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# Petition for Declaration of Innocence as a Wrongfully Imprisoned Individual

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FILED

JUL 24 2 27 PM '96

IN THE COURT OF COMMON PLEAS

GERALD E. FUERST

CUYAHOGA COUNTY, OHIO

\$	160.00	DEPOSITED
JUL 24 1996		
SECURE COSTS		
GERALD E. FUERST, Clerk of Courts		
PER		DEPUTY

ALAN J. DAVIS, Special Administrator )  
of the Estate of SAMUEL H. )  
SHEPPARD )  
12800 Shaker Boulevard )  
Cleveland, OH 44120 )

Plaintiff

-vs-

STATE OF OHIO )  
Serve: STEPHANIE TUBBS JONES )  
Cuyahoga County Prosecutor )  
1200 Ontario Street )  
Cleveland, OH 44113 )

Defendant

CASE NO. 31232

304 KATHLEEN A. SUTULA  
JUDGE



**PETITION FOR DECLARATION OF  
INNOCENCE AS A WRONGFULLY  
IMPRISONED INDIVIDUAL**

Now comes Alan J. Davis, Special Administrator of the Estate of Samuel H. Sheppard, through undersigned counsel, and hereby petitions this Honorable Court for an order, pursuant to Ohio Revised Code Section 2743.48, to declare Samuel H. Sheppard a wrongfully imprisoned person, for the reason that said Samuel H. Sheppard was convicted of second degree murder of his wife, Marilyn Sheppard, in 1954, spent nearly ten years in prison as a result of this conviction, and, as the evidence will show by clear and convincing proof, was actually innocent of this crime.

This Court, pursuant to Ohio Revised Code Section 2305.02:

"... has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies divisions (A)(1) to (3) of section 2743.48 of the Revised Code and that seeks a

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determination by the court that the offense of which he was found guilty, including all lesser included offenses, either was not committed by him or was not committed by any person."

The basis for this Petition is as follows:

1. Dr. Sheppard was indicted for murder in the first degree on August 17, 1954 in connection with the death of his wife, Marilyn Sheppard.
2. His trial ended with a verdict of guilty of murder in the second degree on December 21, 1954, and on January 3, 1955, he was sentenced to life imprisonment.
3. After a lengthy appeals process, the United States Supreme Court in 1964, reversed the conviction and ordered a new trial based on the unfairness of the trial and the prejudicial role of the media.
4. On November 16, 1966, Dr. Sheppard was subject to a re-trial and found not guilty of the murder.
5. Dr. Sheppard was incarcerated for nearly ten years in Ohio prisons.
6. At the time of his arrest, Dr. Sheppard was a practicing physician, with a successful career, the father of a young son, age seven, and a prominent member of the community. The conviction and incarceration essentially ruined his life and caused irreparable suffering for his son and other members of his family. Dr. Sheppard, a once healthy and athletic man, died on April 6, 1970 at the age of 46, due in large part to the years of physical neglect, abuse and mental anguish arising from this prosecution, imprisonment, separation from family, society and career.
7. Despite his acquittal in 1966, the State of Ohio, through the various law enforcement agencies involved in this case, never seriously entertained the notion of

finding the actual killer of Marilyn Sheppard. While the case was technically open and unsolved, these agencies did little more than filing reports of new information that would come to their attention, yet take no serious investigative action.

8. Between 1990 through the present, Samuel Reese Sheppard, son of Dr. Sheppard; Cynthia Cooper, a journalist-author; investigators from AMSEC, a professional investigative firm; and undersigned counsel have conducted a comprehensive and massive review of every aspect of this case. Witnesses, many of whom were never contacted by law enforcement, were interviewed. Police reports, forensic reports, and witness statements never provided the defense at trial, nor disclosed since, were obtained through Public Records Act requests and litigation. Contemporary forensic experts were consulted to review scientific evidence in the case, measuring the significance in light of modern forensic science.

9. The result of this investigation leads to the conclusion that Dr. Sheppard is innocent of the murder of his wife, Marilyn, and that an individual named Richard Eberling, currently incarcerated for the murder of another woman, is the likely murderer.

10. The critical evidence in support of Dr. Sheppard's innocence will be presented in the course of these proceedings; however a few major disclosures should be mentioned at this juncture:

(A) The killer of Marilyn Sheppard left a trail of blood from the murder room throughout the house, blood that could only have come from the oozing wound of the murderer. A newly disclosed police report reveals the existence and even collection of samples from this blood trail, but no

testing was ever done for blood type. Dr. Sheppard was immediately examined, and although he had serious neck and back internal injuries (as a result of his being assaulted by the killer), no open wounds were found on his body. Marilyn Sheppard's teeth were pulled out in a way that indicated she bit the person who was attacking her. Blood from a third person was found in the murder room after testing by renowned criminalist Dr. Paul Leland Kirk, who conducted an exhaustive search of the crime scene in 1955. Richard Eberling, when arrested for a series of burglaries and thefts in 1959 (including the theft of Marilyn Sheppard's ring from the home of Dr. Sheppard's brother), disclosed that he had cut his hand washing windows at the Sheppard home, but gave conflicting times and dates as to when that supposedly occurred. In 1990, investigators tracked down a co-worker of Eberling who insisted that he, not Eberling washed the windows at the Sheppard home in the days before the murder. Incidentally, Eberling was not interrogated by police at the time of the murder, and in 1959, when Eberling was in custody, police were told to drop the matter by Coroner Gerber, Dr. Sheppard's principal accuser, as well as John T. Corrigan, the County Prosecutor.

(B) A Scientific Investigation Unit report, also never disclosed by the prosecution, reveals that there was fresh evidence of forcible entry through the cellar door. The finding was significant enough to require a plasticine impression of the damaged doorway. Yet, the prosecution's

most powerful argument against Dr. Sheppard was that there was no evidence of a break-in, and that Dr. Sheppard was the only one in the house at the time of the murder. That theory can now be debunked because the killer entered through the basement, an entry only known to a small number of people, including Eberling.

11. The re-investigation focused on Richard Eberling as a suspect, who is now serving a life imprisonment for the murder of Ethel Durkin. Eberling has a long and documented history of psychosis and psychopathic symptoms, beginning with neurological impairment as a child. His medical, psychological, and behavioral patterns are consistent with those of disturbed, and even serial killers. The investigation reveals other unsolved killings of women, including the sisters of Ms. Durkin and others, with striking similarities to the Sheppard murder. Eberling was obsessed with Marilyn Sheppard, as indicated by his focus on owning her ring. He was a jewel thief and burglar, and on the night of the murder, jewelry and cash were taken from the home. He was jealous of the Sheppards and their success in life, and the family he never had. He hated Dr. Sheppard for his athletic accomplishments, and two athletic trophies were smashed to the floor on the night of the murder, evidence of hostility and hatred. Eberling had a remarkable knowledge of the description of the property and the furnishings, and as of 1992, was able to draw an architecturally accurate drawing of the property. He cannot truthfully account for his whereabouts at the time of the murder. He fits all the available descriptions of the killer, including the build, the height, the large head, and the use of wigs. The police drawings derived from eyewitnesses who saw a

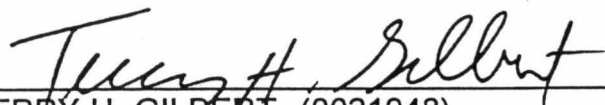
man near the Sheppard home that evening, reveal a similarity to Eberling. Finally, Eberling, who granted a number of interviews and corresponded with Cynthia Cooper since 1992, has been obsessed with the Sheppard murder case and Marilyn Sheppard herself, and has made statements such as "why do women fight back when they are raped?" or "I'm looking at her now and she doesn't look pregnant." There is evidence that Marilyn Sheppard was sexually assaulted, as inferred by her nightgown pushed above her abdomen, yet this aspect was never pursued by the police.

12. The evidence will show that Eberling had motive, opportunity, identity, and access to kill Marilyn Sheppard.

13. A review of all the evidence demonstrates that Dr. Samuel H. Sheppard could not have murdered his wife, had no reason to murder his wife, and was a victim of a misdirected, overreaching prosecution.

**WHEREFORE**, it is urged that this Court undue this momentous injustice, declare Dr. Sheppard innocent, and enter a determination that he is a wrongfully imprisoned individual.

Respectfully submitted,



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