

Tainted testimony

Attorney levels perjury allegations against Wayne County judge, assistant prosecutor, cops



Attorney David Moffitt is looking for justice.

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BY CURT GUYETTE

Lawyer David Moffitt contends that serious crimes have been committed, and that the evidence backing his claim is ironclad. The only thing that's not clear, he says, is whether anyone in authority will have the nerve to pursue a case in which a Wayne County judge, prosecuting attorney and police officers are the ones being accused of committing felonies.

Moffitt represents Alexander Aceval, a 38-year-old Farmington Hills man arrested last year in a drug bust by Inkster police that netted 47 kilograms of cocaine. The lawyer's allegations are detailed in recent court pleadings that assert the public officials all participated in allowing perjured testimony to be presented to the jury hearing Aceval's case.

In a justice system that heavily relies on the integrity of police, prosecutors and judges, failure to investigate the allegations sends a "terrifying" message, Moffitt says.

"It suggests," he says, "that official lawlessness may be above the law."

Here's the background:

On March 11, 2005, an Inkster man named Chad Povish allegedly met with Aceval at a local bar called J Dubbs. Four duffle bags containing more than 100 pounds of cocaine were loaded into the trunk of Povish's Oldsmobile. As Povish drove from the bar, police say, Aceval followed behind. Cops pulled both cars over. Povish, after being taken to the station for questioning, was released without being

charged. Although no drugs were found in his car, Aceval was arrested and charged with conspiracy with intent to distribute cocaine. He faced a potential sentence of life in prison. A second man, Ricardo Pena — who was suspected of having delivered the drugs to the bar earlier in the day — was also apprehended and charged.

Testifying against Aceval, Povish claimed that he had no idea the duffle bags in his car contained drugs. He also testified that there'd been no "deal" cut between him and the police.

Inkster police officers testified that Aceval came under their scrutiny because of information supplied by a confidential informant. Throughout those proceedings, defense lawyers were ordered to ask no questions that could cause the identity of the informant to be revealed.

It's now known that Povish was the informant and that, despite his sworn claim to the contrary, he did indeed have a deal with the cops; the agreement was he'd get 10 percent of the proceeds they obtained through seizure of Aceval's assets. The payoff could be big. Aceval's Farmington Hills home and other property, conservatively estimated to be worth several hundred thousand dollars or more, are currently the subject of a forfeiture lawsuit brought by authorities.

"It's like a job for him," is the way one police officer described the informant's role before his identity was revealed.

After his first trial ended last September with a hung jury, Aceval brought in Moffitt and another new lawyer. In March, just before Aceval's retrial was scheduled to begin, his new defense team uncovered the existence of sealed transcripts that recorded conversations that took place during two secret meetings held between the assistant Wayne County prosecutor handling the case and the 3rd Circuit Court judge presiding over the original trial. In those transcripts, which were recently unsealed, assistant prosecutor Karen Plants informs Judge Mary Waterstone that three government witnesses — two of them police officers — lied while under oath. Instead of taking action to prevent the jury from relying on false information as it attempted to reach a verdict, Waterstone let it stand uncorrected, according to court documents.

As revealed in the transcripts, the judge and prosecutor reasoned that the lies were necessary to protect a confidential informant whose life, they said, would be in jeopardy if his identity were disclosed.

But legal experts interviewed by *Metro Times* say that even if the threat to the informant's life was verified — and there's no evidence in the case file to indicate that it was, says Moffitt — allowing perjured testimony to stand uncorrected after being presented to a jury is not a legitimate remedy.

"It's outrageous," says Bridget McCormack, a criminal law professor at the University of Michigan's law school. Based on details of the case outlined for her by *Metro Times*, she thinks the matter warrants investigation by a special prosecutor.

People need to have faith in the justice system, she explains, and the appearance of collusion between prosecutor and judge undermines that faith. The only thing that can restore it is a full and open investigation.

Peter Henning, who teaches professional responsibility and criminal law at Wayne State University's law school, calls it a "very strange situation."

Henning says it's understandable that, "in the heat of battle," a judge and prosecutor might err on the side of caution and be "overly protective" of a witness whose life may be in peril.

Even so, he says that ultimately "perjury is something that you can't countenance."

"It's the linchpin of our system that the government will be honest," he says.

In this case, however, it appears that the overarching interest was not the guarantee of a fair trial, but rather to protect the identity of the informant.

According to the unsealed transcripts, during the first of two secret meetings with Waterstone, Plants informed the judge that, during a pre-trial evidentiary hearing, one of the officers was asked by a defense attorney if he'd ever met with Povish before the day of the arrest. The officer said he hadn't.

"He knowingly committed perjury to protect the identification of the CI [confidential informant]," Plants told the judge. "To answer yes would have indicated that he had met them in a confidential informant capacity."

The judge responded by saying she was very concerned "this CI is in grave danger and I'm worried he'll not make the weekend before the trial on Monday. I'm very concerned about his identity being found out."

Moffitt says no evidence was ever introduced that justifies those concerns.

The second meeting occurred near the end of the trial, after testimony had been presented but before the case went to the jury.

In that meeting, Plants told the judge: "With regard to Chad Povish's testimony, he was asked whether he had been offered any sort of deals or immunity. He said no. He obviously was offered a deal because he's the confidential informant."

With Povish's financial incentive concealed, the jury was denied important information that could have negatively affected its view of his motives and credibility, says Moffitt.

In that second meeting with Waterstone, Plants also informed the judge that another police officer had lied under oath, again to protect the identity of the informant.

At the end of March, just before the retrial's scheduled start, the defense learned from the Prosecutor's Office that Povish was, indeed, the confidential informant, Moffitt says.

"I don't know what moved them to make that disclosure," he says.

But the revelation was critical. Based on that information, the defense asked Judge Waterstone to remove herself from the case, alleging that she allowed the jury to receive testimony she knew to be false.

Saying from the bench that it was the defense that acted inappropriately by trying to uncover the name of the confidential informant, and claiming that she had no role in suborning perjury and remained unbiased, Waterstone nonetheless acceded to Moffitt's request that she remove herself from the case.

Waterstone was unavailable for comment.

Except for saying that Plants has been "reassigned," the office of Wayne County Prosecutor Kym Worthy wouldn't answer questions from *Metro Times* regarding the allegations.

"Because the case is still in progress, I cannot comment on it," says Maria Miller, spokeswoman for the prosecutor. "There will be an appropriate time to comment when the case is concluded."

Following Waterstone's recusal, the case was assigned to Judge Vera Massey Jones, who ordered that the secret transcripts be unsealed. Moffitt has already asked the State Court of Appeals to look into the perjury allegations, but it declined to examine the issue.

In the wake of what's being characterized as police, prosecutorial and judicial misconduct in the first trial, the defense has asked Judge Massey Jones to dismiss the charges against Aceval. At this point, however, it appears that Aceval will be retried.

Beyond that, Moffitt is hoping someone outside the Wayne County Prosecutor's Office — a special prosecutor or the state attorney general — will investigate the perjury allegations.

"That will be our next step," says Moffitt.

"But right now," he says, "this is a political hot potato that nobody wants to handle. Nobody's willing to look into it, and that's what's most disturbing."

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