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Baccari's lawyers say he is being treated unfairly in North Providence corruption case

April 03, 2014 11:20 PM

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PROVIDENCE — In 2011, a developer took the stand in federal court and openly admitted that he had paid corrupt North Providence councilmen \$21,000 to vote in his favor on a zoning measure involving his condominium project.

The developer, Kevin O'Sullivan, made this admission after a federal prosecutor asked him: "Do you understand that the government is making no promises to you in exchange for your testimony today?"

O'Sullivan was never charged. And almost two years later, federal prosecutors argue that the developer's 2011 testimony in the North Providence corruption case was the type of cooperation that can justify "differential treatment."

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This has drawn fire from defense lawyers who represent a different developer embroiled in the corruption scandal: Richard Baccari Sr., who, unlike O'Sullivan, is charged with bribery and conspiracy.

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Prosecutors from the office of U.S. Attorney Peter F. Neronha were drawn into the issue in late February when they responded to a series of pretrial motions filed by Baccari's lawyers. At that time, the prosecutors referred to Baccari's allegations of "prosecutorial vindictiveness" as "hyperbole and vitriol" with no supporting evidence.

Now, Baccari's lawyers are targeting those responses in a series of lengthy filings that present new information and arguments for U.S. District Judge John J. McConnell to analyze.

One of their arguments aims to bring greater scrutiny to the government's decision to charge Baccari and let O'Sullivan go.

O'Sullivan's apparent motivation for admitting his illegal payoff to corrupt councilmen was the prosecutors' "off-the-record" assurance that he would not be charged, says the defense team.

"Common sense tells us that it would be an extraordinary event for an individual (who had the advice of counsel) to testify — with no assurance ... and admit his guilt in a conspiracy in which three prior defendants had already received lengthy jail sentences," says the defense motion filed in U.S. District Court, Providence.

Those three defendants, all former North Providence councilmen, pleaded guilty to extorting bribes from both Baccari and O'Sullivan in a conspiracy that also attempted to shake down other businessmen for bribes.

The councilmen, Joseph S. Burchfield, John A. "Zam" Zambarano and Raymond L. Douglas III, pleaded guilty to extorting at least \$25,000 from Baccari in early 2009. This was in exchange for their vote to rezone a property off Mineral Spring Avenue, where Baccari and his development company, Churchill & Banks, had proposed the construction of a Stop & Shop.

During proceedings before U.S. District Judge Mary M. Lisi, the councilmen also pleaded guilty to extorting a \$21,000 bribe from O'Sullivan. This was before they voted to rezone a property where the developer planned to turn a mill into a condominium complex.

O'Sullivan, who also promised to pay the councilmen a total of \$75,000, would later testify at the trial of Baccari's real estate lawyer, Robert S. Ciresi, a former North Providence town solicitor, who was convicted of serving as a middleman in the bribery scheme.

The indictment against Baccari, who never testified in the corruption case, accuses him of funding a \$50,000 cash bribe that Ciresi delivered to Zambarano behind a Cranston

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restaurant in view of an FBI agent in early 2009. Another North Providence councilman, Paul F. Caranci, who secretly recorded Zambarano and other conspirators, had tipped off the FBI beforehand.

In 2010, agents photographed O'Sullivan delivering an envelope containing \$21,000 to a second middleman in the conspiracy, who then gave the money to Burchfield and Douglas in the parking lot of the Cadillac Lounge, a strip club.

"Indeed the only meaningful distinction that can be drawn between Mr. Baccari and Mr. O'Sullivan ... is the defendant's assertion of his rights," says the motion filed by Baccari's legal team, a group of four attorneys, led by Boston lawyer Anthony M. Cardinale.

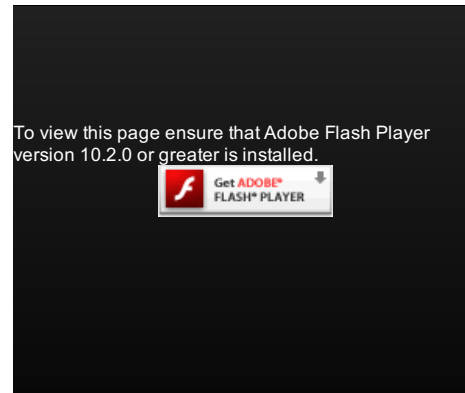
Prosecutors, who haven't yet responded to this latest filing, have already argued that the law gives them "discretion" to prosecute one developer and not the other, citing case law and suggesting that "cooperation versus non-cooperation is a distinction which can justify differential treatment at sentencing."

Baccari's lawyers are also trying to keep prosecutors from introducing Zambarano's recorded statements during a trial. If Zambarano's statements are admitted, say Baccari's lawyers, the court must require prosecutors to call him as a witness, which would allow the defense to cross-examine him.

Zambarano has claimed he was mentally ill when he pleaded guilty to corruption charges before Lisi in 2011.

Baccari's lawyers argue that federal prosecutors have themselves attacked Zambarano's credibility, characterizing the former councilman as a brazen liar who is "completely unworthy of belief."

"Zambarano is a pathological liar," says their latest filing. "The government knows that, Judge Lisi knew and acknowledged that, the Defense knows that. All parties should simply admit that the 'emperor has no clothes.' ... A man's liberty is at stake. Common sense should prevail."



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