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June 6, 2024

## Filed

Honorable Bernard E. DeLury, Jr., P.J., Cr.  
Cape May County Superior Court  
9 N. Main Street  
Cape May Court House, NJ 08210

RE: **State v. Ernest Troiano, Jr. (Wildwood City)**  
Promis Gavel: CPM-23-03-0038-S  
Indictment: 23-07-00109-S  
Our File No: 8300

Dear Judge DeLury:

This office represents defendant Troiano (“Troiano”) in the above matter. Please accept this supplemental brief on behalf of Troiano, and in support of his motion to sever, pursuant to Rule 3:15-2.

Court Rule 3:15-2 specifically provides that the court may grant a severance of defendants “...if for any reason...” it appears that a defendant or the State is prejudiced by a permissible or mandatory joinder of offenses. The State opposes the motions for severance for one primary reason, i.e., that it would be more convenient to try defendants together rather than in two or three separate trials. While a joint trial will eliminate the need for more than one trial, and may be convenient for witnesses, submission of evidence, etc., a very real danger exists in this case that prejudicial spillover of evidence against one defendant will harm another defendant. The State’s desire for convenience and expediency should not come at the expense of a defendant’s right to a fair trial.

Although charged with the same or similar offenses in the same jurisdiction, the facts, circumstances and defenses of each defendant are separate, distinct, unrelated and adversarial.

First, although charged together, they are not charged as conspirators, and therefore there is no compelling reason to have a joint trial of the three defendants.

Secondly, there are important facts that make a joint trial unfair. Factually, Troiano has been intimately involved in public service in Wildwood since 1999, a period of approximately 25 years. He has been the mayor of Wildwood three times, and presently serves as the mayor. Troiano and Byron are political rivals. In a trial, they are likely to become adversarial. Unlike defendant Byron, who has also served in public office, Troiano has never been forced to resign from public office. Unlike Byron, Troiano has never been charged with any other crime. Unlike Byron, Troiano has never been convicted of any other crime, state or federal. Unlike Byron, Troiano does not have other criminal charges pending

**CHARLES H. NUGENT, JR.**ATTORNEY AT LAW  
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against him. Because of his prior conviction, and other pending charges, Byron will likely be unable to testify in his own defense, putting a heavier burden on Troiano to distance himself from Byron.

In a small and close-knit community like Cape May County, these facts are probably no secret, and any potential jury may be aware, at least tangentially, of these facts. The potential that a jury's negative perception of Byron could unduly influence their perception of Troiano, even though the facts and defenses are unrelated, is substantial. Grouping them together, with Byron's baggage, more probably than not will taint Troiano in the eyes of a jury. The adversarial nature of the relationship will likely surface during trial, creating further tension in Troiano's right to a fair trial. A court should not risk the possibility of a jury speculating that strong evidence against one defendant may spillover and contaminate the evidence against another defendant. The State may respond that limiting instructions to a jury can solve any potential prejudice. Limiting instructions have limited efficacy.

Additionally, Troiano's defenses are significantly different than Byron's or Mikulski. Although he had a business during the time he was in public office (as he still does), his business was in Wildwood, and did not require his full-time attention. He did not have a job 40 miles away, in another county. As set forth in his motion, Troiano has multiple witnesses who will testify that he was "*always at City Hall*", and was seen "*everywhere*". Byron cannot make the same claim. The fact that Byron has not filed a motion for severance is also telling.

The existence of these facts makes it important for Troiano, in any defense, to aggressively distance himself from Byron. Counsel for Troiano will be required to spend considerable time, in opening statements, direct examination, cross-examination, and closing arguments, not only defending Troiano from the State, but also from the evidence against Byron. Viewed in this light, Troiano's defense to the charges are hostile to Byron, and therefore antagonistic.

Troiano will be required to make considerable effort during trial to ensure that the jury understands the difference between the defendants, and may be forced to argue Byron's culpability in order to properly defend himself. Troiano may be forced to limit his evidence, his witnesses, his cross-examination, etc. The trial could turn into a case where there are 2-3 prosecutors against each defendant, because defendants may be required to criticize each other, or defend against criticism from each other. These circumstances are not contemplated under joinder rules. Fairness should never be compromised.

Trying these defendants together not only makes life easier for the State, more importantly it gives the State a tactical advantage by fomenting, intentionally or not, discord and tension. If severed, that situation is cured, and prejudice eliminated. A joint trial of multiple defendants should not turn into a free for all where the State is assisted in proving its case by forcing defendants to go on the offensive, and criticize or blame co-defendants. Such a scenario will further magnify hostility and antagonism.

As a matter of simple fairness, a defendant should not be put in that position. Fairness to a defendant outweighs convenience to the State, and Court. Any reasonable weighing and balancing of the issues, including a defendant's right to a fair trial, strongly favor severance.

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ATTORNEY AT LAW

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For the foregoing reasons, it is respectfully requested that the court grant Troiano's motion for severance.

Very truly yours,

*Charles H. Nugent, Jr. /s/*

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Charles H. Nugent, Jr., Esquire

CHN:mml

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