

Thursday Morning Session, December 16, 1954.

(9:00 o'clock a.m.)

FURTHER ARGUMENT ON BEHALF OF DEFENDANT

MR. GARMONE: May it please the Court, Mr. Mahon, Mr. Parrino and Mr. Danaceau, ladies and gentlemen of the jury:

May I take this opportunity -- as I started to say, may I take this opportunity to congratulate you on the splendid attention, the tireless effort you have displayed during these nine weeks. You have been deprived, probably, of many comforts that you ordinarily enjoyed in and around your home with your family because of the admonitions that you have received throughout the trial by his Honor, Judge Blythin.

The purpose, ladies and gentlemen, of those admonitions was that we could come to this point in the lawsuit where your minds would be free, your minds would be open, and that you could take into consideration all the facts and all the testimony that has been submitted to you without any outside influence, and I am sure, and I say this to you sincerely because I have had the opportunity of observation during this entire period, that you

have done just that.

I shall try in my summation to be rather brief. Yesterday you were privileged in hearing arguments that were presented by Mr. Parrino as to what he thought you should gather from all this unraveled and unfolding story. You heard the summations that were made by Mr. Petersilge, and he expressed what he felt your interpretation should be of the facts that you have in your possession now as to the guilt or innocence of Sam Sheppard.

With an effort not to be repetitious, may I convey to you some of the thoughts that I have in my mind?

And I start with the first witness that was offered for your consideration, Mr. Drenkhan, after we had heard the testimony of Dr. Adelson, whose testimony I will try not to touch in the course of my summation.

If you recall, ladies and gentlemen, his testimony was that when he arrived at the scene, he made an investigation of the bedroom in which the body of Marilyn Sheppard was found, and when he was asked the question -- and this is a matter of record -- whether or not, after the body had been removed by the funeral home, there was taken the sheets

and other bedclothing along, his answer was, "Not at that time, but sometime later the funeral home took the sheets and bedclothing with them."

And then he was asked on cross-examination whether Officer Schottke and whether Officer Gareau was present when that was made, and his answer was that they were.

We talk about this vast investigation that was made by members of the Cleveland Police Department. Why, from the very first instance tangible items that were necessary in determining whether or not Sam Sheppard was the man who had committed this most revolting crime was permitted to be removed from that room, without any preservation, without any effort by Schottke, Gareau, Drenkhan or Gerber, though his testimony be to the contrary on the sheets and the bed clothing, to preserve any evidence that may have been of value on those items, evidence that could have been revealed and brought before you as members of this jury by proper examination in one of the finest Coroner's offices in the United States of America.

Why do I attach any significance to that particular portion of the examination at the very first instance? It's significant because, as you have been told by witnesses that were presented through the State of Ohio, that there had been found underneath the fingernails of Marilyn Sheppard some foreign substances, that there had been found in and about the room some nail polish, that there had been found a chip from a person's tooth. Had there been an examination conducted? Had there

been an effort to preserve in a proper manner all the items in that room, including the bed sheets, so that a microscopic examination could have been performed thereon?

How do we know, and how can you say, that these items taken altogether could not have revealed the true murderer of Marilyn Sheppard? Is it on that type of investigation, is it on that type of operation, that you are to be led through a cloud of darkness in asking that you come back with a verdict of guilty as to this Defendant?

If there was not available to the Police Department, if there was not available to the Coroner's office, the necessary mechanics to conduct an examination, then I would say to you to give it whatever weight you feel necessary under the circumstances. But that was not the case.

And while I'm on the subject of Schottke and Gareau, I want you to keep in mind their arrival there at the first instance that they came to the home of the Sheppard family, because you can see that the pattern was now beginning to form.

They went up to this bedroom. There's a man who admits that he was with the Homicide Squad

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for a period of 10 years, and by his own acknowledgement, he said that he spent no more than a minute in the bedroom where the body of a lady who had been murdered laid. Is the pattern beginning to form?

Search your minds and take it step by step until we get to that visit that was made to the room of Sam Sheppard on the second occasion, where Schottke, after having had some conversation with Sam Sheppard earlier in the morning, had come back and he says, "Sam, we found your teeth under your wife's body." That was Sam's testimony.

Schottke didn't say that he made that statement, but he didn't, on the other hand, deny that he had had some conversation there with Sam about teeth.

And you have as much right to believe that the statement was made as testified to by Sam Sheppard, because if it wasn't made, why didn't they bring Officer Gareau in here to rebut the testimony of Sam Sheppard after he had testified on that point?

And then during the course of that conversation he says, "Are you willing to take a lie detector test?"

And what was the answer that this man

gave? He says, "I am."

And after he had been surprised with the answer, if you recall the testimony of Sam Sheppard on that subject matter, he says, "I don't think that will be necessary because I'm satisfied that you are the guilty person."

Now, the pattern has already taken shape, the thoughts that had been running through the mind of Schottke are being expressed, and mind you, ladies and gentlemen of the jury, that that statement was made, not after he conducted an examination or investigation that had run for a period of days, but it had been made after he had spent a matter of two or three minutes in the bedroom of Marilyn Sheppard, after he had spent a matter of about 45 minutes in and around the home of Sam Sheppard, the pattern of bringing about a conviction in this matter by whip rather than by wit.

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There has been much said about the circumstances, about the circumstantial evidence that points in the direction of Sam Sheppard. I say to you, ladies and gentlemen of this jury, that if you place in both of your hands all the circumstances that have been submitted for your consideration and you deal with them fairly and impartially, and favor Sam with the same circumstances as you favor the State, I have no doubt in my mind, from the sincerity that you have displayed during these nine weeks, that that scale will balance in favor of Sam Sheppard, and satisfy your conscience and conviction as to his innocence, and that his guilt has not been proven to you beyond a reasonable doubt.

We have heard the testimony of many witnesses, Mr. and Mrs. Houk, and Mr. and Mrs. Ahern, and many doctors and many nurses who were associated and employed at the Bay View Hospital.

Have you heard one person come into this courtroom, whether it was witnesses that were submitted for your consideration by the State of Ohio -- have you heard one word in this courtroom through the witnesses that were offered by the defense that Sam Sheppard has the capabilities, that Sam Sheppard has

the temperament, or that Sam Sheppard was the type man that was capable of committing so revolting a crime? Why, to the contrary.

Mr. Munn, Marilyn's uncle, who testified for the State, said that Sam was even-tempered. Mr. Munn stated that he on no occasion -- and he had testified that he had been in their company on many times -- stated that he had never seen Sam mistreat Marilyn, that he had never seen Sam mistreat Chip.

The Houks, who were friends and neighbors, the Aherns, who were friends and neighbors, and the Schueles and the Paines, each and every one of them gave you a picture of this young man that defeats entirely the capabilities that would possess him to commit so revolting a crime.

And as I listened in this courtroom for a period of nine weeks, as I heard this testimony unravel, as I heard the State unfold their case, I asked myself this question, and maybe you did, too:

Where have they shown a motive? Where have they shown to you a motive that Sam Sheppard had any desire, that Sam Sheppard ever premeditated or deliberated, where have they showed you a motive that Sam Sheppard had formulated in his mind any

malice toward Marilyn, or anyone else, to bring him to the point where he could kill Marilyn?

Can you, ladies and gentlemen of the jury, on that type of evidence take away all the hope from this young man? Can you, on that type of evidence, take away his life? Can you, on that type of evidence, take away his freedom and existence and a right to continue in this community, to do the many good deeds that people have testified that he has done in his young 31 years?

Why is the testimony of the Coroner's office so significant relating to the nail polish? Why is the testimony of the Coroner's office so significant relating to the substances that Mr. Petersilge described to you were found under the fingernails of Marilyn Sheppard? Why is the testimony of the chipped tooth -- and on that particular subject, if the State of Ohio, and if the Coroner's office, had a scintilla of thought that that chipped tooth came from the mouth of Sam Sheppard, that testimony would have been given to you for your consideration.

But let me not forget what I had started out to say regarding the substances under the nail, the nail polish and the chipped tooth, why a great

significance should be attached to it.

Do you remember Mr. Stawicki, do you remember Mr. Knitter, both gentlemen foreign to one another, Mr. Stawicki having no knowledge of what Mr. Knitter saw, Mr. Knitter having no knowledge of what Mr. Stawicki saw, and they both came in here and told a straightforward story, and the people that they both identified met, in substance, the same requirements as to facial features, as to dress, and as to physical appearance, and that description, ladies and gentlemen, without having knowledge of what Sam Sheppard had told Mr. Houk, without having had the knowledge of what Sam Sheppard had told Schottke and Gareau, and without having knowledge what Sam Sheppard incorporated in the 12-page statement that he signed, corresponded with the description that Sam, to the best of his ability, was able to give the authorities.

Now, correlate two strangers in the vicinity of the Sheppard home, correlate that set of fact, that descriptive picture with the substances under the fingernail of Marilyn Sheppard, with the nail polish, with the chipped tooth, not any of the items having been identified with the defendant -- and you

know as well as I do that if the Cleveland Police Department could have found any clothing in that room, that if the Cleveland Police Department could have found any nail polish in that home, and that if the Cleveland Police Department could have associated the chip of that tooth to the mouth of Sam Sheppard, that that testimony would be here before you.

Think of that picture. Those are two disinterested people, and that silent testimony, through those exhibits that I have described to you, corroborates the story of Sam Sheppard that there was somebody in the room of Marilyn when he got up into that room, beckoned as a result of his wife's call.

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Those are not circumstances that leave you hanging in the air. Those, ladies and gentlemen of the jury, are not circumstances that have not been connected or associated with a continuous chain, but that is direct evidence to substantiate the story that was related to you by Sam Sheppard.

Oh, I know that they said to Stawicki, "What were you interested in, the \$10,000 reward?"

And what was his answer? He said he wasn't.

You saw Mr. Stawicki. He was the man who worked in the steel mills for 26 years. The material things in life that he has gained, the material in life that he enjoys today came by good, honest-to-goodness hard labor. And when we, in our everyday walks of life, through the efforts of hard labor, gain the material things that we need in and around our home and for our family, there is something else that is bred into us through those hard efforts: Spiritual honesty. And that was displayed by Mr. Stawicki.

And when he was told by Chief Eaton, "Maybe you made a mistake, I'll drive you up the road about a mile and bring you back in the opposite direction,"

he came back to the same point and picked out the same place.

Was he ever -- and I say to you again, is his testimony significant? -- was he ever, as the State of Ohio will make you believe that the Police Department investigated out all these rumors and tips, was Mr. Stawicki ever taken to the police station to view any photos? Was Mr. Stawicki ever taken to a line-up in the police station of some of these people who were suspected of the crime for which Sam Sheppard stood charged with? The only line-up he viewed was the line-up that Sam Sheppard was in. And when he was asked the question, "The man that you saw, was he Sam Sheppard?" his answer was no.

And then we have the Knitter boy. Would he have any reason to come before you and state an untruth? What does he have to gain in offering you the testimony that he did? But he came in and told you a straight-forward story. And when he was asked the question regarding the \$10,000 reward, he said he had never read about it.

Ladies and gentlemen of the jury, you can't -- you can't discard from your consideration in the determination of this young man's guilt or

innocence that testimony, because there had never been made an investigation or an examination of the nail polish. Marilyn had no polish on her fingernails, but Marilyn did have polish on her toenails. And was there submitted for your consideration any evidence that the polish that was found on the floor of that bedroom that placed another person in that room that was not Sam Sheppard, was there submitted for your consideration whether that polish corresponded with the polish that was on the toenails of Marilyn Sheppard? They said they didn't make an examination of it.

Well, can you, on that type of evidence that is left hanging in the air, that has been left in this cloud of darkness permit yourselves to be casted out into a stormy sea without a compass, in the darkness of the night, to the point where you may shipwreck the happiness of your home and the peace and forever destroy your conscience?

We are dealing, ladies and gentlemen of the jury, with the life of a human being. And whether a man sits at that table as a first, second, third, or fourth class citizen, he is entitled to a more thorough, he is worthy of a more beneficial

investigation of all the facts than he received under the circumstances.

He didn't receive the consideration that he was entitled to comparable to the seriousness of the charge that he stands on trial for here, because that wouldn't have been consistent with the pattern that began to shape up when the sheets were permitted to be removed before any investigation or examination of them was made.

He didn't receive the benefit of an open mind from the Police Department, he didn't receive the benefit of an open mind from the Coroner's office, because it wouldn't have been consistent with the pattern that formulated in the mind of Officer Schottke. And if he had been honorable and if he had gone into this matter with an open mind, such as you have, would he have interrogated this young man and made no notes of it?

There was this pattern, it came into being, and it was continued throughout:

"We'll get Sam Sheppard. We don't have to worry about getting him through our wits. We'll get him through the old means that we use. We'll interrogate him now and we'll interrogate him again. Schottke and Gareau will go in, Becker

and Lonchar, Boyett, O'Hara, and somewhere along the line we will get a confession out of this man."

But, ladies and gentlemen of the jury, a man who was subjected to the interrogation that Sam Sheppard was put to, if there had been any evidence of guilt, if there had been any knowledge within him, it would have come out. But they didn't realize, they didn't appreciate, that they were dealing with an innocent man, a man who, through all this volume of testimony, a man who has unravelled here a story and through all this volume of testimony there has been unfolded the type man that Sam Sheppard is, the type man who, under no circumstances and, certainly, not under the type of evidence that you have received, could ever possess, could ever possess within the soul in that body the capabilities of committing this most revolting crime.

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My time is drawing to a close. There are one or two items I would like to leave with you.

There was much time spent here yesterday describing Dr. Stephen Sheppard's activities, as to why Dr. Steve Sheppard, when he arrived at the home, went to the bedroom of Marilyn Sheppard without having been told.

Ladies and gentlemen of the jury, as that man testified from that witness stand, he knew that every word he would utter would be weighed by you carefully. He knew that every word he would utter would have a direct bearing on the salvation of Sam Sheppard's life, on the salvation of Sam Sheppard's existence and freedom, and he told you without hesitation that he assumed, because it was that hour in the morning, that Marilyn was in her bedroom.

And let me just leave this thought with you on that subject:

Who would have a better right to assume where the body of Marilyn Sheppard was, Dr. Steve Sheppard or Mrs. Houk, who, from her own testimony, if you recall, stated that she hadn't been in the upstairs portion of that home for a period of a year or a year and a half, or better, and when she arrived there the

only person in the house was Sam Sheppard, and where did she go? She went to the bedroom of Marilyn Sheppard, to an upstairs portion of that home that she had had no acquaintance with for a period of a year or a year and a half, or better.

Now, if there is so much fuss to be attached to the assumption that Dr. Steve Sheppard used as to where Marilyn's body was, think, think how it fits into the statement made by Mrs. Houk, who didn't stop to talk to Sam, only looked into the den, and went directly to the bedroom where the body lay.

Oh, they have said things about Steve, about his activity. I won't spend too much time on that.

I will leave this thought with you:

In the bedroom of my son there is a picture, a picture of a boy about eleven years old, and across his shoulder is a little boy about five years old, and this boy is shuffling through the snow, and as nighttime is beginning to fall, in the far beyond is the silhouette of a schoolhouse, and as he is walking along he said, "He ain't heavy, Father, he is my brother."

I think that that is sufficient answer for the fine bringing-up that Mrs. Sheppard has displayed for you in Richard, Steve and Sam.

Ladies and gentlemen of the jury, there has been much time spent on Miss Hayes. I cross-examined her. I will not go into that. There has much time been spent on Mrs. Lossman, and will you ask yourselves why a mother, Mrs. Lossman -- ask yourselves why her name was dragged into this picture. What significance did it have on the guilt or innocence of Dr. Sam Sheppard?

As to Susan Hayes, it reminds me of the time when Mary Magdalen was brought out by the Elders and thrown at the feet of the Lord, and they wanted to stone her, and the Lord stooped in the sand, and then He straightened again and He said, "Let him who is without sin cast the first stone."

Yes, Sam Sheppard has sinned, he has admitted it, but did the sins he committed, did the sins he committed, as serious as they were, with what you know about this man's background, with what you know about his love for Marilyn Sheppard, testified to by Miss Hayes, create in him, again, the capabilities to commit so revolting a crime?

I ask the State of Ohio in their final summation not to fight for any personal glory, not to fight for the protection of the bungling that was done in this entire investigation, but to state to

you the facts and give them the interpretation in a fair manner, and I am sure they will do that, because the stakes, the stakes that we have contested for in these past nine weeks are very high.

Mr. Barrish, Mrs. Borke, Mr. Verlinger, Mr. Lamb, Mrs. Feuchter, Mr. Hansen, Mrs. Foote, Mrs. Orenstein, Mr. Bird, Mr. Moravec, Mr. Kollarits, Mrs. Williams, Mrs. Mancini, I bring you Sam Sheppard, I give him to you. A more serious deposit I probably will never make again; a more serious deposit in your lifetime you probably will never receive again. I give you the body of a man 31 years young, more than that, his immortal soul, the purchase for which God poured out His own blood.

I ask that you deal with it accordingly, and that you search your conscience thoroughly, and if you do that, I know that your verdict under this descriptive, factual picture that you have received here, will be one of not guilty.

In the language of the Lord, "May God to him, Sam Sheppard, a good deliverance make; the Lord guide you and bless you."

Thank you.

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