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## JURY DOUBTED SCIENTIFIC EVIDENCE IN OFFICER'S KILLING

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Prosecutors had everything but a smoking gun in the case against Wilbur Mitchell.

That's apparently one of the few things that would have persuaded jurors to give Mitchell the death penalty in the slaying of off-duty Metro Officer Evelyn Gort during a robbery attempt.

Jurors on Tuesday found Mitchell guilty of manslaughter, a crime punishable by 17 to 27 years in prison. That's the kind of verdict prosecutors typically get in a fatal car crash case, not a high-profile prosecution of an accused cop killer.

The prosecution felt its case was ironclad -- in no small part because Gort shot at her killer, and the bullet landed in Mitchell's belly.

Overreliance by the prosecution on that piece of evidence -- and jury misgivings about scientific testimony -- played a big part in the verdict, according to interviews with prosecutors, defense attorneys and jurors.

Here is how jurors say they analyzed the prosecution's key evidence and concluded it didn't add up to a capital case:

\* The bullet: A bullet from Gort's gun was found in Mitchell's stomach. Jury foreman Leonardo Cabrera said that didn't prove he fired at her.

Prosecutors may have erred by failing to call a motorcyclist who drove Mitchell to Jackson Memorial Hospital after the shooting. Jurors wondered whether the motorcyclist killed Gort.

\* The gunpowder residue: Mitchell had gunpowder on his hands. Police tests showed he had recently fired a gun.

Despite that testimony, jurors believed the defense: The spray of gunpowder could have come from Gort shooting Mitchell at close range.

\* The remote control: Gort's boyfriend, Antonio Calafell, testified that he handed his car's remote control security device to the robber. The device was blown apart by the same bullet that ended up in Mitchell's stomach.

Why did the jury discount this as evidence that Mitchell was the gunman?

"No one could prove to us Mitchell was holding it," the jury foreman said. "There were no fingerprints on it."

\* The confession: Jurors never heard the best evidence: Mitchell told police he shot Gort -- because she shot him first.

Dade Circuit Judge Robbie M. Barr barred the confession. Mitchell had already invoked his right to an attorney when the homicide detective started questioning him again.

For jurors, the case boiled down to this: No one saw Mitchell shoot the officer, including Calafell, whose back was turned. Police never recovered the murder weapon.

Crime scene technicians never found Mitchell's fingerprints or blood at the scene.

"The verdict was all about a lack of evidence," juror Karen Knowles said Wednesday evening.

Still, the outcome shocked prosecutors, homicide detectives and forensic investigators: They had the .38-caliber bullet. They had scientific evidence Mitchell had just fired a gun and microscopic evidence to indicate Gort's killer was holding the remote control in his left hand when she fired one round through the device.

The idea that Gort fired at her killer from no farther than six inches away -- but mistakenly hit Mitchell -- seemed implausible, prosecutors said.

The notion that her bullet pierced the remote control device -- presumably while in the hands of the killer -- and then somehow ricocheted into Mitchell's belly seemed impossible.

"I'm really at a loss," Bagley said. "In my own mind, this was a case that we could prove forensically."

Bagley, who tried the case with Jamie Campbell and Paul Mendelson, said they decided not to call motorcyclist David McCray to the stand because he has 14 felony convictions.

"He's been convicted of robbery with a firearm," Bagley said. "I didn't want jurors to think he was the shooter."

They relied on science instead.

Crime technicians rubbed cotton swabs between Mitchell's thumbs and index fingers and palms at the hospital. Metro-Dade criminalist Gopinath Rao testified that "Mitchell would not have had as much gunpowder on his hands if he had not fired a weapon. Not like that. After 3 1/2 hours, jumping over a fence and riding a motorbike."

Defense lawyer Manny **Casabielle** asked Rao about the accuracy of the test.

"In a test like that, you cannot be conclusive that he fired a gun," Rao said. "You cannot say that unless you saw (the shooting) yourself."

Criminalist George Borghi then testified that the hole in the remote control and gunpowder found on it matched Gort's gun. If that was true, then the bullet that passed through the device must have struck Mitchell.

**Casabielle** agreed that the remote could have sunk his client, but said Metro police messed up.

Crime scene technicians never compared the gunpowder from two .380-caliber casings found near the remote control to the gunpowder on the device. Gort was killed with a .380-caliber handgun.

"If the gunpowder is different, that eliminates the possibility that the hole in the remote came from some other perpetrator's gun," **Casabielle** said.

"Remember, the remote control fell where the perpetrator was shot. You now have reason to place Wilbur Mitchell there. I would have no argument, and you have him convicted."

Bagley confirmed the .380 slugs were not tested.

On Wednesday morning, **Casabielle** summed up the verdict.

"The state started out with what appeared to be a very strong case," he said. "But you give an attorney a little opening, and they did, and we're going to make it into a big, big hole."

**Illustration:**photo: Wilbur Leroy Mitchell (a)