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Judge tosses gambler's conviction

By ROD SMITH
GAMING WIRE

A judge threw out a conviction against an advantage gambler and professional personal trainer who was convicted earlier this year of disorderly conduct for allegedly resisting arrest while being detailed, handcuffed and roughed up at the El Cortez.

District Judge Joseph Bonaventure on Wednesday tossed the case against Ray Cagno after finding his arrest was illegal and unauthorized under Nevada law.

He found the El Cortez, in essence, had cooked up charges against Cagno to justify its policy of treating advantage gamblers harshly, and that there had never been probable cause that any crime had been committed despite his arrest by Las Vegas police.

"The idea of someone in custody being arrested for complaining about this is without merit and the judge's rule was proper," said Allen Lichtenstein, general counsel for the Nevada chapter of the American Civil Liberties Union.

"It's good to see the courts recognize that even if people are advantage gamblers, they still have constitutional rights," he said.

An advantage gambler is someone who increases his or her chances of winning by taking advantage of a dealer's or casino's mistakes or by means such as card counting.

The Nevada Supreme Court has ruled there is nothing illegal about advantage gambling, which can include such techniques as card counting, shuffle tracking and playing slot machines that are paying out more than their fair share. Nevada's highest court, as well as courts in other gambling states, have ruled advantage gambling is legal since players don't manipulate any cards or machines. Rather, they do nothing more than use normal intelligence much as a bridge player would use watching other players.

Bob Nersesian, a Las Vegas attorney who represents Cagno and has handled about 30 advantage gambling cases, said he and his client "feel vindicated, to a degree."

"I'm elated the judge saw the city's failure. I'm heartened and disheartened at the same time that you have to go through the judicial process to have your rights recognized under the law when they should be clear as day," he said.

Cagno also filed a lawsuit for unspecified damages against the El Cortez, which settled, and three police officers, whose cases are pending in federal court.

Bonaventure ruled that the civil liberties issues involved in the federal case were moot in District Court because of the dismissal of what he ruled was an illegal arrest.

Nersesian said Bonaventure's ruling that Cagno's arrest by Las Vegas police had been illegal cut the legs out of the defense offered by the police in the civil action.

District Court Judge Michael Cherry on Dec. 19 handed down a similar ruling that found the Flamingo Laughlin liable for false imprisonment in the arrest of Tony Vincent, another advantage gambler. A host of other cases are said to be pending, although they are impossible to trace because there is no record advantage gambling is the root cause of a case until the trials proceed.

Many Las Vegas lawyers say there is an emerging pattern of intimidation and excessive force being used by casino security, state gaming and Las Vegas police officers, who often work in concert to trample constitutional rights, civil liberties and gaming regulations to deter advantage gamblers from playing at local properties.

Cagno had been convicted of disorderly conduct because of an advantage gambling incident at the El Cortez and appealed that conviction.

Cagno's disorderly conduct arrest stemmed from his yelling out to casino patrons to call police to help him as he was being led away in handcuffs by hotel security guards.

Video footage Nersesian obtained from the El Cortez shows Cagno hole carding -- meaning he was able to see the blackjack dealer's hole card because of the dealer's mistakes -- in October 2002. He is approached by two security officers who ask him to stop playing. The tapes show Cagno getting up and walking toward an exit.

As he approaches the door, however, he is blocked by two more guards and is forced to the floor, handcuffed and taken to a security holding cell.

Once in the security office, the tapes show Cagno demanding that police be called.

When police officers did arrive at the casino, however, Cagno's bad luck seemingly turned even worse.

Instead of getting help from the police, the officers charged Cagno with disorderly conduct for "yelling, screaming and struggling with a security officer," based on a citizen's complaint, according to motions filed in the case.

However, the complaining witness testified in court that she was told to file the complaint, which

actually was written by a police officer, and that she had not even read the complaining document.

"Here he's trying to file a report because of his battery and false imprisonment by El Cortez, and he ends up in jail with the police claiming he's the perpetrator," Nersesian said.


Police officials could not be reached for comment Wednesday, and Alan Abrams, general manager of the El Cortez, declined comment.

"There's a pattern and practice where the police, both gaming agents and Metro, ignore any kind of complaint a patron makes against a casino about wrongs they commit distinguished from disputes they jump on, but when it comes to personal liberty issues and imprisonments by casinos, it is fundamentally impossible to have public agencies prosecute casinos," Nersesian said.

What makes the Cagno case stand out, Nersesian said, is that he "went the extra mile to make sure his rights were protected and when he did that, they ground him out like a dirty little cigarette butt."

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