



Piece of nail at issue in Spector hearing

Reviving claims that the defense kept evidence, witnesses say they saw criminalist Henry Lee remove a small object from the crime scene.

By Peter Y. Hong, Times Staff Writer
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Two former members of Phil Spector's defense team testified Thursday that they saw famed criminalist Henry Lee pick up a fingernail-size object from the floor near the scene of actress Lana Clarkson's shooting death.

The testimony revived prosecution claims that Spector's team may have withheld crucial evidence the defense recovered after Clarkson's Feb. 3, 2003, death in Spector's mansion.

Prosecutors four years ago claimed the defense, then headed by attorney Robert Shapiro, had kept a piece of Clarkson's nail it recovered from Spector's Alhambra mansion the day after the shooting. A fragment of Clarkson's acrylic nail was missing from her right hand.

The defense at the time denied knowing anything about the nail, which prosecutors said may have broken off in a struggle with Spector.

On Thursday, both attorney Sara Caplan, who worked with Shapiro on Spector's defense, and Stanley White, their private investigator, said they saw Lee remove a small object from Spector's house.

Caplan said the flat object was about the size of her thumbnail. "He picked it up and put it in a vial, it was a little white thing," she said on the witness stand.

Following Caplan to the stand, White told a slightly different story. He said as they surveyed the foyer of Spector's house the day after the shooting, he saw Lee holding something in his hand and approached him. White said the object, sitting on a handkerchief in Lee's upturned hand, looked to him like a gunshot-stained nail.

White said he remarked it was a fingernail, to which Lee shot back: "You're crazy." White said he told Lee, "You need glasses," and walked away.

Judge Larry Paul Fidler is conducting a hearing on the alleged fingernail outside the presence of the jury, which was dismissed until Monday because of medical problems for one of Spector's lawyers, Bruce Cutler. If Fidler finds the defense intentionally withheld evidence from prosecutors, he could impose severe sanctions.

Spector is charged with murder and has pleaded not guilty. His lawyers say Clarkson shot herself in an "accidental suicide."

Prosecutors first claimed in 2004 that Spector's lawyers did not turn over a broken nail seemingly stained with gunshot residue. Their original claim surfaced after White, a retired sheriff's deputy, saw a sheriff's homicide investigator at a barbecue and told him about a nail.

Shapiro, who was later replaced on the defense team by attorney Leslie Abramson, did not reply to letters from prosecutors asking for the evidence. Abramson told the court there was no nail. Lee said he had picked up some thread at the house but had not found a fingernail.

The issue resurfaced this week when a former intern and law clerk to Shapiro, Gregory Diamond, contacted the district attorney's office. Fidler assigned a special master, Loyola Law School professor Laurie Levenson, to look into Diamond's claims, then called the court hearing.

During the first day of testimony Wednesday, Diamond appeared confused and sometimes terrified.

He asked Fidler if he could invoke his 5th Amendment protection against incriminating himself. The judge denied his request, telling him he was a witness, not a criminal defendant.

Thursday morning, Diamond asked Fidler if he could make a statement, prompting a curt "no."

Diamond testified Wednesday that he saw Caplan pick up an object and hand it to Michael Baden, a prominent medical examiner working for the defense. Diamond said Baden identified the object as a tooth fragment.

Baden testified Wednesday that he never received anything from Caplan

and was not qualified to identify teeth.

Caplan also contradicted Diamond, saying it "would be absurd" for her to have contaminated potential evidence by taking something from the crime scene.

Spector attorney Christopher Plourd peppered Diamond with questions about his possible motivations for coming forward.

Diamond said he had tried to sell law-related television show ideas and had contacted the Los Angeles Times, New York Times, Court TV and the Smoking Gun website to tell of his experiences on the Spector defense team.

Jean Rosenbluth, a USC law professor who has been attending the trial, said with Thursday's testimony, "I would think the judge now has the basis to make a finding that there existed a piece of potential evidence, found by Dr. Lee or under his aegis, that was not turned over to the prosecution. Whether it was done maliciously or by accident, who knows?"

Rosenbluth said the flap was unlikely to force a mistrial, but could prompt Fidler to admonish the defense, with or without the jury present.

The judge also could direct jurors to disregard certain evidence, or even preclude Lee, a key defense witness, from testifying. The judge could also refer attorneys to the bar for discipline.

District attorney spokeswoman Sandi Gibbons declined to comment on the matter.

Spector defense attorney Roger Rosen said that although Caplan was "very credible," the object she saw probably was not the fingernail. White, he said, "was very incredible, and the rest of the evidence will show he is not correct."

The issue is not expected to come to a quick conclusion, as Lee is in China and unable to testify for at least a week. Shapiro and other witnesses are expected to take the stand Friday.

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