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Beyond the smoking gun

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One police officer testified he saw the defendant discharge a dozen rounds just outside an East Baltimore residence on New Year's Eve. Another officer told jurors he chased the shooter into the home and saw him drop a gun in the kitchen before arresting him. Even a person who was inside the home that evening said he saw the defendant run into the house, followed by the police, just after he heard shots fired outside.

With this bevy of firsthand accounts of the alleged crime, Baltimore prosecutor Matthew B. Fraling III thought he had an airtight case.

The verdict? Not guilty.

The problem? Jurors told Fraling it was because the state didn't pull fingerprints from the gun.

Fraling blames his loss on the "CSI effect" — a phenomenon in which jurors allegedly won't convict without the high-tech forensic evidence they're seeing every night on television police dramas.

"People always wanted the smoking gun," Fraling said. "But now, they need the smoking gun, the smoke from the gun and a videotape of it."

He and other prosecutors say that, as a result of the popularity of shows like "CSI: Crime Scene Investigation," "Law & Order" and their many progeny, juries increasingly are acquitting defendants when they don't get fingerprints, ballistics or DNA.

But defense lawyers and even some judges in Maryland disagree. At most, they say, the effect of the television shows has been to pique the interest of jurors in scientific evidence that used to make their eyes glaze over.

"I think it's up in the air," explained



ERIC STOCKLIN

An investigator swabs a broken knife for forensic evidence at the Baltimore City Police Department's crime lab. Some prosecutors say television shows like 'CSI: Crime Scene Investigation' are raising jurors' expectations of forensic evidence — and may be giving criminals ideas on how to destroy evidence.

University of Maryland School of Law professor Taunya Lovell Banks, who is organizing a panel discussion on the issue next week. But, she added, "shows like CSI have an education function. If you see the level of public awareness of forensics at the time of the OJ [Simpson] trial, we really have, as an adult population, become much more savvy and sophisticated."

Making the case

CSI and its two spinoffs follow the lives of police investigators and lab technicians in Las Vegas, Miami and New York as they use

science to solve crimes. The original series regularly pulls in up to 30 million viewers a week.

Including shows in syndication, there is rarely a television moment when some form of CSI isn't broadcasting the previously obscure world of forensic science into people's living rooms.

The danger, particularly according to prosecutors, is that the popularity of the show's perfectly packaged crime stories has created unrealistic expectations among potential jurors about the kind of evidence they will see in a real-life trial.

“On TV, they can align the planets in such a way that they can get something we just can’t get,” said Wes Adams, a homicide prosecutor with the **Baltimore City State’s Attorney Office**. “It just doesn’t happen that way in Baltimore City.”

Judge John M. Glynn, who is in charge of the **Baltimore City Circuit Court’s** criminal docket, has noticed a change in jurors since CSI first aired in 2000.

“The show creates an impression that things can be done which are really impossible,” he said. “It goes too far. It creates an illusion of the length to which science can go to prove things and then people expect it here.”

The result generally benefits the defense, especially in cases where the state offers no physical evidence, Glynn remarked. When the state does present forensic evidence, however, jurors can be “dazzled” by it and inclined to convict.

He noted that the effect is aggravated by the fact that Baltimore jurors lack faith in eyewitness testimony and especially police testimony. In many cases, however, there is little else presented. (Physical evidence tying the defendant to the crime is available only in about half the homicide cases in Baltimore, according to a spokesman for the State’s Attorney Office.)

“I’ve had jurors who, when I’ve spoken to them after a case, emphasized that there was no ‘real’ proof — no fingerprints, no chemical evidence, no scientific proof of identification,” he said. “I had a jury convict a guy based on one thumbprint on the rearview mirror of a car and nothing else, but they convicted him. Yet, if I have two or three eyewitnesses ID someone, they will disregard that.”

Even in Howard County — home to the **Johns Hopkins University Applied Physics Laboratory** and several technology corporations — jurors’ interest in the scientific presentations has grown in recent years, Circuit Court Administrative Judge Diane O. Leasure said.

In one case, she had a juror send a question to her about why a certain forensic test hadn’t been performed.

The defense

Defense attorneys don’t seem to know what all the fuss is about.

“Personally, I haven’t noticed any changes in patterns of jury verdicts” because of shows like CSI, said Donald E. Zaremba, deputy public defender for Baltimore County.

“Fingerprint science has been around since the 1800s, so to say [forensic science] is a new phenomenon that people weren’t aware of is misleading,” Zaremba said.

Private criminal defense lawyer Catherine Flynn said jurors aren’t expecting anything different than in the past — just reliable evidence that corroborates eyewitness testimony.

“I would assume that most jurors, as citizens, have an expectation that there is technology available to the police so that if they so chose, they could conduct an investigation that doesn’t rely solely on a witness’s testimony,” she explained. “But I don’t think that’s an unreasonable expectation.”

Flynn has noticed one change: She says prosecutors now seem to be “apologizing” at trial for not having “reliable evidence.”

Baltimore prosecutors Fraling and Adams don’t consider it an apology, but they have changed their approach to jurors, they said.

Now, Fraling tells them in his opening statement what type of evidence they can expect to see during the trial and reminds them that this is real life, not CSI.

Adams has started asking jurors in voir dire whether any of them believe the state must produce scientific evidence in order to find the defendant guilty. He requests certain scientific tests because they’re expected, even if he feels they’re unnecessary. He even calls experts to the stand to explain why evidence such as fingerprints or ballistics isn’t available.

Adams complains that, while defense attorneys claim jurors are the same as ever, they take advantage of the times when there is little or no physical evidence to poke holes in the prosecution’s case.

“If you don’t do some type of forensic testing, the defense will drive a truck through it,” he said. “They’ll ask, ‘Detective so-and-so, don’t you think you should have run DNA tests?’ If they didn’t, then..., combined with a lack of police credibility, it looks sloppy.”

Defense lawyers will also spend much of their energy trying to suppress forensic evidence because of the weight it can hold in a juror’s eyes, he said.

Instructing the jury

Judges, whether or not they believe jurors are more inclined to convict with forensic evidence, say they are more cautious than they used to be when it comes to explaining the role of science in a case.

“I actually instruct the jury three times, in three different ways,” remarked U.S. District Judge Andre M. Davis.

“I read the instructions ... I have the jury read along with me by projecting the instructions [on monitors] as I read them ... and then after reading to them and allowing them to read along, I send in copies of the instruc-

tions to the jury,” Davis said. “This is especially important in technical or scientific cases.”

Davis does not believe there is a CSI effect at work in his federal courtroom in Baltimore.

Judge Wanda K. Heard, circuit judge in Baltimore City and a believer in the CSI effect, created a new instruction specifically to address scientific evidence. It explains what that evidence is and also that the state’s burden of proof does not require it.

She also added a question to her voir dire inquiry about juror attitudes toward forensic evidence.

“Now, a new question I ask is, as a result of watching TV and these CSI shows, do you as a juror believe that the state is required to present scientific evidence to find a person guilty?” she said.

Heard felt “silly” asking it the first time, but “people, believe it or not, raise their hands,” she said. “They say they can’t find a person guilty unless they see scientific evidence.”

Jury’s out

Although courtroom tactics are certainly changing as a result of either a real or perceived juror preference for forensic evidence, the jury’s still out on whether CSI has actually affected verdicts coming out of Maryland’s courtrooms.

Empirical evidence hasn’t settled the issue and anecdotal evidence persists, said Banks, who teaches seminars on law and pop culture in addition to more prosaic topics, like constitutional law and torts.

Regardless of how the debate ultimately plays out, she advises lawyers to get used to the new world of technology, which includes even videos and PowerPoint presentations.

“Lawyers need to be savvy about means of communication and its effects,” Banks said, “and how it seeps into how we judge cases.”

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