



12-23-1954

## 54/12/23 Defendant's Motion for New Trial

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No. 64571

IN THE COURT OF COMMON PLEAS  
Criminal Division  
CUYAHOGA COUNTY, SS.

\*\*\*\*\*

STATE OF OHIO,

Plaintiff,

-vs-

SAMUEL H. SHEPPARD,

Defendant,

\*\*\*\*\*

RECORDED  
INDEXED  
NOV 11 1955  
CLERK OF COURT  
CUYAHOGA COUNTY OHIO

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MOTION FOR NEW TRIAL

FILED  
COURT OF APPEALS  
JAN 11 1955  
LEONARD F. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY, OHIO

FILED  
DEC 23 1954  
LEONARD F. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY, OHIO

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STATE OF OHIO )  
COUNTY OF CUYAHOGA )

IN THE COURT OF COMMON PLEAS  
Criminal Division  
No. 64571

STATE OF OHIO, )  
Plaintiff, )  
-vs- )  
SAMUEL H. SHEPPARD, )  
Defendant, )

MOTION FOR NEW TRIAL

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Now comes the defendant, Samuel H. Sheppard, and states that a verdict of conviction of Second Degree Murder has been rendered against him in this case, and within three days after such verdict, makes this, his written application to the Court, that the verdict heretofore rendered be set aside, vacated and held for naught, and that he be granted a new trial herein, for the following reasons, each of which materially affects his substantial rights:

1. The Court erred in overruling the application of the defendant for a writ of habeas corpus.
2. The Court erred in denying the defendant's application for bail.
3. The Court erred in denying the defendant's Motion for a change of venue, which motion was repeated from time to time during the progress of the trial and repeatedly overruled.
4. The Court erred in denying defendant's Application for a continuance, which was repeated during the progress of the trial and repeatedly overruled.
5. The Court erred in compelling the defendant to exercise peremptory challenges when the Court should have allowed the challenges for cause.
6. The Court erred in denying defendant's motions for withdrawal of a juror and continuation of the case.
7. For irregularities occurring during the trial and which were repeated from time to time, and which were repeatedly overruled.
8. The Court erred in the dismissal from the jury, after the jury was accepted and sworn, of Juror William Manning and substituting in his place, over the objection of the defendant, Juror Jack Hansen.
9. The Court erred in not permitting the defendant to exercise a peremptory challenge after such substitution.

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10. There was irregularity in the proceedings of the court.
  11. There was irregularity in the proceedings of the jury.
  12. There was irregularity on the part of the Prosecuting Attorney.
  13. There was irregularity on the part of witnesses for the State of Ohio.
  14. There was error in the orders of the Court by which this defendant was denied the benefit afforded him by the Constitution of Ohio and the Constitution of the United States of America, including the amendments thereto.
  15. There was abuse of discretion by the court, by reason of which this defendant was prevented from having a fair trial.
  16. There was misconduct on the part of the Prosecuting Attorney.
  17. There was misconduct on the part of witnesses for the State of Ohio.
  18. The verdict is not sustained by sufficient evidence.
  19. The verdict is contrary to law.
  20. Errors of law occurring at the trial, prejudicial to this defendant.
  21. Evidence prejudicial to this defendant was admitted over his objection.
  22. Evidence excluded from the consideration of the jury, which was proffered by this defendant, and which should have been admitted in evidence.
  23. There were errors by the Court in its charge to the jury which were prejudicial to the defendant.
  24. There were errors by the Court in refusing to give special instructions to the jury prior to argument, as requested by this defendant, and which were afterwards not included in his general charge.
  25. There was error by the Court in overruling the defendant's Motion for a directed verdict of "Not Guilty" at the close of the State's evidence in chief.
  26. There was error by the Court in overruling this defendant's Motion for a directed verdict of "Not Guilty" at the close of all the evidence.
  27. There was error by the Court in denying the Motions made by the defendant both at the close of the State's case and the close of the defendant's case.

28. There was error by the Court in not removing from the consideration of the jury the count of First Degree Murder.
29. There was error by the Court in not removing from the consideration of the jury the count of Second Degree Murder.
30. There was error by the Court in not removing from the consideration of the jury the count of Manslaughter.
31. Other errors apparent on the face of the record to the prejudice of this defendant, and by reason of which he was prevented from having a fair trial, as affirmatively appears from the record.
32. The indictment by the Grand Jury was the result of pressure exerted on the Grand Jury. The concept of presumption of innocence was disregarded by the jury, who substituted for it the precept of presumption of guilt.

33. The verdict was influenced by passion and prejudice. During the entire time of the trial the courtroom and corridors were filled with reporters, newspaper photographers, radio commentators and television. The court assigned all the seats in the courtroom, except the last row, to the representatives of such agencies. The Court also placed inside the bar a long table for the use of reporters. This table was stretched across the entire width of the courtroom and was in full view of the jury and was occupied by upwards of twenty reporters. One end of this table was within three feet of the jury box. By arrangement with the Court every available room on the courthouse floor was assigned to agencies of publicity. The Assignment Room, where cases are assigned for other causes to courtrooms, was assigned by the Court to reporters and telegraphers.

During the trial, each day the jury passed a battery of camera men who stood around the entrance room to the jury room and who photographed and televised them.

The Court permitted photographers to go into the jury room during trial and take pictures of the jurors, which pictures later appeared in the newspapers. During the trial newspaper pictures were taken inside the home of one juror, showing how the family fared while the juror was at court. This was called to the attention of the Court, but no action taken.

During the trial and while the jury was leaving the Courthouse, a man appeared on the Courthouse steps with a sign referring to the Sheppard trial. He was taken before the Court but no inquiry was made of the Court as to what effect that sign had on their thinking.

34. Each day before the morning session and the afternoon session the defendant was brought into the courtroom at least ten minutes before the sessions began, at which time photographers were allowed in the courtroom to take his picture. His picture was taken several hundred times. This procedure was objected to by counsel for the defendant but it continued throughout the entire trial.

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35. Prior to the trial, for months the news in the Cleveland newspapers to a very large extent was slanted against the defendant. Front page editorials appeared in one newspaper demanding his arrest and urging that he be subjected to the third degree.
36. Prior to the trial, many statements were made by the Mayor of the City of Cleveland, the Chief of Police, the Inspector of Detectives and the head of the Homicide Squad of the Cleveland Police Department, members of the Prosecuting Attorney's office, which were adverse and condemnatory of the defendant, and which were set forth with appropriate headlines. None of these people testified in the trial.
37. The deliberations of the jury started at 10:30, Friday, December 17th. The jury deliberated from that hour until 10:00 P.M., resumed their deliberations on Saturday, December 18th, at 9:15 A.M. and deliberated until 10:30 P.M., resumed their deliberations at approximately 10:00 A.M., Sunday morning, December 19th, and deliberated until 6:00 P.M., resumed their deliberations on Monday, December 20th, at approximately 10:00 A.M. and deliberated to 10:00 P.M., and again resumed their deliberations on Tuesday, December 21st, at approximately 10:00 A.M. and deliberated until 4:30 P.M., when they returned their verdict. During the time that the jury was deliberating, they were taken by the bailiffs appointed by the Court to their meals, and on Friday, Saturday, Sunday and Monday nights were taken by the bailiffs to the Carter Hotel, where they remained overnight. During the deliberations of the jury, each time they left or entered the Courthouse they were photographed and televised. Each time they went to the hotel they were followed by photographers and reporters and their pictures were taken and printed in Cleveland newspapers. Their pictures were also taken while they were eating their meals.

On one occasion the jury was separated into two groups for the benefit of the newspapers, and so separated their pictures were taken. One group, which was made up of the five female members of the jury, was referred to as the "distaff side", and the other group, which comprised all the male members of the jury, was referred to as the "male section".

During the deliberations of the jury and while they were going to and from their deliberations, the corridor and the section of the Courthouse through which they passed was cluttered with groups of photographers, radio commentators and television.

38. During the trial of the case, the Court was willingly part of a television program that took place on the steps of the Courthouse under the direction of a man named Fabian, who was a correspondent for the Scripps-Howard Newspapers.
39. The Court erred in overruling the request of Juror Elhanore Burke to put a question to the defendant.

40. The defendant was deprived of his liberty without due process of law and was denied trial by an impartial jury, by reason of the wide-spread publicity and misinformation disseminated through newspapers, and radio and television stations both before and during the trial, with resultant mass hysteria and the creation of an atmosphere of public opinion which made a fair and impartial trial by jury impossible, all contrary to the provisions of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America and contrary to the provisions of Article I, Section 10, of the Constitution of the State of Ohio.

*William J. Corrigan*

WILLIAM J. CORRIGAN

*Fred W. Garzone*

FRED W. GARZONE

*Arthur E. Peterslidge*

ARTHUR E. PETERSLIDGE

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Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio, to be kept, hereby certify that the foregoing <sup>transcript</sup> <sup>Appearance Docket 662,420</sup> taken and copied from the Journal <sup>Entries Civil Journal 333-</sup> Pages 871, 874 and Civil Journal 334 Page 532 of the proceedings of the Common Pleas Court within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal <sup>Appearance Docket 662,420</sup> Entries and that the same is a correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially and affix the seal of said Court, at the Court House in the City of Cleveland, in said County, this 28th

day of December, A. D. 19 54

LEONARD F. FUERST Clerk.

By *Sam H. Sheppard* Deputy Clerk.

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No. 662,420

Cuyahoga Common Pleas

In re: Dr. Sam H. Sheppard,

vs.

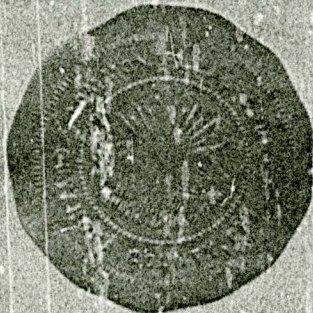
Copy of Journal Entry

No. 48952 C. C.



Common Pleas Court within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the laws of the State of Ohio, to be kept, hereby

certify that the foregoing is taken and copied from the <sup>transcript</sup> ~~Journal~~ Execution Docket 140/Pg. 316 S. D. 67061 & Journal Entries filed Aug. 9, 1954 Civil Journal 333 Page 905, Aug. 13, 1954 of the proceedings of the Common Pleas Court within and for said Cuyahoga County, and Civ. 333 Execution Docket 140/Pg. 316 919 that the said foregoing copy has been compared by me with the original/entry on said Journal 333 Pages 905 and 919 and that the same is a correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially and affix the seal of said Court, at the Court House in the City of Cleveland, in said County, this 28th

day of December, A. D. 1954

LEONARD F. FUERST Clerk

By *Robert Parker Zick* Deputy Clerk

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Execution Docket 140/Pg. 316

S. D. No. 67061

Cuyahoga Common Pleas

State of Ohio

VS.

Samuel H. Sheppard

Copy of Journal Entry

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No 48953 C.C.

NOTICE

The Prosecuting Attorney of Cuyahoga County, Ohio, will take notice that the defendant has filed the foregoing Motion and the same will be on for hearing before Honorable Judge Edward Elythin on December 30, 1954, at 9:15 A.M.

*William J. Corrigan*  
\_\_\_\_\_  
WILLIAM J. CORRIGAN  
Of Counsel for Defendant.

Service of the foregoing Motion and Notice acknowledged this 23rd day of December, 1954.

*Frank T. Culliton*  
\_\_\_\_\_  
Prosecuting Attorney, *per A. Willett*

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