

# METROSTATE

## Murder evidence questioned

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After 16 years on Death Row, Anthony Ray Hinton's greatest hope for freedom rests upon tiny streaks on bullets.

Three national firearms experts testified last week that their ballistics tests contradicted testimony that, in the 1980s, helped convict Hinton of murdering two Birmingham restaurant managers.

It was a rare appearance.

Texas firearms experts Lannie Emanuel and Raymond Cooper usually testify about ballistics evidence that helps send criminals to prison. About 99 percent of their court appearances as expert witnesses have been at the request of prosecutors.

The two examiners from the Institute of Forensic Sciences in Dallas took the stand in Jefferson County after being called by defense attorneys trying to prove that Hinton, an inmate at Holman prison, is innocent.

Emanuel, Cooper and John Dillon, a third defense witness and the retired chief of the FBI's firearm and toolmark identification unit, each told a judge that their tests yielded different conclusions from those of the Alabama forensic examiners whose testimony sealed a conviction.

Emanuel described his attempts to make a gun supposedly used in the crimes fire bullets to match those recovered from a victim. "It was never even close," he said.

Hinton, 45, has maintained his innocence since his arrest in 1985. He told the jury that convicted him, "God is going to show you I didn't

do it."

His appeal lingered without attention because he was unable to hire a lawyer, said Bryan Stevenson, director of the Equal Justice Initiative, a Montgomery nonprofit agency that represents Death Row prisoners. The group got involved three years ago.

Stevenson has asked Circuit Judge James Garrett to free Hinton based on testimony from the three ballistics experts. The judge has not ruled.

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**Anthony Ray Hinton**  
*Has maintained his innocence since his arrest 17 years ago*

# EVIDENCE:

## Rounds used in trial have been lost

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on the matter. He could order a new trial.

At the start of last week's hearing, an attorney with the Alabama attorney general's office, which represents the state in Death Row appeals, tried to discourage Garrett from hearing the new arguments.

Assistant Attorney General James Houts said Hinton already had his chances at trial and at the mandatory appeal.

"The state would simply contend this is an old story wrapped in a new cover," Houts said. "It's a waste of taxpayer money."

Stevenson responded: "This is not a waste of time or money if someone has been on Death Row 16 years and can come down here and prove his innocence."

Firearms investigation was critical in the case against Hinton.

At the time he was convicted, the state reimbursed court-appointed defense attorneys \$1,600 to work capital cases. This left little money to hire experts to test or re-examine prosecutors' evidence, said Birmingham lawyer Sheldon Perhacs, who represented Hinton at the 1986 trial.

Perhacs said he consulted ballistic experts in several states. None would come to Alabama without considerable compensation. He settled on Andrew Payne, a civil engineer with a military munitions background, as his expert witness.

Payne, who has since died, was blind in one eye and could not operate the comparison microscope. He never test-fired any bullets, Stevenson said.

For years, Stevenson has asked Lawden Yates and David Higgins, criminologists with the Alabama Department of Forensic Sciences, to review or explain their conclusions. They refused, Stevenson said.

Higgins and Yates have both retired. The bullets they test-fired from the Hinton gun are

unavailable for review, Higgins said in an interview.

"The truth of the matter is that the original test bullets that Mr. Yates and I based our results on somehow got lost," Higgins said.

### Key evidence

All along, both sides have agreed the ballistics evidence was key to Hinton's conviction in the capital crimes. Here's why:

Police linked Hinton to the capital murders only after a third restaurant manager, Sidney Smotherman, survived an attack and identified Hinton as his shooter. Hinton was on parole for car theft at the time.

Witnesses testified last week that Smotherman misidentified a Mercedes driven by a man who rescued him as a Porsche.

After Smotherman's ID, Bessemer police searched the home in Dora where Hinton lived with his mother. Police retrieved a rusty .38-caliber Smith & Wesson revolver from his mother's bedroom.

Because of similarities in the crimes, Hinton was charged in the three 1985 restaurant attacks: the February robbery-slaying of John Davidson, manager of a Southside Mrs. Winner's Chicken & Biscuits; the July robbery-slaying of Thomas Vason, manager at Captain D's on First Avenue North; and the kidnapping-robbery-shooting of Smotherman, who worked as a manager at Quincy's steakhouse in Bessemer. Smotherman survived, so there were no capital charges in that case.

There were no survivors or witnesses to link Hinton to the capital murders. But at his trial, Yates testified that he determined the six bullets from the three incidents were fired from the Smith & Wesson revolver. Higgins told jurors the bullets that killed Davidson came from the Smith & Wesson.

Hinton offered an alibi for the morning of Smotherman's kidnapping. He was working at a secured Bruno's warehouse in Ensley. A supervisor and a security officer testified that Hinton was on the job that morning and offered time cards and security records as evidence.

Hinton also passed a poly-

graph exam. The jurors who convicted him and recommended the death penalty never saw those results because they are not admissible.

Hinton wore pink and red jail scrubs to the two-day hearing last week. He is heavier than he was at age 30 when he was convicted, and graying. Several relatives sat behind him.

Emanuel, Cooper and Dillon testified about how they examined the twists, damage and "land and groove" markings, a bullet's individual signature.

"In all six cases, I was unable to determine whether or not they had been fired from this gun," Dillon testified. "It's a no-conclusion situation."

### Misaligned revolver

Most striking, according to Emanuel's and Cooper's testimony, was the signature of the bullets that hit Smotherman.

The bullets came from a misaligned revolver. The Smith & Wesson that police took from Hinton is not misaligned. The examiners, separately, fired the Smith & Wesson, and then unsuccessfully tried to manipulate it to fire misaligned. Also, the markings on the bullets taken from Smotherman were elongated. The examiners could not reproduce those markings from the Smith & Wesson.

Nor could they link the other bullets to the Smith & Wesson. After that discovery, Emanuel contacted Alabama examiner Lawden Yates. "I asked if he could show us how he determined they were fired from the same gun," Emanuel said. "He declined."

The professional ethics rules for the Association of Firearm and Toolmark Examiners call for examiners who produce conflicting results to attempt to resolve differences before the matter comes to court, Emanuel said. He is on the association's board of directors.

Yates said in an interview that he would welcome such a meeting and a re-examination. "I stand by what I said," he said. Yates, now a Birmingham lawyer, retired from the Department of Forensic Sciences after 25 years.

Higgins said one reason he

and Yates chose not to confer with the other examiners was that their evidence, the test bullets that linked Hinton to the crimes, was lost.

Emanuel, Cooper and Dillon likely reached different conclusions because of oxidation and wear within the Smith & Wesson, Higgins said. "These men are good. They're highly qualified. They're very honorable and I have the utmost confidence in them," Higgins said. Their tests were done in the mid-1990s, nearly a decade after the crimes.

The problem with that logic, according to Emanuel, is that the bullets used in the shootings are worn smooth, lacking a "land and groove" signature. The bullets that the Alabama examiners fired from the gun actually show a signature, the reverse of possible wear and tear.

"That condition does not heal itself," Emanuel said. "It's not going to be like that, then get better."

He said: "We're impartial, it's just the way it came out."