

1st Circ. May Undo Tribal Casino Bribery Convictions

By **Brian Dowling**

Law360 (June 5, 2024, 4:21 PM EDT) -- First Circuit judges hinted Wednesday that jurisdictional flaws and other issues could reverse the bribery convictions of an architect and tribal chairman in connection with a proposed \$1 billion casino in southeastern Massachusetts.

A three-judge panel heard oral arguments in crossfire appeals filed by Rhode Island architect David DeQuattro, former Mashpee Wampanoag Tribal Chairman Cedric Cromwell and federal prosecutors, who are seeking to revive the tribal leader's extortion convictions that a federal district judge tossed after trial.

The defendants, in part, claim that the government **failed to prove at trial** that DeQuattro's purchase for Cromwell of a used Bowflex machine and a weekend stay at a glitzy Boston hotel were bribes designed to protect his firm's lucrative contract to manage the casino construction project. The **convictions** resulted in Cromwell being sentenced to **three years in prison** and DeQuattro receiving a year of probation, sentences that were stayed pending the appeals.

During Wednesday's hearing, two First Circuit judges focused primarily on the argument that prosecutors failed to establish jurisdiction for the federal programs bribery charges because, while the evidence showed the tribe had received the requisite \$10,000 in federal funds, the Mashpee Wampanoag Gaming Authority was not a recipient.

The daylight between the tribe and the organizationally distinct gaming authority drew comparisons to the circuit's decision last year in *U.S. v. Falcone-Nieves*, which reversed federal programs bribery convictions because the Puerto Rico agency in question wasn't a direct recipient of U.S. funds.

Chief U.S. Circuit Judge David J. Barron pressed Assistant U.S. Attorney Karen Eisenstadt on how the casino case differed from the precedential Puerto Rico example, where the government never claimed that any funds received by the territory automatically counted to establish jurisdiction for the acts of the individual agency.

In the Massachusetts case, prosecutors argued at trial — and the jury appeared to accept — that the casino work done by the gaming authority qualified as the work of the tribe, in spite of the defendants' claims that the authority was established to insulate the tribe from any possible liabilities from the casino project.

Eisenstadt said mere corporate or organizational structuring shouldn't be ironclad insulation from federal bribery liability, and that Congress wrote the statute broadly to capture "any types of shenanigans" to evade the law.


"So you really think," U.S. Circuit Judge William J. Kayatta Jr. asked, "Congress was thinking state governments, tribal governments, people in them might go out, create some governmental agency like how, through legislation, presumably, and do that for the purpose of making bribes that they would then be insulated from? It seems rather ... it's hard to imagine that that was in Congress's mind."

Judge Kayatta also pressed the attorney three times on what line prosecutors would draw to separate "governmental business" and "agency business." Eisenstadt responded that the difference was that Cromwell, the tribe's chairman, essentially established the authority and wielded control over it as its chair.

The judges also appeared intrigued by the defendants' arguments about the limited circumstantial evidence of the critical quid pro quo charged by the government.

From opening arguments at trial through appellate briefing, the defendants maintained that the government didn't meet its burden to show that DeQuattro cut checks to Cromwell and gave him gifts as bribes to protect his firm's work for the tribe. There was no indication the tribe was dissatisfied with the architecture work, meaning there was no motive to need protection, the defendants argued.

Meanwhile, prosecutors made their case claiming the quid pro quo was never going to be said out loud or written down and that the jury could convict the pair by inferring an agreement from the pattern of payments and gifts.

The pattern alone struck Judge Barron as concerning because the U.S. Supreme Court, in cases like *McDonnell v. United States* , has raised the bar on federal programs' bribery cases for fear of criminalizing "normal political interaction between public officials and their constituents."

"We can't just say because the gift was given, or even because the gift was asked for, that's a quid pro quo exchange," Judge Barron said, "unless there's some tie to some specific thing that's being asked for in exchange, which we can infer."

The judge said that logic goes "against the grain of where all these precedents are suggesting we go."

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 Dave Trumbore.