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COVID Rules Unlikely To Win Ex-Mayor New Corruption Trial

By **Chris Villani**

Law360 (May 28, 2021, 3:50 PM EDT) -- After being convicted on nearly two dozen charges, a former Massachusetts mayor will launch an appeal that is expected to include objections to COVID-19-related restrictions placed on his trial in an appellate test case that experts told Law360 has little chance of success.

The convicted one-time mayor of Fall River, Jasiel Correia, objected to holding the trial during the pandemic and the numerous restrictions that would be in place. But observers say those issues are unlikely to sway the First Circuit toward granting a new trial.

"I think Correia faces an uphill battle here," said Christopher Nasson, a white-collar defense lawyer at K&L Gates. "There isn't a lot of case law on this for obvious reasons, but where we have seen courts weigh in on this, it seems as though courts of appeal have generally provided trial courts with latitude in limiting trial mechanics and processes to protect witnesses and other personnel in a deadly pandemic."

Among the unusual proceedings given the green light during the pandemic are remote testimony — several witnesses testified remotely during Correia's three-week trial — and even remote grand jury proceedings, Nasson said.

"In Correia's case, I think the restrictions the court imposed were relatively minor," Nasson said.

A Boston jury **found Correia guilty** of fleecing investors in a smartphone app he developed and separately of shaking down marijuana shops that hoped to open in the city and lying on his taxes.

The trial took place with 26 socially distanced people in the 2,600-square-foot courtroom, with jurors spaced out in chairs, masks worn by all but the testifying witnesses, and only Correia's mother, fiancée and a single media representative allowed in the courtroom while the rest of the public watched on Zoom.

Correia raised his objections in October when he was set to be tried alongside his former chief of staff. She pled guilty before trial, but the rules outlined in the objection remained unchanged even with a single defendant. Many of the issues raised concerned the **sparsely populated courtroom**.

"Having an overflow courtroom, or broadcasting the trial via Zoom, is not an adequate substitute for having family and friends attend the trial," Correia's motion argued, calling it "an anemic substitute for the physical presence of loved ones."

"There are very few absolutes in constitutional law like 'you have to have a public trial,'" said defense attorney Martin Weinberg of Martin G. Weinberg Law PC. "But if there's 200 members of the public that want to view the trial, it's fine to include 100 of them and put them in a second courtroom."

Weinberg said the presence of even a single media member in the courtroom and a few of Correia's family members diminishes the chances of a reversal in the First Circuit. But one thing Correia does have going for him, Weinberg said, is that his appeal is not running up against years of adverse precedent like many others do.

"We are dealing in a legal wilderness," he said.

Whether Correia will raise the issues on appeal is unclear. Correia's attorney, Kevin Reddington, did not immediately return a request for comment for this story, and a government representative declined to comment.

When asked shortly after the jury returned its verdict, Reddington did not rule out the possibility of a COVID-based appeal, but he admitted that, "on balance, other than the stupid masks and the plexiglass, I think it went off quite well."

Still, Reddington said he felt constrained by having to wear a mask during arguments and examination of witnesses, as well as having to stay in one spot in the courtroom.

"I do feel that it was somewhat restrictive," he said. "The masks I don't like, but it's a social issue we are dealing with."

Acting U.S. Attorney Nathaniel Mendell expressed confidence that the verdict would stand up, despite the unusual circumstances surrounding the trial.

"This case and this trial was a model for how to conduct a fair criminal trial under extremely difficult circumstances, in this case, the pandemic," he told reporters after the verdict. "The court went to great lengths to ensure the comfort and the safety of every participant but also to protect the rights of all the litigants. We are confident in that."

But some issues could present hurdles for the government. There were no media members or Zoom broadcast of the jury selection, and the First Circuit has said that a lack of public access during that process can be grounds for a new trial.

A 2010 ruling threw out a Puerto Rico jury's guilty verdict in a case alleging criminal violations of the Clean Water Act because the judge would not let the defendant's family sit in a crowded courtroom while jurors were being examined.

Nixon Peabody LLP partner Rob Fisher said the relegation of the vast majority of spectators to Zoom viewing could be an avenue for appeal but added, "I'm not sure how Correia would spin that other than 'it's different.'"

If anything, the Zoom audience, which numbered well into the hundreds at points during the trial, could cut against the government, he said. Fisher noted that witnesses might be more hesitant on the stand knowing that their faces were being broadcast to far more people than normal.

U.S. District Judge Jed Rakoff denied the motion to delay the trial, saying it "borders on the frivolous."

While some of the COVID-imposed rules may have been restrictive to the defense, if Correia raises the issue on appeal, Fisher said the First Circuit is likely to say the job U.S. District Court Judge Douglas P. Woodlock and the rest of the staff in Boston did is good enough for government work.

"I think the courts are showing those issues can be mitigated, and I think it's going to be tough to raise some of the COVID objections," Fisher said. "Everything worked the way it should have and everyone tried to do the best they could to make sure they could get this off the ground."

The case is U.S. v. Correia, case number 1:18-cr-10364, in the U.S. District Court for the District of Massachusetts.

--Editing by Philip Shea.

A previous version of this story incorrectly stated that Rob Fisher represented a witness in the MiMedx Group fraud case. The error has been corrected.

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