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Reply Brief of Appellant on Motion for Leave to Appeal and Appeal as of Right

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IN THE SUPREME COURT OF OHIO

APPEAL FROM COURT OF APPEAL OF

CUYAHOGA COUNTY

State of Ohio,

Plaintiff-Appellee,

-vs-

Sam H. Sheppard,

Defendant-Appellant

No. 34615

No. 34616

REPLY BRIEF OF APPELLANT ON MOTION FOR LEAVE TO APPEAL AND APPEAL AS OF RIGHT

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REPLY BRIEF OF APPELLANT

State v. Petro, 148 Ohio St., 473, holds as follows in paragraph eleven of the syllabus:

> "In a criminal case where proof beyond a reasonable doubt is required, this court will look to the record to ascertain whether or not such rule has been disregarded."

EVIDENCE DOES NOT SUPPORT THE CONVICTION

Evidence of the State permits a rational hypothesis of innocence. It does not point unerringly to guilt. It is consistent with innocence.

It is conceded that Mrs. Sheppard, a vigorous athletic young woman, struggled violently with her assailant who attacked her while she was in bed in her bed room sometime between the hours of 12:50 A.M. and 5:30 A.M., July 4, 1954.

RED AND BLUE WOOL FIBERS UNDER THE FINGER NAILS OF THE DECEASED

Miss Cowan, a technician in the office of the Coroner of Cuyahoga County testified for the State. She testified as follows concerning the red and blue wool fibers under the nails of the deceased.

"Q. I can't see it. Anyway we will take Exhibit DD and will you tell what that is?

"A. I have two slides here on it.

"Q. Do you have to have a microscope?

"A. Yes, sir, but I did check these before I brought them down.

"Q. Will you tell me what it is?

"A. This is the one that contains the dark blue wool fiber and the fine blue fiber and the fractured hair.

"Q. This slide here contains a blue fiber and a red fiber?

"A. No, a blue wool fiber and a blue cotton fiber.

"Q. A blue wool fiber and a blue cotton fiber and a fractured hair?

"A. Yes.

"Q. And that was under the finger of which hand?

"A. The middle finger of the right hand."

* * * *

"Q. Now, then handing you Exhibit EEEE, will you state what that is?

"A. That is the fiber from under the nail of the right thumb."

The fibers found under the finger and thumb nails of the victim did not come from the apparel of the defendant nor from anything over which the defendant had any control. The State offers no explanation as to the origin of these fibers -- none whatever. The State dismissed that vital and important circumstance as "insignificant."

Not infrequently a conviction for second degree manslaughter in a "hit skip" automobile occurrence is obtained largely from finding fibers of cloth clinging to the mechanism of the automobile which matches the cloth worn by the person killed. Had the State been able to establish that these wool fibers under the nails of the decedent matched clothing of the defendant, it would have urged strenuously that such evidence proved guilt. However, when the evidence of the State failed to explain or account for the presence of these cloth fibers under the nails of decedent, the Prosecutor has nothing to say.

This vital link in the chain of circumstances is not only consistent with innocence of the defendant, but points to some other person.

THE PIECE OF LEATHERETTE OR LEATHER

A piece of leatherette or leather was found in the bed room under or near the bed. There is some confusion as to just when this piece of leather was found. Officer Drenkham testified that he found a piece of leather on the morning of July 4th which was the morning of the killing. Another Officer said he found a piece of leather on the morning of July 5th. This confusion in the State's testimony is not vital. We will however take the testimony

most favorable to the State being that of the Coroner Dr. Samuel R. Gerber who testified as follows:

"Q. Now, to get back to July 5th when you say you met Mr. Rossbach and Mr. Yettra and certain other police officers, what time of the day was that?

"A. It was around 10 o'clock in the morning.

"Q. And did you again go up to the bedroom?

"A. Yes.

"Q. And was anything picked up at that visit?

"A. Yes.

"Q. And what was picked up?

"A. There was a piece of nail polish and a piece of - a very small piece of what appears to be leather or leatherette.

"Q. And do you have those with you?

"A. May I have them, please?

"Q. (Exhibit) 43 contains this brown fragment that you just referred to?

"A. Yes.

(This was the piece of leatherette or leather)

"Q. It is a little triangular piece about a quarter of an inch on each side of the triangle approximately?

"A. Approximately, yes."

The foregoing was direct examination.

"Q. Did you coordinate it with anything that you found in Dr. Sheppard's house?

"A. We attempted to.

"Q. Well, did you?

"A. We were not able to.

"Q. But you made that attempt?

"A. Yes, sir.

"Q. And did you do that personally, or was that done by one of your professional chemists?

"A. I did that personally.

"Q. And what day did you do that?

"A. Right along whenever I saw -

"Q. That is you made a continuing -

"A. Observation.

"Q. -- observation to determine if in any way you could fit this piece of leather or leatherette into any object connected with the Sheppard home.

"A. Yes, sir.

"Q. And in that connection what did you examine?

"A. Anything that - well, in the first place, we tried to connect it with the shoes and there wasn't any place missing on the shoes. We tried to connect it up with a quirt and there was nothing - no defect in the quirt that would fit into - that it would fit into, and there was other (3258) things that were observed in the house and not brought in.

"Q. Well, I suppose you found in that house a great many things?

"A. No. We found very few things that you could even consider had any possibility of it coming from.

"Q. Well, you found shoes and you found some purses.

"A. Yes, and we found a quirt.

"Q. And you found a golf bag?

"A. It didn't come from the golf bag.

"Q. And you found leather grips on the golf clubs?

"A. Yes, sir.

"Q. And did you find any chairs around there that were covered with leather that you attempted to match it with?

"A. It had no appearance - the chairs had no appearance that it could come from them."

* * * *

"Q. Well, you made a thorough search as far as humanly possible?

"A. We attempted it, yes, sir."

The only explanation that the State gives to account for the presence of this piece of leather in the death room was that the police and coroner permitted photographers to come in and take pictures. No attempt whatsoever was made to explain the presence of the piece of leather. Again we might observe that the Coroner made the most diligent effort to find leather material in the home that would match this piece of leather. None was found. The Coroner recognized the compelling evidentiary value of this piece of leather if connected with the defendant. There was no such connection. The coroner knew that this piece of leather did not come from anyone permitted to enter the bedroom. In his mind he connected

it with the killer.

In a circumstantial evidence case the law requires that all material circumstances be established beyond a reasonable doubt and that the chain of circumstances must point unerringly to guilt and be irreconcilable with any rational hypothesis of innocence. The unexplained cloth fibers under the finger and thumb nails of the deceased and the piece of leather found in the death room shortly after the discovery of the crime indicates the presence in the death room of a person other than the defendant or his wife at the time of the murder.

THE BLOOD PATTERN AND THE "T" SHIRT

The State concedes that at 12:50 A.M. July 4th, the defendant was wearing a "T" Shirt; that about 5:30 A.M. of the same day he was not wearing the "T" Shirt. This is the only inference relative to the "T" Shirt. It may be inferred that the shirt was removed between the above hours. The State builds inference upon inference with no evidence whatsoever to support them. From the foregoing the State infers that the defendant went upstairs and killed his wife, after a violent struggle, during which blood was splattered all over the "T" shirt; that the defendant then by some unexplained method concealed

the "T" shirt because it was drenched with blood. To support these inferences, the State collides with factual circumstances consistent with innocence. Defendant's trousers had absolutely no blood on them above the knee.

The State's evidence and exhibits disclose that the victim's blood went downward, outward, and upward in a spray of countless droplets. The blood spread outside lines of a triangle the apex of which would be at the body or head of the dead woman. The edges of the bed were sprayed with blood and the walls and ceiling on both sides of the triangle. We agree with the State that the killer interrupted a part of this torrent of blood. There was no blood within the area of the triangle excepting a large glob on a wardrobe very close to the bed. The State in building up its inferences about blood being splattered on the "T" Shirt then are faced with the dilemma occasioned by the evidence of the State that there was absolutely no blood on the trousers between the knee and the waist. No testimony whatever was offered to explain this phenomena. With spraying blood going out of the deceased from the edge of the bed which was about knee high and with the one exception, none back of the assailant the query arises immediately: why was there no blood between the knees and the waist of the defendant's trousers? The State concedes that blood would have gotten upon the defendant's trousers

in that area. There is no evidence whatever offered to explain just how no blood got on the trousers in that area when, if the defendant committed the crime, his trousers would have been right in the midst of the torrential spattering of blood from the victim. The State recognizes this situation and on page 86 of its brief in this Court gives the following amazing explanation in this language:

> "'The absence of numerous fine drops of blood on appellant's trousers, belt, shoes, socks, and shorts.' The evidence shows that the blood splattered upward and it may well be that the defendant's T-shirt sufficiently covered the upper part of his trousers."

(State's Exhibit 9 shows drops of blood went downward also.)

There is absolutely no evidence whatsoever to support this amazing foray into the field of speculation. There is no evidence whether the T-shirt was stuffed into the trousers or whether the T-shirt was outside of the trousers. There is no evidence whatsoever as to the length of the T-shirt. The State had available numerous T-shirts that the defendant wore from time to time. None of these were presented to show the length of such T-shirts that the defendant habitually wore during the summer. Yet the State now says that "it may well be" that the defendant's T-shirt extended clear down to his knees. This speculation doesn't help the State because blood would penetrate

through thin cotton and appear on the trousers. The Prosecution urged this wild speculation to the Jury in the Court of Appeals and again here. We do not find that the Court of Appeals gave any explanation of the cloth fibers found under the fingernails of the decedent, nor the piece of leather, nor the admission by the State that under its evidence blood must have gotten onto the trousers of the killer, there being no blood on defendant's trousers above the knee.

At page 86 of the State's brief is this further language:

> "The State, of course, contends that the defendant disposed of his T-shirt because it was spattered with blood."

Again comes the question why didn't some of the spattering blood get on the trousers?

BLOOD TYPING

At page 4775 of the Bill of Exceptions, it is disclosed that the official, final conclusions of the coroner as set out in his report, which is required by law, that the blood typing of the deceased was O Rh negative, type MS."

The same report discloses the following:

> "Watches: Man's yellow metal wristwatch (Dr. Sheppard's wristwatch here involved) crusted stains yield positive test for human blood, type M."

Defendant's blood is type AB_2.

There was no O blood on the watch. There was no MS factor on the watch. It was typed "M". The defendant testified to two violent physical encounters that he had with the assailant of his wife. Of course, the State argues that the jury did not have to believe that. However, the official coroner's report required by law shows a distinct difference in the blood grouping and typing of the decedent's blood and that on the wristwatch of the defendant. Again the State fails to explain this vital difference. The blood on defendant's wristwatch was neither his nor his wife's. Certainly the jury should not conclude that the typing of blood on the wristwatch was entirely different than that stated in the coroner's report.

The State's own evidence is compelling that someone different than the defendant was wearing apparel in the deathroom that contained red and blue fibers, a portion of his attire (probably a leatherette jacket plaid lined) produced the piece of leather gouged out by the fingernails of the deceased. Likewise a total failure of any blood on the defendant's trousers from the knee to

the waist, completely unexplained by any evidence or in any other logical manner, strongly indicates the presence in the room of another person. Then comes the coroner's official report that discloses blood on the defendant's wristwatch to be of a different grouping or typing from that of his wife or his own. This further indicates another person and tends at least to support the defendant's testimony that he engaged in a violent struggle with the assailant.

Miss Cowen was the technician in the office of the coroner and here is what she has to say in her testimony on direct examination:

"Q. And did you type that blood?

"A. Yes, sir, I did.

"Q. And what was the result of your experiment?

"A. The typing was typing O blood. It was later determined that the type was OM."

This was the typing of Marilyn Sheppard's blood. How can that testimony be reconciled with the coroner's official report when he says that the deceased's blood was "group O Rh negative, type MS."

It is hardly conceivable that a jury of laymen should be permitted to speculate in a highly scientific field and endeavor to reconcile the coroner's official report with the testimony of his laboratory technician. However, the blood on the wristwatch of the defendant was

not the same type as his wife's nor of his own. That blood came from somebody else. Was it the blood of the man with whom Dr. Sheppard had two violent encounters according to his account or is there presented a rational hypotheses consistent with innocence?

The foregoing link of circumstancial and direct evidence pointing to innocence as well as other circumstances likewise pointing to innocence, with which we will not burden the Court, are unexplained by the State.

However, before leaving the T-shirt we quote again from the State's brief at page 60:

> "The evidence discloses that when Marilyn Sheppard was beaten to death, there were spurts of blood outward and upward, some of which landed high on the walls. Such spurts of blood would have necessarily landed all over a T-shirt on the assailant standing or leaning over the victim."

By what mysterious legerdemain did the blood spurt outward and land "all over a T-shirt on the assailant standing or leaning over the victim" and yet miraculously fail to cause the slightest drop to get on the defendant's trousers between the waist and the knee?

In civil cases the rule is that the plaintiff must explain and account for the effectiveness of causes which are not attributable to the defendant. The motion for leave to appeal should be sustained that this Court may announce a rule determining if the State in a criminal prosecution

must explain circumstances intimately connected with the crime for which the defendant on trial is in no way connected. The State has not by any evidencé or other explanation accounted for the failure of this rain of blood going outward from the victim and failing to get on the trousers of the defendant between the knee and his waist.

We will now discuss the chain of circumstances upon which the State relies for conviction as disclosed in the State's brief from page 59 to 67.

"1. The folded jacket on the couch." Where was the jacket? Was it under the defendant as he lay there on the couch, was it at the head or was it at the foot or just where was it? Certainly it can't be concluded that the defendant failed to muss up the jacket when he went upstairs. It proves nothing. The defendant says that he went upstairs and so does the State, so the folded jacket is no evidence of guilt whatsoever and is consistent with innocence.

"2. The missing T-shirt." We agree that the T-shirt was on the defendant at 12:15 a.m. and was not on him at 5:50 a.m. This is a fact; now what are the inferences? The State infers that at precisely the time of the killing the defendant was wearing the T-shirt. The only inference that can be drawn is that sometime between around 12:15 a.m. and 5:30 a.m. the T-shirt was removed.

The inferences that the defendant was wearing the shirt, killed his wife and got blood all over the T-shirt by reason of innumerable spurts none of which got on his trousers, the defendant had to get rid of the T-shirt, and that he did, are inference on inference.

"3. No struggle in room?" Dr. Adelson testified with certainty that Marilyn's mouth - that is the interior - was injured by some object in her mouth, and that the abrasions in her mouth might well have been caused by the insertion of the assailant's finger. The State admits that there was a struggle. At page 61 it is said in the State's brief:

> "It may well be, as the defense suggests, that the victim fought and struggled with her assailant, and it may well be that some of the injuries to her hand resulted from that struggle;"

At page 62 this statement:

> "This theory, like other theories advanced by the defense, DOES NOT EXCLUDE THE DEFENDANT AS HER ASSAILANT."

There is no burden upon the defendant to exclude anybody. It is the burden of the State to establish the guilt of the defendant beyond a reasonable doubt. The testimony of the State does not exclude another person. In fact it indicates that there was an assailant other than the defendant.

"4. Victim's rings still on her fingers." The State's evidence establishes that at the morgue there was experienced considerable difficulty in removing the rings from the victim's fingers. However, that her rings were not removed was no evidence that her husband killed her.

"5. No evidence of sexual attack." That does not furnish any proof of guilt of defendant.

"6. Victim's wristwatch." There was no evidence as to how long is required for blood to dry or congeal. It is a scientific fact that blood begins to congeal immediately upon exposure to air. An object lying in wet blood and removed will still leave the imprint of the place where it rested however that is no evidence whatsoever as to the guilt of the defendant.

"7. Bloody splotch on pillow." There was a splotch on the pillow. One inference is permitted. This inference is that it was an object, a surgical instrument or something similar to a surgical instrument. There is no description of any surgical instrument that would fit the splotch. However, there being a splotch and no object found the only inference permissible is that some object was laying there. However from that inference the State draws the further inference that this object, whatever it was, was used to beat in the head of Mrs. Sheppard. However that does not exclude another person.

"8. Blood on defendant's wristwatch." There was blood on defendant's wristwatch but according to coroner's official report it did not type the same as his wife's blood, nor was it the defendant's. This tends to indicate another person and to exclude the defendant.

"9. The green bag." The defendant's wristwatch and some keys were found in this green bag. How they got there is unexplained. However at page 64 of the State's brief, referring to the defendant's watch it is said that:

"The upper band of which was smeared with blood." This certainly would have furnished a sufficient quantity of blood to make a thorough analysis which was done and the group and typing was different from his wife's blood. The green bag instance is of no evidential value - it does not exclude another assailant and the blood typing indicates that the defendant did not participate in any struggle with his wife.

"10. One bloody smudge on the defendant's trousers but no other blood."

Dr. Sheppard went up to attend his wife whom he thought was in a convulsion due to pregnancy. The State says that he went upstairs also. Everyone agrees that the bed was literally soaked with blood. The doctor felt the pulse at the neck. His knee was the height of the blood soaked mattress and pressed against it. This single spot

of blood on the trousers knee does not reconcile with the evidence claimed by the State of a shower of blood going outward on the assailant while he was bending over her.

"11. Absence of fingerprints." Somebody it appears endeavored to wipe off fingerprints. Does that indicate that only a husband would do that or from common experience would not a person with a criminal record be the one who would try to erase evidence of his crime? Is it natural to assume that fingerprints will be found in every inhabited house? Chip's palm print was found. Is that evidence that Chip killed his mother?

"12. Blood stains around the house." There were blood stains about the house. When they got there is not disclosed. How many years old is not shown. Was it fresh blood? All of these questions could have been answered by the Coroner's technicians but were not.

Probably any house has blood spots on it and in it. At pages 65 and 66 of the State's brief the following:

> "We do know of the spilling of human blood during the early morning of July 4, 1954, and a jury would have been fully justified in concluding from all of the other facts before it and the fact that some of it was human blood and from the location where it was found, the stairways to the kitchen and to the basement, that it was the victim's blood, and that the person dropping it was the defendant."

Well the evidence conclusively shows that it did not drop from the trousers because with one slight exception there was no blood on the trousers. It could not have dropped from the T-shirt because the laws of gravity would have required such blood to have run down on the trousers. To claim that it dropped from the defendant's hands would likewise require that the jury concluded that he went around with his hands outspread so that it would not get on his trousers. There is inference on inference. There is absolutely no testimony whatsoever as to when the blood got on these steps. If it were fresh blood certainly the pathologist and the technician would have known that. Probably they did and the State failed to bring out such information.

"13. Water under defendant's wristwatch crystal." The defendant says that he was in the lake. Obviously water could well get into his crystal. There is no evidence on the part of the State whatsoever as to where the water came from. The State undoubtedly by reason of its laboratories, facilities which are the finest, tested the water. Was it lake water? Or was it tap water? Those questions are left unanswered by the State. All that is left is inference on inference.

"14. The dog, Koko, was not heard to bark." Does that prove that he did not bark? This was in the

dead hours of the early morning. That neighbors did not hear him bark certainly does not prove that he didn't bark; furthermore, the evidence is undisputed that strangers from the hospital frequently came into the house all hours of the night to see the doctor, to get advice as to medication or to advise him relative to the conditions of patients, and the dog didn't bark. Numerous folks from various parts of the State were frequently in the house.

"15. Burglary picture confused." This sub-head affords no proof whatsoever of guilt. The prosecution is merely endeavoring to question a suggestion that there may have been a burglary.

The foregoing fifteen sub-heads constitute the State's claim to have convicted the defendant beyond all reasonable doubt. As against those circumstances, most of which are consistent with innocence, the State does not explain by way of evidence or otherwise the presence of red and blue cloth fibers under the nail of the victim, the presence of the piece of leather under or near the bed either on the morning of July 4 or the next morning. There was not a scratch on the body of the defendant, though the evidence is clear that the victim scratched and clawed her assailant. The assailant, according to the State, was bending or leaning over Mrs. Sheppard and in the direct path of a torrent of blood, yet no blood was found on

defendant's trousers from the knee up. Blood typing by the State shows blood on defendant's wristwatch was not his wife's.

THE LAW

15 Ohio Jurisprudence, 2d p. 630, Section 462:

"However, when circumstantial evidence alone is relied upon for conviction it must be of such a character that it is wholly inconsistent with any other conclusion than that the party charged is guilty of the crime. These circumstances themselves must be thoroughly proved and must all point in the same direction, and together must be irreconcilable with any other reasonable hypothesis. All circumstances (this includes wool fibers, leather, blood typing, absence of blood on trousers, and so forth) must be consistent and all, taken together, must point surely and unerringly to the guilt of the defendant, and must be inconsistent with any other rational supposition than that the defendant is guilty of the offense charged.

* * * *

Not every fact and circumstance in a case needs to be proved beyond a reasonable doubt, but every essential link in the chain of circumstances necessary to prove each or any of the charges, as claimed by the State, must be proved beyond a reasonable doubt. The inference which they compel should not be that the defendant might have done the deed, but that he actually did it. If for any reason the facts relied on for conviction in a criminal prosecution are not consistent each with the other, and are not all consistent with the hypothesis of guilt and no other hypothesis the State must fail."

The following is old law but good law. State vs. Snell, 2 Ohio Nisi Prius Reports 55, page 61 the Court says:

> "Circumstantial evidence is admissible under our law to prove the guilt of the defendant, but this kind of evidence can only be conclusive where every necessary link in the chain of circumstances from which the deduction of guilt is sought to be drawn, is proved beyond the existence of a reasonable doubt; and if any fact or circumstance in the case necessary to be proved in order to draw the deduction or inference of guilt against the defendant is not proved beyond the existence of a reasonable doubt, then the jury would not be justified in returning a verdict of guilty;"

Columbus vs Treadwell, 46 Abstracts 367, headnote 5:

> "In criminal proceedings in which it is sought to establish the guilt of the accused through circumstantial evidence, an inference cannot be based upon another inference or upon a fact the existence of which in itself rests upon an inference."

ERROR OF THE TRIAL COURT IN ITS CHARGE

The overwhelming evidence establishes that he had an excellent reputation for peace and quiet. He never resorted to violence, kept his temper under most trying conditions and never violated any law against violence. In general his reputation for being a peaceful, temperate and self-controlled person was established. With that in the record the trial court charged the jury as follows:

> "Some evidence has been given in this case concerning the claimed general conduct and reputation of the defendant and it is proper

> to present such evidence for your consideration. It is not admitted because it furnishes proof of guilt or innocence.***"

This charge is directly contrary to the law of Ohio. The statute on reasonable doubt 2945.04 R.C. states that:

> "It is that state of the case which, after the entire comparison and consideration of all the evidence, * * *"

The trial court did not permit the jury to arrive at its verdict after a consideration of all of the evidence.

Stewart vs State, 22 Ohio State 477, paragraph 4 of the syllabus:

> "In a criminal case it is error to instruct the jury that evidence of the defendant's good character is not to be considered by the jury, or made available to the defendant, except in doubtful cases; the true and proper rule being to leave the weight and bearing of such evidence to the jury."

State vs. Hare et al., 87 Ohio State, 204 2nd syllabus:

> "* * * and the court should have instructed the jury to consider the same (reputation evidence) in connection with all the other evidence in the case in arriving at a verdict."

Donaldson vs State, 5 O.C.D. 98, the syllbaus:

> "And instructions that the whole testimony should be looked at together, and if on a fair consideration of the whole of it a reasonable doubt of the defendant's guilt exists, it should go to his acquittal, but that if on the whcle evidence there is no such reasonable doubt of his guilt, the jury should so find, notwithstanding the proof

> of good character is misleading, for the reason that the language conveys the idea that evidence of good character is available only in otherwise doubtful case."

Baum vs. State, 6 C.C. (N.S.) 515, holds the law to be:

> "In a criminal case for assault with intent to kill, where the defendant put in evidence his previous good character, it is not error for the court to say to the jury that, 'the weight to be given the good character of the defendant for peace and quiet must be such that the jury under all the circumstances think it should receive.'"

The portion of the court's charge above referred to is prejudicial to defendant. It is not the law of Ohio. Reputation as to peace and quiet is a part of the evidence and must be submitted to the jury together with all of the other evidence. In a doubtful case evidence of previous good character as to peace and quiet may be sufficient as to create a reasonable doubt. This was a doubtful case. It was based on dubious circumstantial evidence. In spite of all of the hostile press, radio broadcasts and so forth, the jury in this case deliberated five whole days sometimes up to aslong as ten or twelve hours before reaching a verdict.

The court almost suggested to the jury that the defendant was guilty when it gave an example of circumstantial evidence that if George Washington were seen carrying an axe out of the driveway of a man's house and it was discovered that a cherry tree had been chopped down that this was an

example of circumstantial evidence of the guilt of George Washington.

The example given was merely that George Washington was there and hence was in a position to chop the tree down. In the case at bar the defendant was in his home and his wife was murdered. And if George was guilty so was the defendant. This misled the jury and was unfair.

The charge of the court that if the evidence counterbalanced one side against the other equally then the verdict should be acquittal. That eliminated completely the requirement that evidence beyond a reasonable doubt is required before a conviction may be lawfully had.

The case at bar is of great public interest. When the State's case fails to meet the legal requirement of guilt beyond a reasonable doubt, are the courts powerless to correct the mistake? No, indeed.

There are two motions before the court. One, an appeal of right on constitutional questions and the other a motion for leave to appeal. The whole bill of exceptions in this case indicates a lack of due process of law, errors by the court, a failure of proof, and other incidents inconsistent with the sound administration of justice.

The foregoing is submitted in support of both appealings.

This case is of such widespread importance not only to the bench and bar and people of Ohio but to people throughout the country, that these motions should be sustained and the highest tribunal of justice in Ohio pass upon the merits and announce such rules of law as may be necessary to guide the bench and the bar in the future.

Respectfully submitted,

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(Parentheses and other forms of emphasis are ours.)