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Wecht Analysis of Sheppard Murder

Cyril H. Wecht

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FORENSIC PATHOLOGY

LEGAL MEDICINE

July 29, 1999

Terry H. Gilbert, Esquire
Friedman & Gilbert
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1370 Ontario Street
Cleveland, Ohio 44113

RE: Marilyn R. Sheppard, Deceased

Dear Mr. Gilbert:

Pursuant to your request, I have reviewed the investigative reports, post-mortem protocol, various trial transcripts, and other relevant documents in the death of Marilyn R. Sheppard, and the subsequent prosecution of her husband, Dr. Samuel H. Sheppard.

CLINICAL SUMMARY:

On July 3, 1954, Mr. and Mrs. Sheppard had guests, Mr. and Mrs. Ahern, over to their home for dinner. At approximately 10:30 P.M., they all began to watch television. At some point in time, Dr. Sheppard stretched out on the couch/daybed and fell asleep. Mr. and Mrs. Ahern eventually left, and since Mrs. Sheppard could not get her husband to move, she left him sleeping, and she went upstairs to bed. In the early morning of July 4th, Dr. Sheppard was awakened by what he thought was his wife calling out his name. He rushed up the stairs and thought he saw someone, but he was then hit on the head and became unconscious. When Dr. Sheppard awoke, he heard a noise downstairs and thought he saw someone on the porch that led out to the lake. Dr. Sheppard gave chase, and ended up fighting with the male individual on the beach, where he was again hit and knocked unconscious. It appears that Dr. Sheppard was lying partially in the water and partially on the sand at this time. After regaining consciousness, he returned

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to the house where he found his wife dead in their bedroom. Soon after, he called Mayor Houk.

On July 4th, at approximately 6:40 A.M., Samuel R. Gerber, M.D., the Cuyahoga County Coroner, was notified about Mrs. Sheppard's death. He arrived at the house at approximately 7:50 A.M. At 8:00 A.M., Dr. Gerber entered the bedroom, and upon seeing Mrs. Sheppard lying supine on the bloodstained sheets on the bed, he pronounced her dead. He did not touch the body at this time, but got a general impression of the scene. Her pajama top was pushed up around her breasts, exposing the midline chest and entire abdomen. Her lower body was under a sheet or quilt. It appears that upon removing the sheet, her legs were apart, and the pajama bottoms were only on the right leg. Blood splatters were on the pillow at the head of the bed. The exact description of the rest of the room is not available. However, it did appear that blood splatters or stains were found elsewhere, including a large spot on the wardrobe door. A trail was also found going out of the bedroom, down the stairs, and out the door toward the lake. This was felt to be due to blood from Mrs. Sheppard that dripped off the weapon as it was carried out of the house by her assailant. Dr. Gerber then went to the Bay View Hospital with Police Chief Eaton to interview Dr. Sheppard. Dr. Gerber noted a large bruise on the right side of Dr. Sheppard's face near the eye. Neither he nor any other physician that treated Dr. Sheppard appear to have found any open wounds on his body. Before leaving the hospital, Dr. Gerber requested and was given Dr. Sheppard's clothing and wallet. He noticed a bloodstain on the right pant leg. Dr. Gerber then went back to the Sheppard residence, arriving at approximately 9:30 A.M., and re-examined the bedroom. He thought he saw the bloody outline of a bracelet or watch on Mrs. Sheppard's wrist. Around 10:30 A.M., representatives from the Pease Funeral Home arrived to remove Mrs. Sheppard, and at that time, Dr. Gerber finally touched the body. Through all the materials available, it appears that Dr. Gerber felt that rigor mortis had "set in" (by this, one might infer that he meant well-developed), and that lividity was present. However, he never said if fixed. Using these facts, the autopsy report, and the statement provided by Mr. and Mrs. Ahern, Dr. Gerber concluded that Mrs. Sheppard died between 3:00 and 4:00 A.M.

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The body was transported to the Cuyahoga County Coroner's Office, where Lester Adelson, M.D., performed an autopsy on July 4th, beginning at 12:30 P.M. He found the deceased to weigh 125 pounds and measure 67 inches. She appeared to be the stated age of 31 years. Rigor mortis was complete and lividity was dependent. The lips and nail beds appeared cyanotic. Abundant dried blood was noted over the entire face, neck, upper chest, and hands. After cleaning the body, Dr. Adelson noted multiple injuries. On the forehead and scalp, in the frontal region (both sides), both parietal regions, left temporal region, and right occipital region, there were 15 individual lacerations. Most of these had ragged, abraded, or contused margins, or a combination of them. They ranged in size from 1/2" x 1/4" up to 2-1/4" x 1/2". Of those lacerations, four were crescentic, two were gaping, one was linear, one was cruciate, one was "Y"-shaped, and the rest not otherwise described. Through the lacerations noted frontally, a non-depressed, comminuted skull fracture was found. Many of the other lacerations extended down to the skull bone. Dr. Adelson noted that all the eyelids were swollen and purplish-brown in color. There were small, crusted abrasions of both the upper and lower right eyelids. The nasal bones were fractured. A 5/16" x 1/8" laceration was present over the right temporo-mandibular joint. There were small, crusted abrasions on the bridge of the nose, left mid infra-orbital margin, and buccal surface of the lower lip. There were portions of the upper right and left media incisors that were absent, with a laceration/contusion of the adjacent inner upper lip. There was a 2" in diameter, purple-brown contusion on the superior right shoulder. There were multiple abrasions, with or without admixed contusions, measuring 1/4" up to 2" x 3/4", on the distal right forearm and hand as follows: distal radius, posterolateral wrist, anterior base of the thumb, posterior second finger over the proximal phalange, and posterior fourth metacarpal phalangeal joint. The right fifth metacarpal phalangeal joint was hypermobile and crepitus. There was a 1-1/2" x 1/4", contused abrasion over the distal left ulna and partial avulsion of the left fourth fingernail.

On internal examination, Dr. Adelson described the lungs as weighing 550 grams on the right and 470 grams on the left, with the parenchyma showing moderate quantities of bloody, frothy fluid on pressure. The trachea and major airways

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contained a large quantity of bloodstained, seromucoid froth. A 2 cm., adenomatous nodule (follicular adenoma by microscopic examination) was present in the lower left lobe of the thyroid; otherwise, the internal neck was unremarkable. The stomach contained 1/2 ounce of orange-brown, mucoid fluid. The uterus was enlarged due to a pregnancy, consisting of a male fetus measuring 20 cm. from crown to heel and 14 cm. from crown to rump. Dr. Adelson estimated the gestational age at approximately four months. On reflecting the scalp, extensive hemorrhage was seen within it and both temporalis muscles. There was "severe comminution and splintering of the entire frontal bone with complete separation of the coronal suture". The dura was intact with no epidural hemorrhage described. Beneath the dura, 20 cc. of fluid blood was found over each cerebral hemisphere. There was diffuse subarachnoid hemorrhage of the cerebral hemispheres and cerebellum. Contusions with focal and confluent hemorrhages involving the cortex of the temporal and frontal lobes bilaterally were noted. Focal and confluent hemorrhages were present in the right basal ganglia. The base of the skull was intact, except in the anterior cranial fossa where there was a comminuted fracture. The roofs of both orbits were splintered and fragmented, and the interior of the frontal sinus was visible.

The microscopic examination of the autopsy tissue slides was consistent with the gross examination. A toxicological examination was unremarkable. No blood alcohol was present. Dr. Adelson stated that swabs from the vagina did not reveal the presence of sperm.

After completion of the autopsy, Dr. Gerber agreed with Dr. Adelson's findings and signed out the cause of death as "Multiple Impacts to Head and Face with Comminuted Fractures of Skull and Separation of Frontal Suture, Bilateral Subdural Hemorrhages, Diffuse Bilateral Subarachnoid Hemorrhages, and Contusions of Brain". The manner of death was "Homicide by Assault".

Dr. Gerber stated that after the body was removed, two fragments of teeth were found. He also turned over the pillow with blood splatters on it, and found the other side to be blood-soaked, except for what he (alone) described as the outline of a surgical instrument. He said the outline was that of two blades, each 3" long, with the widest part, 2-

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3/4". A space was present between the blades, and teeth-like indentations were noted at the blade tips. Evidently, Dr. Gerber never was able to produce an instrument that matched this description, nor was he apparently ever pressed to do so. He also stated that on examining the rest of the house, he noticed several drawers pulled out of a desk in the den. Near the desk were a wrench, screwdriver, several other tools, and a watch. Dr. Gerber ascertained later that it was Mrs. Sheppard's watch, and noticed it was bloodstained. During the course of the investigation, he brought in the bedding, various items of clothing, various pieces of furniture, and other items for examination by his criminalist. One of these items was a green bag found outside the house. It contained a watch, a chain, some keys, and a ring. Later, the watch was determined to be Dr. Sheppard's, and it also was bloodstained. At no time was a weapon found, and it is unclear if the investigators ever truly identified what the specific weapon could have been. All the material submitted appears to have been examined, and many items were found to be bloodstained. However, of all the items examined, only a blood sample from Mrs. Sheppard and the bedsheet she was found lying on were typed. Both were Type O. Examination of Dr. Sheppard's pants revealed sand in the cuffs and pockets. In late July, 1954, Dr. Gerber held an inquest, which concluded that Dr. Sheppard should be tried for the death of his wife.

Prior to the trial in late 1954, Dr. Paul L. Kirk, a criminalist in charge of the Criminalistics portion of the School of Criminology of the University of California, was hired by the defense to review the case.

Dr. Kirk questioned why such limited blood typing testing was performed on the specimens provided. Based on the position of the body and the blood splatters, he determined the position of the attacker. He concluded that all the wounds could be accounted for by left hand blows, and that the weapon used was likely less than 1 foot in length. Based on the nature of the wounds, Dr. Kirk felt the weapon could have been a large cylindrical instrument like a piece of pipe with a flared end, or a flashlight. He felt a small, bar-type instrument could have produced the external wounds, but that it most likely was not heavy enough to have shattered the skull. He felt that inasmuch as one side of the pillow had the "instrument mark" Dr. Gerber described and blood

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splatters, it was the side that was upward during the assault. The opposite side, which was blood-soaked, could be explained by contact with the pool of blood on the bed. Also, Dr. Kirk believed that the pillow had likely been moved during the assault, with the bottom part of the pillow case folded when it was put down, so that a mirror image blood impression would have formed (which a viewer could interpret as he saw fit). He had a definite feeling as to the relevance of the teeth fragments. As they were found outside the mouth and fractured in a way he felt was consistent with being pulled outward, it seemed very clear that the teeth were clamped on something that was forcibly withdrawn, thereby fracturing the teeth. Dr. Kirk believed that it was most likely that Mrs. Sheppard bit into the hand of her assailant after his hand had been placed over her mouth to prevent an outcry. He felt that blood shed from that hand could have placed the large blood spot on the wardrobe door, and also produced the trail leading out of the house. Finally, based on the description of the body as found, with the displaced pajamas, Dr. Kirk felt this really was initially a sex crime that evolved into an assault and homicide.

On December 21, 1954, Dr. Sheppard was convicted of second degree murder, for which he received a sentence of life in prison.

On August 2, 1955, Mr. Karl Schuele, the Sheppards' next-door neighbor, turned a flashlight over to the police that he had found in the lake near the shore. It was described as a 3-cell flashlight, with no glass in the reflector and with the bottom cap broken out. The light had been damaged by striking something that caused the case to be dented on the side. The batteries were still present, and the flashlight appeared to have been in the water for a long time. The flashlight was turned over to the Cleveland Homicide Squad the next day. (What happened to it after that cannot be determined based on the information provided.)

On November 8, 1954, Mr. Richard Eberling, a man who washed the windows in the Sheppard home in 1954, was caught burglarizing homes in Cleveland. A search of his house revealed a diamond ring that belonged to Mrs. Sheppard. Mr. Eberling told the police that he had stolen the ring from the home of Dr. Richard Sheppard, Dr. Sam Sheppard's brother.

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Unprompted by police, he told them he had washed the windows at Dr. Sam Sheppard's house two days before the murder, and had cut his finger on a kitchen window and bled all over the house. Mr. Eberling was noted to have a prominent scar on his left wrist. On November 19, 1954, he was said to have passed a lie detector test, and thus was cleared of Mrs. Sheppard's death. On July 7, 1984, Mr. Eberling was convicted for killing Mrs. Ethel Durkin, a 90 year old widow, in order to get her estate after he forged her will. On April 29, 1996, Mrs. Durkin's former nurse stated that Mr. Eberling had told her he killed Mrs. Sheppard.

On July 16, 1964, Dr. Sheppard was released from prison by a federal judge, who felt that he did not receive a fair trial due to prejudicial, heavy publicity. In mid-1966, Dr. Sheppard was granted a new trial by the U. S. Supreme Court, and he was acquitted on November 16, 1966. Dr. Sheppard died four years later due to liver failure.

On October 19, 1995, the Sheppard family filed a wrongful imprisonment lawsuit, seeking a declaration of innocence of Dr. Sam Sheppard. On February 3, 1997, Mohammed Tahir, Ph.D., a leading expert and Supervisor of DNA and Serology at the Indianapolis-Marion County Forensic Services Agency, released his initial findings with regard to this case. At that time, he had no definitive sample from Dr. Sheppard, but he did have hairs from Mrs. Sheppard's head and a blood sample from Mr. Eberling. Dr. Tahir's initial report stated that Mr. Eberling could not be excluded as a suspect. It also appears that samples from the blood trail through the house could not have been Mrs. Sheppard's. In doing his tests, Dr. Tahir apparently performed a microscopic examination of the vaginal smears made in 1954 and found the presence of sperm, which Dr. Adelson had said were not present. DNA testing of these smears showed the sperm fraction to be a mixture, with Mr. Eberling not able to be excluded as a potential part donor. In mid-September, 1997, the body of Dr. Sheppard was exhumed, and samples for DNA testing were taken. A follow-up report by Dr. Tahir was issued on April 21, 1999, incorporating the new DNA evidence. Using the material obtained from the exhumation autopsy, he concluded that Dr. Sheppard's blood was not on the wood chip, the stain on his pants, or in one of the vaginal smears. Due to the limitations of the test, no conclusion could be made regarding the stain from the bedroom wardrobe or

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the other vaginal smear to determine if Dr. Sheppard was a possible donor. With regard to all of these same items, Dr. Tahir stated that Mr. Eberling could not be excluded as a partial contributor to the DNA detected in each.

This case was also reviewed by Michael N. Sobel, D.M.D., a forensic odontologist who has expertise in examining and analyzing teeth and bite marks. In reviewing this case, he concluded that it is unlikely, considering the anatomy of the teeth and the surrounding soft tissues, that fracturing of the teeth would occur during a bite. Rather, Dr. Sobel believes these injuries were produced by direct trauma to the face from a blunt instrument. He had the opportunity to review photographs of Mr. Eberling. In his opinion, the scar on Mr. Eberling's left wrist depicts a "longitudinal gouge pattern", and is not representative of a bite mark. Dr. Sobel believes that Mrs. Sheppard's partially avulsed left fourth fingernail could have accounted for this gouge mark.

MEDICOLEGAL QUESTIONS:

1. Was the scene of the murder processed properly?

No, it was not. Despite finding the body in a partially disrobed state, Dr. Gerber never raised the possibility of a sexual assault, which I believe such a setting clearly suggested. The pattern of injuries, as described by Dr. Adelson, were mainly blunt force trauma of the head and upper extremities. This would not account for the partial removal of Mrs. Sheppard's pajama bottom and the bunching up of the pajama top, which are strongly indicative of a sexual assault. It is unclear as to how detailed a genital examination was performed by Dr. Adelson; his autopsy report only states these structures as "normal female". With the influence and early bias of Dr. Gerber's opinion, I do not believe this examination would have been more than cursory. The nature of the assault should have led the pathologist to perform careful, detailed rape studies. To have obtained the best results, swabs from the mouth, vagina, and anus should have been taken at the scene. This was not done. During the autopsy, Dr. Adelson did take vaginal swabs, but there was no record of oral or anal swabs having been taken. Also, what was done with the smears he made is not clear. Dr. Adelson

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stated that he saw no sperm, but Dr. Tahir found them by microscopic examination in order to do his DNA studies.

On moving the body, Dr. Gerber found the two teeth fragments. Due to rigor mortis, he could not check Mrs. Sheppard's mouth. He erroneously concluded they came from her attacker, but never said he examined Dr. Sheppard's mouth. When Dr. Adelson described that the teeth came from Mrs. Sheppard's mouth, he made no conclusion as to how they could have broken off, nor did Dr. Gerber. It does not appear that Dr. Gerber consulted a forensic odontologist, nor did he place any significance on these injuries. Although Dr. Kirk makes a reasonable argument about the way Mrs. Sheppard's teeth were fractured, I agree with Dr. Sobel that when the anatomy of the teeth and the surrounding soft tissues is considered, it was most likely blunt force trauma that caused her teeth to fracture. Since Dr. Kirk nor I had an opportunity to view directly or by photographs the scar on Mr. Eberling's wrist, I will defer to Dr. Sobel that it does not represent a bite mark, but rather a deep scratch or gouge. When the trauma to the left hand of Mrs. Sheppard is considered, specifically the avulsed fingernail, I feel it is likely that she deeply scratched her assailant, which would have led to him bleeding. If this had been considered, then it would have been clear to Dr. Gerber and his criminalist that all the blood samples had to be typed, since the examination of Dr. Sheppard failed to reveal any broken skin or sign of bleeding.

Finally, I believe the way Dr. Gerber approached the scene was wrong. In dealing with any crime scene, the professionals who are specifically trained to deal with specific aspects of forensic science, e.g., a blood splatter expert, should go to the scene. I could not find anything in the criminalist report to indicate that a criminalist viewed the scene, but rather only examined items Dr. Gerber felt to be important. Also, it appeared that Dr. Gerber made his mind up from the start that Dr. Sheppard was involved, and that all the blood splatters in the house were from his wife. Dr. Gerber did not request that his criminalist type the various blood samples, even though the avulsed fingernail suggested that Mrs. Sheppard may have scratched her assailant. Thus, the blood trail leading out of the house could have come from the assailant. Detailed typing could have shown that the stains were not all hers.

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2. Were the wounds observed on Mrs. Sheppard consistent with a surgical blade?

No. The wounds were clearly all due to blunt force trauma, rather than sharp instrument trauma. I concur with Dr. Kirk that a cylindrical object such as a pipe or a flashlight could have made all the wounds found, especially since several of the lacerations were crescentic. If a sharp instrument had been used, then incisions or stab wounds would have been found, but Dr. Adelson described no such injuries.

The flashlight that was found in the lake near the Sheppard home in 1955 was said to have been dented as if it had repeatedly struck something. It is unclear whether this flashlight ever went to the Coroner's Office for testing. If it did, then a thorough examination should have been done, especially in light of Dr. Kirk's opinion. I would not expect blood to be found on the flashlight after the prolonged immersion, whether by the unaided eye or utilizing other tests. On the other hand, since the casing was damaged, tissue or hairs could have become embedded in it which the water immersion would have been less likely to remove. Such a finding could have proved that the flashlight was the murder weapon.

OPINION:

After completion of my evaluation and analysis of all the materials, it is my professional opinion, based upon a reasonable degree of medical certainty, that Marilyn R. Sheppard died as a result of blunt force trauma of the head. The finding of her body in a partially clad state was strongly indicative of a sexual assault. This opinion is reinforced by the finding of a mixed sperm fraction by Dr. Tahir in the vaginal swabs obtained during the autopsy of Mrs. Sheppard.

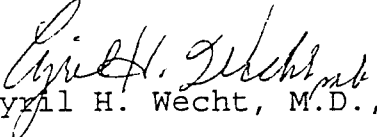
The pattern of the wounds is consistent with a cylindrical object, such as a flashlight or a pipe, as the weapon. Upon finding the flashlight in the lake adjacent to the Sheppard home, a careful examination should have been conducted to look for any residual trace evidence, which does not appear to have been done.

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The scar on Mr. Eberling's left wrist noted at his autopsy is consistent with a deep scratch or gouge. When compared with the finding of an avulsed fingernail on Mrs. Sheppard's left hand, it appears to me that she deeply scratched him while trying to ward off his blows. This would have led to the assailant bleeding at the scene. Therefore, it was imperative that blood typing be completed on all the bloodstains to prove, as the prosecution and Dr. Gerber asserted, that all of them were from Mrs. Sheppard, and not from a possible attacker as Dr. Samuel H. Sheppard had described. This was not done at the time. Dr. Tahir's studies clearly show that some of the stains were from another individual. Mr. Richard Eberling, who was employed by the Sheppards at that time, is a possible match.

With all of the above information, I conclude that this incident began as a sexually motivated crime which evolved into a homicide that was not committed by Dr. Sheppard, but by another individual, most likely Mr. Eberling. This is based on his knowledge of the deceased, the finding of her ring in his home, the fact that he was subsequently in jail for another murder, and that all the DNA evidence uncovered by Dr. Tahir includes him as a potential match.

Very truly yours,


Cyril H. Wecht, M.D., J.D.

CHW/mb