

People v Golub
2025 NY Slip Op 35477(U)
June 20, 2025
City Court of Saratoga Springs, Saratoga County
Docket Number: Docket No. CR-04162-24
Judge: Jeffrey D. Wait
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CITY COURT CITY OF SARATOGA SPRINGS
COUNTY OF SARATOGA STATE OF NEW YORK
PRESENT: HONORABLE JEFFREY D. WAIT



THE PEOPLE OF THE STATE OF NEW YORK,

-vs-

DECISION & ORDER
Docket No.: CR-04162-24

JASON N. GOLUB

Defendant.

APPEARANCES:

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WAIT, J.

The defendant stands charged with Official Misconduct, a Class A Misdemeanor, in violation of Penal Law 195.00 (1). As is relevant here, “[a] public servant is guilty of Official Misconduct when, with intent to obtain a benefit . . . [h]e commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized.” The facts as alleged are, in sum, as follows: On December 27, 2023, the defendant, while acting as the Commissioner of Public Works, accepted repairs to his home by an employee of the Saratoga Springs Department of Public Works, which repairs “were unauthorized as they

utilized property belonging to the City of Saratoga Springs for personal benefit.” Further, “this benefit was obtained when an employee of the City of Saratoga Springs completed the repairs during his regular working hours, which is unauthorized per the City of Saratoga Springs Policy Manual.” The complaint was affirmed by a Lieutenant of the Saratoga Springs Police Department “[upon] information and belief.”

The complaint is supported by the sworn statements of two Public Works Department employees. In the first statement, the employee states that in late December of 2023 the defendant asked him if he knew anyone who could fix a clogged drain. He recommended an individual who was also a Public Works employee, named Ken. They both went to defendant’s home, after work hours, and Ken “snaked” the drain. This witness stated that Ken had driven to the defendant’s home in his personal vehicle. He was not sure who owned the snake. The employee “Ken” also provided a supporting statement and confirmed that on December 26, 2023, after work hours, he went to the defendant’s home to snake the drain, but that it did not work. According to this witness he told the defendant he would have to come back the following day with a longer snake, which he would get “from the city van.” He also told the defendant he would bring a bottle of drain cleaner. The next day, December 27, 2023, Ken brought the drain cleaner (but not the snake) to the defendant’s house, poured it down the drain, and returned two hours later to confirm that the drain was in fact clear. Ken also stated, in sum and substance, that he was working for the city, on the clock, when he was at the defendant’s house on the 27th. Notably absent from the statement is any allegation as to the source of the drain cleaner or as to whether the defendant knew or had reason to know that the employee was at his house on city time.

The defendant has moved to dismiss the Misdemeanor Complaint pursuant to CPL §§ 170.30 (1) (a), (f), on grounds that it is “defective and legally and factually infirm.” The first such section requires dismissal if it is “not sufficient on its face.” CPL § 170.35. A misdemeanor complaint is deemed sufficient on its face, however, when “the factual part of such instrument . . . contain[s] a statement of the complainant alleging facts of an evidentiary character supporting or tending to support the charges,” CPL § 100.15 (2), and “the allegations of the factual part of such accusatory instrument and/or any supporting depositions which may accompany it provide reasonable cause to believe the defendant committed the offense charged.” CPL § 100.40 (4) (b). Reasonable cause to believe that a person has committed an offense “exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it.” CPL § 70.10 (2).

Here, the factual statement in the Misdemeanor Complaint is fundamentally flawed. It alleges, for example, that the defendant “did accept repairs made to his home by [a city] employee . . . during his regular working hours,” yet the supporting statements do not contain an allegation that the defendant knew or had reason to know the employee was on the clock at the time. Indeed, it can be inferred that the defendant did not know, given that when the employee arrived at the defendant’s home the day before it was made clear to the defendant that the employee was not on the clock. Further, the record is devoid of any fact which would indicate that on the second day this was any different from the first day. Notably, the defendant was not charged with a crime based upon that first visit. If this fact, then, *i.e.*, that the employee was on the clock, is thus critical to the validity of the complaint, as it appears, then the absence of facts

supporting the defendant's knowledge of whether the employee was on the clock the second day, especially given the inference that the defendant did not know, means that there cannot be reasonable cause to believe the crime was committed.

The second element of the crime, that the defendant intended to gain a benefit by virtue of the unauthorized act, is likewise unsupported. The Complaint alleges that "the repairs made were unauthorized" by virtue of the benefit having derived from the use of city owned property. The only property at issue is the bottle of drain cleaner, however, and there is no allegation that the defendant knew that the drain cleaner belonged to the City. Indeed, there is not even an allegation that the drain cleaner was city property, let alone that the defendant knew this.

Even if the complaint is viewed in a light most favorable to the People, as it must be, *see* CPL §§ 100.40, 100.15, it still must fail. In other words, even if the Court assumes for the moment that what is meant by the allegations (because this is not what is actually alleged) is that the defendant's unauthorized act was using city employees during work hours, and that the benefit was the drain repair using city property, the fact remains that the supporting statements do not allege that the defendant knew or had reason to know that any employee was on the clock when at his house or that the drain fluid was city property.

All that said, there is an even more basic reason that the complaint must be dismissed. Quite simply, there is no interpretation of the facts presented that allows for a finding that the defendant "commit[ed] an act relating to his office . . . constituting an unauthorized exercise of his official functions." P.L. § 195.00. The Legislative intent behind the statute is instructive in this regard. First, Penal Law § 195.00 contains two *mens rea* elements, requiring both an intent to obtain a benefit and knowingly acting. *People v. Flanagan*, 28 N.Y.3d 644, 655 (2017), citing *People v. Feerick*, 93 N.Y.2d 433, 446 (1999). By requiring both such elements, "[t]he

Legislature intended to encompass flagrant and intentional abuse of authority.” *Feerick, supra*, at 445. Conversely, “[t]he Legislature sought to ensure that good faith miscalculations in the exercise of official judgment did not run the risk of criminal prosecution. *Id.*, at 446. The statute thus requires evidence that the act complained of “related to” the defendant’s role as Public Works Commissioner and that he “knew his acts . . . were an unauthorized exercise of his official function.” *Id.*

It is uncontroverted that the defendant was not exercising an official function when he asked one of the department’s employees (as alleged in the employee’s statement) “if [he] knew anyone that could fix a clogged drain” at his house. This request, moreover, was not related to the defendant’s role as Public Works Commissioner. He was acting in his private capacity. In *People v. Casteneda*, 40 Misc. 3d 1207(A) (2013), the defendant, who was Mayor of the Village of Brockport, was charged with multiple counts of Official Misconduct. In sum, she owned rental properties that were not in compliance with various code requirements, and thus it was alleged that she violated her oath of office by committing these Code violations and for failing to enforce and prosecute them (the Mayor of a village being required by the Village Law of the State of New York to “provide for the enforcement of . . . local laws, rules and regulations”). The misdemeanor complaints were dismissed, however, since the “factual allegations set forth in the accusatory instruments and the accompanying supporting depositions [were] devoid of any factual allegations establishing a nexus between the alleged misconduct and . . . her position as Mayor.” *Casteneda, supra*, at *3. As here, there was “no allegation of fact that the defendant relied on or used her public position to advance her alleged misdeed.” *Id.* Finally, allegations “of personal wrongdoing that are unrelated to [the defendant’s] duties as a public official,” such as the allegations in this matter, simply do not give rise to the crime of Official Misconduct. *Id.*

It of course goes without saying that the use of city employees on city time to work at a private residence using city supplies is improper and might well implicate the Penal Law. That said, the facts as alleged in this matter do not even support a finding that the defendant knew the employees were on city time or that they were using city property. The more critical factor, however, is that the Misdemeanor Complaint does not set forth factual allegations which constitute, even if true, the crime of Official Misconduct. Again, there are no factual allegations establishing a nexus between the alleged misconduct and the defendant's position as Commissioner of Public Works or his public duty or his oath of office. That is, the acts complained of do not relate to the office of Commissioner of Public Works and do not constitute an exercise of the defendant's official functions let alone an unauthorized exercise of those functions. Accordingly, the complaint charging the defendant with Official Misconduct must be dismissed.

So ordered.

Signed this 20 day of June, 2025
at Saratoga Springs, New York.



Hon. Jeffrey D. Wait
City Court Judge