

Prosecutor accused of misconduct in trial

Witness allowed to testify falsely, federal judge says

By Steve Mills
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A federal judge has found that a prosecutor in U.S. Atty. Patrick Fitzgerald's office committed prosecutorial misconduct by allowing a government witness to testify falsely in a drug conspiracy trial that resulted in the convictions of four defendants in March.

In a ruling issued Wednesday, District Judge Joan Lefkow ordered a new trial for the four on some counts, including the key conspiracy charge. But she refused to dismiss other counts, meaning each faces sentencing for those convictions.

The trial centered on what prosecutors said was a drug ring operated by the Gangster Disciples street gang. In announcing charges against 16 people in 2007, federal officials said they were upending the gang's drug dealing at Cabrini-Green.

At trial, the prosecution's case relied in part on witness Seneca Williams, who testified as part of a plea agreement. Lefkow described him as a key witness for prosecutors because he helped prove the conspiracy charge against the four defendants—Rondell Freeman, Brian Wilbourn, Daniel Hill and Adam Sanders.

Leonard Goodman, the lawyer for Wilbourn, said the defendants and Williams were facing sentences of 20 years to life in prison. But Williams' deal called for only a 5-year sentence.

"Everybody knows these witnesses will lie, saying whatever the government wants them to say to get their deals," Goodman said. "The only difference is that in this case we happened to catch one."

Under questioning from

prosecutors, Williams testified that during late 2002 and early 2003, he witnessed Wilbourn packaging narcotics and talking about drug business with Freeman at a Granville Avenue apartment sometimes known as the "penthouse."

But the government ultimately conceded that Wilbourn was behind bars from April 2002 until September 2005 and that Freeman did not even live in the Granville Avenue apartment in 2002.

That meant Williams' testimony could not be true.

But, Lefkow wrote, when defense lawyers confronted Williams with the fact that Wilbourn was in jail when Williams said he witnessed the conspiracy, one of the prosecutors—Lefkow does not identify whom—objected and said, "That's not true." Williams never conceded on the witness stand that he was lying or that he was mistaken, according to Lefkow.

Lefkow singled out Assistant U.S. Atty. Rachel Cannon for her conduct at the trial.

Cannon declined to comment. An office spokesman, Randall Samborn, said pros-

ecutors received the ruling Thursday, are reviewing it and considering their options, "including asking the judge to reconsider her opinion and/or filing an appeal."

According to the opinion, Cannon argued in court that Williams was testifying about a broad period of time and, while he might be wrong about specific dates, "the facts remain true."

When Lefkow reminded Cannon that she has an obligation to make sure the evidence she puts on is true and accurate, Cannon told Lefkow, "And we stand by everything that's been presented, Your Honor."

Prosecutors argued that they did not knowingly use perjured testimony. But Lefkow wrote that she could not accept prosecutors' "glib assertion" that Williams was only mistaken in his testimony. She said it was "beside the point" whether Williams was lying or mistaken. "It is well established that the prosecution may not use testimony that it knows to be false."

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