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SHEPPARD DEMANDS NEW TRIAL

PD 12-24-54
Misconduct, Irregularities

list
Charged in Application;

40 'Reasons' Listed

(Photo on Picture Page)

BY SANFORD WATZMAN

Dr. Samuel H. Sheppard demanded yesterday that his conviction of second-degree murder "be set aside, vacated and held for naught"—and at the same time advanced 40 "reasons" why he should be granted a new trial.

In the motion, filed in his behalf by his attorneys, charges of misconduct and irregularities were leveled at the court, the prosecutors, the state's witnesses and the newspapers.

Criticized, in addition, were the grand jury, the trial jury, Mayor Anthony J. Celebrezze, Police Chief Frank W. Story, Detective Chief James E. McArthur and Homicide Capt. David E. Kerr.

Hearing Is Thursday

The motion was filed at the Criminal Court Building at 4 p. m. by William H. Corrigan, son of the chief defense counsel. On the paper were the signatures of William J. Corrigan, Fred W. Garmone and Arthur E. Petersilge, all defense attorneys.

Common Pleas Judge Edward Blythin, who presided at the trial, said he would hear the motion Thursday. If he overrules it Corrigan will have 10 days to draw up new papers for the Court of Appeals.

Should the application not be denied Dr. Sheppard will go on trial again and face, for the second time, the possibility of execution at the state penitentiary.

Attorney Given Keys

Petersilge was also a visitor to the court building—on a matter not directly concerned with the trial. After stopping to see Dr. Sam in his jail cell he came downstairs and was given the keys to the murder home by Assistant County Prosecutor Saul S. Danaceau.

The residence, at 28924 West Lake Road, Bay Village, had been in the custody of authorities since the July 4 homicide.

As the attorney for Dr. Richard A. Sheppard, the murder victim's father-in-law and executor of her estate, Petersilge said he was taking the keys for purposes of an appraisal and inventory.

Charges Court Erred

He added that the family had no immediate plans for the house.

In the new-trial application, the court was accused of error in overruling several trial and pretrial motions of the defendant.

These included one for a writ of habeas corpus (to release Dr. Sam from jail), a request for

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Sheppard Asks New Trial, Lists 40 'Reasons' in Motion

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... bail, demands for a trial postponement and trial in another county, and motions to instruct the jury to exonerate Dr. Sam.

Other faults ascribed to the court were:

THE DEFENSE was forced to use peremptory challenges on prospective jurors whom the court should have excused.

A JUROR who was found to have had a police record was released from duty, although he had already been sworn in.

Instructions Cited

"PREJUDICIAL" evidence was admitted, but evidence brought in by Dr. Sheppard was ruled out.

IMPROPER instructions were given to the jury and the judge refused to give special instructions requested by the defense.

THE COURT did not remove from the jury's consideration the counts of first and second degree murder and manslaughter.

FREEDOM the court gave to newsmen and action of the judge himself taking part in a television broadcast from the courthouse steps were improper.

PREVENTING Juror Mrs. Elizabeth A. Borke from asking the defendant a question was an error.

The grand jury was specifically criticized for returning an indictment "under pressure" and for allegedly disregarding the presumption of innocence and substituting for it a presumption of guilt.

Mayor Celebrezze and his police officers were attacked for giving the newspapers "condemnatory" statements. It was pointed out that these persons did not testify at the trial.

Longhiest criticism was re-

served for newspaper, radio and television coverage of the case, which allegedly led to a verdict "influenced by passion and prejudice."

Described in detail were the space and facilities reserved for newsmen in the court building. Among Corrigan's complaints in this connection were:

THAT the jurors were photographed daily and that they posed for cameramen when they interrupted their deliberations at mealtimes; that the family of an alternate juror was the subject of pictures and a feature story.

"Slanting" Charged

THAT Dr. Sheppard was photographed in the courtroom "several hundred times," despite objections by his attorneys.

THAT news was "slanted" against the defendant; that there were front-page editorials demanding his arrest and nominating him as a candidate for the "third degree."

Other, more general, charges were made by the defense attorneys:

THE VERDICT was "not sustained by sufficient evidence" and was "contrary to law."

THE DEFENDANT "was deprived of his liberty without due process of law and was denied trial by an impartial jury." Reason given for this was newspaper publicity and "mass hysteria." This was held to be contrary to the Ohio Constitution and to the Fifth, Sixth and 14th Amendments to the United States Constitution.

Allegations Generalized

The new-trial motion, on the whole, was characterized by generalization in its allegations.

Some of the specific "errors" mentioned by Corrigan in the course of the trial, such as "hearsay" testimony by Mrs. Don J. Ahern and the "surgical instrument" testimony of Coroner Samuel R. Gerber, were not set forth specifically in the motion.

In all, the court was attacked on 24 points, the newspapers on four, the prosecutors on two, the state's witnesses on two, the trial jury on one, the grand jury on one and the city officials on one. In addition, there were five general charges.

Earlier in the day, the defendant had another visitor—his brother, Dr. Stephen A. Sheppard, who spent only a few minutes with the prisoner.

Moved to Old Cell

Regular visiting hours are today from 1 to 3 p. m., Sheriff Joseph M. Sweeney said.

Sweeney reported the convicted murderer was moved back to his old cell in the morning at his own request. Sheppard had been transferred to another cell when he was sentenced to the penitentiary and when it was thought he might leave in the next shipment of prisoners to Columbus.

His departure from County Jail has been delayed pending disposition of the new-trial motion.

Under the terms of Mrs. Marilyn Sheppard's will, her property, including the home was left to her husband. But his conviction on a murder charge bars him from inheriting the estate, it was pointed out.

This would make the couple's seven-year-old son, Chip, the legal heir. Now staying at the home of Dr. Steve, the boy possibly might become the subject of a custody battle in court. The murder victim's own family has been visiting Chip at the home of Dr. Steve.

Any disposition of the Bay Village residence would have to be cleared through Probate Court, where a guardian would be appointed for the boy, it was also pointed out.