

2nd Circ. Mulls Blackmail Case's Effect On Fraud Conviction

By **Pete Brush**

Law360, New York (March 4, 2025, 6:27 PM EST) -- Second Circuit judges looked tempted Tuesday to let Scott Tucker, who is incarcerated on charges that he ran a \$2 billion payday lending scam, file a new appeal — after hearing that Tucker's trial counsel faced blackmail from an unrelated client during Tucker's \$2 billion fraud trial.

U.S. Circuit Judges Dennis Jacobs, Denny Chin and Sarah A. L. Merriam all made comments to that effect during a hearing on a motion for Tucker, who is 63 and serving a 16-year sentence in a Mississippi federal prison with a 2031 release date.

Judge Chin asked after digesting the unusual fact pattern in the case: "The only issue before us is whether to grant a certificate of appealability. Would it be imprudent to let it go forward so that, at a minimum, the government could file a brief?"

Tucker — who is perhaps best known as an auto racer **who owned** a slew of high-end performance cars — filed what is known as a Section 2255 appeal available to prisoners after his first appellate challenge, which leaned on a tribal sovereignty defense, was rejected by the circuit. During that first appeal, the circuit **described evidence** presented against him during a **2017 trial** before U.S. District Judge P. Kevin Castel as overwhelming.

But filings that weren't seen during the first appeal show that Tucker's lead trial counsel — Lee Alan Ginsberg — was during the trial cooperating with prosecutors from the Southern District of New York in a blackmail case.

"I was blackmailed and defrauded by a former client," a Ginsberg affidavit says.

That wrinkle emerged in the middle of Tucker's trial and prompted a semi-secret conflicts hearing called by Judge Castel on Sept. 25, 2017, during which, according to statements Tuesday, Tucker waived any conflict and elected to keep Ginsberg as his attorney and go forward.

The blackmail had nothing to do with Tucker or his case, but it put Ginsberg in the uncomfortable position of working with prosecutors from the same office that was seeking to convict his client, according to filings.

Tucker's current lawyer, Benjamin Silverman of the Law Office of Benjamin Silverman, told the circuit Tuesday that Tucker wasn't in a position to fully understand the conflicts in play.

"It wasn't an informed decision," Silverman said.

Judge Castel, citing myriad factors, concluded in an opinion last year that the blackmail case did not cause Tucker sufficient prejudice as to allow him a second shot in the circuit.

The judge noted that Tucker "confirmed his understanding" that Ginsberg was potentially a victim of extortion, was potentially a "subject of surveillance" by an unnamed perpetrator, and had "experienced significant emotional and mental distress," facing potential criminal exposure himself.

But that didn't seem to sit well Tuesday with Judge Merriam, who noted that no independent conflicts lawyer was on hand to advise Tucker during his long-ago Curcio hearing — a proceeding aimed at

ensuring a client understands his attorney's potential conflicts.

Merriam also wondered whether other members of Tucker's team, including Ginsberg's trial co-counsel Beverly Van Ness — who also represented Tucker during his first appeal — were also conflicted.

She called it a "Catch-22" where Tucker's appellate lawyer was "potentially not in a position to raise the argument that he now wishes to raise" either because of incomplete knowledge of the blackmail issue or the fact that she also was on the trial team.

The question of whether Van Ness was able to fully represent Tucker's interests given the situation with Ginsberg is "a claim that's been raised for the first time here at this podium," prosecutor Jim Ligtenberg said in reply.

"Are we allowed to consider something we identify in the record that counsel hasn't raised?" Judge Merriam said. "We've pointed out an issue we've noticed."

There, Ligtenberg, arguing for judicial finality and for the preservation of judicial resources, suggested that — renewed appeal or no — Tucker's conviction is likely to stand.

"This court itself has said that the evidence was absolutely overwhelming," he said. "There's no indication that there would be any prejudice based on a different lawyer."

For his part, Judge Jacobs called it "at least eye-opening" that Tucker found himself in an unusual and messy situation with court-appointed counsel after his chosen lawyers, Paula Junghans and Paul Schectman, departed

Court filings say the trial team that Tucker hired left before trial because he could not pay them. He was subject to an asset freeze in a different case brought by the U.S. Federal Trade Commission.

"Our office had nothing to do with that," Ligtenberg said Tuesday of the FTC asset freeze, which subsequently was **overturned by** the U.S. Supreme Court.

After Tuesday's hearing, Silverman said he appreciates that the circuit "is taking a close look at the injustices that befell" Tucker.

"The Supreme Court has already held that the government behaved unlawfully when it seized the money Mr. Tucker had paid to his lawyers to represent him," Silverman told Law360 by email. "But he remains in jail because he was convicted at trial while represented by a court-appointed lawyer who was meeting with the prosecutors in the middle of the trial to seek immunity and leniency for his own misconduct."

Requests for comment from other counsel involved in the case were not returned.

Tucker is represented by Benjamin Silverman of the Law Office of Benjamin Silverman.

The government is represented by James Ligtenberg of the U.S. Attorney's Office of the Southern District of New York.

The appeal is Tucker v. United States, case number 24-2864, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Amy French.