



Scientists' conduct leaves Spector's defense team vulnerable to criticism

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By Harriet Ryan

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When it came to hiring expert witnesses for his murder defense, Phil Spector went for the top of the line. The scientists he retained to analyze evidence in the fatal shooting of an actress are a who's who of American forensics, the men who wrote the textbooks for their fields and whose faces stare out from the television when a criminal case goes national.

But if the conclusions of this high-profile scientific team have helped Spector's cause, the conduct of two members has left his defense vulnerable to criticism. In his first trial, a judge concluded that Dr. Henry Lee, the criminalist who gained worldwide recognition for his work on the O.J. Simpson murder trial, hid or destroyed a potentially important piece of evidence from the death scene.

And this month at Spector's retrial, another scientist was accused by prosecutors of perjuring himself during testimony about bloodstains. The allegations set up the unusual tableau of the judge reading expert James Pex his rights as he sat on the witness stand.

Prosecutors have portrayed the alleged misconduct as part of a larger effort by the experts to twist the evidence to the music producer's benefit as they racked up huge bills -- in Pex's case, \$66,000. But Spector's attorney contests the accusations and says prosecutors are attacking the scientists when they cannot challenge their science.

"Law enforcement can spend as much time and effort and expense as they believe necessary to put a case together and that is simply considered public servants doing their job. But if the defense hires good experts, they are trying to buy an acquittal," said Spector's attorney, Doron Weinberg.

The clashes highlight the hard-fought nature of every piece of forensic evidence in a case where there are two competing versions of events and no eyewitness testimony. Spector and Lana Clarkson, 40, were alone in his home six years ago when a snub-nosed revolver discharged in her mouth. The music icon faces 18 years in prison if convicted of second-degree murder. His defense claims Clarkson shot herself.

The effect of the attacks on the experts' credibility is unclear. In the first trial, the defense touted Lee as its star witness, but after the judge found he mishandled evidence, he balked at testifying. The defense decided not to call him, instead relying on others to make the case for suicide. That jury split 10 to 2 in favor of conviction.

In the current case, Spector's attorney alleges Pex simply mixed up some photographs that were extraneous to his testimony anyhow. But prosecutors are expected to tell jurors in their closing arguments that Pex is a perjurer whose every conclusion -- including findings the defense says exonerate Spector -- should be disregarded.

Pex, a retired laboratory director from Oregon who has appeared on "Good Morning America," "Dateline" and the Discovery Channel, also faces the prospect of criminal prosecution. A spokeswoman for the district attorney's office said there would be no decision during the trial.

Pex is covered by a gag order on witnesses. He was among a host of experts from both sides who testified about bloodstains at the scene. Under questioning by Spector's attorney Feb. 10, he pointed out what he said was blood spatter on the grip of the gun and said it indicated that Spector couldn't have been clutching the weapon when it went off. A "more probable circumstance," he told the jury, was that Clarkson pressed the trigger.

Pex supplemented his conclusions with a PowerPoint presentation of photos of experiments he said he conducted in October with a blood-soaked sponge and a Colt Cobra, the same type of gun used in the shooting. But on cross-examination the next day, the prosecution confronted him with evidence showing that some of the photos were from a previous experiment he conducted with a different weapon.

"You falsified an experiment for this jury," Deputy Dist. Atty. Alan Jackson charged during cross-examination. Outside the jury's presence, the prosecutor called Pex a highly paid liar.

The defense said the photo mix-up was an innocent mistake that did not detract from the expert's "extremely significant" findings.

"It was a mistake on a very small point. It's not perjury. It's not a lie. It's a mistake and it's being blown out of proportion," Weinberg said.

Superior Court Judge Larry Paul Fidler said he did not have enough evidence to determine whether misconduct had occurred, but before jurors returned to the courtroom for more testimony from the expert, the judge informed Pex that based on the perjury allegations, he had the right to an attorney.

"If you cannot afford an attorney, the court will appoint one for you at no cost to yourself," Fidler told him.

"I read my transcripts from yesterday. I don't need one," Pex replied.

The tense courtroom scene with Pex recalled the controversy involving Lee in 2007. The Connecticut scientist was summoned to the courtroom to answer charges by two former members of the defense team who said they saw him recover a small white object from the death scene. Prosecutors said he never turned it over to them and speculated that it might have been a piece of fingernail that could advance their case.

Lee denied picking up such an item, but the judge said he found the testimony of a former defense attorney more credible and allowed prosecutors to call the lawyer as a witness.

In a telephone interview last week, Lee said the incident had damaged his reputation and caused him to rethink the justice system and his role. Lawyers in other cases raised the misconduct allegations from the Spector trial, and he sensed the public was responding to him differently as well.

"It smeared me," he said.

Although he remains on the defense witness list, Lee said he wanted nothing to do with the Spector proceeding.

"I refuse to participate in the case anymore because nobody is interested in the facts and the truth," he said.

He has turned his attention to cold cases and the training of law enforcement in evidence-collection techniques, he said.

USC law professor Jean Rosenbluth, who closely followed Spector's first trial, said "a certain cynicism" exists among the public when it comes to paid expert witnesses. She said that when confronted with conflicting evidence, jurors sometimes disregard the entire area of testimony.

"They figure out that the experts don't necessarily know what they are talking about and they focus on other evidence," she said.

Pex's recent stumble has not soured Spector's defense on forensic experts. Dr. Vincent DiMaio, a pathologist from Texas who concluded that Clarkson's death was a spur-of-the-moment suicide, is expected on the stand next week.

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