

## R E B U T T A L

Thereupon the State of Ohio, further to maintain the issues on its part to be maintained, and to rebut the evidence offered on behalf of the defendant, called as a witness JAY H. HUBACH, who, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

By Mr. Danaceau:

Q Will you give us your name?

A Jay H. Hubach.

Q And how do you spell your last name?

A H-u-b-a-c-h.

Q And you live where?

A Bay Village.

Q And you are on the Bay Village police force?

A That's correct.

Q How long have you been on the Bay Village police force?

A Nearly seven years.

Q I didn't get that.

A Nearly seven years.

Q And what position do you occupy?

A Sergeant.

Q And how long have you been Sergeant?

A About five and a half years.

Q And do you know Dr. Sam Sheppard?

A Yes, sir.

Q How long have you known him?

A About two years.

Q Have you ever been at his home before this tragedy?

A Yes, sir.

Q How often?

A Not too many occasions, that is, in personal visits.

Q And how many personal visits?

A I have been water skiing with him several times.

Q You have been water skiing with him several times?

A Yes, sir.

MR. CORRIGAN: I object. That  
is not rebuttal.

MR. MAHON: It is all preliminary.

MR. DANACEAU: It is all preliminary.  
I don't know what the objection is. Mr. Corrigan  
has objected.

THE COURT: Yes. I think it is  
not rebuttal of anything that has been testified  
here.

MR. MAHON: Well, it is preliminary.

MR. DANACEAU: It is nothing in  
issue thus far. It is all preliminary.

THE COURT: Let's go ahead.

Q Did you know Marilyn Sheppard?

A Yes, sir.

Q How long have you known her?

A Approximately the same length of time, maybe just a little  
bit less.

Q Of course, you knew that Dr. Sam Sheppard was the unofficial  
police ~~surgeon~~ connected with Bay Village Police Department?

A Unofficial, yes.

Q You were friendly with him, were you not?

A Yes, sir.

MR. CORRIGAN: Object. It isn't  
rebuttal.

THE COURT: All right. Go ahead.

Q It has been testified here, I believe, that you were present,  
Sergeant Hubach, in a visit to the Sheppard home, was it  
November 11th --

MR. GARMONE: On or about November  
11th.

Q -- on or about November 11th of this year. Do you recall  
that?

A Correct.

Q Were you present?

A Yes, sir.

Q Who was there?

A Mrs. Dorothy Sheppard, Dr. Richard Sheppard, Dr. Stephen Sheppard, and Mr. David Phillips.

Q Who is Mr. David Phillips?

A He is a friend of the Sheppard family.

Q And you were there?

A Yes, sir.

Q It has been testified here that Dorothy Sheppard saw or found a key underneath a wastebasket. Do you recall that incident?

A I recall of the key, sir, but I don't recall it ever being under the wastebasket.

Q Where is this wastebasket?

A In location, it was between the sink and the cupboards. Now, the cupboards are on the east side of the room and the sink is facing the south.

Q And in what room is this?

A That is the kitchen.

Q In the kitchen. And were you in the kitchen when this occurred?

A I was in the doorway, sir.

Q And did Dorothy point something out to you?

A I don't recall as she pointed out or I saw it, or it was simultaneously, but we did see the key.

Q And where was the key that you saw?

A When I saw the key it was in the open. It was more or less --

THE COURT: In the what?

MR. DANACEAU: In the open.

THE WITNESS: In the open.

THE COURT: Oh, yes.

Q Was it underneath this basket?

A I didn't see it under the basket.

Q Who picked it up?

A I'm not positive of that, whether Mrs. Sheppard picked it up and handed it to me, or whether I picked it up. I'm not positive.

Q Now, then, Sergeant, you have been in that home many times?

A Yes, sir.

Q After July 4th and prior to November 11th of this year, is that correct?

A That's correct.

Q Were you in that home when a search was made in this very room in the kitchen?

A Yes, sir.

Q Before that, before November 11th?

A Yes, sir.

Q And when was that?

A It was the latter part of July, possibly around the 22nd

or the 23rd.

Q And by whom was the search being made?

A By the boys from the Cleveland laboratory.

Q And were you in the kitchen at the time the search was being made?

A Yes, sir.

Q State to the jury what the fact is as to whether or not that basket was moved or a search made under it or around it?

A That basket was moved at that time by Detective Elmer -- is all I can think of is his first name, I can't think of his last name -- he moved that out to the center of the kitchen floor at which time he dumped a lot of his refuse into that can.

Q And was there a key there at that time?

A No, sir.

Q It has been testified here, Sergeant, that you accompanied -- withdraw that.

It has been testified here, sir, that you suggested to Dr. Sam Sheppard that he carry a pistol or a gun. Did you ever make any such suggestion to Dr. Sam Sheppard?

A I don't recall of making any suggestion to that effect.

Q Did you have a conversation with him about carrying a gun?

A Yes, sir.

Q Will you relate to the jury precisely what that conversation was, what he said to you and what you said to him?

A I don't know as I can recall the exact words.

Q Well, give us the substance.

A The substance or gist of it was to the effect of the ability to carry a gun, and I explained to the best of my knowledge the concealed weapons law, and what it pertained to, and whether it would apply to him, I didn't know.

I also stated that I didn't know whether his police surgeon's commission in a neighboring town would enable him to carry that gun freely, but that the best thing to do was seek counsel from his attorney.

Q Was that the substance of the conversation?

A That is the general gist of it, yes, sir.

Q Did you later see Dr. Sam Sheppard with a pistol or a gun on him?

A Sometime later I saw him have one on him. It was in his father's home.

Q Do you remember when it was or about what time that was?

A I would say possibly the week after the funeral.

Q And where on his body did he carry this gun?

A It was in the open, that is, it was in a holster on his belt.

Q Did you then have a conversation with him about carrying the gun?

A As I was leaving I recall saying to him that, "Doctor, you had better get advice from your attorney as to carrying that

weapon."

Q What did he say?

A Words to the effect that he wasn't interested or didn't care, he was going to carry it anyways.

Q Sergeant Hubach, have you been subpoenaed by the defense within the last few days?

A Yes, sir.

Q Did they call you to the stand?

A No, sir.

MR. DANACEAU: You may inquire.

CROSS EXAMINATION OF JAY H. HUBACH

By Mr. Garmone:

Q Sergeant Hubach, you have been with the Bay Village police force for how long a period?

A A member of the force?

Q Yes.

A Six years and seven months, to be exact.

Q And about five and a half of those years you have had the rank of Sergeant?

A Yes, sir.

Q Now, how many times would you say, between the 4th of July and November 11th, that you had the opportunity of going through the Sheppard home at 28924 West Lake Road?

A It would be hard to say exactly how many days I was in

there.

Q Well, the approximate number of times.

A Possibly ten or twelve.

Q And during any of those ten or twelve times you never once touched the wastebasket, did you?

A I, myself, never touched the wastebasket.

Q Now, coming down to the 11th of November, when you first saw the key, where was it in reference to where the wastebasket was located?

A I would say, as I recall, about a foot and a half to two foot.

Q And was there anything in the wastebasket?

A Yes.

Q Litter?

A Yes.

Q Empty milk containers?

A That milk container was put in there by Dr. Richard Sheppard that morning.

Q Well, what was some of the litter -- some of the other litter in the wastebasket?

A That I can't explain.

Q But the wastebasket did have litter in it, didn't it?

A Yes, sir.

Q And wasn't Mrs. Dorothy Sheppard in the process of emptying that wastebasket at the time?

A At the time, as I recall --

Q Was she or was she not?

A I can't say that she was in the process of emptying it.

Q Well, was there something said there by Mrs. Dorothy Sheppard that she thinks she'll empty the wastebasket?

A Yes, because there was an odor in the home.

Q Odor in the home, and it was coming from the wastebasket, wasn't it?

A At that time we didn't know.

Q Didn't know. Now, who picked the key up? Did I understand you to say you don't recall?

A That's correct, I don't recall.

Q You participated in the investigation of this matter, didn't you, Sergeant?

A Yes, sir.

Q After the key was picked up what, if anything, did you do with it?

A I took it back to the station and turned it over to the Chief.

Q What was done with it, to your knowledge, after that, do you know?

A To my knowledge, it was put on the key ring with the other two keys.

Q Did you at any time, Officer Hubach, submit that key to any ballistic expert to determine whether or not there was

fingerprints that could be obtained from it?

A No, sir.

Q Did you think that was important?

A At the time of the discovery of the key?

Q Yes.

A I didn't.

Q You didn't. Now, was the key ever taken anywhere other than the Bay Village Police Department?

A To my knowledge, no.

Q Now, when you were asked the question by Mr. Danaceau as to whether or not Sam had obtained permission from you as to whether or not he could carry a pistol, your answer was you don't recall?

MR. DANACEAU: I object to that.

He never said anything about permission. It was a question of whether he suggested that he carry it.

THE COURT: Objection will be sustained. That was not the question.

Q Then I will rephrase my question. When it was suggested to you by Sam Sheppard whether or not he be permitted to carry a pistol, your answer in response to that question was that, "I don't recall," wasn't it?

A I said I don't recall ever mentioning that. I explained to him --

Q

No. Was your answer, in response to the question, when the suggestion by Sam Sheppard was made to you whether he be permitted to carry a pistol or not, "I don't recall"?

MR. DANACEAU: I object again, because that is not the question.

THE COURT: No, that is not the question, Mr. Garmone.

MR. GARMONE: Well, then, you put the question to him.

THE COURT: Let's have the question from the record, if you can find it, Mr. Reporter.

MR. MAHON: Let the reporter read the question.

MR. DANACEAU: I suggest the reporter read the question.

(Question and answer read by the reporter as follows: "It has been testified here, sir, that you suggested to Dr. Sam Sheppard that he carry a pistol or a gun. Did you ever make any such suggestion to Dr. Sam Sheppard?

"A. I don't recall of making any suggestion to that effect.")

Q

Was that your answer to the question that was put to you by Mr. Danaceau?

A

It must be.

Q As read by the reporter.

Now, you were in the house on the morning of the 4th of July, weren't you, Sergeant Hubach?

A Yes, sir.

Q And about what time was it when you first arrived there?

A Roughly about 6:20.

Q Did you go to the bathroom of that home during the course of your observations in and about the Sheppard home that morning?

A Yes, sir.

Q And didn't you, as a matter of fact, see a cigarette butt in the toilet bowl that morning?

A Yes, sir, I did.

Q Did you do anything about it?

A No, sir.

Q Do you think that was good police investigation, Sergeant?

MR. PARRINO: I object to this.

MR. DANACEAU: This isn't --

THE COURT: Objection sustained.

Q Did you call to the attention of -- I will withdraw that.

Who was present, by the way, of officers when you made the observation of the cigarette butt in the toilet bowl about 6:20 a.m. on the morning of July the 4th?

MR. PARRINO: I object to this,

if the Court please, as not being part of rebuttal.

THE COURT: Objection sustained.

Q Were you alone at the time that observation was made?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

Q Did you call the observation to the attention of any of your fellow-officers?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

Q Did you call the observation that you made to the attention of any officers of the Cleveland Police Department?

MR. DANACEAU: We object.

MR. MAHON: Now, if your Honor please, this witness --

THE COURT: Objection sustained.

This witness isn't here as a general witness. He is here only on rebuttal.

MR. GARMONE: I think they opened the door for general examination.

Q Now, Officer, on the 11th, coming back to the incident where the key was observed, did you make a report of that finding?

A There is a report to that effect, yes, sir.

Q Was that report ever submitted to any member of the Cleveland Police Department?

A I believe so. I'm not positive, however.

Q You are not positive?

A No, sir.

Q Was there any member of the Cleveland Police Department that came out to discuss the finding of that key with you?

A Not with me, no, sir.

Q To your knowledge, was there any member of the Cleveland Police Department that came out to discuss the finding of that key with any of your fellow officers?

A I don't know that, sir.

Q Now, you have been asked by Mr. Danaceau in preliminary examination about how long you have known Sam and Marilyn, is that right?

A That's correct.

Q And you testified about two years?

A Correct.

Q And Marilyn maybe a little shorter time?

A Possibly.

Q You, during that period of time, have had an occasion to observe Sam, have you not?

A Yes, sir.

Q And Sam is a good man, isn't he, Sergeant Hubach?

MR. MAHON: I object to the form  
of the question.

THE COURT: Yes. Objection will  
be sustained.

MR. GARMONE: That is all.

MR. DANACEAU: That is all.

(Witness excused.)

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MR. MAHON: The State rests,  
your Honor.

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THEREUPON THE STATE OF OHIO RESTED.

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THE COURT: Ladies and gentlemen  
of the jury, --

MR. DANACEAU: Just a moment. The  
defense should also rest, if they rest at this  
time.

MR. GARMONE: Yes. Let the record  
show that we again rest.

THE COURT: The resting by the  
State is also subject to the checking of the  
exhibits, of course.

MR. GARMONE: That is correct.

MR. DANACEAU: Both sides have  
rested.