

1st Circ. Drops Bribery, Reinstates Extortion In Casino Case

By **Brian Dowling**

Law360 (September 27, 2024, 11:39 PM EDT) -- The First Circuit on Friday reversed both convictions and acquittals in a high-profile bribery and extortion case involving a Rhode Island architect and a Massachusetts tribal official who had been found guilty of a quid pro quo exchange of pricey gifts related to a valuable design contract on the tribe's \$1 billion casino development.

The three-judge panel concluded there was a critical flaw in the jury's finding that architect David DeQuattro's purchase of a used BowFlex exercise bike and a hotel stay in Boston for Mashpee Wampanoag Tribal Chairman Cedric Cromwell amounted to federal programs bribery.

Prosecutors told the jury those gifts were made at the chairman's request in exchange for him convincing the tribe's gaming authority to cancel its valuable contract with DeQuattro's firm, Robinson Green Berretta.

The opinion, penned by Chief Circuit Judge David J. Barron, concluded that the government failed to link the contract between the firm and the Mashpee Wampanoag Gaming Authority with the tribe, which had received federal funds at the time of the alleged bribery, forming the basis for the federal programs bribery charges.

The panel explained that the fact that the two are intertwined isn't enough in the eyes of the law.

"The text of [the federal programs bribery statute] makes clear that we cannot simply assume that the two entities are one and the same, such that the 'business' of one is necessarily the 'business' of the other," the appellate panel said.

The architect and chairman had urged the panel to vacate the convictions on that basis, explaining that the tribe and authorities were legally distinct entities designed to insulate the tribe from any liabilities that could arise from the development.

Also, none of the tribe's federally granted funds made their way to the architecture contract, the defendants said.

The appellate panel spared no effort in delving into the government's legal position that the gaming authority's business and the tribe's business were one and the same because the authority is an "arm" of the tribe.

The First Circuit, however, concluded that its precedential legal test evaluating whether something is an "arm" of a tribe for sovereign immunity purposes is an inadequate way to tie the two entities together for the purposes of the federal program's bribery law.

Even as the appeals court rejected the bribery verdicts, it reinstated the jury's conviction of Cromwell for Hobbs Act extortion, which had been rejected by the federal judge overseeing the trial.

U.S. District Judge Douglas P. Woodlock tossed out Cromwell's extortion convictions shortly before his sentencing in November 2022. The judge reasoned that officials like Cromwell were immune from the charges in the statute because the text didn't explicitly say it applies to tribal leaders.

The panel rather briefly addressed the judge's error and explained it and other circuits recognize that

the federal government is a "superior sovereign from whose suits the tribes enjoy no sovereign immunity."

Cromwell's alternative arguments to sustain the acquittal on other grounds also failed to convince the panel.

Prosecutors charged the pair in 2020, claiming DeQuattro paid the bribes Cromwell requested to protect his firm's contract with the gaming authority as the "owner's representative" on the proposed First Light Casino the tribe was pursuing in Taunton, Massachusetts.

Two years later, a Boston jury heard two weeks of testimony covering how Cromwell asked DeQuattro for \$54,000 in payments, plus the exercise bike and a weekend stay in a luxury Boston hotel.

In judgments that were stayed pending their appeal to the First Circuit, Judge Woodlock sentenced Cromwell to three years in prison for the now-vacated bribery convictions but handed down a probationary term and a \$50,000 fine for DeQuattro.

The appeals court's ruling will require the case to return to the federal court for Cromwell to be sentenced again.

DeQuattro's counsel, Martin G. Weinberg of Martin G. Weinberg PC told Law360 he appreciated the appeals court's decision that wiped out the last of his client's remaining convictions.

"Mr. DeQuattro's long fight for freedom that included a jury acquittal on most of the bribery charges and then Friday's appellate decision vacating the lone count of conviction has ended finally and successfully due to the First Circuit's rigorous analysis of the elements of 18 USC 666, the statute most favored in the prosecutions of local or state officials or here an Indian tribal leader," Weinberg said.

Representatives for Cromwell and the government were not immediately available for comment Friday.

Chief U.S. Circuit Judge David J. Barron and U.S. Circuit Judges William J. Kayatta Jr. and Gustavo Gelpí sat on the panel for the First Circuit.

The government is represented by Karen Eisenstadt for the U.S. Attorney's Office for the District of Massachusetts.

DeQuattro is represented by Martin G. Weinberg of Martin G. Weinberg PC.

Cromwell is represented by Robert F. Hennessy of Schnipper Hennessy PC.

The cases are U.S. v. DeQuattro, case numbers 23-1115 and 23-1139, and U.S. v. Cromwell, case numbers 23-1116 and 23-1138, in the U.S. Court of Appeals for the First Circuit.

--Editing by Jay Jackson Jr.

Update: This article has been updated with comments from counsel for DeQuattro.