

THEREUPON the defendant, further to maintain the issues on his part to be maintained, called as a witness DOCTOR STEPHEN SHEPPARD, who, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DOCTOR STEPHEN SHEPPARD

By Mr. Bailey:

Q State your name, please, sir?

A Stephen Sheppard.

Q Where do you live?

A 3811 West Valley Drive in Fairview Park.

Q And what is your occupation?

A I am a surgeon.

Q In 1954 were you also a surgeon?

A Yes.

Q How long have you been licensed to practice medicine in the state of Ohio?

A Since 1946.

Q I ask you to observe the defendant Doctor Sam Sheppard, and tell us whether or not he is your brother?

A He is.

Q In 1954, Doctor Sheppard, where were your offices?

A 2204 Lorain Road, Fairview Park.

Q Were these offices known as the Sheppard Clinic?

A Yes.

Q And were you connected at the time with any hospitals?

A Yes.

Q What hospital was that?

A Bay View Hospital.

Q Do you have another brother, Richard, who is also a physician?

A Yes.

Q Now, whether or not Doctors Sam and Richard Sheppard were also connected with the same hospital?

A They were.

Q Do you know what kind of medicine Doctor Sam Sheppard practiced at that time?

A Yes.

Q What was it?

A Neurosurgery and orthopedics.

Q Doctor Sheppard, have you in the course of your experience and practice as a physician, ever had occasion to install or remove casts?

A Yes.

Q Can you tell us how a cast is generally removed, and I refer now to a plaster cast used to place a weakened or broken limb?

MR. SPELLACY: Objection.

THE COURT: Overruled.

A A cast is removed by a device known as a striker saw which vibrates a blade very quickly, making a groove in the cast, following which a cast spreader is inserted into the groove, and pressure is exerted on the handles of the spreader in such a way as to cause a cast to fracture and be separated.

MR. BAILEY: Mark this, please.

(Defendant's Exhibit TT was marked for identification by the reporter.)

Q Doctor Sheppard, I show you Defendant's Exhibit TT and ask you if you can recognize that?

A Yes, sir.

Q What is it?

A It is a cast spreader.

Q Have you ever seen this particular cast spreader before?

A Yes.

Q Do you know who owns it?

A Yes.

Q Who?

A The Bay View Hospital.

Q Now, you have indicated that the nose of the spreader is inserted into a groove cut in the cast, and then the cast is fractured, like so?

A Yes.

MR. BAILEY: Defendant's Exhibit

It is offered without objection, your Honor.

THE COURT: It may be received.

Q Doctor, I call your attention to the morning of July 4, 1954, and ask you where you were first on that morning?

A In bed.

Q Where were you living at that time?

A 19027 Englewood Drive, Rocky River.

Q Sometime early on the morning of July 4th did you receive a telephone call?

A Yes.

Q From whom?

A Dorothy Sheppard.

Q As a result of that call did you go somewhere?

A Yes.

Q Where did you go?

A To Sam's home in Bay Village.

Q And when you arrived at the home, was someone present?

A Yes.

Q Who was there when you arrived?

A Doctor Richard was there. A number of policemen and firemen were there. Doctor Sam was there. I can't recall who all else.

Q Do you recall or did you know prior to July 4, 1954, a J. Spencer Houk?

A Yes.

Q Did you know his wife, Esther?

A Yes.

Q Do you recall whether you saw either of them on the morning of July 4th at Sam's house?

A Yes.

Q When you first observed your brother, Sam Sheppard, where was he?

A He was lying on the floor in the den.

Q What was his position on the floor, was he on his back or side or what?

A He was on his back with his feet toward the north which would be toward the lake.

Q What was the position of his hands, if you recall?

A He was holding his neck.

Q Did you make any observations as to his condition?

A Yes.

Q What did you observe?

A I thought that he was dead. I touched him. He was cold. I immediately left the room.

Q Did you notice anything about his face that was unusual, just from visual observation?

A Yes.

Q What?

A The right side of his face was swollen. There was

blood on his mouth.

Q After you left the room did you talk to somebody?

A Yes.

Q At some subsequent time did you go somewhere with Doctor Sam?

A Yes.

Q Where did you take him?

A To Bay View Hospital.

Q By what mode of transportation did you go to the Bay View Hospital?

A My automobile.

Q How far away from Sam's house is the Bay View Hospital located?

A Perhaps three miles.

Q In which direction?

A East.

Q And was it situated on the same street?

A Yes.

Q Lake Road?

A Yes.

Q Who was present in the motor vehicle that took Doctor Sam to the Bay View Hospital?

A I was present. Doctor Sam was present. Doctor Robert Carver was present. And my wife, Betty.

THE COURT:

I am sorry,

Counselor, I did not get that name. Doctor Robert?

THE WITNESS: Doctor Carver,

C-a-r-v-e-r.

Q How long were you at the home of Sam Sheppard before he was removed to the hospital?

A Perhaps ten, fifteen minutes.

Q Had you conferred with any police officers or anyone else between the time you first saw Doctor Sam and the time that you left with him?

A No.

Q Were there any police officers in the vicinity as you drove out of the Sam Sheppard driveway and headed to the hospital?

A Yes.

Q Did any police officer at any time object to his being removed?

A No.

Q Did you see Patrolman Drenkhan there that morning?

A Yes.

Q Had you known him prior to the morning of July 4th?

A Yes, I had.

Q Did you know any of the other Bay Village police officers?

A Yes.

Q Which one?

A I knew Chief Eaton. I knew Jay Hubach. I knew Officer Cavanaugh. I knew Cliff Mercer.

Q How long did it take to reach the Bay View Hospital, approximately?

A Eight minutes.

Q When you arrived, what happened to Doctor Sam?

A He was placed on a gurney cart and taken to room 115.

Q What is a gurney cart?

A A gurney cart is a stretcher with wheels.

Q When he arrived at room 115, what was done to him?

A Mrs. Anna Franz, the nurse in charge, and one of the aides, disrobed him and put him to bed, covered him with hot water bottles and blankets.

Q Do you know whether or not any X-rays were taken of Sam Sheppard on that morning?

A Yes, I do.

Q Who ordered those X-rays?

A I did.

Q And approximately what time was he taken into X-ray?

A I would guess 7:30, quarter of eight.

Q How long were you in attendance at the hospital after Sam Sheppard arrived?

A Perhaps an hour.

Q Did you subsequently contact any other physicians for the purpose of having them examine and evaluate the condition

of Doctor Sam Sheppard?

A Yes, I did.

Q Who?

A Doctor Charles Elkins and Doctor Clifford Foster.

Q What specialty in the area of medicine did Doctor Elkins practice, if you know?

A He is a neurosurgeon.

Q Did you have conversation on July 4th at any time with the then mayor of Bay Village, J. Spencer Houk?

A Yes.

Q And did you have any further conversation with the mayor on other days in connection with this case?

A Yes, sir.

Q Can you tell us what dates you talked with Mr. Houk?

A I talked with him on the 5th, again on the 6th, in his office, again on the 7th, in his home, again on the 12th in his office, and again on the 14th in the parking lot of the Bay View Hospital.

Q Referring to the meeting of July 14th, 1954, who called for that meeting?

A Mr. Houk.

Q And how did you receive the call?

A I was in surgery at the Bay View Hospital and I was paged.

Q As a result of the page, did you pick up the telephone?

A Yes.

Q And did you recognize the voice of the speaker at the other end of the line?

A Yes.

Q And who was it?

A J. Spencer Houk.

THE COURT: Would you fix the date, Counselor? I am sorry, would you fix the date?

MR. BAILEY: Yes, your Honor, July 14, 1954.

THE COURT: I am sorry. I missed it.

Please proceed.

Q What did he say over the telephone?

A He said he would like to speak with me immediately.

Q And as a result of that request, did you go to the parking lot?

A No. We discussed where this meeting should take place. I explained to him that I had worked that morning, and that I couldn't get away conveniently, and suggested that perhaps he could come to the office later that afternoon.

He said it was of the utmost importance, and he felt that he should talk with me that morning.

I suggested that I might be able to come to the emergency entry if he would come to the hospital and we could talk at that time.

Q And did he later appear at the emergency entrance?

A Yes, he did.

Q How much later?

A Eight or ten minutes.

Q And did you confer with him?

A Yes.

Q Where?

A In his automobile in the parking lot.

Q How long did this conference take?

A Ten or fifteen minutes.

Q Will you give us the conversation that you had with J. Spencer Houk on that morning in the parking lot in his car behind the Bay Village Hospital?

A Mr. Houk said that he felt I should do everything in my power to influence Doctor Sam to plead guilty to manslaughter; that his friends, meaning Doctor Sam's friends, and everyone would understand, and that they would be united in an attempt to help him in every way possible.

He said that he felt that the problem had developed to the point where something just had to be done, and he urged and recommended that this be the course followed.

Q Did he make any other statement that morning that you

can recall?

A No.

Q Now, having in mind that known J. Spencer Houk previously, did you notice anything unusual about his manner or condition on that morning?

A Yes.

Q What did you notice?

A He was extremely agitated. He smoked continuously, and he had the odor of alcohol on his breath.

MR. BAILEY: Your witness.

THE COURT: Counselor Spellacy
or Corrigan?

CROSS EXAMINATION OF DOCTOR STEPHEN SHEPPARD

By Mr. Spellacy:

Q Doctor Sheppard, what is your specialty?

A Abdominal surgery and urology.

Q Abdominal surgery and neurology?

A Urology.

Q Urology?

A Yes.

Q How long have you been engaged in this?

A I graduated in 1944. I returned to Cleveland in 1946, and I should say there for twenty-two years.

Q You graduated in 1944?

A Yes.

Q From where?

A The Los Angeles College of Osteopathic Physicians and Surgeons in Los Angeles.

Q And you returned to Cleveland in 1946?

A Yes.

Q During the interim were you in some sort of internship?

A Yes, I interned at the Los Angeles County General Hospital, and took a residency there, following my internship.

Q Doctor Sam also went to Los Angeles County Hospital, is that correct?

A He went to the same medical school, and he also interned and took a residency at the County Hospital, yes.

Q Just as you did?

A It was a different residency, but it was the same institution.

Q And approximately when did he finish school?

A I believe he graduated in about 1950 or perhaps '49, and returned to Cleveland sometime in '51.

Q '51?

A I believe so.

Q And in 1951 he was a neurosurgeon, is that correct?

A He had completed a residency in neurosurgery.

Q And he performed neurosurgery in connection with Bay View Hospital, is that correct?

A Yes.

Q Now, you have indicated to us a type of cast spreader, is that correct?

A Yes.

Q I think it is referred to as Defense Exhibit TT?

A Yes.

Q There are a number of types, aren't there?

A This is the only kind I am familiar with.

Q You have never seen any other kind of cast spreader or cast cutter?

A Different sizes perhaps, but the shape and the basic design, so far as I know, is this.

MR. BAILEY: Excuse me, before you -- your Honor, I object. The question is duplicitous. He said cast spreader or cast cutter, they being different instruments.

THE COURT: Overruled. We understand from the record that a cast cutter is a saw.

MR. BAILEY: No, I think not, your Honor.

THE WITNESS: Excuse me, if that is what the question was, I misstated myself.

There is a manually operated cast

cutter, which is quite different from the cast spreader.

Q When you told us before about how a cast was removed, you told us about the manner electrically, is that correct?

A The striker saw --

Q Yes.

A -- and the cast spreader, which is certainly used today in I think every hospital in the United States.

Q Going back to 1954, wasn't it done manually on several occasions?

A It may have been.

Q Now, this would not be a cast cutter, would it?

A No, this is a cast spreader.

Q Well, what does a cast cutter look like?

A The electric cast cutter, the striker saw looks like a saw.

A cast cutter, manual cast cutter, looks like an instrument with fat handles and jaws which grip the cast between the jaws, and by exerting pressure the cast is gradually split in the same way that the striker saw does it, only it takes a great deal more time.

Following this the cast spreader is inserted into the groove made by the cast cutter, and again the cast is spread with this kind of an instrument.

Q Now, you indicated that the cast cutter has jaws

on it?

A Yes.

Q Now, how about bone forceps, is there such a tool?

A Yes.

Q What do they look like?

A Well, there any number and shapes and sizes of bone forceps, but they usually are in the shape of grasping jaws which can be tightened occasionally.

There is a thread screw that can be tightened down to maintain them in position.

Q Would it simply look like a pair of pliers?

A I wouldn't think so. They are considerably more complicated than an ordinary pair of pliers.

Q Well, to a layman would they look like a pair of pliers?

A I don't think a layman would ever mistake a --

Q You don't think so?

A -- a bone instrument that you described as a pair of pliers, no.

Q Do they work on the same principle?

A They are hinged.

Q Just like a pair of pliers is hinged in the middle?

A Hinged like a pair of pliers, but certainly the appearance is quite different.

Q And is there another name for those?

A Not that I know of.

Q Is there such a tool as the rongeur?

A Rongeur, yes.

Q What is that?

A It is an instrument which is used for biopsy purposes, and for chewing out small sections of bone and tissue and cartilage. It is used most frequently in the removal of a spinal cord disc.

There is a petuitary rongeur which is used for that purpose. It is a very slender instrument which inserts into a small opening or incision, and bits of tissue can be removed by means of this.

Q Does this also work on the same principle as a pair of pliers?

A If you mean is it hinged and does it have jaws, yes.

But certainly it would not be mistaken for a pair of pliers.

Q Well, it works on the same principle, doesn't it, doctor?

A Basically.

Q And you say it is used for removing discs, is that correct?

A That is one of the uses.

Q And this would be a neurosurgeon's work, wouldn't it?

A Yes.

Q Now, Doctor Sam was a neurosurgeon, wasn't he?

A Yes.

Q Now, you lived on Englewood in 1954, which is in Rocky River, is that correct?

A That is correct.

Q And this, Englewood is about three blocks north of Hilliard off of Wooster Road, isn't it?

A I think it is two blocks.

Q And it runs east off of Wooster Road?

A That's correct.

Q How far is it from there to Bay View Hospital?

A Roughly two miles.

Q About two miles. Doctor Sam lived on the other side of Bay View Hospital, didn't he?

A He lived west of Bay View Hospital.

Q You lived east of it and he lived west of it?

A That's true.

Q And your brother Doctor Richard Sheppard lived next door to Bay View Hospital?

A Just to the west.

Q Now, you would have occasion to see Doctor Sam Sheppard quite often, wouldn't you?

A Yes.

Q Not only in connection with Bay View Hospital, but

socially as well, isn't that right?

A That is true.

Q And, of course, being his brother, you knew his activities and what activities he was engaged in, didn't you?

A For the most part, yes.

Q You knew, of course, that he was a good athlete?

A Yes.

Q And that he was always in good shape physically?

A Yes.

Q And that he engaged in a number of athletic events, even in 1954, isn't that true?

A Well, not competitive events. I think he was the coach or the trainer or perhaps the athletic team physician and observed a number of these events, and worked out with the members of the team.

Q And he played basketball?

A Yes.

Q In his yard. He did a lot of water skiing, is that correct?

A Yes.

Q And he played tennis?

A I think that is true.

Q In fact, he was quite a good tennis player, wasn't he?

A I never played tennis with him.

Q You didn't know?

A I never played tennis with anyone.

Q Well, have you heard that he was quite a good tennis player?

A No.

Q You never heard that?

A No.

Q Well, did you know that he played tennis?

A I believe he and his wife played tennis on occasions. I never saw them.

Q You never saw them. Well, when you were growing up did you know that he played tennis?

A No.

Q You didn't know that. Were you in Los Angeles together?

A Yes.

Q Did you know he played tennis out there?

A I am told he played tennis while he was interning, but I wasn't there at that time.

Q Now, he had a punching bag in his basement?

A Yes.

Q And he used his punching bag quite often, didn't he?

A I can't tell you how often. I know that he and his son used it.

Q Well, you say his son used it. Where was this punching bag located; was it on the ceiling?

A I believe it hung down from a holder of some sort.

Q Now, Doctor, you indicated before a cast cutter.

MR. SPELLACY: Do you want me to have this marked?

MR. BAILEY: I don't care.

MR. SPELLACY: I will just ask him.

Q Is this a type of cast cutter --

MR. BAILEY: Excuse me. If you are going to question him on it, I do want it marked.

MR. SPELLACY: All right. Mark this.

(State's Exhibit 71 was marked for identification by the reporter.)

Q Other than the electric kind that you have told us about, this is -- referring now to State's Exhibit 71 -- this would be another type of cast cutter, would it not?

A Yes, that is a manual cast cutter.

Q And this is different than a cast spreader, is that correct?

A Quite different.

Q It is used for a different purpose, isn't it?

A They are both used for the removal of casts, but they have quite different functions in that operation.

Q Now, it is not uncommon, is it, Doctor, for doctors to order tools specially made?

A I would say it is uncommon. I have never done it.

Q You would say it is uncommon. Well, have you ever heard of doctors ordering tools specially made?

A Yes.

Q You know that it is done on occasions, isn't that right?

A It is done, yes.

Q Many people who are engaged in delicate surgery find various needs for various type tools, isn't that true?

A Yes. This is how most of the instruments have been developed.

Q And on occasion doctors will have friends or somebody that they know in the manufacturing business make tools for them, isn't that correct?

A On occasion.

Q A neurosurgeon is engaged in very delicate work, isn't he?

A Yes.

Q Because he is working with the nervous system or the spinal cord on a great number of occasions, isn't he?

A Yes.

Q Now, directing your attention again to July 4, 1954, what time did you receive this call?

A Just before 6:00 a.m.

Q Just before 6:00 a.m.; I believe you got the call from Dorothy Sheppard, is that correct?

A Yes.

Q And that would be Richard's wife, is that correct?

A That is correct.

Q Do you know where she got a call from?

A She told me that Doctor -- no, she told me that Mr. Houk called her, I believe.

Q And you learned then that Spencer Houk had called Richard's house relative to this matter, is that correct?

A Yes.

Q And that he had called there sometime before six o'clock?

A Certainly before I was called.

Q You immediately got dressed, I assume, and drove out to your brother's home?

A Yes.

Q Did you learn in the call from Dorothy Sheppard that someone had been hurt or that someone was dead?

A Yes.

Q Now, did you learn from Dorothy Sheppard that Spencer Houk had called there?

A Yes.

Q -- from the Sheppard home?

A That's my recollection.

Q Did you take anything with you when you went out there?

A Yes.

Q What did you take with you?

A A .38 caliber stub nose revolver.

Q And was this on your person, or in your car when you left the house?

A On my person.

Q Was it in your clothes when you put your clothes on?

A No. I went to a cupboard where I kept this revolver, and put it in my clothes, and it was there when I left the house.

Q You knew that somebody had called from the Sheppard residence that someone was hurt and that you should get out there as a physician, isn't that correct?

A Nobody asked me to get out there as a physician.

Q Did you take any physician's instruments with you?

A The things that were in my automobile, they are always there.

Q Did you know that they were in your automobile that morning?

A Yes.

Q You had them with you?

A Yes.

Q Did you take them in the house with you?

A No. They are always in my car. You mean in the house when I got to Doctor Sam's?

Q Yes.

A No, I did not.

Q When you got there you saw that an ambulance was there, didn't you?

A Yes.

Q I believe you indicated that Doctor Sam was laying on the floor, lying on the floor, holding his neck?

A Right.

Q And that you thought he was dead?

A At first, yes.

Q And when you thought he was dead, you ran downstairs, is that correct?

A No, I touched him and he responded and moved and groaned, and I knew he wasn't dead, so I left the room.

Q Well, prior to this time, when you got there, the police were there, weren't they?

A Yes.

Q Patrolman Drenkhan was there, wasn't he?

A Yes.

Q Do you know if Sam had any conversation with Patrolman Drenkhan prior to your arrival?

A Not of my own knowledge.

Q Do you know if he had any conversation with Mr. Houk prior to your arrival?

A I have heard that he did.

Q At any rate, when you got there he was laying on the floor, he was cold, and you thought he was dead, is that right?

A When I first looked into the room, yes.

Q Then you proceeded upstairs?

A Yes.

Q What way did you go to go upstairs?

A I went into the dining portion of the living room and through the living room, around by the fireplace and up the stairs.

Q You had been in that house a number of times, had you?

A Many times.

Q The shortest route from where you were in the den would be to go through the kitchen right up the stairs, isn't that right?

A As I recall --

Q Doctor, do you understand my question?

A Yes.

Q The shortest route would have been to go right through the kitchen right upstairs?

A The most direct route, yes.

Q The shortest route, too?

A Yes.

Q Did anyone direct you to go upstairs?

A No.

Q You had a feeling that something was upstairs, isn't that right, that Marilyn was upstairs?

A I can't recall what my feelings were. My assumption was that she was upstairs.

Q And that was a natural assumption, wasn't it, Doctor?

A I think so.

Q So you went upstairs, then?

A Yes.

Q No one had directed you to go upstairs, had they?

A Not that I recall.

Q It was just a natural assumption on your part that Marilyn was probably upstairs?

A I am sorry, I didn't hear you.

Q It was a natural assumption on your part that Marilyn was probably upstairs?

A Possibly.

Q So you went upstairs?

A Yes.

Q Was anyone upstairs when you went up there?

A No.

Q Did you see Mr. Houk in the house when you got there?

A Not that first time.

Q How many times were you at the house that particular day?

A Twice.

Q What time was the next time that you were there?

A A little before eight.

Q A little before eight; is that eight in the morning?

A Yes.

Q Were you there later in the day at any time?

A I believe I went back later in the afternoon, but I didn't go in.

Q What time would that have been?

A Possibly around four.

Q Around four. Now, where was Patrolman Drenkhan when you got in the house the first time?

A I believe he was in the den.

Q Do you know what he was doing in the den?

A As I recall, he was talking on the telephone. Perhaps that is when I came back downstairs.

Q Do you know who he was talking to?

A I believe he was talking to the Cleveland Police Department.

Q Up until that time all the people that were there were Bay Village policemen, isn't that right?

A And firemen.

Q And firemen. As a matter of fact, there was a stretcher

in the house, wasn't there?

A Yes.

Q The firemen had taken the stretcher into the house from the ambulance that was parked in the driveway, is that right?

A I would assume that.

Q Was your brother, Doctor Richard, there at that time?

A Yes.

Q Where was he?

A I don't recall that I saw him.

Q Well, do you know that he was there, though?

A I have learned that he had been and was there, yes.

Q Well, when you went there of your own knowledge, did you see him?

A I don't recall that I did.

Q Do you recall having any conversation with him then at that time?

A I think I saw Doctor Richard in the lower level after I came back downstairs.

Q The lower level would be the first floor?

A The first floor.

Q Where on the first floor do you recall now having seen him?

A In the living room, I believe.

Q What portion of the living room?

A I believe in the dining area.

Q You recall that, that you saw him in the dining room?

A I was in and out of that house so many times that day that I can't pinpoint this.

Q Where was Doctor Sam at this time?

A In the den.

Q Still on the floor?

A Yes.

Q Still grasping his neck?

A As far as I know.

Q Doctor, how many times were you in and out of that house that day?

A I was there on the first occasion early. I went to the hospital, came back just before eight, and I was in and out two or three times on that occasion.

Q The first occasion how many times were you in and out of the house?

A Once.

Q Just once?

A Yes.

Q Now, when you talked with Doctor Richard, was this -- Sam was still on the floor in the den, is that correct?

A That is my recollection.

Q Was anyone with him?

A With Sam?

Q Yes.

A Officer Drenkhan was in there, and I believe Chief Eaton was there by this time.

Q Did you know at this time if he -- you had realized, of course, that he was alive, is that correct?

A Yes.

Q You had assured yourself of that prior to talking to Richard?

A Yes.

Q Do you know whether he was conscious or not?

A He was conscious when I went in and spoke with him.

Q And he talked back to you?

A He responded.

Q So he was conscious?

A Yes.

Q When you had this conversation with Richard in the dining area of the front room, do you know where the stretcher was?

A No.

Q You know that it was still in the house, though, don't you?

A I don't know that.

Q Well, Officer Drenkhan was calling the Cleveland Police, is that right?

A Yes.

Q About what time was this?

A Quarter of seven, perhaps seven o'clock.

Q Now, did you have occasion to remove Doctor Sam from that house that day?

A Yes.

Q Prior to removing him did you make a diagnosis of what was wrong with him?

A No.

Q He was laying on the floor holding his neck, and as you indicated you thought he was dead, did you at that time make a diagnosis of what was wrong?

A At what time?

Q At the time that you assured yourself that he was not dead?

A No.

Q You did not make a diagnosis?

A No.

Q How did you remove Doctor Sam Sheppard from the home that morning?

A I asked him if he thought he could walk. He said that he thought he could, that he had been walking, that he felt certain that he could.

Q Do you understand my question, Doctor?

A We, Doctor Carver and I, assisted him to his feet, and we put both of his arms around each of our shoulders,

and we conducted him, half carried him, and took him to my station wagon.

Q You indicated that when you got to the hospital, Bay View Hospital, that you placed him on a gurney cart after you got him there and wheeled him into the hospital, is that right?

A He was placed on a gurney cart. I didn't personally do this.

Q Now, back in the home, you had him stand up and you walked him out of the home, is that correct?

A Yes.

Q There was an ambulance there, wasn't there, Doctor?

A Yes.

Q And there was a stretcher in the house, wasn't there?

A I presume there was a stretcher in the area.

Q Doctor Carver assisted you?

A Yes.

Q Doctor Carver at that time was an intern at Bay View Hospital, is that correct?

A Yes.

Q What time did you arrive at the hospital that particular morning?

A I would guess shortly after seven.

Q Shortly after seven?

A Yes.

Q And you indicated that Doctor was treated there at the hospital?

A Yes.

Q And was he treated by you?

A Yes.

Q You were in charge of his treatment and care?

A Yes.

Q You saw fit to call in a neurosurgeon, is that correct?

A Yes.

Q What time did you call in the neurosurgeon?

A I can't remember. Later in the day.

Q Pardon me?

A Sometime later in the day. I don't know the time.

Q Sometime later in the day. Approximately what time later in the day?

A I have no recollection of the time. I think the chart would probably reveal it.

Q The hospital records would indicate that?

A I should think so.

Q I think you indicated before that that was Doctor Charles Elkins, is that correct?

A Yes.

Q I believe you had X-rays taken there, is that right?

A Yes.

Q Now, directing your attention to July 4th, did you

have occasion to examine those X-rays on that day?

A Yes.

Q And what did those X-rays show on July 4th?

A A chip fracture of the second cervical vertebra.

Q Would that be a fracture of the spinous process of the 2nd cervical vertebra?

A Yes.

Q That was your interpretation of it, is that correct?

A Yes.

Q Did you have occasion to have X-rays taken at a later date?

A Yes.

Q On how many occasions on a later date did you have X-rays taken?

A I can't remember.

Q Well, to refresh your recollection, on July 6, 1954, weren't X-rays taken?

A That is entirely possible.

Q And isn't it true, Doctor, that the X-rays on July 6th showed that there was no fracture of the spinous process of the 2nd cervical vertebra?

A The finding was not confirmed.

Q Well, after that finding wasn't confirmed, wasn't a second set of X-rays taken on July 6th?

A I don't remember.

Q And didn't the second set of X-rays show that there was no fracture of the spinous process of the 2nd cervical vertebra?

A All of the films all that were taken on subsequent occasions failed to confirm the findings on that first day.

Q That's right.

A That's right.

Q So that --

MR. BAILEY: Excuse me. May the comment be stricken, your Honor, "That's right," and questions be put.

THE COURT: Please proceed, Counselor. Overruled. It may stand.

Q So on July 6th, the X-rays did not confirm the fracture of the spinous process of the 2nd cervical vertebra?

A I believe that is correct.

Q Now, prior to this time, though, you had told somebody that Doctor Sam has a broken neck, isn't that right?

A Yes.

Q But the X-rays taken on the 6th of July didn't confirm that, did they?

A No.

Q Now, did you examine him on the 4th -- strike that. Did Doctor Elkins examine him on the 4th?

A Yes.

Q Will you tell us what kind of an examination Doctor Elkins gave him on the 4th?

A A neurological examination.

Q What is a neurological examination?

A It is an evaluation of the central nervous system, and the peripheral nervous system.

It consists of a study of the reflexes of the eyes and the cranial nerves and the deep tendons, and other portions of the body.

THE COURT: I am sorry, Counselor, did you fix a date?

MR. SPELLACY: I was talking about July 4th.

I believe the witness has indicated that Doctor Elkins examined him on that day.

Q Is that correct?

A Yes.

Q Now, were you present when this examination took place?

A I was present during the portions of it.

Q Do you know what Doctor Elkins' findings were on the 4th after this neurological examination?

A Yes.

Q What were they?

A He found certain reflexes were missing.

He found that there was swelling at the site of Sam's mouth, that the eye was swollen and almost completely closed.

Q This was on July 4th?

A I believe so. That the muscles in the back of the neck were spastic, and he responded to touch in a way that would indicate injury.

MR. BAILEY: It will take a bit of time to examine this, your Honor, if it is intended to be used.

THE COURT: May I see Counselors, please?

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

THE COURT: Ladies and gentlemen of the jury, Counselors have agreed that now is the time to take a recess.

So we will have a recess, our morning recess, at this time, rather than the customary time of about a quarter of eleven.

While you are away on your recess, ladies and gentlemen, you will bear in mind the instructions given you on each occasion as you leave this room.

You shall not discuss this case or what you have heard of it amongst yourselves.

You shall not permit anyone else to discuss it with you, nor permit yourselves to overhear anything that relates to this cause by any means of communication.

We will have our morning recess.

(Thereupon a recess was had.)

MR. SPELLACY: Will you mark this, please.

(State's Exhibit 72 was marked for identification by the reporter.)

Q Doctor Sheppard, showing you what has been marked for identification purposes as State's Exhibit 72, would this be the case summary record of Bay View Hospital with regard to Doctor Sam Sheppard?

A Yes.

Q And these records were kept by the Bay View Hospital with regard to his case, is that correct?

A Yes.

Q Referring to page 12, what has been marked page 12 of these records, you told us before that Doctor Elkins examined Doctor Sam Sheppard and found -- and I am referring now to the 4th of July, 1954 -- and found reflexes missing, is that correct?

A Yes.

Q Now, this is page 12, sir, and is this correct:

"Doctor Sam is alert and answers questions lucidly. There is swelling of the right periorbital tissue.

Pupils are equal and react. Moves all extremities well. No Babinski's.

He has voided. Complains of occipital headache. Cervical collar in place.

Neck not examined.

Impression: Cerebral concussion. Advise average fluid. Sedation. C. W. Elkins."

A Yes.

Q Do you know when this was made?

A Yes.

Q When was that made?

A July 4th of 1954.

Q Is there anything in this report of Doctor Elkins that indicates that certain reflexes were missing?

A No.

Q As a matter of fact, in here, the impression that is given by Doctor Elkins is that there is a cerebral concussion?

A Yes.

Q And what is a concussion?

A Injury to the brain.

Q When one is knocked out, that is a concussion, right?

A Yes.

Q And how does somebody diagnose a concussion?

A By the appearance of the patient, the history of the injury.

Q Where do you get the history of the injury?

A From the patient.

Q So that it is a subjective thing insofar as the patient is concerned that all a person can rely upon is the history of the case, unless there are objective signs present, is that correct?

A Yes.

Q Pardon me?

A Yes.

Q Was there any notation of objective signs present in this report?

A Not by Doctor Elkins. I am sorry, I think he did mention swelling. That would be an objective sign.

Q Swelling of the right periorbital tissue?

A Periorbital, that is around --

Q That is the right eye, is it not?

A Yes, around the eye, periorbital.

Q That doesn't mean concussion, does it?

A No of and by itself, no.

Q So you don't know where Doctor Elkins got his information to arrive at the cerebral concussion, do you?

A I believe he obtained it from the patient.

Q Then he just relied on what the patient told him, is

that correct?

A And his findings.

MR. BAILEY: I object to that.

I don't think this witness can testify what another doctor relied on.

THE COURT: Sustained. The jury is instructed to disregard the doctor's response.

Q Doctor, the records would indicate what time the patient arrived at the hospital, would they not?

A Yes.

Q What time does it indicate that the patient arrived at the hospital?

A 6:30 a.m.

Q That would be 6:30 on the morning of July 4, 1954?

A Yes.

Q And that is what time he arrived at the hospital, is that correct?

A Yes.

MR. SPELLACY: I have no further questions.

THE COURT: Counselor Bailey?

MR. BAILEY: I would like this to be received in evidence.

MR. SPELLACY: Fine, I will offer

it right now.

MR. BAILEY: Might it be received,
your Honor?

THE COURT: Yes, it is received.

MR. SPELLACY: State's Exhibit 72.

MR. BAILEY: Yes.

REDIRECT EXAMINATION OF DOCTOR STEPHEN SHEPPARD

By Mr. Bailey:

Q Doctor Sheppard, I believe you testified you had seen
your younger brother participate in athletics when he was
young?

A Yes.

Q At some time, did he play football?

A Yes.

Q Did he play in the backfield?

A Yes.

Q Have you ever seen him perform surgery?

A Many times.

Q From having known him all of his life, do you know
whether or not he is right or left handed?

A Yes.

Q What is he?

MR. SPELLACY: Objection.

THE COURT: He may answer.

A Doctor Sam is righthanded.

Q Have you ever seen him use his left hand for eating?

A Sandwiches.

Q Have you ever seen him use it for surgery?

A No.

Q Did anybody else examine Doctor Sam who was not connected with Bay View Hospital on the fourth day of July, 1954?

A Yes.

Q Who?

A In addition to Doctor Elkins, you mean?

Q Yes.

A Doctor Gerber was there and examined him briefly.

Doctor Hexter was there, as a physician requested by Doctor Gerber. He examined Doctor Sam.

Q How long was Doctor Hexter with him?

A Perhaps a half an hour.

Q Had you known Doctor Hexter prior to this incident?

A I knew of him.

Q I take it he was not connected with the Bay View Hospital?

A No, he was not.

Q Did you know what specialty of medicine he had, if any?

A He was a general practitioner.

Q Where is Doctor Hexter now, if you know?

A I know he practices and lives in the area, but I don't know where he is just now.

Q No, I mean is he still practicing in Bay View?

A Yes.

Q Were any other doctors permitted to examine Sam Sheppard at any time between July 4th and the trial, to your knowledge?

A Yes.

Q Did Doctor Hexter ever examine him a subsequent time after July 4th?

A Not to my knowledge.

Q Did any other doctors not requested by the defense or the Sheppard family examine Doctor Sam?

A Prior to the trial?

Q Yes.

A Yes.

Q Were any of these doctors --

THE COURT: Counselor, would you fix the date, if there was another examination?

MR. BAILEY: Yes.

Q Give us the approximate date, if you can?

MR. SPELLACY: Is this as to his own personal knowledge?

MR. BAILEY: I don't know.

Q Were you present at any examinations?

A No.

Q How did you learn of them?

A Doctor Sam told me.

Q Do you know a doctor named Spencer Braden?

A Yes.

Q What is his specialty?

A Neurology. Neurosurgery.

Q Doctor Sheppard, you have testified that the initial X-ray report reflected a chip fracture of the cervical vertebra?

A Yes.

Q Who did the initial interpretations of the X-rays films?

A Doctor Gerry Flick, the roentgenologist.

Q What is a roentgenologist?

A A roentgenologist is a specialist who interprets X-ray films.

Q Might he also be called a radiologist, or is there a difference?

A A radiologist is involved in the use of X-ray for treatment of malignancy and athletic injuries.

Q Where was Doctor Flick employed at that time?

A He worked at the Bay View Hospital.

Q Where is he today, do you know?

A He is no longer living.

Q When did he die?

A I think perhaps three or four years ago.

Q Now, the record being State's Exhibit 72 discloses an entry signed by Doctor Flick saying:

"There is a chip fracture in the inferior-posterior margin of the 2nd cervical vertebral spinous process. There is rather marked hypertrophic change at C-5-6. As a matter of fact, there is bridging between these vertebral bodies. Soft structures in the anterior are negative."

Now, where, so that we can understand it, was this chip fracture located as described by this entry?

A Just at the base of the skull. The 2nd cervical vertebra is the second one down and it would be perhaps an inch and a half beneath the base of the skull.

Q And what does a chip fracture mean?

A The bone is broken.

Q I believe you said something earlier about spastic muscle condition. Will you tell us what a spasm is?

A A spasm is an involuntary tightening or tension of the muscle.

Q What causes this involuntary tightening or tension?

A Usually pain, injury.

Q Is any external stimulus required to demonstrate a spasm?

A No.

Q Can a spasm be voluntarily created by the patient?

A No.

Q Now, in the normal practice of medicine, doctor, in making diagnoses, whether or not it is customary to rely to some extent on the history given by the patient?

A It is.

Q You said that there was evident a swelling around the right eye; is this consistent with injury to the head?

A Yes.

Q As an objective finding on which no reliance is placed on what the patient says?

A Yes.

Q Now, did you as a physician make any diagnosis of injury to the neck or skull?

A Yes.

Q And was this in some part based on the history given to you by Doctor Sam Sheppard?

A Yes.

Q What history were you relying on, what did he tell you had happened to the base of his neck?

A He told me that he had been struck and knocked unconscious on two occasions.

Q Now, this record also disposes that Doctor Elkins diagnosed on one examination a contusion of the spinal cord; are you familiar with that?

A Yes.

Q What is a contusion of the spinal cord?

A It is an injury of the spinal cord --

MR. SPELLACY: May we have the
time of that examination?

A Literally a bruise.

MR. BAILEY: Excuse me. Let
me get the entry.

MR. SPELLACY: I believe it is
page 13.

Q Referring to page 13, then, of State's Exhibit 72,
there is an entry here signed by Charles W. Elkins relating
an examination made on July 6th of 1954.

Did you know of that examination?

A Yes, I did.

Q And the final entry just above the signature of
Doctor Elkins, "Cervical spinal cord contusion," and the
word "Imp"?

A Impression.

Q Does that "Imp" customarily mean impression in the
construction of hospital records?

A Yes, or diagnosis.

Q Where does the spinal cord run with reference to the
skull and back of the neck?

A Down into the passageway in the vertebral bodies,

the spinal column. The spinal cord is protected by the spinal column, completely surrounded by it.

Q These vertebrae, then, are round bones with a hole down the middle?

A No, the vertebrae are round bones with a passageway directly behind the round portion which you describe as round bones, those are the vertebral bodies.

Directly behind those is a passageway through which the spinal cord passes, and on all sides of the spinal cord are the lamina and the spinous processes, which protect the spinal cord from injury in the ordinary events of the day.

Q What is a contusion?

A A contusion is a medical term for bruise.

Q Now, Doctor, in circumstances where X-rays additionally show a chipped fracture, as they did in this case, and subsequent X-rays do not, does this mean necessarily that the original X-rays were erroneous or defective?

A No.

MR. SPELLACY: Objection.

THE COURT: The answer is ordered stricken and the jury will disregard the answer.

Q What might cause, Doctor, a chipped fracture visible on July 4, 1954, not to appear in later films, if you know, from your experience?

A Differences in the technique of the person taking the

film, and variation in the distance of the tube from the patient's anatomy.

Q How many people in the Bay View Hospital operated the X-ray machine in July of 1954, just roughly?

A Six.

Q Were these people physicians or were they assistants?

A They were technicians.

Q The record discloses that a schautz collar was applied; will you tell us what that is?

A A schautz collar is a device which is employed to protect the neck and hold the head in an upright position, so that the muscles of the neck won't be required to hold it up there by reducing and relieving muscle spasm and pain.

Q Do you recall when a schautz collar was first applied or fitted to the neck of Doctor Sam Sheppard?

A A temporary collar was fitted immediately after his admission.

Q Doctor, you testified that after observing Doctor Sam Sheppard in the den, you went upstairs?

A Yes.

Q Prior to going upstairs, had you observed the entire first floor?

A I had observed the entire den and the entire kitchen.

Q And what about the living-dining room area?

A I had been in the dining area and the living area when

Mrs. Sheppard and I stepped in there prior to my going into the den.

Q Were there any other rooms on the first floor that you did not observe?

A The only other room was the one around through the L by the fireplace.

Q You went up from couch or living room side of the stairs rather than through the kitchen, is that correct?

A That is correct.

Q And when you observed all these rooms on the first floor, I take it you did not see Marilyn Sheppard?

A That is correct.

Q Doctor, you told us that when you left the house that morning in response to a telephone call, you took a pistol?

A Yes, I did.

Q What information were you given in that telephone call by Dorothy Sheppard?

A She said that something terrible had happened up at Sam and Marilyn's house and they thought Marilyn was dead.

Q Was there any other information?

A Not that I recall.

Q Was it because of that telephone conversation that you took with you the pistol?

A Yes.

Q Did you have any knowledge as to whether or not the

causes of the trouble and possible death to Marilyn Sheppard was still around the house?

MR. SPELLACY: Objection.

THE COURT: Sustained.

Q Doctor, prior to going to the second floor, and after you had first observed Sam Sheppard on the floor of the den, did you speak to him?

THE COURT: I am sorry, I didn't follow your question.

MR. BAILEY: After Doctor Stephen Sheppard had entered the house and saw Doctor Sam Sheppard on the floor of the den, and prior to the time that he went to the second floor, I asked whether or not he spoke to him.

A Yes.

Q And did you give some instructions?

A Yes.

Q To whom?

A To my wife, Betty.

Q Where was she at the time you spoke?

A In the dining area of the living room.

Q Doctor, when you arrived at the home, how many vehicles were in the driveway?

A The driveway was completely filled with vehicles, with the exception of one spot and that is where I put my

car. I would estimate eight.

Q Did you observe the ambulance there?

A Yes, I did.

Q And whether or not the ambulance had access to Lake Road or it was blocked?

A It was blocked.

Q Do you recall whether or not Chief Eaton was present when Doctor Sam Sheppard was first removed from his home?

A I do.

Q Was he present?

A He was.

Q Do you recall whether or not he was informed whether Sam was going?

A He could see it.

Q In other words, from where he was standing, Sam was in his view as he was removed by yourself and Doctor Carver?

A Correct.

Q Did Chief Eaton have anything to say to the notion of removing Doctor Sam Sheppard?

A He made no comment.

MR. BAILEY: Has this been
received?

MR. SPELLACY: No.

MR. BAILEY: May it be received,
your Honor, State's Exhibit 71?

MR. CORRIGAN: If you will offer it as a Defense Exhibit. We are not going to offer it as a State's Exhibit.

MR. BAILEY: I will be happy to offer it as a Defense Exhibit.

MR. CORRIGAN: No objection.

THE COURT: It is received.

(State's Exhibit 71 was remarked for identification by the reporter as Defendant's Exhibit UU.)

Q Doctor, you told us that it is customary for physicians to have instruments made of their own design?

A Yes.

Q But you said that you had never ordered such an instrument?

A I never have.

Q To your knowledge, had Doctor Sam ever ordered one?

A He never did.

Q Doctor, showing you State's Exhibit 35, a pillow found on Marilyn Sheppard's bed, I direct your attention to an impression on this blood-stain, two points here, and the rough perimeter. I will ask you whether or not in all your experience in medicine you have ever seen or known about a surgical instrument that would fit that pattern even approximately?

A Never.

MR. BAILEY: No further questions.

However, your Honor, I ask before the witness leaves that I be allowed to read State's Exhibit 72, for the reason that some of the handwriting is his, and I may need assistance in having it read.

THE COURT: May I see Counselors?

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

THE COURT: Do you want to make your request?

MR. BAILEY: Yes. The defense requests an opportunity at this time to read State's Exhibit 72.

THE COURT: May I see it, please?

MR. BAILEY: Surely. Withdraw the request.

THE COURT: The request to have State's Exhibit 72 read into the record is withdrawn. (Thereupon proceedings were resumed within the hearing of the jury, as follows:)

THE COURT: Anything further of this witness?

MR. BAILEY: Yes.

By Mr. Bailey:

Q Do you know a Doctor Clifford Foster?

A Yes, sir, I do.

Q Did you know him on July 4, 1954?

A Yes.

Q Did he have an area or specialty in the field of medicine?

A Yes.

Q And what was it?

A Otolaryngology.

Q Spell that, and then interpret it, please.

A O-t-o-l-a-r-y-n-g-o-l-o-g-y, eye, ear, nose, and throat.

Q Do you know whether or not he examined Sam Sheppard on that day?

A He did.

Q By the way, Doctor, you identified this as the record of Sam Sheppard's case from the Bay View Hospital; when was the last time prior to today that you saw this record?

A The previous trial.

Q Twelve years ago?

A 1954.

Q I take it, it has not been in the Bay View Hospital in the interim, then?

A Not to my knowledge.

THE COURT:

Can you fix a date,

Counselor, of Doctor Foster's examination?

MR. BAILEY: July 4th, your
Honor.

Thank you, Doctor, I have no
further questions.

THE COURT: Counselor Spellacy?

MR. SPELLACY: No further questions.

THE COURT: You are excused,
Doctor.

THE WITNESS: Thank you, Judge.

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