

THERUPON, MICHAEL POPIEL, A member of the prospective jury panel, having been previously sworn, was examined and testified on voir dire, as follows:

THE COURT: Good afternoon, Mr. Popiel.

MR. POPIEL: Good afternoon.

THE COURT: Is that the correct pronunciation of your name?

MR. POPIEL: Long "o". Popiel.

THE COURT: Popiel?

MR. POPIEL: Yes.

THE COURT: That is P-o-p-i-e-l?

MR. POPIEL: Yes.

THE COURT: Now, Mr. Popiel, the lawyers are going to ask you some questions, and if you will just relax and pay attention to the questions, that is all that the Court expects of you, except that we want you to respond forthrightly and accurately to the questions that the lawyers will put to you, and keep your voice at such a point that everyone in this courtroom can hear you. Will you do that, please?

MR. POPIEL: I will try.

THE COURT: Mr. Romito, who sits in front of you, he has to report everything that you respond. So a nodding of your head will not be sufficient.

So keep your voice up so that each of us can hear your responses to the questions are. Will you do that, sir?

MR. POPIEL: Yes.

THE COURT: And remember that you are under oath.

MR. POPIEL: Yes.

THE COURT: Please proceed.

VOIR DIRE EXAMINATION OF MICHAEL POPIEL

By Mr. Spellacy:

Q Once again for the record, will you please state your name?

A Michael Popiel.

Q Where do you live, sir?

A 6802 Reid Drive, Parma Heights.

Q How long have you lived on Reid Drive?

A Five years.

Q Prior to living on Reid Drive where did you live?

A In Parma.

Q In Parma, Ohio?

A Yes.

Q Whereabouts in Parma?

A I don't remember the address. On Hollywood Drive.

Q On Hollywood Drive?

A Yes.

Q How long did you live in Parma?

A Three years.

Q Are you a native of Cleveland?

A Yes.

Q Did you go to school here in Cleveland?

A Yes, I did.

Q Where did you go to school?

A I went to Fogart Junior High and South High.

Q What year did you graduate from South High?

A I didn't graduate from South High.

Q What years did you attend South High?

A Oh, probably in 19-- I got out of there about 1927.

Q Are you married, sir?

A Yes.

Q Do you have a family?

A Yes.

Q How many children do you have?

A Two.

Q What are their names and ages?

A Barbara, 22. David, 20.

Q Do they live in the home with you on Reid Drive?

A The son does. The daughter is married and has her own.

Q Pardon?

A The daughter is married and is away.

Q What is your daughter's name?

A Barbara.

Q What is her name now?

A Barbara Wagner.

Q Barbara Wagner?

A Yes.

Q Where does she live?

A On West 104th Street.

Q On West 104th Street?

A Yes.

Q Is she employed outside the home?

A No.

Q What does her husband do?

A He works in a machine shop.

Q Pardon me?

A A little machine shop, he works.

Q Does your son work?

A No.

Q Is he in school?

A No, not now.

Q Is your wife employed outside the home?

A Yes.

Q Where is she employed, Mr. Popiel?

A She works at the post office.

Q What is your employment, sir?

A Post office.

Q How long have you worked for the Post Office?

A Since 1947.

Q 1947. Prior to that what did you do?

A I was in the service; and before that I worked for Republic Steel.

Q What did you do for Republic Steel?

A Tube maker.

Q What post office do you work at?

A At the main post office.

Q What are your duties there at the main post office?

A I am a clerk in the dispatching section.

Q Now, you understand that this case is entitled the State of Ohio vs. Sam Sheppard, you realize that?

A Yes, sir.

Q Do you recall reading anything about this case?

A Yes, I have read about it since the beginning.

Q Where were you living in 1954?

A I believe in Parma.

Q In Parma. Without telling me exactly what you read, but did you read the newspapers about this matter?

A Yes.

Q What newspapers did you read, if you can recall?

A The Press and the Plain Dealer and the News, I believe, at that time.

Q The Cleveland News?

A The Cleveland News.

Q As a result of having read about this case, have you formed or expressed an opinion with regard to it?

A At that time, yes.

Q You did?

A Yes.

Q Now, you not only formed an opinion, but you also expressed an opinion, is that correct?

A Yes.

Q Would this have been on more than one occasion that you expressed an opinion?

A Probably, yes.

Q Now, if called upon to sit as a juror in this particular case, could you set outside your mind the opinion that you had expressed, and decide this case solely on the facts presented here in this courtroom?

A I believe I could.

Q In other words, you understand that Judge Talty will instruct you that you are to confine yourself only to the evidence that is presented here in this courtroom, and you are not to rely upon your memory as to what the facts were,

or what you recall the facts to be, you understand that?

A I understand.

Q And you are to confine yourself only to the facts as you hear the facts from the witness stand that you are sitting in now?

A Yes.

Q And if selected as a juror could you do that?

A Yes, I could.

Q I believe you indicated when a question was asked by Judge Talty, as to whether or not any of the members of the panel had jury experience, I believe you indicated you had, is that correct?

A That's right.

Q When was it that you had this jury experience?

A A year ago last summer, and about 20 years before that.

Q A year ago last summer?

A Yes.

Q Was that on a civil case or a criminal case?

A That was civil.

Q A civil case. Would that have been in this county, sir?

A Yes.

Q In the Common Pleas Court?

A Right.

Q Would that have taken place down at Lakeside Avenue and



Ontario?

A Yes.

Q Now, would your experience as a juror in that particular case prevent you from being fair and impartial to this defendant as well as to the people of Ohio?

It wouldn't.

Q You understand, sir, that what your duties are as a juror, that you are the sole and exclusive determiners of the facts?

A Yes.

Q And you are the ones who determine wherein the truth lies, do you understand that?

A Yes, I do.

Q And that equally important as a juror you must follow the law that Judge Talty gives to you, understand that?

A Yes.

Q You indicated you had prior jury service about twenty years ago?

A About.

Q Was that in a civil or criminal case?

A It was a criminal case.

Q Was it in this building, this particular building?

A Yes, it was.

Q What type of a case was that, without telling us what the results of the case were, but just what type of a case?



A A manslaughter case.

Q You say manslaughter; was that an automobile manslaughter?

A It was automobile.

Q Automobile manslaughter?

A Yes.

Q Without telling me what the verdict was in the particular case, did you arrive at a verdict?

A Yes, we did.

Q Is there anything about that experience that you had some twenty years ago, that would prevent you from being fair to this defendant as well as to the people of Ohio?

A I don't think so.

Q Do you know anybody connected with the County Prosecutor's office?

A No.

Q Do you know anybody connected with the defense in this case?

A No, sir.

Q Going back, Mr. Popiel, you know that as a juror you are to take the law that his Honor Judge Talty gives to you; now, in the cases that you sat on as a juror, in the civil case, and the criminal case 20 years ago, the Court gave you principles of law, is that correct?

A Yes.

Q Now, those cases are somewhat different than the one we have here, and it will be necessary for you to set outside your mind any ideas that you might have gotten from the instructions in those cases, and decide the case only on the law that Judge Talty gives to you here, would you do that?

A Yes.

Q Do you understand my question?

A Yes, I do.

Q You understand that a defendant in a criminal case is presumed to be innocent until proven guilty?

A I understand that.

Q And the law places a burden upon the State of Ohio to prove him guilty beyond a reasonable doubt, do you understand that?

A Yes.

Q And you would follow that instruction of law if Judge Talty gives it to you?

A I would.

Q Did I ask you, sir, if you have friends who are police officers?

A No, you didn't.

Q And do you?

A No, I don't.

Q Do you know anybody connected with the County Coroner's office?

A No.

Q I anticipate that there will be police officers who will testify here, and his Honor Judge Talty will tell you, instruct you as a matter of law, that you are not to give any more or any less believability or weight to their testimony, solely because they are police officers, understand that?

A Yes.

Q That you are to size them up just like any other witness?

A Yes.

Q Could you follow that instruction?

A Yes, I could.

Q I anticipate that Judge Talty will tell you that there are various kinds of evidence, types of evidence, that are introduced into a criminal case, what we refer to as direct evidence, and what we refer to as circumstantial evidence.

And if Judge Talty were to tell you that circumstantial evidence, properly proven, is just as good and just as binding as direct evidence, would you follow that instruction of law?

A I would.

Q If Judge Talty were to tell you that sympathy or bias or prejudice has no place in any lawsuit, would you follow that principle of law?

A Yes.

Q And you are to decide the case free of any bias or prejudice or sympathy, is that right?

A That's right.

Q And if he were also to tell you that as a juror in your deliberations you are not to be concerned at all with punishment, with the penalty, if there is to be a punishment or a penalty, that this is a matter within the sole and exclusive discretion of the Court, understand that?

A I understand that.

Q That you are only to concern yourself with the facts as they are presented here in this courtroom, and the law that he tells you the law to be, is that right?

A That's right.

Q And if selected as a juror, could you do this?

A Yes, sir.

Q Have you ever been a witness in any kind of a case?

A No, I don't believe so.

Q Any members of your family ever been a witness in any kind of a case?

A No.

Q Is there anything that you can think of that would prevent you from being a fair and impartial juror in this case to both sides, both to this defendant as well as to the people of Ohio?

A No.

MR. SPELLACY: Pass for cause, your Honor.

THE COURT: Counselor Bailey or Sherman?

VOIR DIRE EXAMINATION OF MICHAEL POPIEL

By Mr. Bailey:

Q Mr. Popiel, you told us at the time of the original trial you did eventually come to harbor an opinion about the merits of the case?

A Yes, I did.

Q And you mentioned three newspapers that you were reading at that time, the Press, the Plain Dealer, and the Cleveland News?

A Yes.

Q Did you subscribe to all three newspapers?

A Yes, I think I did.

Q And would you ordinarily read the news in each of them on a given day?

A I believe so.

Q With reference now to the Cleveland Press, do you recall whether or not you read any editorials about this case?

A Yes, I read them occasionally.

Q Do you recall what the thrust of those editorials was?

A Yes.

Q Do you think your recollection of these editorials, and their purpose and point, will in any way influence your judgment for or against Doctor Sheppard in this case?

A You mean at the present time?

Q Yes.

A Not at the present time, no.

Q Did they at that time?

A Yes.

Q Now, you said that you had an opinion, and I believe you did say, "had"?

A Yes.

Q At some point did that opinion change or disappear?

A I believe it did.

Q Can you tell me about when?

A After the furor had died down and things had quieted down, I believe I looked at it a little differently.

Q You mean on sober reflection and re-examination of the facts your opinion shifted?

MR. SPELLACY: Objection.

THE COURT: Overruled. He may answer.

A Yes, I believe it shifted.

Q Do you hold an opinion today?

A No.

Q Do I understand you to say that although an opinion

did formulate, that it disappeared, and you now have an open mind?

A Yes.

Q And this happened shortly after the first trial?

A I can't tell you the exact time.

Q I am not asking for the exact time, but as you said, after the furor had died down?

A Yes.

Q Now, I assume in the course of the initial proceedings before the furor died down, you read a number of facts about the case?

A Yes.

Q You learned that a woman named Marilyn Sheppard had been murdered in her own home?

A Yes, I did.

Q And that she was married to a doctor named Sam?

A Yes.

Q And that he was in the home during all the time that this took place?

A Yes.

Q Did you learn anything about his side of the story, about what he said happened?

A I read it.

Q Without going into details as to what the facts were, do you recall any facts that you learned or heard about

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through the news media or any other source about the defendant Sam Sheppard's activities other than his practice of medicine?

A Outside of the news media?

Q Through the news media or anywhere else?

A Through that way, yes.

Q Without saying what they were, would you say the information that you gained in this respect tended to favor or not to favor Doctor Sheppard?

MR. CORRIGAN: Objection.

THE COURT: Sustained. The state of the voir dire now is that he has an open mind, and that he holds no opinion as of today; and we will proceed along that line of inquiry.

MR. BAILEY: I object to that ruling.

THE COURT: No need for objection. Your objections to rulings are automatic under our State procedure, counselor. Just proceed.

MR. BAILEY: I wish to leave the question as put.

Q Mr. Popiel, have you followed the case since the original trial?

A No.

Q Have you heard of any subsequent developments?

A I just glanced at it here and there in the paper,

that's all.

Q Do you continue to read the newspapers?

A Yes.

Q And you watch the news on television at night?

A Yes.

Q You listen to the radio going to and from work?

A No.

Q Beside the newspapers have you read any magazine articles about this matter that you can recall?

A Oh, if there were any in Time magazine, I probably read it, but I don't get any others.

Q Have you read any books about the Sheppard case?

A No.

Q You heard a couple of years ago through the news media that Doctor Sheppard was released?

A Yes.

Q And you have since heard that the Supreme Court ruled his first trial to be void?

A Yes, I heard.

Q Now, having in mind the information which came to you originally through the news media, and that there was a trial and a conviction, and that that conviction has been rendered void, are you able to approach this case with as open a mind as you would have if there had never been a trial?

A I hope so.

Q Well, I hope so, too. Do you feel you can do it?

A Yes.

Q Do you know what kind of doctor Sam Sheppard was or is?

A I believe he is an osteopath, but I don't know what that means.

Q Assuming the evidence will show that he is, you say that you don't know what an osteopath is?

A No.

Q If the Court instructs you that a doctor of osteopathy and a medical doctor, under the laws of the State of Ohio, are co-equals, similar in every respect, can you accept that instruction as a fact?

A If the Court so says, yes.

Q And if you hear expert testimony from medical doctors on the one hand, and doctors of osteopathy on the other, would you be able to regard them as equals so far as testimony goes?

A Yes.

Q As a result of your prior experience in a criminal case some time ago, which you described, do you have any impression of which you are conscious, that a police officer is more likely to be a reliable witness than some other person?

A No, I don't think so.

Q Has your service in the government of the United States created any such impression of which you are aware?

A I think the government is right 95% of the time.

Q You think it is right 95% of the time?

A Yes.

Q Do you draw any inference from the fact that the government is bringing Sam Sheppard to trial, that the government is right and that it is a true accusation?

A No, not in this case.

Q Were you working for the post office in Cleveland in 1962?

A Yes.

Q And have you been working there since?

A Yes.

Q Without asking you the nature of any information, may I ask whether or not my name has ever come to your attention except in connection with this case?

A I didn't get the question?

Q I will repeat the question. I should like to ask if my name has ever come to your attention other than in connection with the Sheppard case?

A Your name? Well, I believe I saw in the paper where you were connected with several cases, moved around the country quite a bit.

Q But beyond that, let me be specific, I mean from within the post office in any official manner?

A No.

Q Mr. Popiel, the Court has already given a general instruction, and it has been mentioned in passing by counsel for the state, that there is a presumption of innocence with which we begin this case, and it attaches to the defendant Sam Sheppard?

A Yes.

Q And that that presumption is not at all altered or disturbed by the fact that there has been a prior proceeding here which proved to be aborted.

Now, do you feel you can accept this instruction and actually presume this defendant to be innocent until you are shown otherwise?

A Yes.

Q Having in mind, Mr. Popiel, as the trial progresses, certain of the details you may have recalled from sources other than the courtroom, may conflict with what comes out in this trial, or may tend to supplement, do you think in deliberating your verdict in this case you can effectively discharge from your mind any prior knowledge, and rely solely and only on the evidence that Judge Talty admits?

A I can.

Q There is a rule in the law, if it becomes appropriate Judge Talty will tell you, that a defendant in a criminal case has no obligation to testify, and that if he does not testify no inference can be drawn from that fact, the

prosecution cannot comment on it, nor will the Court, that is to say, the failure to testify he will tell you is no indication of guilt.

Do you feel that you can accept that instruction?

A Yes, I could.

Q So even if the State shows to your satisfaction that Marilyn Sheppard was murdered by someone, and that Sam Sheppard was in the house at the time, and he gives you no explanation and doesn't testify, you say that you would not imply from that that if he could afford to testify he would do so, and therefore his silence means he is hiding something?

MR. SPELLACY: Objection.

THE COURT: Objection sustained.

Q If you are instructed that the fact that the defense presents no evidence whatsoever, but allows the case to go to your consideration solely on that evidence presented by the prosecution, that the defense has no obligation to present evidence, that you are to draw no inference from the failure of the defendant to produce a single witness, do you feel you can abide by that instruction?

A Yes.

Q Do you know anyone in the Cleveland Police Department?

A No, sir, I don't.

Q Anyone in the Coroner's Office?

A

A No.

Q Have you recently heard discussion about this case among your fellow employees in the post office?

A Not too often.

Q And are you conscious of any recent opinions that have been proffered for your consideration?

A Conjectures.

Q Conjectures. Having in mind the thinking of your fellow employees, as has been expressed to you, do you feel this can be effectively put aside in your consideration of the final question of guilt or innocence of Doctor Sheppard?

A Yes, it can.

Q In the event that the State should rely on circumstantial evidence, the Court will instruct you that circumstantial evidence can be as reliable as direct evidence, but will further instruct you that where circumstantial evidence is used to prove a fact in a criminal case, that the circumstances must be such that they can only be interpreted in terms of guilt, there is no room for interpretation in terms of innocence, or the defendant must be acquitted, do you feel that you could conscientiously apply that instruction if it were given, and apply it to circumstantial evidence?

A If it were given, yes.

Q If you are told by the Court that the State has and always has the burden of proof in this case, and the burden



is to prove the defendant guilty beyond a reasonable doubt, do you feel that you can conscientiously abide by that instruction and vote not guilty so long as you have a reasonable doubt?

A Yes.

MR. BAILEY: The defendant, your Honor, passes for cause.

THE COURT: Mr. Popiel, would you be kind enough, sir, to take the chair in the second row next to Mrs. Manning, please, just walk around. Thank you.

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