

new, and with a new start. The Court believes that this record reflects that there is circumstantial evidence in this case of a different character and nature than that which was adduced in 1954, stronger in character, in some areas.

Accordingly the motion for discharge is overruled.

Anything further, counselors?

MR. BAILEY: No, your Honor.

(Thereupon the jury was brought into the courtroom, and the following proceedings were had in the presence and hearing of the jury:)

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Ladies and gentlemen of the jury, we have reached that point in the proceeding where we will now hear the closing arguments or summations of counselors.

You will recall that at the very outset and commencement of this proceeding you heard opening statements, and the Court instructed you at that time that neither opening statements nor closing arguments, if we reached that point in this proceeding, would be considered by you as evidence

in this case.

So now we are about to undertake and listen to the summations of counselors for each party to this lawsuit; and you are hereby instructed that these closing arguments are not evidence in this cause, and will not be so considered by you.

For purposes of the opening statement for and on behalf of the State of Ohio, the Court will call Counselor Corrigan or Spellacy?

MR. SPELLACY: Yes, if it please the Court.

CLOSING ARGUMENT BY MR. SPELLACY

MR. SPELLACY: If it please the Court, your Honor, Judge Talty, Mr. Bailey, Mr. Sherman, ladies and gentlemen of the jury:

As Judge Talty has just indicated to you, we have reached that part of the case which has been referred to as closing argument; and he has also instructed you that what we are about to say here in this particular case is not evidence.

As you know from the time that we impaneled you on voir dire, that the only evidence that you are to consider, of course, was the evidence that came from the witness stand from

the lips of the witnesses and the physical exhibits that were offered and received into the evidence.

What we say here by way of closing argument is certainly not to be considered by you as evidence.

We are given this opportunity, though, to give you our ideas as to what we think the evidence in this case showed.

With that in mind, certainly, if my interpretation of the facts differs from yours, disregard my interpretation and accept your own, because you and you alone are the sole and exclusive triers of the facts in this case.

Before I begin the argument, I would like to take this opportunity to thank his Honor Judge Talty for the judicial manner in which he has presided over this trial.

I would like to thank Mr. Bailey and Mr. Sherman for the manner in which they have conducted their defense.

And I would like to take this opportunity to thank each and every one of you, particularly, each and every one of you, for the time and trouble that you have taken out of your every-day lives, to come in here into this courtroom, and to devote it

to our system of justice, for this defendant and for the people of Ohio.

Certainly you were called upon to suffer great personal sacrifice, away from your families, and away from your loved ones.

Your services here as jurors to this defendant and to the people of Ohio certainly is just as important as those members of our armed forces who are presently serving in Viet Nam, or watching over the Berlin Wall.

Your service and duty here as jurors is just as important as those members of our armed forces.

On behalf of the County Prosecutor's office, we would like to thank you.

Now, you know that the reason you are here is because of an indictment returned by the Grand Jury, and you know, of course, that the indictment is not evidence in this particular case, and I will refer to it only for the purposes of aiding you.

And at the conclusion of the case, his Honor Judge Talty will read to you the indictment, and he will instruct you as to principles of law, and you will learn that the indictment charges that

on the 4th day of July, 1954, that the defendant Sam Sheppard purposely and maliciously killed Marilyn Sheppard.

At the conclusion of the case his Honor Judge Talty will give you the definition and the instructions of law as to what is purposeful, and what is malicious.

Purposeful he will tell you means intentionally. When we have that particular instruction of law in mind, of course, we can look at the testimony of Doctor Lester Adelson as to whether or not this killing was purposeful, and whether it was intentional.

And certainly we don't have to be too concerned with these elements when we look at the slides; and it wasn't pleasant to put on those slides, but it was necessary, because we have an obligation and a duty to illustrate that on the third day of July, 1954, Marilyn Sheppard was a living human being, and that on July 4, 1954, she met her death because of a purposeful and malicious act.

And certainly 35 wounds to the head, as Doctor Lester Adelson told you, was a purposeful and malicious act.



We asked the doctor how many blows would it take to inflict 35 wounds, and he told us 25 blows. Certainly 25 blows was a purposeful and malicious act.

We said, "Doctor, what type of instrument inflicted all those blows?" and he said there was a different type of instrument, because, as you recall, you remember that the eyes were black, the nose was broken, there weren't any cuts or lacerations around the eyes.

A different type of weapon inflicted those wounds than inflicted the wounds in the top of the head, and around the head and on the hand.

This is important about Doctor Lester Adelson's testimony, because once again it shows that two separate or a number of weapons were used, or a number of instruments, and that this was a purposeful and malicious act, that the eyes were blackened, the nose was broken but not cut, and the head was cut.

"Doctor, where was the great number of wounds?" and this is significant when you picture that body laying on the bed, "Where were the great number of wounds?" The greatest number of wounds were on the lefthand side of the head. And the

body, of course, was laying on its back with the greatest number of wounds on the lefthand side.

And this is important when you come to your ultimate conclusion as to how the blows were struck, and how many were struck.

So we know from the testimony that Marilyn Sheppard died as a result of a number of blows inflicted to the head, and that there were at least 25 of these blows; that they were struck with such force and strong enough to shatter the frontal bone, and we saw the slides of those and we have pictures in the evidence here.

We know that a great deal of strength was needed to inflict the number of wounds that caused the death of Marilyn Sheppard.

We know from the evidence on her hands that she was struggling, that these are defense wounds, and they are present on both hands. We know that from the evidence, too.

But let's move on. We know that on July 3rd, 1954, Marilyn Sheppard was alive; that on that particular evening Mr. and Mrs. Donald Ahern, who came in here and testified, they had cocktails over at the Ahern's house.

They went from the Ahern's house to the

Sheppard house, and there at the Sheppard house they began to have dinner, and this dinner started about 9:00.

Prior to having dinner Donald Ahern, Sam Sheppard, went down and checked the water. The water was too rough for water skiing.

There was some concern about a party that they were supposed to have the next day. The lake was too rough for that, they thought.

So they went down in the basement, and Doctor Sam Sheppard worked on the punching bag. He took off a jacket he had on, and all he had on at that time was a white T-shirt.

So they went back up to eat. And Mrs. Ahern told you how she and Marilyn prepared the dinner, how they ate out on the porch, and it was quite windy that night, and it was chilly.

So it was necessary for Donald Ahern to get a jacket, Mrs. Ahern went in and got him a jacket, one of Sam Sheppard's jackets.

It was necessary since Sam Sheppard at this time only had on a white T-shirt to get a jacket, and he got a brown corduroy jacket, and he put the brown corduroy jacket on when they were out on the porch eating dinner.



And they finished eating dinner about 10:00. This is important because what they had to eat, what time they finished, is important in establishing the time of death.

And we know from Doctor Gerber, and it is unrefuted, that the time of death was between 3:00 and 4:00; 3:00 in the morning, and 4:00 in the morning.

Let's go on with the Aherns; that they came back in the house, and Mr. Ahern testified -- and this is unrefuted -- that the house was quite chilly that evening, and they left their jackets on, and they began watching television and he listened to the baseball game over in the corner.

Sam Sheppard became tired. He lay down on a couch, while the rest of them were watching television, and he lay down on the couch and they left that house at 12:30. Sam Sheppard was asleep on the couch, and he had on State's Exhibit 1, the brown corduroy jacket.

We know that at 12:30 Marilyn Sheppard was alive. When the Aherns left she accompanied them to the door.

When she accompanied them to the door she closed the door behind them, and there were lights on in the house, there were lights on down-

stairs, and there were lights on upstairs. This we know from the Aherns' testimony. This was at 12:30.

And we know the next morning at a quarter to six that a call comes from the Sheppard home, and, now, mind you, death occurs between 3:00 and 4:00.

The next thing we hear is that a quarter to six or roughly thereabouts, a call comes from Sam Sheppard to Spencer Houk; and, strangely enough, isn't daylight starting to break.

As daylight breaks a call comes to the Houk home, "Something happened to Marilyn, get over here quick."

And, oh, there is a great deal to do about did you call the police then, did you as mayor call the police.

You remember Esther Houk's reply, "He was able to call us, why didn't he call the police?" He is the police surgeon."

But there is a great deal to do about why they didn't call the police.

So they go over, as a friend they go over, and they go in and they find Sam Sheppard sitting in a chair.

And what happened to Marilyn, what happened?

And he says, "I was asleep on the couch, I heard a noise or I heard Marilyn scream, I ran upstairs, I got clobbered; the next thing I can remember coming to on the beach, I wandered around."

This is the first statement, the first time he has contact with the outside world.

And, then, of course, we know Esther Houk runs upstairs; and a great deal to do on cross examination, "Why did you run upstairs? Did you see the body downstairs?"

There is nothing mysterious about that. Steve Sheppard testified that he went upstairs, naturally. This was the natural thing to do.

But an inference is trying to be made to you people that Esther Houk had something malicious in her mind when she ran upstairs.

She went upstairs, and she came right back down and she said, "My God, call the police, call everybody," and the police are called.

And we know that Patrolman Drenkhan got there at one minute after six, and he was the first policeman on the scene.

But let's go back to when the Houks

arrived, and they came down, Esther Houk came downstairs, and the defendant got up and he says, "Oh, my neck," as he is walking into the kitchen and back into the den.

And she offers him a drink and he says, "No, no, I don't want it, I have got to think."

With that the brothers come; Richard comes and Steve comes. Richard comes into the house, he goes upstairs, according to the testimony of the Houks, and he examines Marilyn Sheppard and she is dead.

He comes back downstairs into the den and he says, "Sam, did you have anything to do with this?"

MR. BAILEY:           Objection.

THE COURT:           Overruled.

MR. SPELLACY:       And the reply is in the record, "Hell no," and this is unrefuted.

Then Steve Sheppard arrives, and by 6:30 Sam Sheppard is in Bay View Hospital. The hospital records bear that out.

And we know from our common knowledge and common experience that it takes a little bit of time to get from the Sheppard home to Bay View Hospital.

But be that as it may, Patrolman Drenkhan

responds to the call, and he arrives, and he asked the same question, "What happened?" and the same response is given.

"Marilyn screamed, I woke up, I ran upstairs, got clobbered, came to on the beach."

But Patrolman Drenkhan on his way upstairs sees something peculiar, insofar as these stories are concerned.

He sees State's Exhibit 1, which is not thrown on the couch, which is not on the body of the defendant, which was on the body of the defendant at 12:30 when the Aherns left.

Where is this coat? It is placed at the end of the couch like that (indicating). This right away was so important that that morning they took a photo of it, because it just didn't jibe with his story.

This coat was not slept on. It was not thrown off in his hurry to get upstairs. It was placed there, as he took it off and went upstairs, not in response to any cries or screams.

Let's go back to Spencer Houk. We have the story that he first told him on the morning about how he came to on the beach, that's all he remembers.

You remember Spencer Houk -- and this is



also unrefuted -- that the conversation he had with him at Bay View Hospital in the evening, where he said, "What happened, Sam?" and he starts telling him about it.

And he said, "I woke up on the floor. I heard a noise downstairs. I chased a man down."

"Can you describe him for us?"

"Yes, I can. He is bigger than I am. Six-two, six-three, or six-four, big broad shoulders that tapered down to a narrow waist. He has got hair that stands straight up."

And isn't this story corroborated by Detective Schottke, who got the same thing at 10:00 in the morning, that this man was six foot two, or six foot three, and at that time he told him it was a dark complected white man.

But he tells Spencer Houk that he could recognize the profile of this man, that so easily knocked him out on the beach.

And then we have another conversation with Spencer Houk, all of which is also unrefuted, at the house, at Spencer Houk's home --

MR. BAILEY: I object to the use of the word "unrefuted."

THE COURT: Overruled.

MR. SPELLACY: Where they talk about, there is a conversation about the police, and about the accusations being made to Spencer Houk.

And Spencer Houk says, "Sam, is this true, have you done this, have you said this about me?"

And Sam's reply is, "Don't pay any attention to those fellows; they are trying to put one of us against the other."

And then, also, of course, there are conversations at City Hall, two conversations, which are also unrefuted --

MR. BAILEY: I object, again.

THE COURT: Overruled.

MR. SPELLACY: Where he says, "Maybe the man wasn't six foot two, or six foot three, or six foot four, maybe I just imagined it because he over-powered me so easily when I was down on the beach; really he could be 180 pounds and five foot ten."

And then another conversation he says to Spencer Houk, the man he called and requested to come over as a friend, he says, "You know Doctor Moritz has expressed some interest in you."

And we know also from Spencer Houk that he was accused by Steve Sheppard down at Central

Police Station. This is the man they called as a friend, whose name just happened to come in, whose telephone number just happened to come into his mind on the morning of July 4, 1954. His name just happened to pop in.

Yet on that bed in the bedroom, or right beside the bed was a telephone, on the night stand. Was that used when he found that Marilyn was beaten so badly? No. Were the police called at that time?

No. Were the police ever called by Sam Sheppard? No.

Now, getting back to the first policeman that responded to the scene, Patrolman Fred Drenkhan, now Chief of Police in Bay Village. He told you about the investigation he conducted there in that house that day, and certainly we can see from the pictures that are in the evidence here, and from the evidence, that certainly there was no burglary, there was no forcible entry into that home, because all the doors were checked, the windows were checked, and we can see from the pictures that that was a phony burglary, because what burglar pulls out drawers in a desk and stacks them on top of one another?

What burglar pulls out drawers in a desk

and leaves them all even?

This is just a make-believe burglary. There is no question about that. They even conceded that in their opening statement.

But Drenkhan not only checks the house but he goes down on the beach, because he has in mind now the story that was given to him by Sam Sheppard, and he goes down and he looks down on the beach.

"Did you see any marks on the beach?"

"No, there were no marks; I didn't see anything at the foot of the stairs."

Then, of course, we have the conversation with Drenkhan on July 8, 1954, and the significant thing about this conversation is that he heard Marilyn scream, he ran upstairs, he was struck from behind, he came to, and, mind you, this is on July 8th, he took the pulse and he went back downstairs.

He didn't hear any noises. He went back downstairs, and he saw a form going out the door, and he chased this form.

Once again we have a man who has 1 bushy-hair, that succumbs and knocks him out on the beach. Of course, Drenkhan also told us about a conversation

they had out at Fairview Police Station. They asked him if Marilyn had any admirers, and he didn't know any.

They asked him about his extramarital activities and he admitted he had some.

MR. BAILEY: I object, your Honor.

THE COURT: Overruled.

MR. SPELLACY: We go back, and Drenkhan realizes this case is too big at this particular time, so he calls Cleveland, and Cleveland is called in as a courtesy matter on the 4th of July.

They send out a scientific man who arrives at the home, and we all know of course that it was Mike Grabowski. And as a courtesy matter on the 4th of July Patrolman Schottke and Gareau go out to the home.

Of course, Detective Schottke testified here, and he told us that the only contact they had with the case was on the 4th of July, and we know from the testimony of other witnesses that Cleveland didn't official get into this case until July 23rd, when Sergeant Dombrowski and Lieutenant Poelking and a few more fellows from the Scientific Unit went out to the home.

So that on the 4th of July at about 9:00,



Schottke and Gareau had been assigned by Captain Hauschild to go out and give assistance to Bay Village; and they respond to this call and they arrive at the home around 9:00, I believe.

And they talk first of all to Doctor Gerber who had arrived at the home prior to when they did. And they go up and they check the room, and, of course, you have heard over and over again a description of the room, the position of the body, and it is depicted in the photos here.

It is not necessary and I won't belabor you by going over it again, but they described what they saw when they entered the room, and they checked, and then they went back to Bay View Hospital where they met for the first time Sam Sheppard; and this was at 10:00 in the morning.

And what did Sam Sheppard tell them at 10:00 in the morning? He told them that he was asleep on the couch, that he had fallen asleep when the Aherns left at 12:30, and that he heard his wife scream, he got up from the couch, raced upstairs, was struck from behind, or, on the side, came to, heard a noise downstairs, went downstairs.

"Were there any lights on in the house?"

No, there were no lights on in the house.

But Patrolman Drenkhan told us there was a light switch at the bottom of the stairs, and at the top of the stairs. The lights were not on in the house.

"I chased this form down to the beach, and when I got down to the beach I got knocked out again."

They asked him, "Can you describe this form for us?" This is at 10:00 in the morning, and I ask you to remember that this is after Doctor Gerber has talked to him at 9:00, and I will get into his testimony later.

But at 10:00 in the morning they asked him, "Can you describe this man?"

"Yes, I can."

"He is a dark complected white man, much bigger than I am, about six foot three inches. I didn't get a good look at him, but he is about that big. He is a dark complected white man."

So they then ask him, "How long did Marilyn's screams last?"

"All the time I was running upstairs."

So they talk to him at that time and that is all he tells them or essentially all he tells them.

They go back to the Sheppard home, and at 1:00 what we have marked here as State's Exhibit 26, a green bag, State's Exhibit 24, a man's watch, and State's Exhibit 25, the ring, and the key chain, State's Exhibit 23, are found. They are found by Larry Houk on the side of the hill in about three or four feet of brush.

And they are given to Detective Gareau, and, of course, we won't go into how they were handled. They were handled carefully by the detectives.

These articles were taken back to Bay View Hospital, and they said, "Are these yours?"

"Yes, they are mine, I was wearing them."

And with that they say, "How does blood get on the watch?"

Now, mind you, the first time they talked to him he said, "I heard a noise downstairs, I got up and I ran down after this noise."

"How did blood get on the watch?"

"I remember now, when I woke up on the floor, I took my wife's pulse by the throat, and that's how blood got on the watch. And then I chased the man downstairs or the noise downstairs."

"Well, this man," the police asked him,

"If this man were so interested in getting your watch, and intent upon robbery, why didn't he take your wallet?"

And then Sam Sheppard says, "Yes, I remember now, the wallet was on the floor beside me, my badge was shining in the light, the little light was there, and I picked this up, put it in my pocket, went in and checked Chip, and then I heard the noise downstairs."

All these stories are inconsistent with one another and they are all unrefuted..

MR. BAILEY: I object, again.

THE COURT: Overruled.

MR. SPELLACY: Another significant thing, when they look at the watch when it is taken out of the bag it is stopped, and what time is it stopped at? 4:15.

What time were the Houks called? A quarter to six. That is a lapse of an hour and a half.

Then we have the testimony of Doctor Gerber, who has been County Coroner here in this county for thirty years. He arrived at the home at about eight o'clock, and he went up and he checked the room that the body was in, and he described it; he made sure, of course, it was

obvious that Marilyn was dead.

Then he had occasion after Mike Grabowski came -- and Mike Grabowski took a photo of this jacket as Patrolman Drenkhan did, because it just didn't jibe with Sam's story, and it doesn't.

This jacket was on him at 12:30, and according to his own story he fell asleep with it on; and it wasn't on him when the Houks came in the house. In fact, he was bare from the waist up.

We know also that he had a T-shirt on when the Aherns left, and that a T-shirt was underneath the brown corduroy coat.

And, of course, when the Houks arrived he is bare from the waist up. I will have a little bit more to say about the T-shirt a little later on.

But Doctor Gerber went out then to Bay View Hospital and he got the clothes that Sam Sheppard was wearing, the pants, the shoes and the socks, and he had a conversation with the defendant.

And, mind you, this is about 9:00, an hour before Schottke sees him; and, mind you, he tells Schottke that the man is six foot two, six foot three.

He tells Doctor Gerber, which is also unrefuted, that he went to sleep, that Marilyn called, that he went upstairs, that he was knocked out there,



that he heard a noise downstairs, that he chased this noise down, that he was knocked out again on the beach, and then he came to and he wandered around in a dazed condition.

Then Gerber asked him, "Can you describe the person that you saw in the room?"

"No, I can't, I can't tell you. All I remember is a form."

"Can you describe the person that you chased down the steps?"

"No, I can't. All I can tell you is that it was a form."

This is an hour before he tells Schottke the man is a dark complected white man, six foot two, six foot three.

Which statement are you going to believe? Doctor Gerber tells you that after getting the clothes he goes back to the house, and when he goes back to the house the body is moved, and he learns at that time the amount of rigor mortis that has set in; and he establishes the time of death between 3:00 and 4:00. He says 4:00 at the latest, somewhere between those hours.

And he tells you that he then conducts an examination of that room, certain things are noticed,

This can only mean one thing, that that pillow had to be moved at one time or another, and that some object was laid on this pillow, and the pillow was moved again, and this took time.

And can you tell me that Sam Sheppard was laying on the floor in the bedroom or in the hall or on the stairs or wherever he was while this was being done, while the watch was being taken off Marilyn Sheppard, while this pillow was being moved around, while an object was laid on this pillow long enough to make this impression? Is this reasonable?

We had the testimony of Sergeant Dombrowski. There was really nothing too significant about it other than he took photos and he checked the house also with Patrolman Drenkhan and they found no means of forcible entrance.

But it was significant that they checked and dusted the doors; no prints on the doors.

He checked the desk; no prints on the desk. He checked the den; there are no prints on any objects in the den.

What objects do we have in the den? We have the statuettes that are broken on the floor.

We have the green box that is depicted in one of

the exhibits, the photos, and what is significant about all these things, that they are the same marks that are on the desk, are on the desk in the den, are on the green box, and are on the statuettes.

And this took time to do this, to make those marks as though something had been wiped off; and it took time for that watch to get down into the-- Marilyn's watch -- to get down into the den.

And if I may, while I am talking about the watch, let's just take a step backwards, about the statement that Sam Sheppard made to Patrolman Schottke, when he said to Patrolman Schottke, "I got the blood on the watch when I took her pulse." Let's follow that story through logically.

That means that he got the blood on the watch after he came to in the bedroom. So he came to in the bedroom, and then to believe his story he heard a noise downstairs. He has the watch at this time. He chases the man downstairs, and he chases and he loses on the beach, and he has the watch on then, when he is on the beach, to follow this story through logically.

And do you believe that the man then took his watch off, took his key chain off him, and his ring off him, went back up those long flight of stairs

some 52 steps as Patrolman Drenkhan testified, went back into the house, back up the stairs to Marilyn's room, took Marilyn's watch off her, came back into the den, got the green bag out of the den, and then went down the stairs, the foot of the stairs, where Sam Sheppard was laying, just knocked out, and threw the bag. Is this logical? It just doesn't fit.

We know from the evidence from Detective Grabowski, from the green bag, from the watches, that what took place in that house took time.

And remember that the time of death was between three and four o'clock, and that it was just a coincidence that the Houks were called when daylight was starting to break. Something had to be done.

And were the police called? No. The Houks were called.

We know from the testimony of Sergeant Dombrowski about the blood in the house, and that there was blood going down the stairs, going out the front door, on both sides of the stairway, the stairway going through the L-shaped living room, and the stairway going down to the kitchen, and both out the front door and out the back door, and that

there was blood going down the basement, and that the blood going down the basement was human blood. We know this from the precipitin test that were tested by Henry Dombrowski and by Mary Cowan, and we know there was human blood from the second floor to the first floor, on the precipitin test, tested by Mary Cowan and Henry Dombrowski.

Then we have the testimony -- I might just call this to your attention, you remember the testimony of Detective Dombrowski as to the chair, the red chair that was in the room?

He testified that he found blood on the chair on the lefthand side, on the side here. And this is important when you consider the testimony of Mary Cowan, because although she didn't get a benzidine test, or positive benzidine reaction to the back of the left pant leg, she got a luminol reaction. And isn't this consistent with right in there, when he sat on the chair.

And she told you that she examined those pants, and we have them in evidence here, she testified that she saw on the front of these pants in this area, and she described for you, brown, reddish-brown specks that tested positive on the luminol test as blood.



But, of course, she was honest and she told you she didn't get a benzidine reaction, and she told you why she thought she didn't get a benzidine reaction, because she knows through her experience that blood that is placed on an object, a fabric such as this, and then comes in contact with water, will wash out readily; and you don't get a positive reaction on the benzidine.

Then they try and say that is copper sulphate. Their own doctor, Doctor Kirk, said copper sulphate is a bluish material. These are reddish-brown stains, and they are on the front of the pants, they are on the cuff of the pants, and they are on the back of the left leg.

And she can tell you there is a larger spot that she did get a positive for blood, and it was blood, and I believe she typed it and I believe she got a type M on those particular pants.

And, of course, Marilyn Sheppard we know is a type O-M.

Then we have Mary Cowan's testimony as to the watches. She testified as to the examination she made on the watch, State's Exhibit 24.

And we have slides and photos of this watch as they appeared when she examined on the

5th or 6th of July, 1954, and of course it is completely different than it is today.

She told you what she saw on that particular watch. She told you that she saw splatterings of blood, and she described what a splattering is.

We don't have to be an expert, when we saw that particular slide on the screen there. Those are splatterings.

And isn't it strange that the watch being worn on the left hand, that the splatterings are down in this area, and they are void up in here, on this side, that most of them were below the numeral 6, as she testified.

And isn't this consistent with somebody standing over the bed, because you wouldn't get blood on the back side here, but you sure get it on the front. But, "no, I got this when I took her pulse."

It is also significant that she tested the green bag, and the green bag tested negative, no blood on it.

This means both the inside and the outside of the green bag had no blood on it.

This means that the watch which had blood

on it had to be dry when it was placed in that green bag, and the other objects were placed in that green bag; the blood on that watch had to be dry, and this takes time. And, of course, we had time here.

Now, Mary Cowan concluded the State's case in chief.

I anticipate that at the conclusion of the arguments Judge Talty will instruct you as to principles of law, and he will instruct you about circumstantial evidence. Listen to that instruction.

There is nothing mysterious about circumstantial evidence. It is just common ordinary sense. And it is allowed in all criminal cases, because by its very nature crime isn't committed at the 50-yard line between the Cleveland Browns and Philadelphia Eagles game. Crime is committed in the nighttime, when there are no witnesses.

The Legislature saw fit to allow circumstantial evidence. As I say, there is nothing mysterious about it. It is just common sense, and I am sure if you look at the common ordinary sense factors in this case, such as the watch, and as I said, we don't have to be an expert to see the blood splattering on that watch, this can only mean one

thing, that that watch was in the room, he was wearing it when Marilyn Sheppard was killed, and the splatters are on it. There is nothing mysterious about this.

Last week my little boy who is three years old went out in the kitchen where there was a chocolate cake on the stove and he came back in the front room and he had frosting on his hand, I didn't see him put his hand on the cake; but I didn't have to be Einstein to figure out that he did.

This is just common ordinary sense. We have the T-shirt. When the Houks got there, there is no T-shirt.

And we know by their own admission that the man who inflicted these wounds had to intercept the blood that was coming up from the bed; and where would he intercept that blood? On the T-shirt.

And we know from Mrs. Franz, who came in here as a nurse, that it took four people to get his pants off of him, that were soaking wet.

Well, how many people would it take to get a T-shirt off? How many of you when bringing your children home after they have fallen asleep in the car have trouble getting their snowsuits off, which would zip off? This is just common ordinary sense.

Can you tell me that a man who is knocked out on the beach, that another man or whoever this intruder was, was going to take the time to pull off his T-shirt? What did he want, a souvenir? This is ridiculous.

Then we have the jacket, State's Exhibit 1. You know, witnesses come in here -- and this is what is so nice about circumstantial evidence -- and, of course, you have a duty and an obligation to weigh the witnesses -- circumstances don't lie, nor are they mistaken, these are just facts, and it is a fact that this coat was laying on the couch where he allegedly fell asleep, and he was wearing that coat at 12:30.

Yet at 6:00 we have that coat laying on the couch, and we also know from the evidence from Mr. Ahern, it is uncontraverted, that it was chilly in the house that evening.

And we all know from our common experience that you get cooler in the middle of the night, and I don't believe that he took that coat off and laid it down at the edge of the cot where his feet were and then went back to sleep. This is just not reasonable.

Then we have, of course, the absence of



any marks on the beach. The story he told is refuted there.

Patrolman Drenkhan said he looked down there. There were no marks on the beach.

Then, of course, we have the various stories told by Sam Sheppard to various people at various times, and they all vary.

These stories are consistent with only one thing, they are consistent with guilt, they are consistent with the fact that on the 4th day of July, 1954, Sam Sheppard purposely and maliciously killed Marilyn Sheppard.

Thank you.

MR. BAILEY: May we approach the bench, your Honor?

THE COURT: Yes.

(Thereupon counsel and the Court conferred at the Court's bench out of the hearing of the jury, as follows:)

MR. BAILEY: The record will reflect that on each of several occasions, when referring to an interrogation which the evidence showed involved only one person, that is, the witness and the defendant Sam Sheppard, the prosecutor persisted in using the term "unrefuted."