



Spector judge to attorney: Testify or 'I will hold you in contempt'

Sara Caplan has refused to tell the jury about an expert witness' picking up object at death scene.

By Peter Y. Hong, Times Staff Writer
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The controversy over missing evidence in the Phil Spector murder case intensified Thursday, when the trial judge ruled he will hold a former Spector defense attorney in contempt if she continues to refuse to testify before the jury.

But Judge Larry Paul Fidler allowed Sara Caplan's attorneys time to work out a compromise with prosecutors. The lawyers will return Monday morning to report on whether they have struck a deal.

At issue is a fingernail-sized object that attorney Caplan, testifying earlier without the jury present, said she had seen Henry C. Lee, the defense's famous forensic scientist, handle at Spector's home the night after actress Lana Clarkson's February 2003 death. Lee denied finding or hiding such an object, but Fidler ruled earlier that the defense never turned the object over to prosecutors as required by law.

Fidler said testimony from Caplan, who had been on Spector's original defense team, weighed heavily in his ruling that the defense had withheld evidence. Prosecutors said the object could have been a piece of Clarkson's acrylic fingernail blown off in the shooting, which could help determine whether the 40-year-old actress or Spector pulled the trigger.

Caplan says she cannot testify before the jury because it would breach attorney-client privilege. Fidler rejected her position. "Do you understand if you refuse to testify I will hold you in contempt?" Fidler asked.

"I understand," Caplan replied.

A compromise could include having Caplan's previous testimony read to the jury. Or lawyers could present a written statement to jurors.

Fidler's decision to grant time for the lawyers to attempt a compromise defused a tense standoff. Caplan's attorney, Michael Nasatir, had argued that the lawyer's ethical obligations to a client — even a former one — precluded her from testifying against his interests.

Caplan said she was insulted by prosecutors' compelling her to testify against a client, and asked Fidler, "Please, do not hold me in contempt."

Fidler gently told Caplan, who had been standing, wiping tears from her eyes, that she could sit. She did.

"It goes without saying, nobody wants to be here today," Fidler said.

"Though I admire her position," Fidler said of Caplan, "I don't agree with it."

"You are not going to jail today," Fidler told Caplan in a friendly tone. If no agreement is reached, Fidler said he will stay his contempt order to allow her to remain free while she appeals.

Fidler said there was no way to remedy the harm done by withholding evidence except to have Caplan tell the jury about it. "No other person can testify as to what she saw. Just as the defense has a right to a constitutional trial, the people of the state of California have a right to a fair trial. The jury has a right to know it may have been deprived of something that may have assisted them in their case," Fidler said.

Fidler said the defense has called Lee its "linchpin," and hence, "his credibility is paramount. And the people have a right to attack that credibility on all reasonable grounds. If he is being untruthful by taking a piece of evidence, hiding it from the prosecution and not giving it to them, it directly affects his credibility."

Clarkson was found dead in Spector's Alhambra mansion on Feb. 3, 2003. The 67-year-old Spector is a legendary record producer who worked with the Beatles, the Righteous Brothers and others. He has pleaded not guilty to murder, saying Clarkson shot herself. He is free on bail.

Following the hearing on Caplan, the jury heard from James Carroll, a sheriff's firearms expert who testified that the revolver used to shoot Clarkson could not have fired accidentally because it took considerable force to pull the trigger. Carroll will resume his testimony Monday.

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