

Can I Get a Witness?

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DA refuses to press charges against whistleblowing doctor in road rage case

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Fitzgibbons: "It's a fairly complex crime." Photo by Amy Theilig

Santa Ana police seemed to have everything they needed to put Dr. Michael Fitzgibbons in the city jail: two 911 calls linking the doctor to a June 28 road rage incident, and, inside his car, a loaded gun and black gloves—just as the callers described them.

But on Tuesday the district attorney's office sent the case back to police.

"We sent it back for further investigation," said DA spokesperson Susan Kang Schroeder. "Right now, we don't have enough [evidence] for a filing."

Schroeder's statement was purposefully vague. She refused to say whether her office believed Fitzgibbons had committed a crime or, as he alleges, was actually framed. And it only deepens the mystery of a gun that has enlivened the seemingly sterile debate over healthcare at Santa Ana's Western Medical Center.

Santa Ana police arrested Fitzgibbons June 28 after finding the loaded gun and black gloves in his car in the Western Med parking lot. They charged him with possession of a loaded weapon, carrying a concealed gun and brandishing a firearm.

From the beginning, Fitzgibbons has asserted his innocence. He says he's never owned a gun and doesn't own a pair of black gloves. He claims someone planted the gun and gloves in his car.

"It's a fairly complex crime," Fitzgibbons said. "It involves some planning and forethought. And obviously it's a crime that someone paid for—I don't think that the people who actually did the crime had any interest in me personally. I think they were just hirelings to carry it out."

Fitzgibbons has many supporters at Western Medical Center, but he's also alienated some of the hospital's staff—not to mention its owners, Integrated Healthcare Holdings Inc.—over the past few years. When the Costa Mesa holding company first proposed purchasing the hospital from Tenet Healthcare Corp. in 2004, Fitzgibbons testified at public hearings that IHHI's principal investor, Dr. Kali P. Chaudhuri, had a record of buying financially troubled hospitals, only to close them and sell the real estate at a profit. In May 2005, after the sale went through (without Chaudhuri, who state regulators said could not participate in the purchase) he sent other hospital doctors an e-mail saying the hospital's financial situation was "ominous."

IHHI sued Fitzgibbons for slander and interfering with the company's business. But on June 14, a judge threw the case out of court and ordered the company to pay Fitzgibbons' six-figure legal bills.

The road-rage case seemed like a slam dunk. Cops had two witnesses (the 911 callers), and the gun and gloves. According to the callers, the incident took place just two blocks away from Fitzgibbons' Santa Ana office at 2 p.m. Shortly after 2, Fitzgibbons was eating in the hospital cafeteria when police confronted him, demanding to know if he had just waved a gun during a traffic dispute.

"I said no such incident took place," Fitzgibbons recalls. "So they said, 'Okay, well, can we pat you down?' And they checked me for a weapon."

When they failed to find one, police asked if they could search Fitzgibbons' car. As Fitzgibbons walked them to the parking lot, he asked how they had traced his car to the hospital.

"I said there are a lot of brown Camrys out there. Why do you think it's me?" he said. "And they said, 'We have your license plate number; somebody followed you here.'"

Fitzgibbons says police asked him to stand back while they searched his car. He was so confident they'd find nothing that he turned his back on the officers. "And then they said, 'There's a weapon,'" he said. "I was about to use my cell phone, but they arrested me and took it away."

After handcuffing him, police brought Fitzgibbons to the police station and strip-searched him. They released him several hours later after charging him in the incident.

In addition to the gun and gloves they found in Fitzgibbons' car, police have another key piece of evidence: 911 calls from two eyewitnesses who said they saw the incident. Department spokesperson Lorenzo Carillo said the callers were only "partially identified." Asked what that meant—if, for example, the callers refused to give their names but were obviously males—he said, "You've hit the nail on the head. There were two calls, and we are trying to recontact them."

Because the case is still officially under investigation, Carillo refused to say anything more about the 911 calls, except that they provided police with enough information about Fitzgibbons' car to track the vehicle to the hospital parking lot. Carillo also refused to say whether the gun had a traceable serial number, or if there was any other forensic evidence, like fingerprints or DNA, that might help police link the gun to Fitzgibbons—or anyone else.

Fitzgibbons is sure he was framed. He says he told Santa Ana cops that scratches on his car door show someone broke into his vehicle shortly before the crime occurred. He says the cops responded that they had already completed their investigation. Carillo insisted the investigation was ongoing, but refused to say whether police had examined the car for scratches. "The gun is our case," he said. "That's the primary focus."

If, as Fitzgibbons claims, he was set up in an effort to impeach his credibility as a whistleblower, the plot has already begun to produce its desired effect. On July 13, Brian Cross, M.D., Western Medical Center's chief of staff, sent Fitzgibbons a letter demanding he appear before the hospital's "Well Being Committee."

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