

Judge kicks verdict over disputed scientific evidence

By: [Peter Vieth](#) February 28, 2019



After hearing arguments that prosecutors misled a jury about scientific evidence in a murder trial, a Richmond judge threw out the jury's 2<sup>nd</sup>-degree murder verdict and ordered a new trial.

Lawyers for James D. Henshaw said inaccurate test results on gunshot residue unfairly suggested Henshaw and a shooting victim were far apart, undermining Henshaw's claim of self-defense.

The testing was accurate and there was plenty of other evidence rebutting a self-defense theory, prosecutors argued. Nevertheless, Circuit Judge Gregory L. Rupe on Dec. 14 set aside guilty verdicts and directed that a new trial be scheduled.

### **Heated dispute over car**

The friction between Henshaw, of Church Road, and Deavon L. Jacobs of Richmond involved a rental car, according to evidence in the case. Witnesses said Henshaw had rented a car for Jacobs to use, and Jacobs had not returned the car, according to pleadings.

The two men had a confrontation in Colonial Heights four days before the shooting. They met again Jan. 8, 2017, on the second floor balcony of a Motel 6 in Richmond.

Henshaw said he was attacked by Jacobs, who backed him up against a railing and threatened to throw him over. Henshaw fired two shots, hitting Jacobs in the lower abdomen and the face. The shot to the face was fatal.

### **Estimates of distance**

At trial in February of last year, the prosecution presented evidence from a firearms examiner with the Virginia Department of Forensic Science. Bronwyn McMaster told the jury she examined the pants Jacobs had been wearing and – based on the level of gunshot residue – she said the gun muzzle was more than 30 inches away.

But she said that conclusion applied only if there was no “intervening object.” In fact, there were other clothes worn by Jacobs, including a jacket and two thermal shirts that had holes in the waist area.

In May, Henshaw’s lawyers filed an ex parte motion for those outer layers of clothes to be tested. They argued the prosecution neither introduced nor mentioned the outer clothing with corresponding holes.

“The Commonwealth misled the Court and the jury into believing that there were no intervening objects, and that McMaster’s determination was valid,” wrote defense attorneys Steven D. Benjamin, Betty Layne DesPortes and Cary B. Bowen.

A judge ordered the added testing in July. The examiner concluded the bullet in question passed through the jacket and the two thermal shirts. Moreover, the Sept. 18 DFS certificate of analysis said the residue on the jacket was consistent with the gun being more than six inches from the jacket at the time of firing.

Nevertheless, prosecutors opposed setting aside the guilty verdicts.

The new testing confirmed the gun muzzle was not in contact or close to contact with the newly tested clothing, wrote prosecutors Edward K. Nickel and Alicia Roberts of the Richmond commonwealth’s attorney’s office.

The supplemental report “only bolsters the Commonwealth’s evidence that the non-fatal gunshot wound ... was not fired at close range but instead fired from several feet away,” the prosecutors wrote.

The prosecutors also pointed to testimony from an eyewitness who said Jacobs was moving away from Henshaw just before shots were fired.

The defense lawyers contended the prosecution should have told the jury that the distance between Jacobs and the gun muzzle was only greater than six inches.

“The Commonwealth intentionally introduced inaccurate scientific evidence and misled the Court and the jury,” wrote Benjamin and DesPortes.

Rupe’s order dated Dec. 14 granted the motion to set aside the jury verdicts and continued the case for a January docket call. The charges of 2<sup>nd</sup>-degree murder and use of a firearm are now set for a three-day jury trial starting June 11.