

The evidence will show, ladies and gentlemen, reasonably interpreted, that there was no one in that house that night other than Sam Sheppard and his son, Chip, and Marilyn.

The evidence will show beyond any reasonable doubt that on the morning of July 4th, that Sam Sheppard unlawfully, purposefully, that is, intentionally, and maliciously killed his wife, Marilyn Sheppard.

Thank you, your Honor.

THE COURT: Counselor Bailey
or Sherman?

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

MR. BAILEY: Ladies and gentlemen, just as Mr. Corrigan prefaced his opening statement with some explanation, I think I should do the same first.

I adopt and endorse the things he told you about the procedure, which is going to be followed in this trial and the order in which things will be done, and also his statement that what we tell you here is not evidence.

It is an outline, the framework in which

you may fit the evidence, as it comes often disjointed, to a pattern.

Now, by law the prosecution begins the case with control of the evidence, that is to say, it decides who will be called, what evidence will be presented, and until its burden is discharged, the defense will not be heard from.

However, in many cases, and in this case in particular, much of the evidence that the prosecution will submit is evidence that the defense would submit if it had to go first.

And beyond that, although in some jurisdictions the defense counsel does not tell the jury what he expects to present until the prosecution is through with its case, in this one defense counsel begins right at the beginning before any evidence is heard.

So I must tell you in all fairness that our expectations for the production of evidence are conditional to some extent on what the State produces and what we feel should be explained or rebutted or contradicted.

Now, 90%, 90% of what Mr. Corrigan has just told you of the facts he has just outlined to you are undisputed.

We are not going to waste your time having in mind that you are inconvenienced in this case by being kept apart from your families, the defense is not going to waste your time by forcing the State of Ohio to prove things that we are satisfied are true.

So let there be no mistake, there is no dispute that Marilyn Sheppard was murdered, probably, certainly by a human being, on the morning of July 4th, 1954.

There is no dispute that the primary cause of her death was a number of blows to the head; how many we think doesn't matter; a number of blows to the head by some instrument -- and whether it was the concussion or asphyxiation in her own blood -- that's what killed her.

There is no dispute that she dies between 12:30 or thereabouts when she was seen alive, and quarter of six in the morning when Mayor Houk was called.

There is no dispute that the defendant Sam Sheppard was at home that night, and was last seen sleeping on a couch adjacent to the stairway to the second floor just as Mr. Corrigan described.

Mr. Corrigan has outlined for you the

story that the defendant gave to the police and to others on that first day. Right away he said, and I will reiterate, he said that he was sleeping, he does not know the time, but at some time he heard a cry or a shout or something that awakened him, and he ran to the top of the stairs, stairs which will be described in evidence and which you have seen in order to enable you to understand that evidence.

He said that when he arrived at the top of the stairs he was clobbered, to use his words, that is to say, struck with something or by something, by somebody, and that he became unconscious. How long he was unconscious we don't know.

At some point he regained consciousness, awoke, and his attention was attracted to the glint of a badge lying pinned to his wallet on the floor near his body, near the door to the bedroom on the second floor of that house, because Sam Sheppard was the police surgeon for Bay Village.

He heard a noise on the first floor, and in his befuddled condition ran down the stairs and perceived or saw something going out the door, not to Lake Road, but to Lake Erie.

And he chased that something. He chased it across the lawn and down the steps, which will be

described and which you have seen, to the beach, and grappled or fought, and lost consciousness once again.

And that when he awakened just at about dawn between 5:30 and quarter of 6:00 on the morning of July 4, 1954, he was half in and half out of the water of Lake Erie, lying in the sand on the beach, which you will hear described as being somewhat smaller than it appears today.

And he ran up to the house and examined his wife and put his knee against the bed, and he found that he could perceive no pulse.

So Sam Sheppard went to the telephone. He did not call the police. He called a man who lived two doors away, which house was viewed by you, and he said these words, he said, "Spen, come quick, I think they've killed Marilyn." "I think they've killed Marilyn."

The evidence will show that J. Spencer Houk, who had a butcher shop in Bay Village, and was its Mayor, received that call and did in fact recognize Sam Sheppard's voice, and believed the message that was given to him.

The evidence will show that Spencer Houk did not call the police, he did not pick up a weapon.

He aroused his wife. He did not walk across the lawn or run. He drove his car, and when he arrived at the house he sent his wife up to see Marilyn Sheppard.

The evidence will show that at the time this was done he had been given no information about who "they" were or how "they" were armed, or whether "they" were still there.

After J. Spencer Houk had arrived at the house where Sam Sheppard lived, and after Mrs. Houk had viewed the butchered body on the bed, they then called the police, and they talked to Sam Sheppard, and there was some conversation which you will hear about.

Then first came the police of Bay Village and there was conversation between Sam Sheppard and the police; and then arrived others including members of his family, all of whom you will hear are brothers, and at that time father, all of them doctors as well.

There were, the evidence will show without question, visible injuries to the face of Sam Sheppard, and he was holding his neck. (indicating)

And as a result of observations made by one or more of the brothers, he was taken to the Bay View Hospital which was not owned by the Sheppards

but at which they were staff members and at which they practiced and did surgery.

After he was received at the Bay View Hospital he was treated and X-rayed, the results of which will be brought in for your consideration, and interrogated, and the results of that interrogation I anticipate you will hear, and examined by several physicians.

Without describing all of the medical evidence you can expect, I will tell you that from Tucson, Arizona, the defense will produce a neurologist named Charles Elkins, who had examined Sam Sheppard several times after this incident, and in detail, and as an expert neurologist he will tell you that he was able to make an examination for injury to the brain or nervous system, the symptoms of which cannot be controlled or faked, and that he found a serious injury to the spinal cord inflicted in the back of the neck of the defendant Sam Sheppard.

You will hear evidence that X-ray showed a chipped fracture of the 3rd cervical vertebra.

You will hear evidence that his teeth were loosened, and in some cases chipped, on that

morning. And you will hear evidence that he was in shock.

There came upon the scene at the Sheppard house, as Mr. Corrigan has said, the police of Bay Village, the police of Cleveland, the personnel from the office of the Sheriff, and others from the office of the County Coroner, many many people.

You will find that there were footprints on the beach, and that none of these were identified.

You will find indeed that there was no forcible sign of entry into that house on that day, because no forcible entry was made.

There is some evidence that you may hear and I will not describe to you now for reasons that will become apparent if it is necessary to produce it, but the evidence will show, as Mr. Corrigan has already said, that Marilyn Sheppard retired that night with a pair of two-piece pajamas, and that when her body was found the lower or pant part of the pajamas was off one leg but not ripped, and that the upper or jacket portion of the pajamas was pushed up but not ripped.

There will be evidence that as police surgeon, and indeed as a surgeon in general, it was

often necessary for Sam Sheppard to go out late at night on emergencies. But then when he did so it was his custom to leave on the second floor of his house a light burning against his return, and that those who were close to him knew what that light meant, that Sam was not at home.

The evidence will show that between the hours of midnight and dawn on July 4th, a car was missing from the Sheppard driveway, and that this fact was noticeable to any passerby.

The evidence will show that the house which you saw and which will be described to you so that it may become a proper part of the record, has two entrances, one on Lake Road and one facing Lake Erie.

And that upon entering the house in order to take the shortest route to the second floor, it is possible to turn left and go directly through the kitchen, up to a small landing and then directly up the stairs; and you will infer, when you have heard the evidence, that a person familiar with the house would take that route.

The evidence will show, ladies and gentlemen, and I do not suggest to you that the burden is on the defendant or one which we assume

to solve this case, because we only defend Sam Sheppard; but the evidence will show that someone else was in that house that night beside Sam Sheppard, and this is the only thing in Mr. Corrigan's statement I contradict.

Someone else was there, some adult human being, who was up in that room, and who killed Marilyn Sheppard for reasons that may become apparent to you as the case unfolds.

The evidence will show to your satisfaction that this was no strange intruder, but someone who came through an unlocked door or had a key, and had had one for some time.

You will learn as the testimony is reported to you by the several witnesses that will appear, that many investigators looked over the premises of the Sheppard house. But that no detailed investigation of the murder room, as I will call it for the balance of this proceeding, the room where Marilyn Sheppard was found, her bedroom, was conducted until December of 1954, at which time a man who will come to testify in this court from California, the University of California at Berkeley, a criminologist with great experience and qualifications, whose name is Paul Leland Kirk,

who will tell you that in December of 1954 and the early part of 1955 he made examination of the murder room which had been preserved intact because the house was under the care and supervision of the authorities.

That he found this room as it existed on the morning of July 4th to be spattered with blood.

The evidence will show that as whoever struck Marilyn Sheppard with a weapon on the 4th on the top of her head and her hands, as this weapon flailed again and again and was swung, not only from the impact of the weapon on flesh which cracked it open, but from the swing of that weapon blood spatters were made upon the walls and ceiling of the room; and from these and other physical evidence in that room we will to a large extent, with the evidence in this courtroom reconstruct that crime.

You will be shown that the shape and size of spots of blood hitting the wall and then sliding out leaving a trail, because of the velocity and direction from which they came, will indicate that Marilyn Sheppard was killed with a weapon approximately twelve inches in length, with a

striking surface perpendicular to its own axis, which could very possibly have been a flashlight or something shaped like that, and was swung by a person who was lefthanded or was using a left hand for the purposes of this crime, and was swung by a person whose physical strength was compatible with that of a woman.

And the evidence will show that Doctor Sam Sheppard was then a husky and athletic 30-year old man.

Doctor Adelson who performed the autopsy on Marilyn Sheppard, will testify before you and bring photographs of her skull, which you may examine and determine for yourselves, which is your power and duty, the strength of the blows that descended upon that skull on the morning of the murder of Marilyn Sheppard.

The evidence will show that when Doctor Sam Sheppard awoke or regained consciousness on the floor of the bedroom where his dead wife lay, his wallet was out of his pants, and his pocket was ripped down about three inches, and that a key chain had been removed forcibly from that pocket causing the rip.

The evidence will show that adjacent

to the walkway down to the beach, which you traversed this morning, a green bag was found, a green bag which had been used by this defendant to keep his outboard motor tools in, but which on this morning contained some jewelry, and the evidence will make unmistakably clear that the position in which this green bag was found by the son of J. Spencer Houk, was sufficiently close to the wooden steps to have been discarded by someone in flight.

You will have, I am sure, photographs resurrecting the scene, after these twelve years, taken at the time by the investigators investigating this murder, and you will have evidence from a man whose specialty is fingerprinting, who dusted this house for prints, using one method but refraining from using another, because in so doing he will tell you he might have interfered with some of the blood evidence, chemical tests.

And he will tell you he found no fingerprints, but he found little scratches on various surfaces compatible with a wiping by some rag or cloth, from which you will find as a fact that someone did wipe fingerprints in the house of Sam Sheppard on the morning of July 4th, someone who couldn't afford to have fingerprints found in that

house.

You will hear evidence that will satisfy you beyond any doubt that whoever killed Marilyn Sheppard was soaked with her blood, because of the spray and the spatter, and the fight you will find she put up. You will hear the evidence of her condition.

You will find that the T-shirt which was seen on Doctor Sam Sheppard by the Aherns before they left that night to go home was not on him when he awoke on the beach and has never been found.

But you will hear that the trousers which he was wearing when they left and which he still had on when the Houks and later the police arrived, as well as his body, had no blood, except for one stain on the knee, diluted with water, which the evidence will show got there when he came up from the lake where he had been lying half in and half out of the water with the lower extremities submerged, and he put his knee against the bed as he felt for his wife's pulse.

You will find that the police in the course of their investigations took custody of the clothes in which he was found, and had them examined

in a laboratory, and that in the pockets and cuffs of these trousers, which Sam was wearing when the Aherns left and the Houks arrived, there was sand which was washed in there little by little as he lay unconscious half in and half out of the water.

And you will hear evidence that when he arrived at the Bay View Hospital his feet and other parts of his body were puckered up, as in your common experience you have observed when a portion of the human body stays in water for a length of time.

It has been suggested that the evidence will show Marilyn Sheppard died between three and four o'clock. Whether or not that is true the defense will not dispute.

We will not be able to give you any evidence as to the time that these things happened except that they happened after 12:30 and before quarter of six.

Ladies and gentlemen, although it is not the obligation of the defense to come forward with any more evidence than is necessary to satisfy you of the defendant's innocence, this is a search for truth, which is the highest calling in a jury trial, and there will be a great deal of circumstantial

evidence, perfectly good evidence, and if you consider it closely, when this trial is concluded and you have heard all that both sides can bring you, you will be satisfied that Sam Sheppard didn't kill his wife, and you will have a pretty good idea who did.

THE COURT: Counselor Corrigan
or Spellacy, are you ready with your first witness?

MR. CORRIGAN: The State will call
Don Ahern.

THE COURT: Be at ease, ladies
and gentlemen, while we are awaiting the arrival
of the witness.

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