

CLOSING ARGUMENT BY MR. SHERMAN

MR. SHERMAN: If the Court pleases, Mr. Corrigan, Mr. Spellacy, ladies and gentlemen of the jury: At this time, again, I would re-iterate what has already been said, what we say to you now is not evidence.

It is only our ideas of what the evidence showed. What Mr. Spellacy just stated is what he thinks the evidence showed.

Before I continue, I want to come back, and thank you members of the jury for being so attentive during this long trial, and I know that you will continue to do as good a job that you have. We want to thank all of you for your work.

The State has presented quite a bit of evidence here. You will recall when you started this trial that under oath each and every one of you stated that you would give to this defendant that presumption of innocence that the law says he must have, and that you would continue to give him that presumption of innocence until the State of Ohio, not the defendant, until the State of Ohio proved the defendant guilty

beyond a reasonable doubt, as defined by the Court.

The duty is on the State of Ohio, and I would like to talk to you now merely on the State's evidence, forgetting for the moment while I am talking to you that the defendant produced any evidence.

What did the State produce to carry this burden beyond a reasonable doubt? It produced the Aherns, friends of the Sheppards.

But what value did the Aherns' testimony have to proving Doctor Sheppard guilty beyond a reasonable doubt? They stated that he had the jacket on when they left. They stated there were lights on when they left.

And, important, they stated the lake side door was bolted but they didn't know if the Lake Road door was bolted or not.

Everything that they said is just as consistent with the innocence of Doctor Sheppard. There is nothing inconsistent with that.

Doctor Adelson was brought on. We stated at the beginning of this case, ladies and gentlemen, we all know that there was an ugly murder that night, and this is what Doctor Adelson

proved, and we admit that Marilyn Sheppard was

murdered that night. Then came the Houks; and what did both the Houks prove or add to the testimony of the guilt or innocence of Doctor Sheppard?

Spencer Houk observed Sam's injuries. He stated his face was swollen. He observed the injury to Sam's face, and he heard Sam's story, and I will talk more about the stories later; and he saw a footprint in the sand which will show or can show that someone else could very well have been on the beach.

But there was never a cast taken of that print, never anything done with it.

Esther Houk testified that the front door was open when they came. Again, this is consistent with the doctor's innocence, that someone else could have very easily gotten in that house, at any time, without any forcible entry.

All the testimony is that that Lake Road door had been opened and unlocked.

And I question whether their reactions are normal on that night. I think if we each put ourselves in that position of the husband getting a phone call, would he take his wife with

him on such an emergency phone call, unprepared for anything?

And would you women go into a room where there was a badly beaten body and not run down the stairs, come down the stairs and calmly say and not as the prosecutor said, but calmly say, "Call the police, call the ambulance, call everybody."

I don't think this is the normal action for a woman under the circumstances.

We have Officer Drenkhan's testimony, and how many times has this coat in testimony been referred to as the neatly folded coat, and any time anyone neatly folds it, they take it and throw it and it becomes neatly folded, the same as when you would get up if you are sleeping and you are warm and you take your coat off, and you lay it at the end of the couch, it is now neatly folded.

Certainly it is consistent with laying the coat at the end of the couch, that each and every one of you would do if you took it off.

And you have the weather reports. The temperature that night was 70 degrees. That is not cold.

Officer Drenkhan's testimony is important for something else. They searched that house high and low, and they searched the grounds and they had divers in the water and there was no weapon found. If Doctor Sheppard committed this, where did the weapon go? There is no evidence he left the house.

Someone carried a weapon away from that house, someone who was not in that house when the Houks arrived.

And we heard that there were no marks on the beach when Drenkhan went down to the beach.

You are allowed to use your common sense, ladies and gentlemen, and water washing back and forth on the beach, how many marks do you have left?

Robert Schottke, again, I want to point out one very important difference in what was just referred to you.

One of the statements was that when asked, when Schottke asked Doctor Sam, "How did you get the blood on this watch?" he said, "I took her pulse."

Recall the statement that Mr. Schottke said Sam was confused, as you and I would have been confused under such circumstances, and he said, "I may have." He didn't say definitely "I took her

pulse." We don't know. He says he may have. That was an explanation that he might have done it. He did not say he did it.

And again Mr. Schottke observed the injuries to Doctor Sam's face, although as an investigator he felt for some reason that it was not important to find out if he was injured.

I think you as individuals using your common sense, it must have been very important whether Doctor Sheppard was injured that night.

Coroner Gerber, we won't dispute the time of death. We told you that at the beginning of the trial, I believe.

Coroner Gerber attempts to make an imprint, a surgical instrument out of this print in the pillow.

He searched the United States in twelve years and hasn't been able to find what he says was the instrument, because there was no instrument on that. If it was it was not a surgical instrument, as he would like you to believe.

And he contradicts his own Doctor Adelson. Doctor Adelson testified, if you will recall, that the teeth could have been broken by an outward pull. Doctor Gerber says no, but he does say the inside



of the tooth could have taken the blow from the lower teeth. Isn't this consistent with a pullout?

He says there was no blood on the belt. This I believe is only consistent with the innocence of Doctor Sheppard.

There would have been blood all over the belt.

Marilyn's watch was taken from her wrist, and we are to believe that there was some long period of time intervening.

Doctor Gerber testified that blood on the wrist would take up to three minutes to dry, to dry, not to get tacky, to dry.

There was plenty of time, or, it would take a very short time for blood as it was on the wrist to form the impression. It wouldn't to have even been dry when the watch was removed.

The detective testified that the fingerprints were all wiped out of the house. Whose fingerprints are more natural in that house, and who would be the last person to want to remove his fingerprints from his own house? The defendant.

Someone who did not want their fingerprints found in that house removed them, not the defendant.

This is the natural place for his finger-

prints.

Lieutenant Poelking, the thumbprint on the headboard of his wife's bed, this is a natural place for the husband's thumbprint.

We have the spots throughout the house. Sergeant Dombrowski checked the spots and said there were spots throughout the house, and he checked two of them and out of the two one was human blood. We don't know how many of these spots were human blood. But even if they were, the spots throughout the house or not, inconsistent with the defendant's innocence; whoever did it could just as well have made these spots. There is nothing saying that it had to be the defendant who did this, even if we assume that they are blood spots.

Mary Cowan, she found minute brown stains on the front of the pants. And I ask you, after looking at the photos, if any murderer would have minute brown stains on the front of his pants? He would have large stains all over his pants.

And they tested positive, luminol, and negative, benzidine.

The blood that the detective tested on the door, the two spots tested positive luminol, but only one turned out to be human blood.



And we know that at least copper sulphate and rust can cause luminol to react, we know at least these two items can.

The large spot on the knee, if these spots on the top did not react to benzidine, why did the large spot on the knee react to benzidine, and they had the same treatment. It doesn't add up.

The large spot on the knee wasn't there before or after the water came. Mary Cowan stated it was there before.

If we as a matter of argument accept that, this could very easily have gotten there when Doctor Sheppard checked his wife the first time.

There is nothing inconsistent with his innocence.

The blood on the watch, we don't even know whose blood this is on the watch.

Mary Cowan testified that she could not type the blood on the watch. It was inconclusive.

Yet we know she typed smaller spots of blood, and if it is the blood of Marilyn Sheppard, from the door, testimony there was spots on the door, spots on the wall, and on the floor, of the

hallway, even, is it inconceivable that Marilyn was still alive and the beating was still going on when Sam came up the stairs in response to the scream, and that there was blood flying when he came into the room?

But I wonder how close an examination of that watch was really made.

We know from testimony that there had to be fingerprints on that watch. We know it was handled after it was found. It was handled by the boys. It was handled by the police, and yet her examination reveals no fingerprints.

How close was this watch really examined, ladies and gentlemen?

And again she testifies that there was no blood on the belt. They never identified the red substance on the floor whether could have come from a third person, and she testified that there was sand, there was sand in the cuffs, and in all but the lefthand front pocket of Doctor Sheppard.

Everything consistent with his innocence, and inconsistent with his guilt.

The prosecutor has asked you how long it would be to take off a T-shirt. I think I could tear a T-shirt off a person in about half a second;

and it wouldn't take four people to take it off; it wouldn't take two people to take it off. It would take one jerk to tear a T-shirt off of anyone.

You will recall in the opening statement that we stated we would agree with 90 percent of the evidence the prosecution presented, and we still agree with 90 percent of the factual evidence that the prosecution presented.

We can't agree with all their erroneous opinions drawn. But we can agree with most of the facts.

But the circumstantial evidence must point to the guilt of that man, and that man alone, and to convict him it must have no other reasonable hypothesis. And I don't think from summing up the total evidence that the State alone, not even considering the evidence that the defendant has produced, that this test can be met, or that the defendant can be convicted.

I said I would speak on the stories of the defendant. There were differences in his stories. Some were more complete, some were less complete.

And I would ask each of you to think,

if this happened to you, after all this happened, after being knocked out twice, could you get up and repeat a story bing, bing, bing, bing, right down the line, and never leave a thing out, add a thing, subtract a thing, or change a thing?

If you could you would be lying, because you had a memorized story.

The differences show that the defendant was telling the truth because this is a natural difference for anyone to go through such circumstances.

I think, ladies and gentlemen, when you deliberate this case you will do one thing and one thing only, and that is to find the defendant not guilty.

Thank you.

THE COURT: Ladies and gentlemen of the jury, it is 11:30, and we will have an early luncheon recess, following which we will hear the concluding arguments, so we will stand recessed for lunch until 1:00.

But it is the Court's hope and intent that we start promptly at 1:00, so perhaps you can get returned here or be returned here shortly before 1:00, so that we can commence as close to

1:00 as we possibly can.

Counselors have already indicated to me that they will be prepared to go forward at 1:00.

So while you are away on your luncheon recess, you shall carefully observe the instructions given you on each occasion when you have gone from this room, and that is that you shall not discuss among yourselves what you have heard of this case. You will not permit anyone else to discuss it with you; nor shall you permit yourselves to overhear anything that relates to this cause by any means of communication; having in mind specifically the instructions given with reference to printed material, radio, or television, we will stand recessed for lunch until 1:00.

(Thereupon an adjournment was taken to 1:00 p.m., Tuesday, November 15, 1966, at which time the following proceedings were had:)

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