

People v. Luckie, Garrison, Angerame

The New York State Attorney General stretched the bounds of New York State bribery and corruption laws to new lengths that threaten private construction companies operating in New York on government contracts.

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Facts of the case

- Jim Luckie was a Cushman Wakefield employee assigned by Cushman to supervise electrical maintenance work at the World Trade Center site.
 - He remained a Cushman employee with his salary paid by Cushman. He worked pursuant to a contract between Cushman and the Port Authority for electrical maintenance and sat in a Port Authority office.
- Mike Garrison and Paul Angerame were employees of an electrical sub-contractor engaged by Cushman to perform the actual electrical maintenance work.
 - Garrison and Angerame had a 20-year relationship with Lucky. They gave Lucky business entertainment expenditures – sports tickets, dinners, golf outings.
 - Entertainment was a bit excessive, but every expense was submitted to compliance department and approved. Nothing hidden. No “bags of cash.”

Government's Theory of Prosecution

- Because Jim Luckie was working on a public construction contract, and because he was sitting in Port Authority Offices, he was a PUBLIC SERVANT. Therefore he was not entitled to receive any business entertainment spending and the business entertainment provided to him constituted bribe payments.
- Also, the World Trade Center site is really really important.

Seven of the Nine Counts in the Indictment Charge “Public Servant” related crimes, greatly raising the stakes:

- Corrupting the Government in the First Degree (PL § 496.05) – Class “B” Felony carrying a mandatory minimum prison sentence.
 - Bribery and Bribe Receiving in the Second Degree (PL § 200.03 and 200.11) Class “C” Felonies
 - Rewarding and Receiving Reward for Official Misconduct (PL § 200.20 and 200.25) Class “E” Felonies
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- In the alternative, Luckie was a private employee and the payments to him constituted commercial bribery.
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Definition of a Public Servant - NYS PL § 10.00(15)

- “Public Servant” means:
 - (a) any public officer or employee or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or
 - **(b) any person exercising the functions of any such public officer or employee.**
 - The term public servant includes a person who has been elected or designated to become a public servant.
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The Attorney General's Analysis Relied on Irrelevant Facts

- The relevant test is the **specific function** that the person is exercising, not the irrelevant or superficial facts that were the focus of the AG analysis:

“Luckie had a Port Authority email address, laptop computer, access to Port Authority programs and systems and a phone. Luckie sent emails to Port Authority, CW and HB employees from his Port Authority email address. The Port Authority reimbursed CW for Luckie’s salary as a passed through expense. CW billed Port Authority for Luckie’s salary in accordance with the terms of the Site Management contract.” (AG 3rd Bill of Particulars).

- The focus on these points was a misapplication of the law
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The Attorney General's Position Contravened Precedent

- This prosecution appeared to contravene the clear holding of the Court of Appeals in *Matter of World Trade Ctr. Bombing Litig.*, 17 N.Y.3d 423 (2011) (litigation over the 2003 truck bombing at WTC).
- There, the Court found that the Port Authority “performs dual proprietary and governmental functions.” (Id. at 446). The Court held that certain functions carried out by the Port Authority (or contracted to private entities) are proprietary rather than governmental.
 - Issue was whether the Port Authority could claim sovereign immunity for its building management role. The Court of Appeals held it could not:
- *The functions of a governmental entity can be viewed along a “continuum of responsibility ranging from the most **basic proprietary obligation, like that of a private landlord**, to the most complex governmental function, such as the provision of police protection.” (Id. at 446).*

The Attorney General's Position Contravened Precedent

- We argued, and the Court agreed:
- Property management is a quintessentially private, or proprietary, function – it is a subset of the functions of a landlord which the Court of Appeals has already called the “*the most basic proprietary obligation.*” In other words, landlord-like functions are the most private functions on the continuum between private and governmental functions as described by the Court of Appeals.

PRIVATE/PROPRIETARY-----GOVERNMENT
(Landlord) (Police)

- Analysis should be on the role/function played by the putative public servant – not where he was located.
 - Here, Cushman Wakefield, pursuant to a contract, was simply acting as a property manager (and Luckie in an even more limited role as electrical maintenance manager).
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The Contract Did Not Create an Expectation that Luckie Would be a Public Servant

Cushman Wakefield is an Independent Contractor and a Limited Agent:

2.3 Scope of Authority. SWPM shall not approve, nor shall SWPM have any authority to execute or otherwise enter into, on behalf of the Port Authority, any contract, real property lease, lease of equipment, easement, encumbrance, obligation or agreement affecting the Site Wide Managed Areas or any other portion of the WTC Site, including without limitation, any Ancillary Service Contract, without the express prior written consent of the Port Authority, except as expressly otherwise set forth in this Agreement. This Agreement is not one of general agency by SWPM for the Port Authority, but one pursuant to which SWPM is engaged as an independent contractor, and in that respect has only a limited agency as specifically set forth in this Agreement.

The Contract Did Not Create an Expectation that Luckie Would be a Public Servant

All employees required for the operation and management of the Site Wide Managed Areas shall be employees of SWPM or Ancillary Service Contractors, and not employees of the Port Authority.

Policy Implications

- This prosecution would have enhanced criminal exposure for countless private individuals in any industry involving government contracts.
 - Construction obviously would have been greatly affected by this – theoretically it would apply to all private property managers contracted to manage government properties. That could have included small construction companies that build public or subsidized housing and then managed the properties after construction is completed.
 - Could equally apply to any employee of a company engaged by public contract: janitorial services, property managers. Store owners?
 - With new statutes like Corrupting the Government in the First Degree, exposure for construction management companies is greatly heightened. Mandatory State Prison.
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Holding: Case Dismissed on the Grand Jury Minutes

- Holdings

- 1. Luckie was not a public servant, so public bribery counts were dismissed

However ... at its core, the Port Authority was functioning in a proprietary manner and Luckie's tasks relative to the Port Authority does nothing to alter that finding. Nor does the People's claim that because the WTC is of significant importance on a local, state, national and international level, somehow transform the Port Authority proprietary role as relative to Cushman into a governmental one. Again there are many circumstances where a governmental entity is acting in a proprietary function and this is simply one of those cases. Given the case law and the particular facts of this case, the Court concludes that the Port Authority was acting in a proprietary function and as such, Luckie cannot be found to be a public servant under Penal Law 10.00(15). Accordingly, counts one through three and counts six through nine are dismissed.

- 2. Commercial Bribery:

- No proof of economic harm for felony.
 - Insufficient evidence of agreement. "A mere hope that an employee will be influenced by the gift is not sufficient to establish the existence of an agreement or understanding."