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CRIMINAL - FINALIST

Kenneth Swartz Swartz and Lenamon

Three clients acquitted of charges of drug trafficking, money laundering

The case didn't look good. Government wiretaps caught the defendants negotiating to buy 100 kilograms of cocaine. Two co-defendants pleaded out and were lined up as witnesses.

But prosecutors made a tactical error when they decided not to put a confidential informant on the stand. Kenneth Swartz and Marc Seitles were able to convince a jury that authorities busted a completely different side deal set up by the informant.

Steven Amster, who came in to the case late, underscored the poor police work.

Their three clients faced up to 20 years in prison but were acquitted of drug trafficking and money laundering. Swartz said even he was surprised at the outcome of the 10-day trial in July.

"We honestly thought it was going to be a guilty verdict," said Swartz of Swartz and Lenamon in Miami. "We put together a nice theory, and it just fell into place. I think they did not like the idea this informant was used."

Amster said at times he worked at cross-purposes to Swartz and Seitles after failing to get a severance from U.S. District Judge Cecilia Altonaga. The government alleged Amster's client, Jesus Morales, was the buyer, and the other two defendants — Daniel Marin and Evilio Condo— were the



Kenneth Swartz

money men.

"They were arguing that their guys were in the wrong place at the wrong time, and that it was all my guy, but we needed to show it was them," said Amster, a Miami attorney. "It was a difficult case not to point fingers. We bit our tongues the best we could."

The informant set up a buy in Morales' rented house, and a multi-agency task force set up outside. One man came and went, dropping off \$366,000 cash, but nobody followed him, took his photograph or even got his license plate number.

Officers and agents watched a 20-kilogram cocaine delivery. Four kilograms were purchased by one man, who was arrested after he left the house. But when the home was raided, no drugs were found.

Marin and Condo were arrested with another man in the backyard. The lawyers argued their clients were present at taped meetings talking about a cocaine purchase but did not participate in the discussion.

"Essentially our argument was that there

was another deal taking place unrelated to our client," Seitles said. "And the government needs to explain how they lost a guy."

The informant also was not consistent in identifying voices on the wiretap, Swartz said. The lawyers discovered he had been paid \$600,000 over the last 20 years working for the Sunny Isles Beach and North Miami police departments but had been "deactivated" for lying to authorities.

The informant wasn't even authorized to set up the deal that resulted in the indictment. He was freelancing.

"This is what is going on in Miami. This [confidential informant] is going around trying to entrap people, trying to see if they are willing to engage in trafficking," Seitles said.

The defense argued the informant was working a side deal right in front of his handlers.

"We painted him as double-dealer. He was playing both sides of the fence and making money," Swartz said.

Aliocha Billalba pleaded guilty, testified and fingered Marin and Conde in the 100-kilo deal, but the defense said he was testifying only to cut his sentence. Billalba is serving a five-year sentence for introducing the informant to Morales.

Jury selection was key. "We all believed the best shot that we had was to get a smart jury," Seitles said.

Amster said he shut down his practice during the trial and tried to keep things simple. He scored on the cross-examination of a canine officer, whose dog didn't find any drugs in the house.

"Instead of focusing on the whole history of the case, I focused on what was missing," Amster said.

The case also was significant because the defendants were accused of laundering \$965,000 based on money seized from the defendants in Texas two years ago.

A U.S. Supreme Court decision in June stated that simply concealing cash during transportation does not constitute money laundering, but Altonaga did not dismiss the charge. Seitles said it was the first trial to test the high court ruling.

— John Pacenti