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Ninth Circuit Upholds "Pill Mill" Conspiracy Conviction



After a lengthy jury trial, David James Garrison, a licensed physician's assistant, was convicted for conspiracy and health care fraud crimes related to his involvement in an OxyContin scheme at the Lake Medical Group clinic. The Defendant was sentenced to 120 months in prison. Garrison appealed his conviction.

The Ninth Circuit Court of Appeals affirmed Garrison's conviction for conspiracy to distribute controlled substances in violation of [21 U.S.C. § 846](#), and for distributing a controlled substance outside the course of usual medical practice, and for no legitimate medical purpose in violation of [21 U.S.C. § 841](#). [United States v. David James Garrison](#), No. 15-50137 (9th Cir. 2018).

The Clinic's Conspiracy

The government described Lake Medical Group as a "pill mill" during the trial, and referred to the individual defendants as "drug dealers in white coats." The evidence revealed that the clinic's conduct led to the illicit street-sale of more than a million OxyContin tablets. *Garrison* at 4. The government showed demonstrated at trial that the Clinic generated 13,207 prescriptions for OxyContin. The patients who were prescribed the drug either did not receive the drug, or did not retain it. Instead, people working at the clinic would receive the OxyContin from participating pharmacists and then sell the pills illegally. *Id.* 5.

Elements of the Crimes that the Government Must Prove

To establish a drug conspiracy under 21 U.S.C. 846, , "the government must prove (1) an agreement to accomplish an illegal objective; and (2) the intent to commit the underlying offense" To prove a violation of 21 U.S.C. 841, in this case for distributing OxyContin outside the usual medical practice and for no legitimate medical purpose, "the government must prove three elements:

1. that the practitioner distributed controlled substances,
2. that the distribution of those controlled substances was outside the usual course of professional practice and without a legitimate medical purpose, and
3. that the practitioner acted with intent to distribute the drugs and with intent to distribute them outside the course of professional practice."

Id. at citing *United States v. Feingold*, 454 F.3d 1001, 1008 (9th Cir. 2006). *Id.*

The Trial.

Garrison's main defense at trial was that he was not aware of the conspiracy and that he did not knowingly participate in the conspiracy. *Id.* 7. However, Garrison stipulated that he, "wrote and signed hundreds of prescriptions for OxyContin with similar diagnoses on the prescription pads of other medical professionals." He further stipulated that he pre-signed and left blank prescriptions for use by other practitioners. *Id.* 6.

The government presented expert testimony at trial that Garrison acted outside the scope of usual

medical practice, and that he "participated in distributing OxyContin in an alarmingly high volume and strength for no legitimate medical purpose." *Id.*

In the absence of direct evidence demonstrating that Garrison entered into an agreement to participate in a drug conspiracy, the Ninth Circuit noted that a jury can infer the existence of an agreement from circumstantial evidence. *Id.* 14. The Court found that "Garrison had much more than a slight connection with the conspiracy. He was a major actor in it." *Id.*

It is not necessary for a defendant to participate in or be aware of the full scope of a fraud scheme to be convicted for involvement – it is only necessary that a defendant further a portion of the scheme's illicit operations.

The Court held that there was sufficient evidence to sustain Garrison's conviction. *Id.* 17.

The Government's "Grave Mistakes"

In *Garrison*, "the government made grave mistakes" before and during the trial. *Id.* 7. The government repeatedly failed to timely disclose information as required by law to the defense. Some of the information included falsified records and false statements made by two witnesses, Santiago and Shishalovsky, who testified against Garrison. *Id.* 8. The government also failed to timely share documents related to Shishalovsky's plea negotiation, in which the government agreed to allow Shishalovsky to continue working in the healthcare field in exchange for testimony. *Id.*

Finally, the government failed to turn over evidence that Cho, one of Garrison's codefendants, had been forwarding confidential information to his FBI agent brother, and the fact that Cho might get a deal in exchange for his testimony. *Id.* 9. The government concluded that this same evidence had prejudiced two other codefendants, Yoon and Lim. Weeks into the trial and upon the government's motion, the district court dismissed all charges against Yoon and Lim. *Id.*

The jury was instructed as to the government's misconduct and all of the late disclosed evidence was given to the jury. The Court concluded: "In light of the extensive evidence against Garrison, we cannot conclude that any prejudice stemmed from the late disclosure. *Id.* 16. The Court found no error in the remedies the trial court implemented in response to the government's late disclosures. *Id.* 17.

The Ninth Circuit Court of Appeals upheld Garrison's conviction and sentence.

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