

THEREUPON, the witness DR. CHARLES ELKINS resumed the witness stand and was further examined and testified as follows:

CROSS EXAMINATION OF DR. CHARLES ELKINS

By Mr. Spellacy:

Q Doctor, this morning prior to the recess you told us about examining Sam Sheppard on July 4th, 1954; do you recall that?

A Yes, sir, I did.

Q Now, approximately what time did you make this examination?

A I believe it was late in the afternoon.

Q Would it be fair to say it was around five or so?

A I think after five o'clock.

Q After five o'clock?

A Yes.

Q How did you happen to make this examination?

A His brother requested that I examine him.

Q Would that be his brother, Steve?

A That's correct.

Q And had you known Steve prior to this, also?

A Yes, I had.

Q Did you know the Sheppard family generally prior to July 4th, 1954?

A No, I can't say that I knew the family generally. I had known Doctor Sam and I had known his brother, Steve. But to the best of my recollection I had never met his second brother nor had I met any other member of the family, to the best of my recollection.

Q But you knew Steve. Did you know Steve the same way that you knew Doctor Sam, through consultations, and so forth?

A I don't recollect that I ever saw consultation for Steve. It was always that I was called by Doctor Sam.

Q You say, you indicated that you had known Doctor Sam for about two years prior to this?

A To the best of my recollection.

Q Did you ever perform any neurological exams on Doctor Sam prior to July 4th, 1954?

A No, sir.

Q Doctor, I believe in giving us or reciting your qualifications, that you had spent a great number of years as a resident in the specialty of neurology, is that correct?

A That is correct.

Q How long did you spend in the field of neurology prior to the beginning of your practice?

A Prior to my first beginning in practice it was three years in the specialty.

Q In the specialty?

A That's right.

Q And those three years were devoted solely to the specialty of neurology, is that correct?

A That's correct.

Q This was prior to going out into practice of neurology?

A That's correct.

Q Now, did you receive a phone call from Doctor Steve on the 4th of July, 1954?

A I have talked with him on the phone, I believe that he called me --

Q Prior to going to Bay View Hospital?

A Yes, there was a telephone conversation.

Q And did you receive this phone call on the morning or in the afternoon or in the evening?

A I believe it was in the afternoon.

Q How much before this did you receive the phone call before going there, if you can recall?

A Vaguely I can recall that I played golf, for example, on Sunday afternoon. It was after my golf game that I received the telephone call. So I assume it was somewhere between four and six o'clock.

Q And did you receive this at your home?

A That's correct.

Q I believe -- were you living on the west side at that

time?

A Yes, I was.

Q You indicated that you moved to Tuscon; when was it you moved to Tuscon?

A It was just before Labor Day in 1954, because I had to get my boys in school.

Q It was shortly after, let's see, that would have been in September of '54, is that correct?

A That's correct.

Q Then I believe you came back and you testified in the first trial in this matter, is that correct?

A That's correct.

Q Now, you got this call some time in the afternoon on the 4th of July, and you went immediately to Bay View Hospital?

A Well, it was in a short period of time.

Q Had you been to Bay View Hospital before this?

A Yes, I had.

Q And had this been in connection with the consultations that you and Doctor Sam had had?

A That's correct.

Q Did you make any examinations at any time prior to this at Bay View Hospital?

A Yes, sir, I did.

Q And would these have been neurological exams?

A Yes.

Q You worked then on some cases in connection with or in conjunction with Doctor Sam Sheppard, is that correct?

A I consulted with him, yes.

Q Doctor Elkins, when you examined Doctor Sam Sheppard on the 4th of July, 1954, of course, you made a notation on the hospital chart as to what your examination consisted of, and what your findings were; is that correct?

A Yes, I did.

Q And this is a routine practice that consulting physicians engage in, is that correct?

A It is my routine practice.

Q You were called there as a neurosurgeon to consult on the case at hand, is that correct?

A Yes, that's correct.

Q Did you perform any neurological examine that day?

A According to my record I performed a cursory examination, as I have explained, to determine just what this situation was.

Q What is a neurological exam?

A A neurological examination consists of many things.

Q Well, testing the reflexes would be a neurological examination?

A It would be part of an examination.

Q It would be part of it; and you have described on

direct examination by Mr. Bailey, how you test a reflex, and the reflexes give you some indication if there is any damage to the spinal cord; is that correct?

A That's correct.

Q You test the reflexes on the triceps, is that correct?

A That's correct.

Q And the abdominal reflexes; and what other reflexes do you test, other than the abdominal and the triceps?

A I mentioned the reflexes of the eyes, the pupils contracting and dilating.

Q Is this part of the neurological exam?

A It would be part of the neurological examination.

Q Did you perform that particular test on the 4th of July, 1954?

A If I did I made no record of it.

Q Now, doctor, of course, if you had found anything abnormal with regard to that, you probably would have made a record of that, is that correct?

A Not necessarily.

Q Well, do you recall if you found anything abnormal as to the examination of the eyes?

A No, I don't recall.

Q Do you feel that you would have made a notation of that if you had found something abnormal?

A I think if I had seen something abnormal, I certainly

would have made a record of it.

Q Would it be a fair statement, then, doctor, that you didn't find anything abnormal when you looked at the eyes on the 4th of July, 1954?

A That is a fair statement.

Q Did you check any reflexes on the 4th of July, 1954?

A If I did I made no record of it.

Q Once again, doctor, if you had checked the reflexes and found that some reflexes were missing, this would be abnormal and you probably would have made a notation of it, is that correct?

A I probably would have made a notation of it, yes, sir.

Q But there is no notation as to the 4th of July, 1954, that any reflexes are missing, is that correct?

A I would like to return to your original question about the eyes, if you don't mind.

Q Yes, please.

A I did make a record that the pupils were equal and reacted, which I have explained, and this was a normal finding.

Q Right.

A I made no record of abnormality in reflexes, and I don't recall whether or not I tested his reflexes at that time.

Q But with regard to the eyes, then, you found nothing

abnormal insofar as you as a neurosurgeon were concerned, is that correct?

A That's correct.

Q Now, of course, doctor, is there such a thing as an eye-grounds test?

A Yes.

Q What is that?

A This consists of looking into the back of the eye with a light, a scope, and one observes the mechanism of vision insofar as the eye is concerned, the retina, and one can actually see the ending of the optic nerve.

Q And is this part of a neurological exam?

A Yes, it is.

Q Is that what you refer to when you say that the eyes are normal and react to light?

A I have made no record of doing this type of an examination, but I may say that I am absolutely certain that I did this, and had there been any abnormality I would have recorded it.

Q So then you are satisfied, doctor, that on July 4th, 1954, there was no abnormality insofar as the eyes were concerned?

A Not only on July 4th but also on July 6th.

Q My question now, we are concerned with July 4th, doctor.

A Correct.

Q Now, on July 4th your record doesn't reflect there, or the hospital record, does not reflect any absence of any reflexes on the 4th of July, 1954; is that correct?

A That's correct.

Q Now, I believe you testified before that you didn't have occasion to see the X-rays on the 4th of July?

A I don't believe I said that. I said on the 6th I had a notation that I had seen the X-rays and I don't remember whether they were on the 4th or the 5th or the 6th.

Q Well, do you recall seeing them on the 4th? Let me ask you that.

A No, I can't specifically recall that date.

Q Did you know that X-rays had been taken earlier that morning?

A I presume so.

Q You presume so?

A Yes.

Q You mentioned, doctor, the 5th of July; did you see Doctor Sam Sheppard on the 5th of July?

A I believe I dropped in to see him on the 5th.

Q And on the 5th of July, 1954, did you perform any neurological examination?

A I don't believe so.

Q Insofar as the records are concerned, the first time that you performed any neurological exam was on July 6,

1954, is that correct?

A I believe so.

Q Now, when you viewed the X-rays that you have talked about on the 6th of July, did you come to the conclusion that there was a fracture of the spinous process of the 2nd cervical vertebra?

A I did.

Q And did you have some doubt in your mind at that time?

A Not at that time.

Q Doctor, didn't you order or suggest that possibly other X-rays should be taken to confirm this, and when these other X-rays were to be taken that possibly the collar should be removed that he was wearing?

A I don't recall this specifically.

Q Doctor, do you recall testifying in 1954 when certain questions were asked of you, and I believe this is on -- I am fairly sure it is on cross examination by Mr. Parrino -- do you remember Mr. Parrino?

A I remember Mr. Parrino.

Q Do you remember these questions, "Let me put the question this way," and I am referring to page 5145, on the lefthand side, and page 6761 on the righthand side, and about 3/4ths of the way down the page, "Let me put the question this way: Did you see any X-rays that morning of the 6th

of Doctor Sam's cervical vertebrae?"

Answer: "Yes, I believe I did."

Question: "And did you evaluate what you saw?"

Answer: "Yes, sir."

Question: "And what is your opinion, doctor, as to whether or not you saw a fracture of the spinous process of the 2nd cervical vertebra?"

Answer: "I did."

Question: "Was there a fracture there, doctor?"

Answer: "I can't say whether there was a fracture there. I saw a set of X-rays which showed a defect in the spinous process of the 2nd cervical vertebra, and at that time I made a statement that this looked like a fracture, I couldn't tell whether it was recent or old, but it had looked like a fracture and I advised, and I believe this to be correct, although I can't be sure, these X-rays were taken with Sam's collar in place, and I advised repeating the X-rays without the collar; in other words, I was not certain of this thing."

Is that correct, doctor?

A I said it; it is correct.

Q Do you know if subsequent X-rays were taken?

A I believe they were.

Q Doctor, do you know if those following X-rays showed a fracture of the spinous process of the 2nd cervical

vertebra?

A As I recollect, I could not see the fracture on subsequent X-rays.

Q They did not show a fracture, then, is that correct?

A I couldn't see it.

Q Well, the X-rays didn't show them, is that correct?

MR. BAILEY: I object. He said he couldn't see them. What they showed might be interpreted by a radiologist.

THE COURT: Objection sustained.

Q Now, going back to the 4th of July, again, doctor, and your notations on the hospital records as to your impression on that particular day -- what was your impression on the 4th of July, 1954?

A Cerebral concussion.

Q Cerebral concussion?

A Yes.

Q What is that?

A Well, I think I have described this. It is a temporary derangement of the brain.

Q And did you see any objective signs of that on the 4th of July, 1954?

A No.

Q Now, when we talk about objective -- of course, on the other hand, you have subjective complaints, is that

correct?

A That's correct.

Q Subjective is what somebody tells you as a patient, is that correct?

A That's correct.

Q And objective is, of course, what you as a trained neurological examiner sees, is that correct?

A That's correct.

Q And this impression that you received on the 4th of July, with regard to a cerebral -- am I pronouncing it right -- cerebral concussion, was that objective or subjective?

A This was a conclusion reached on subjective complaints.

Q In other words, it was a conclusion that you came to as a result of what Doctor Sam Sheppard told you, is that correct?

A That's correct.

Q Now, I believe you indicated, Doctor Elkins, that you saw Doctor Sam Sheppard again on July 5th, 1954; is that correct?

A I believe I dropped in to see him.

Q And I believe you did not perform any neurological exam on that particular day?

A Not that I recall.

Q On the 6th, of course, you examined Doctor Sam Sheppard is that correct?

A That's correct.

Q And I believe he complained to you about a sensation in his left hand, is that correct?

A Yes.

Q Or absence of sensation, is that right?

A Yes.

Q Was this the first time this complaint was made to you?

A I believe so.

Q Of course, the absence of the feeling in the left hand indicated to you that as a neurosurgeon that there might be something wrong with the spinal cord, is that correct?

A That's correct.

Q But this complaint had not been made to you prior to this time?

A Not that I know of.

Q Doctor, on the 6th of July you came to the conclusion that there was a contusion of the spinal cord, is that correct?

A I believe this is true.

Q And a contusion is a bruise, is that right?

A As I have defined it, yes.

Q Much the same as a bruise on the right side of the face, is that correct?

A That's correct.

Q And on the 4th of July, of course, you noticed that there was a bruise on the right side of the face?

A Yes.

Q And this was evident?

A This is objective.

Q Right, and, I mean, you could see this?

A Yes.

Q And, of course, a contusion of the spinal cord is the same as a bruise, isn't it?

A By definition that is certainly correct.

Q Now, tell me, doctor, is a contusion of the spinal cord an immediate thing, or is this a progressive thing?

A It can be both.

Q In other words, it could take place some few days after?

A The bruising --

MR. BAILEY: Excuse me, your Honor,
I am going to have to object, because we don't
know after what. "Few days after" is the question.

THE COURT: Overruled.

Q Is this a delayed reaction type thing?

A The effects of a contusion can be progressive.

Q They don't show up immediately?

A Not necessarily.

Q Oftentimes do they show up immediately?

Q A contusion, as you indicated, would be similar to the bruise on the eye which was evident on the 4th of July, is that correct?

A That's right.

Q But you didn't find on the 4th of July any evidence of contusion of the spinal cord?

A That's right.

Q Nor did you on the 5th of July find any evidence of contusion of the spinal cord?

A I have no record of the 5th of July.

Q The first time you found any was on the 6th of July, is that correct?

A The first time I found any was on the 6th of July.

Q You don't know how much before that this contusion had existed, is that correct?

A No, I don't.

Q I believe later on, though, on direct examination you indicated to Mr. Bailey that on August 6, 1954, that this was not a contusion but a concussion of the spinal cord, is that correct?

A That is correct.

Q This is the impression you had in August of 1954?

A (Witness nods.)

Q Well, is that a less serious thing than a contusion, a concussion?

A Yes, it is.

MR. SPELLACY: Excuse us just a moment, your Honor.

I have no further questions.

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REDIRECT EXAMINATION OF DR. CHARLES ELKINS

By Mr. Bailey:

Q Doctor Elkins, you have indicated that you did not evince any contusion of the spinal cord on the 4th or 5th days of July, but you found it on the 6th?

A That is correct.

Q Is that the first time you looked for it, by way of neurological examination?

A I believe this is true.

Q Do you have any evidence that the damage present on the 6th was not there on the 4th?

A No.

Q Do you find anything in the hospital record showing that Sam Sheppard suffered any trauma while he was a patient in the hospital?

A No, I don't think so.

Q Is the damage to the spinal cord consistent with the trauma to the back of the neck?

A Yes, it is.

Q You told us earlier that the difference between a

concussion and a contusion is one of degree, the contusion being the more severe?

A That's correct.

Q Now, what kind of force to the head can cause a concussion, need it be in any particular part of the head?

A No, sir.

Q Is it any force that will cause the brain to slam against the skull?

A It is usually a direct force.

Q Could it be applied to the face?

A Yes, it could.

Q Could a good hard smash in the face cause a concussion?

MR. SPELLACY: Objection.

A Yes.

THE COURT: Overruled. The answer may stand.

A Yes.

Q You say that it could. You did see objective evidence on Sam Sheppard's face of some kind of contusion?

A That's correct.

Q What, again, doctor, was your reason for not making the examination on the 4th when you were first called?

A I felt that Doctor Sam was too sick to warrant a complete and detailed examination.

Q You satisfied yourself that no emergency treatment

was necessary?

A That is right.

MR. BAILEY: Thank you. That is all.

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RECROSS EXAMINATION OF DR. CHARLES ELKINS

By Mr. Spellacy:

Q Doctor, did you satisfy yourself that there was nothing neurological wrong with him on July 4th, 1954?

A Within limitations, yes.

MR. SPELLACY: No further questions.

MR. BAILEY: What do you mean by within limitations?

THE WITNESS: I felt that he had sustained a concussion --

MR. SPELLACY: Objection.

THE COURT: Sustained.

MR. BAILEY: We have no further questions, doctor. Thank you.

MR. SPELLACY: I have nothing further.

THE COURT: You are excused, doctor.

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

THE COURT: Counselor, do you wish to make a statement?

MR. BAILEY: I do, your Honor.