

Guilty Verdict...from Page 1A

seriously.

“They clearly took into account all of the evidence and set aside any prejudices or sympathies they might have,” she said. “They did what the judge instructed them to do – examine the evidence and apply the law.”

Boatright said that the criminal justice system requires not only individual jurors willing to serve, but also the truthful cooperation of people with information relative to a case, regardless of whatever fears they may have.

“That happened in this case, and we are extremely proud of those citizens who did it,” Boatright said. “This case could not have happened without their courage.”

Joining Boatright in prosecuting the case was Assistant U.S. Attorney William McKinnon Jr.

Lawyers for the defense declined to comment after the trial adjourned Oct. 24.

During closing statements Thursday morning, the prosecution attempted to put into perspective for the jury the scope of the men’s crimes by placing seven clear plastic containers atop the front wall of the jury box.

Inside the seven containers were a total of 15,000 navy beans representing the number of oxycodone pills prescribed by Heaton and purchased at pharmacies by Gowder over a period of roughly two-and-a-half years, according to testimony provided by Jason Allen of the Drug Enforcement Administration.

In an unusual move, Gowder testified on his own behalf in the second week of trial on Wednesday, Oct. 23, saying that he personally took every pill prescribed to him by Heaton, and he denied allegations that he’d distributed or diverted pills in any way, including to his son Brad.

With a public defender by his side, Brad Gowder swore in to testify on Tuesday, Oct. 22. He countered testimony provided the week before by another witness in the trial by saying he had never been given oxycodone by his dad to sell and that he had never stolen pills from his dad.

When asked about his participation in the sale of drugs to anyone else, Brad deferred to his Fifth Amendment right not to self-incriminate.

“Anyone who knows my family and knows what we’ve been through – they know I would never give him drugs,” Mike said of his son to the jury. He went on to describe the addictive behavior of other family members, including his brother David, former director of the Union General Hospital Emergency Room.

It was David Gowder’s April 2015 arrest for filling a fraudulent prescription in Fannin County that sparked the initial investigation by the Union County Sheriff’s Office that led to the DEA discovering the illegal prescriptions written by Heaton and filled by Mike Gowder.

Both Gowder brothers and Dr. Heaton were arrested in February 2016, after which a federal indictment unsealed in April 2018 charged the men with a single count of conspiracy and multiple counts of fraudulent dispensing and obtaining of prescriptions.

David Gowder pleaded guilty in March to one count of prescribing oxycodone without a legitimate medical purpose. He was subsequently removed as a co-defendant in the case and remains free on bond while awaiting sentencing.

Also part of Mike Gowder’s testimony was the claim of chronic back pain he’d begun having in 2006. He underwent surgery, he said, but the pain had gotten worse, particularly pain that radiated up his right leg.

At his attorney’s request, Gowder stepped down from the witness stand and pulled his pants legs up to show the jury that the calf muscles on his right leg had atrophied and were much smaller than those on his left.

He said he sought help from Dr. Heaton in 2011, saying that he didn’t want to take time off for surgery then.

Testimony provided last week by DEA Agent Allen showed a pattern of opioid prescriptions written by Heaton to Gowder beginning in 2012 that quickly escalated to 450 oxycodone pills a month.

“I was working 10 to 12-hour days,” Gowder said. “To my knowledge, no one knew I was taking drugs. I had a very public job. I knew if the right people knew, my job would be in jeopardy.”

That’s why Gowder said he filled the prescriptions

away from Blairsville, which according to DEA testimony included pharmacies in Hiwassee and Cleveland, in Nashville, Tennessee, and in Murphy, North Carolina.

Gowder testified that his family rented a home in Nashville because his son was going to school there and his daughter lived there.

“We went three or four weekends a month. Driving and riding really hurt my leg,” Gowder said, adding that he always filled one of his three monthly prescriptions in Nashville for what he described as “breakthrough” leg pain, and that he “wasn’t trying to hide it.”

Prosecutor McKinnon pointed out on cross-examination that the dates of the prescriptions didn’t match the days they were filled. McKinnon said one week, for example, had Gowder picking up a prescription from Heaton on Tuesday, then another on Thursday.

But citing pharmacy records, Gowder had waited to fill the Thursday prescription until Friday at 11:52 a.m. in Nashville, Tennessee, then gone to Murphy, North Carolina, to fill the Tuesday prescription at 6 p.m. that same evening, McKinnon said.

“You told the jury you worked 24/7 at the hospital, but it was easier to go to Nashville?” McKinnon said. “Wouldn’t it have been easier to fill both prescriptions in Murphy? Why not get them done at the same time?”

Gowder said he didn’t know.

“It’s because you knew they wouldn’t fill it,” McKinnon said. “You understood that pharmacies have an obligation to carefully control the dispensing of controlled substances.”

McKinnon noted that the prescriptions directed Gowder to take five pills a day, and that had he gone to the same pharmacist within a few days to get another 150, the pharmacist would have refused to fill it.

“With every prescription you filled, you were misleading the pharmacist,” McKinnon said. “You were taking 450 a month, and the pharmacist thought you were taking 150. You knew they were being misled about these pills.”

Gowder denied he was misleading anyone.

“My back was hurting,” he said. “I was trying to do my job.”

In answer to a question by his attorney, Gowder told the jury that his brother’s arrest in April 2015 caused him to “stop and think” about his own use of opioids.

“It made me determine that I need to get off the medication,” Gowder said.

He described a trip to a detox center in Michigan in April 2015, saying that the center was concerned about a cardiac issue so he couldn’t get in.

“I just decided to do it on my own over the Fourth of July weekend,” he said. “It was a rough five to seven days. I was in terrible pain, throwing up.”

Gowder then said he hadn’t taken an opioid since and that, furthermore, he’d yet to undergo the surgery he needed for his back because he had lost his health insurance when he lost his job after being arrested.

Mike Johnston, former chief operating officer of Union General Hospital, said on Oct. 21 that he was working closely with Gowder during the time covered in the indictment. Johnston said he had never seen Gowder look under the influence or appear drowsy or unfocused.

“He was always very much in charge,” Johnston said, adding that Gowder would occasionally complain of back pain and sciatica and sometimes showed visible signs of pain.

Johnston said Gowder took a rare week’s vacation over the Fourth of July holiday in 2015, leaving instructions to tell people he was on vacation even though he was really going to have back surgery.

The former hospital COO testified that there was no change in Gowder’s demeanor upon his return.

In February 2016, after both of them were no longer employed by the hospital, Johnston said Gowder asked to meet with him.

When they talked, he said Gowder wanted to remind him of that week he took off the previous July. Johnston testified that Gowder told him he had really been at a detox facility in Michigan and that he wanted Johnston to remember that.

Another witness in the federal trial was Dr. Gary Kaufman, who swore in as a medical records expert on Oct. 21.

Kaufman is certified in both neurosurgery and pain management. He testified that for a prescription to be valid, it must have a legitimate medical purpose and be within the scope of professional practice.

He went on to describe the circumstances of a legitimate medical purpose for pain medication, saying that a person should be in pain, and their provider should determine a course of treatment, then document that it exists either by obtaining previous medical records or testing.

“If you discover that the patient is a drug addict, it’s no longer legitimate,” Kaufman said. “If the doctor is having sex with the patient, it is no longer legitimate.”

In order to remain within the scope of professional practice, Kaufman said that certain steps must be taken, including the documentation of every prescription, the testing of urine or saliva every three months to be sure the patient is taking the prescribed medication, and the regular checking of the national Prescription Drug Monitoring Program, or PDMP.

Early filling of prescriptions, pharmacy hopping, or reports of lost or stolen prescriptions are all red flags that medication is being abused or diverted, Kaufman added.

The prosecution pointed out that pharmacists regularly check PDMP when presented with prescriptions for opioids, but during the years 2012 to 2015, they could not see a patients’ prescriptions in other states.

Assistant U.S. Attorney Boatright asked Kaufman for his evaluation of four of Dr. Heaton’s patient files, and Kaufman testified that there was an inadequate amount of records for the patients, all of whom were being prescribed opioids.

Only one had a records release form indicating an attempt to get the patient’s past medical files, he said, and there were no informed consent forms or patient contracts and no evidence of urine testing.

He even found a notation that one patient receiving oxycodone from Heaton had returned from a visit to another state and said she had taken methadone there because it was cheaper, and that Heaton had subsequently changed her prescriptions to methadone with no apparent basis other than she had asked for it.

“It’s good medicine, but you have to be trained when you use it,” Kaufman said, adding that patients cannot drink alcohol or take Xanax with the drug. “Methadone accounts for only 5% of prescriptions, but 30% of opioid deaths are people taking methadone.”

Kaufman said that the patient reported her methadone stolen the next month – a clear warning sign of abuse or diversion – and that later, Heaton had noted on her record that she had been arrested for a DUI, though he still continued to prescribe methadone to her. Kaufman described both incidents as very disturbing.

“The DUI implies that she’s drinking while taking a very high dose of methadone,” Kaufman said. “That’s how people die – you just stop breathing.”

Kaufman compared the prescriptions documented in the PDMP to those noted in that patient’s records, finding that Heaton had written her 13 prescriptions with no mention of them in her file.

Heaton’s patient file on Mike Gowder was similarly lacking in documentation, Kaufman testified. Over the course of his analysis, Kaufman found well over 100 prescriptions not recorded, and others were recorded on one date but actually written on different dates.

Beginning in 2012, the PDMP database showed Heaton had prescribed hydrocodone to Gowder and increased the amount each month. By July 2012, Kaufman said the prescription had changed to oxycodone, and that it eventually reached a maximum of three prescriptions a month for 150 pills each totaling 450 pills a month.

According to the PDMP examined by Kaufman, it was by May 2013 that Gowder had begun receiving three prescriptions a month from Heaton and filling them each in a different state, seemingly to avoid detection.

“This is very much like a pattern I would expect to see someone suffering from abuse or distribution,” the medical expert said.

Kaufman said that, over the years, he had personally taken care of thousands of patients as a doctor, and that he “never gave anyone this much medication.”

“It’s an extraordinary amount with no documentation – the average person would die,” Kaufman said.

The prosecution also called Dan MacIsaac, a DEA investigator, to testify about an analysis he conducted of the defendants’ bank accounts. His findings backed up testimony provided by former COO Johnston about what Heaton had been paid by the hospital.

MacIsaac found monthly deposits by Heaton accounting for the \$4,000 he was paid as the medical director of the hospital’s nursing home; the \$1,000 for managing the sleep center; and the \$1,000 for payment as the medical director of Appalachian Home Health Care.

He also found a range of \$1,000 to \$4,000 deposits paid to Heaton every month for taking patients admitted to the hospital who didn’t have a doctor.

Furthermore, he reported deposits from Union General in early 2014 for the \$155,000 that Dr. Heaton was paid for the purchase of his sleep center.

Dr. Alan Sanders, a family practice doctor from Blairsville, testified for the defense.

He informed the jury of his status as the current medical director of the nursing home, sleep center and renamed Mountain Home Health Services. Sanders said he was also responsible for certain on-call days to care for patients admitted without a doctor to the hospital.

For each position, Sanders said he receives the same pay that Dr. Heaton received to perform the same jobs.

MacIsaac also testified about the Gowder bank accounts, saying that among those were one at United Community Bank and one at Park Sterling Bank that each received monthly deposits of around \$2,000 in cash.

Total cash deposits for the United Community Bank account between January 2013 and March 2016 were \$67,980. For the Park Sterling account, deposits totaled \$67,740 between April 2013 and February 2016.

In his testimony, Gowder said the money came from cash transactions he’d made with his hobby of buying and selling guns, vehicles, racehorses and land. He testified that he didn’t keep records of most of it.

Assistant U.S. Attorney McKinnon asked him if he claimed the profit he was making from his sales of guns, horses and vehicles on his income tax, to which Gowder replied that he rarely ever made a profit.

Mike Gowder was the last person to testify in the trial, and unlike his co-defendant in the case, Dr. Heaton chose not to testify on his own behalf. David Gowder also did not testify as a witness, but he did attend the trial in support of his brother.

The trial began with jury selection the morning of Tuesday, Oct. 15, and ended in adjournment by Judge Story around 4:15 p.m. on Thursday, Oct. 24, immediately following the jury’s pronouncement of verdict.

In attendance that last day of trial was Chad Deyton, who initiated the entire investigation more than four years ago in his former position as a narcotics investigator with the Union County Sheriff’s Office.

Deyton now serves as chief of the Union County Schools Police Department and was deputized earlier this year as a Drug Enforcement Administration Task Force Officer.

“This case was tremendously important to the citizens of Union County,” Deyton said. “Numerous

witnesses came forward to testify truthfully about the defendants and their conduct.

“Hopefully, this verdict will send a message to other medical professionals who might seek to abuse their power by illegitimately prescribing and obtaining addictive pain pills, and further, act as a testament that such people will be held accountable, so long as individuals have the courage

to come forward and speak the truth.”

Added Deyton, “A big thank you to all of the cooperating agencies: the United States Attorney’s Office, Supervisory Diversion Investigator Jason Allen and the DEA Atlanta Divisional Office, North Carolina and Tennessee authorities, and our local district attorney.”