



Bruins 3, Penguins 4, Final

Judge asks prosecutors why they haven't pursued conspiracy charges in State Police OT scandal

By [Matt Rocheleau](#) Globe Staff, Updated May 2, 2019, 9:23 a.m.



Retired Trooper Daren DeJong, 57, of Uxbridge left Moakley Federal Court on Thursday. JOHN TLUMACKI/GLOBE STAFF/GLOBE STAFF

US District Judge Mark L. Wolf said Thursday that the State Police overtime fraud scandal appeared to amount to “a conspiracy” and he grilled federal prosecutors about why they haven't pursued charges often used against mobsters who engage in elaborate criminal schemes.

Wolf raised the issue during a sentencing hearing for retired trooper Daren DeJong, 57, of Uxbridge. The judge ultimately postponed issuing a sentence, saying he wanted to hear more from prosecutors.

“It now appears this case may involve an uncharged conspiracy or RICO conspiracy,” Wolf said, referring to charges under the Racketeer Influenced and Corrupt Organizations Act, which Congress enacted in 1970 to crack down on the Mafia and other organized crime groups.

“I've seen a lot of conspiracy charges in my last 34 years,” said Wolf, who in the 1980s served as chief of the public corruption unit for the US attorney's office in Boston.

Assistant US Attorney Mark Grady pushed back. While prosecutors found “an egregious lack of oversight,” they “didn't have evidence of a conspiracy,” he said.

“The conspiracy was not nearly as clear as the court suggests,” Grady said.

Including DeJong, 46 current and former troopers have been accused by State Police of collecting overtime for hours they didn't work.

The department has shared evidence with state and federal prosecutors conducting parallel investigations, leading to criminal charges against 10 troopers.

Troopers faked work on overtime shifts, writing “bogus” traffic citations, prosecutors have said. They destroyed or disposed of copies of phony citations, and filed other fraudulent paperwork.

Longtime Boston-based criminal defense attorney Peter Elikann said “usually conspiracy is not particularly difficult” or complicated to prove. “There’s been conspiracy cases where people have never even met each other,” Elikann said.

But it’s possible that in the State Police cases, prosecutors simply “couldn’t quite nail down that there was a common scheme,” he said.

“They might have thought it was stronger just charging each person for what they did individually,” Elikann said.

A newly unsealed court filing in DeJong’s case by his own attorney seemed to backfire, fueling Wolf’s questions about the potential for conspiracy charges.

The filing said DeJong recently detailed for the state attorney general’s office how he, fellow troopers, and shift commanders for years coordinated to skip shifts and cover it up.

During a three-hour interview last month, DeJong told state prosecutors that one morning, “[Redacted] sent him a text message,” saying “that they would not be writing citations that day and that he should go home and be with his family,” the filing said.

Another time, “He received a phone call from a different [redacted] who stated ‘we’ve all agreed not to write,’ that ‘it would be best if we were on the same page,’ with instructions not to tell anyone of their conversation and that he should ‘run silent, run deep’ (which DeJong took to mean that he should not attract attention, not stop any cars, and just go home),” the filing said.

“This same [redacted] on other occasions told DeJong to ‘take a slow ride home,’ ” it added.

Wolf, referring to those excerpts, said, “That’s a conspiracy.”

Assistant US Attorney Dustin Chao said “although they’re charged in group,” the cases are “apples and oranges” because the troopers used “different ways to submit fraudulent tickets.”

DeJong’s attorney, R. Bradford Bailey, also countered the conspiracy notion, saying that among troopers, “There was no agreement how to do this, there was no teaching how to do this.”

In the court filing, Bailey wrote that his client’s cooperation with state prosecutors was a “type of ‘repayment’ towards making amends.”

Bailey wrote that it was something DeJong decided to do “after observing that many of those within the State Police command-structure who helped to foster the culture in which that misconduct developed had yet to be prosecuted.”

The court filing is partially redacted to conceal the identities of “at least four people” who have not been charged criminally, Wolf noted in court.

During the lengthy hearing, Wolf referred to James “Whitey” Bulger, the notorious Boston gangster. Wolf held high-profile yearlong hearings in 1998 involving Bulger that exposed the FBI’s corrupt relationship with longtime informants Bulger and Stephen “The Rifleman” Flemmi.

Wolf also questioned whether prosecutors could have pursued mail fraud and wire fraud charges in the overtime scandal.

And he pressed prosecutors on why they only charged DeJong with embezzling money in 2016 when they had evidence suggesting he did the same thing in 2015 and in January 2017.

DeJong was [arrested](#) on a federal embezzlement charge in July for allegedly collecting about \$14,000 for overtime he didn't work in 2016. In a deal with prosecutors, he [pleaded guilty](#) in January.

Prosecutors later estimated DeJong fraudulently collected another \$16,000 in overtime in 2015, and about \$1,000 more in January 2017.

Elikann said a judge probing such prosecutorial decisions was “a bit unusual, although it's certainly within the parameters of what a judge can ask if it helps the judge come to a better-informed decision” on sentencing.

During Wolf's questioning, prosecutors also revealed that State Police and prosecutors investigating the scandal can't tell if the overtime fraud scheme was carried out prior to 2015 because the department destroyed troves of records for earlier years as part of what prosecutors described as routine efforts to expunge old records.

In October, the US attorney's office rebuked State Police after news surfaced that the department had tried several times last year to destroy more than a hundred boxes of payroll, attendance, and personnel documents spanning decades, despite numerous active investigations.

A State Police spokesman said Thursday the department still has payroll and attendance records prior to 2015, but said the statewide records retention schedule required traffic citations only be kept for three years.

In court, DeJong told the judge he was sorry and “ashamed” as he read from a sheet of paper and wiped away tears, his voice trembling with emotion.

DeJong said he “had the best intentions” going into law enforcement, but acknowledged he lost that “somewhere along the line.”

“For the rest of my life, I’ll work hard to reconcile what I did,” DeJong said.

Wolf said DeJong’s cooperation with state prosecutors was significant.

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