

dbor DAILY BUSINESS REVIEW

JUSTICE WATCH John Pacenti

Witness' criminal past hidden from defense



Prosecutors repeatedly turned to a South Carolina doctor to put doctors accused of running pill mills behind bars in Florida and elsewhere. Now at least one of those doctors will be entitled to a new trial.

The 11th U.S. Circuit Court of Appeals, in overturning the conviction of a Pensacola doctor, revealed the doctor who testified as an expert against him was charged with

impersonating a federal marshal to carry a gun aboard commercial aircraft at least eight times. He was caught on his way to ninth flight and settled charges through pretrial diversion and by paying a fine.

The appellate court said prosecutors should have revealed the witness' criminal history to the defense.

SEE STORY, PAGE A3

WITNESS' CRIMINAL PAST KEPT HIDDEN FROM DEFENSE

Federal prosecutors secretly taped phone calls involving the defense team for Miami Beach Dr. **Ali Shaygan**, leading a federal judge to reprimand them and sanction the U.S. attorney's office.

Now it appears another secret was kept from Shaygan's defense team — as well as from other physicians charged with illegally prescribing pain medications.

An opinion last month from the 11th U.S. Circuit Court of Appeals revealed a medical expert who was a key witness for the government masqueraded as a federal marshal, using a fake badge to carry guns on commercial airplanes eight times. He was caught by airport security before a ninth flight.

Dr. **Arthur Jordan** was caught in 2006 in South Dakota, where federal prosecutors allowed him to settle the case by entering a pretrial diversion program and paying a \$2,000 fine.

Jordan, who practices in South Carolina, resumed his role as an expert government witness, specializing in putting doctors in prison by testifying about standards of practice.

The appellate court said prosecutors should not have kept Jordan's crime a secret from defendants.

Jordan's history as an expert witness came to light in the appeal of Dr. **Robert L. Ignasiak Jr.** of Pensacola, who was sentenced to more than 24 years in prison for illegally prescribing narcotics.

Jordan has testified he makes \$300 an hour and has made \$30,000 working for the government. He could not be reached for comment by deadline.

Ignasiak appealed on numerous fronts, but the one that stuck was the government failing to disclose Jordan's deal and criminal history. It could jeopardize an unknown number of doctor convictions



JAY MALLIN



A.M. HOLT

Judge Beverly B. Martin, left, rejected hiding the history of "the government's key witness." Miami attorney Roy Black, right, says Arthur Jordan was a tailor-made expert for the government in pill mill prosecutions.

WHAT'S AT STAKE?

An unknown number of convictions of doctors for illegally prescribing narcotics. The 11th U.S. Circuit Court of Appeals ruled federal prosecutors should have revealed a key expert witness in a number of cases against physicians was arrested in 2006 after impersonating a federal marshal as he carried a gun aboard commercial aircraft.

and play a role in Shaygan's effort to enforce his trial judge's order that the government foot his \$601,000 defense bill.

Attorney **Roy Black**, senior partner at Black Srebnick Kornspan & Stumpf in Miami who represented Ignasiak at trial

and on appeal, said Jordan is a tailor-made expert for the government in pill mill prosecutions.

Black said Jordan thinks doctors should prescribe narcotics only as a last resort, even if it means their patients suffers.

"He had some very unique and personal opinions of how doctors ought to practice medicine," Black said. "He trained with the SWAT team and has all this police training. So he had this vary narrow view of how doctors should prescribe pain medicine."

RIGHT TO PRIVACY

Judge **Beverly B. Martin**, writing for the three-judge appellate panel, called Jordan "the government's key witness" against

SEE JUSTICE WATCH, PAGE A4

FROM PAGE A3

JUSTICE WATCH: Witness' criminal history kept hidden

Ignasiak.

Prosecutors came clean about Jordan after Ignasiak was convicted in 2009 and sentenced, filing a sealed post-sentencing notice with Senior U.S. District Judge Lacey A. Collier in Pensacola.

Prosecutors said they were unaware of Jordan's criminal history during trial and said he had a right to privacy. Jordan's case is not listed in Pacer, the electronic system of public federal court records.

Collier agreed, denying Ignasiak's motion to unseal the notice, but Martin scoffed at the government's argument.

"The public has a great interest in learning the contents of the notice — namely learning the highly material fact that Dr. Jordan, a repeat government witness, abused his government authority and committed acts which could have been charged as felonies."

Martin said it was an understatement that the defense would have used the information to discredit Jordan's testimony.

The government has a right to protect witnesses like Jordan from an unwarranted invasion of privacy, but not

at the expense of a defendant's constitutional rights, she said.

"Our agreement with the government starts and ends with their observation that there exists a presumption of openness in all legal proceedings," Martin wrote. "The government's argument minimizes what is at stake when that presumption of openness is overcome."

It's also disingenuous for the government to keep Jordan's background sealed, which would allow other prosecutors to claim ignorance if he were used again, Martin wrote in the 49-page opinion.

"We would expect the government to condemn, not condone, such a problematic outcome," the judge wrote.

Black said it is irrelevant if Ignasiak's prosecutors were unaware of Jordan's criminal baggage.

"It's their duty to know, and if they didn't know it's the government we hold responsible," he said. "Clearly bringing firearms on a plane and using a phony ID — it is fairly outrageous."

Judges **Emmit Ripley Cox** and **J.L. Edmondson** concurred with Martin in the Jan. 19 opinion reversing Ignasiak's

conviction and ordering the notice unsealed.

Two weeks later, the notice remained sealed in both the appellate and district courts, and Ignasiak remains in prison in Mississippi, unable to make bond, Black said.

'EDGE OF THE ENVELOPE'

The opinion adds fodder to Shaygan's efforts to get the appellate court to reconsider its reversal of sanctions imposed by U.S. District Judge **Alan Gold** against Miami prosecutors for their misdeeds during trial the same year Ignasiak went to trial.

Assistant U.S. Attorneys **Sean Cronin** and **Andrea Hoffman** had two witnesses tape conversations with defense attorney **David O. Markus** and a defense investigator under the guise of a witness tampering investigation. Miami attorney Marc Seitles also represents Shaygan.

Gold faulted prosecutors for the unauthorized taping as well as their addition of charges after Shaygan pursued a motion to suppress statements he made to authorities shortly after his arrest.

The jury deliberated less than four

hours before acquitting Shaygan in 2009. Some jurors even hugged him.

Gold ordered the government to pay \$601,795 to cover Shaygan's legal bills, but an 11th Circuit panel said the judge failed to provide due process to the prosecutors when he questioned them and others.



Markus

The defense is seeking a hearing before the full 11th Circuit. Markus asked the court Tuesday to take judicial notice of the Ignasiak case, saying it constitutes yet another nondisclosure violation by Shaygan's prosecutors.

The U.S. attorney's office in Miami had no comment on the latest developments by deadline.

"What happened in Shaygan was of course outrageous, and I can't understand for the life of me why they would use this expert with this background," Black said. "It seems they are pushing the edge of the envelope, and that's when these kind of things happen."

John Pacenti can be reached at jpacenti@alm.com or at (305) 347-6638.