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Cleveland Plain Dealer

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STATE SAYS ONLY SAM HAD CHANCE

Blasts Theory of Intruder and Sex Fiend in Defense Case

Evidence in the Marilyn Sheppard murder case proves neither a burglar nor a sex-maniac—only her husband—could have murdered her, the state contended yesterday in a 90-page legal brief.

This answer to a 366-page document advanced earlier by Chief Defense Counsel William J. Corrigan was filed in the Court of Appeals, where Dr. Samuel H. Sheppard will fight the next round in his so far futile battle for freedom.

Authors of the state's brief, made a part of the court record by County Prosecutor Frank T. Cullitan, were three of Cullitan's assistants—Saul S. Dana-ceau, Thomas J. Parrino and Gertrude B. Mahon.

Cite "Exclusive Opportunity"

"They argued from their review of "a mass of evidence" that only Dr. Sam had the motive, time and "exclusive opportunity" to do the killing.

Corrigan has until a week from Saturday to file a rebuttal brief. Although oral arguments are set for May 23 in the higher court, it appeared likely that this would be postponed.

Besides this tussle on alleged "errors" at the trial, the appellate court is expected to referee another joust over "newly discovered evidence" that was rejected by the trial court.

Postponement Seen

The postponement apparently is in the offing because Corrigan, who has not yet filed the second motion, has indicated he wants the Court of Appeals to consider both matters at the same time.

"If this victim was murdered by an intruder whose only motive was a sex attack, why would he take the defendant's watch, ring and key chain, which he had on his person that night?" the prosecutors asked.

"The unreasonableness of this hypothesis of the defense is so great that it taxes human credulity to the point of revolt."

Elements Considered

Then, in one long and scornful sentence, the state's attorneys explained why they thought so, asking the court to consider all these elements:

THAT the sex fiend entered the home, ignoring the defendant who was lying on the couch.
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State Contends Only Dr. Sam Had Chance to Kill Marilyn

(Continued From First Page)

THAT he dealt the victim some 35 blows before Dr. Sam could come to her aid and that the osteopath did so without turning on any lights.

THAT the intruder felled "this 180-pound athlete" with only a blow of the fist, without using his weapon to erase him as an eyewitness.

THAT the maniac left Dr. Sam lying in the bedroom, went downstairs in the dark, made some noise and waited for the defendant to chase him.

THAT the pursuit was through the lake door of the house, "which the evidence shows had been locked with a night chain."

Thefts Weighed

THAT the stranger "ran down the stairway to the beach, the only place where he could not get away" without going into the water.

THAT he again felled Dr. Sam, again not killing him, and removed his wrist watch, key chain and ring.

THAT he placed these articles in a green bag, which had been in Dr. Sam's den, and then threw the bag and its contents away.

THAT he simulated a burglary in the home, removed any fingerprints "and then departed with the weapon and T-shirt, having thrown the rest of the loot away."

"Motive" Blasted

"And now before this Court of Appeals defense counsel urges that the only motive of the intruder, under all these circumstances, was a sex attack," Cullitan's aides pointed out.

The prosecutors continued:

"Let us see whether the evidence excludes the hypothesis that a burglar did the killing, because if it does, then the only person left in that home to commit this crime was the defendant.

"The defendant's own statement that he was sleeping on the couch makes it absolutely clear that the burglar could have gotten what he wanted and gone away without having to go upstairs to kill the defendant's wife to accomplish the burglary."

Marilyn Still Had Rings

The state's lawyers went on that it was unnecessary for a thief to have murdered Mrs. Sheppard to steal her husband's jewelry, that her rings were still on her fingers and that her watch was found downstairs.

"There could be no motive for fabricating evidence other than the defendant's own guilt of the homicide," they said, "and no outsider had the opportunity and the time, nor the motive, to fabricate a burglary in that home."

These other points were taken up by the state, which accused the defense of soft-pedaling or ignoring them in its brief:

DR. SAM'S TESTIMONY was "so glaring in its absurdity, improbability and unreasonableness that the jurors' minds must have recoiled when it was offered as the truth."

THE IMPRINT of Marilyn's watch was found on the dried blood of her wrist, indicating it was removed after the murder.

No Blood in Bag

THERE WAS NO BLOOD inside the green bag, although its contents were crusted with blood, indicating they were placed inside after the blood on them dried.

THE MURDER PILLOW showed a bloody outline of the weapon, indicating the bludgeoning instrument had lain there for a good deal of time after the slaying.

DR. SAM'S OWN WATCH had blood only on its upper surface, although he testified it became bloody when he took his wife's pulse.

assertion that procedural errors had been committed at the trial and that the case was prejudiced by publicity.

Cullitan's assistants emphasized that Dr. Sam had also received favorable publicity in the newspapers, such as verbatim publication of his statements, and that he and his lawyers frequently posed for pictures.

"It should not be necessary to point out that newspapers have a constitutional right to report events in the community and to criticize what appears to them to be laxity on the part of public officials," the brief went on.

"Defense counsel have seen fit to devote a considerable portion of their brief to criticism of public officials; surely, the newspapers have an equal right."

Another answer to the contention in Corrigan's brief that the killer was left-handed, a proposition introduced as new evidence later in the affidavit of Dr. Paul L. Kirk, came earlier in the day from Detective Chief James E. McArthur.

McArthur released for publication two photographs of the osteopath in which he was portrayed as eating a lawn party snack and water-skiing with his left hand.

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Jacket Unstained

IF HE DID DIP THE WATCH IN BLOOD in that manner, he must have been taking Marilyn's pulse with his left hand.

THE CORDUROY JACKET, which the osteopath was wearing when he fell asleep on the couch, was later found "dry and without bloodstains."

WHILE DR. SAM'S TESTIMONY was that he acted in the dark, a state's witness said she saw lights on in the home between 2:15 and 2:30 a. m.

"Nor can the physical attainments of the defendant be ignored — his various athletic pursuits and his skill as a surgeon," the brief continued. "He was physically able to strike the blows that killed Marilyn, and he could do it with either or both hands."

The larger section of the state's document disputed the