

Brian A. Pelloni, Esq. (#026342008)

Hornstine & Vanderslice LLC
501 Cambria Avenue, Suite 300
Bensalem, PA 19020
(215) 568-4968
Counsel for Defendant Ernest V. Troiano

THE STATE OF NEW JERSEY

v.

ERNEST V. TROIANO, et al.

_____, Defendants

SUPERIOR COURT OF NEW JERSEY
COUNTY OF CAPE MAY

LAW DIVISION: CRIMINAL

CASE NO.: CPM-22-000535

CERTIFICATION OF SERVICE

I, Brian A. Pelloni, Esq. being of full age, hereby certify that a full and complete copy of Defendant's Motion for a Probable Cause Hearing was served upon the following via eCourts filing on May 1, 2023:

Brian Uzdevinis, Esq., Deputy Attorney General
Division of Criminal Justice
Office of Public Integrity & Accountability
25 Market Street, P.O. Box 085
Trenton, NJ 08625-0085
UzdavinisB@njdcj.org

Dated: May 1, 2023

By: 
Brian A. Pelloni, Esq.,
Counsel for Defendant Ernest V. Troiano

Brian A. Pelloni, Esq. (#026342008)

Hornstine & Vanderslice LLC
501 Cambria Avenue, Suite 300
Bensalem, PA 19020
(215) 568-4968
Counsel for Defendant Ernest V. Troiano

THE STATE OF NEW JERSEY

v.

ERNEST V. TROIANO, et al.

, Defendants

SUPERIOR COURT OF NEW JERSEY
COUNTY OF CAPE MAY

LAW DIVISION: CRIMINAL

CASE NO.: CPM-22-000535

**CERTIFICATION OF COUNSEL IN
SUPPORT OF DEFENDANT
TROIANO'S MOTION
TO DISMISS INDICTMENT**

I, Brian A. Pelloni, Esq., being of full age, hereby certify as follows:

1. I am an attorney at law licensed in the State of New Jersey, and I represent Defendant Troiano in the above docketed matter. I am fully familiar with the facts and circumstances of this case, and I am making this Certification in support of Defendant, Ernest V. Troiano's, Motion to dismiss the indictment returned on March 10, 2023.

2. Complaint 0514-S-2022-000131 was issued on June 24, 2022 alleging violations of N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:28-7(a)(2). (Exhibit A).

3. As evidenced in the attached Affidavit of Probable Cause, the State's case revolves around a change in the law in 2010 (P.L. 2010, c.2) regarding the number of hours required to be worked by an elected official to be eligible for enrollment in the State Health Benefits Program (hereinafter "SHBP"). (Exhibit A, page 9).

4. According to the new law, "After the effective date of P.L.2010, c. 2, the term 'employee' means (i) a full-time appointive or elective officer whose hours of work are fixed at 35 or more per week . . ." PUBLIC OFFICERS AND EMPLOYEES--RETIREMENT AND PENSIONS, 2010 NJ Sess. Law Serv. Ch. 2 (SENATE 3) (WEST).

5. Discovery in this matter was subsequently provided to counsel pursuant to a Protective Order issued by the Honorable Bernard E. DeLury, Jr., P.J.Cr. on August 24, 2022. Said discovery was bates stamped by the prosecution with the format "DCJ/201913690/xxxxxxxx" (Exhibit B, consisting of the pages from that discovery relevant to this Motion).

6. On December 9, 2022, counsel provided DAG Uzdavinis with a recorded audio statement taken December 5, 2022 from [REDACTED] who was a confidential assistant with the City of Wildwood, and was the one responsible for Mayor Troiano's timesheets, calendar, and schedule. (Exhibit C - Note: The included cover letter addresses and quotes her statements relevant to this matter. A full copy of the audio recording can be provided to the Court upon request, as it cannot be uploaded to eCourts directly).

7. In her December 5, 2022 statement, [REDACTED] was asked directly whether Mayor Troiano worked more than 35 hours per week, and she replied "absolutely, without a doubt." She further explained her knowledge was based on her firsthand experience with the Mayor, and that the hours he worked were consistent throughout his tenure with the City. (See Exhibit C, p.2).

8. On February 17, 2023, [REDACTED] was called to testify before the Grand Jury. (Exhibit D).

9. At that time, the Grand Jury panel was told that the only purpose of the proceeding was to "gather additional evidence in this ongoing investigation and prosecution." They were also told the State would not be asking them to vote on an indictment at that time. (Exhibit D, p.3, ln. 9-12).

10. Although the State asked [REDACTED] various questions about the timesheets that she completed on behalf of Mayor Troiano, at no time did the State attempt to elicit from the witness whether Mayor Troiano worked the required 35 hours per week. (See Exhibit D).

11. The State *only* asked if two *other* City Commissioners, Steven Mikulski and [REDACTED] were working 35 hours per week. (Exhibit D, pg.51, line 1).
12. On February 22, 2023, counsel provided DAG Uzdavinis with a certification from [REDACTED] who was the Deputy Director of the New Jersey Department of Community Affairs, Division of Local Government Services at the time that P.L. 2010, c.2 was enacted. (Exhibit E).
13. [REDACTED] was the primary drafter of “Local Finance Notice 2010-12,” the only known guidance from the State as to how local municipalities should handle the new law dealing with the 35 hour requirement for elected officials. (Exhibit E, pp. 6-18).
14. On March 10, 2023, the State called New Jersey State Police Detective Sergeant [REDACTED] to testify before the Grand Jury. (Exhibit F).
15. During an introduction by the prosecutor, he noted that “a few members of the jury who are here today were not here [on February 17th], but they have since been qualified, that is, provided an opportunity to review the testimony that was taken from the witness that day by reading the transcripts.” (Exhibit F, p.4, l.22 to p.5, l.1).
16. The presentation then commenced, and there is no further indication in the record that the absent jurors actually reviewed any transcript or that any further action was taken by the prosecutor to request or confirm a review was completed.
17. At no time during the presentation to the grand jury, on either date, did the State attempt to introduce the information that had been provided by [REDACTED] or [REDACTED]
18. Further, the State’s primary witness on March 10 conveyed multiple statements of alleged witnesses that were either plainly false or significantly misrepresented, as detailed further in the attached Brief.

19. At the end of the State's presentation on March 10, 2023, a twelve count indictment was returned against all defendants in this matter, each for official misconduct, theft by unlawful taking, tampering with public records, and falsifying or tampering with records.

20. Based upon the deficiencies in the grand jury process, the failure of the State to introduce exculpatory evidence, and the misrepresentation of multiple key facts by the State's detective, the Indictment against Defendant Troiano should be dismissed.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 1, 2023

By: 

Brian A. Pelloni, Esq.,
Counsel for Defendant Ernest V. Troiano

COMPLAINT - SUMMONS

COMPLAINT NUMBER				THE STATE OF NEW JERSEY VS. ERNEST V TROIANO ADDRESS: 157 WEST LEAMING AVE WILDWOOD NJ 08260-1440	
0514	S	2022	000131		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		
WILDWOOD CITY MUNICIPAL COURT 115 WEST DAVIS AVENUE WILDWOOD NJ 08260-0000 609-522-4924 COUNTY OF: CAPE MAY					
# of CHARGES 2	CO-DEFTS	POLICE CASE #: I620190008		DEFENDANT INFORMATION	
COMPLAINANT C NAME: V BRENNAN NEW JERSEY STATE POLICE			SEX: M EYE COLOR: BROWN DOB: [REDACTED]		DL STATE: NJ
			DRIVER'S LIC. #: [REDACTED]		SBI #: [REDACTED]
			SOCIAL SECURITY #: [REDACTED]		TELEPHONE #: [REDACTED] (c)
			LIVESCAN PCN #: [REDACTED]		

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **01/01/2012** in **WILDWOOD CITY**, **CAPE MAY** County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, BETWEEN ON OR ABOUT JULY 1, 2011 AND DECEMBER 31, 2019, IN THE CITY OF WILDWOOD, IN THE COUNTY OF CAPE MAY, ELSEWHERE, AND WITHIN THE JURISDICTION OF THIS COURT, ERNEST V. TROIANO, JR. KNOWINGLY DID UNLAWFULLY TAKE OR EXERCISE UNLAWFUL CONTROL OVER THE MOVABLE PROPERTY OF THE CITY OF WILDWOOD AND THE NEW JERSEY STATE HEALTH BENEFITS PROGRAM (SHBP) WITH PURPOSE TO DEPRIVE THE OWNER OF THE SAME, THAT IS, THE SAID ERNEST V. TROIANO, JR. KNOWINGLY DID UNLAWFULLY TAKE OR EXERCISE UNLAWFUL CONTROL OVER HEALTH AND MEDICAL BENEFITS TO WHICH HE WAS NOT ENTITLED, IN EXCESS OF \$75,000 PAID ON HIS BEHALF BY THE CITY OF WILDWOOD AND THE SHBP, CONTRARY TO THE PROVISIONS OF N.J.S.A. 2C:20-3, A CRIME OF THE SECOND DEGREE. CASE IS BEING PROSECUTED BY N.J. DIVISION OF CRIMINAL JUSTICE, DAG BRIAN UZDAVINIS, 856-414-8571.

WITHIN THE JURISDICTION OF THIS COURT, BETWEEN ON OR ABOUT JULY 1, 2011 AND
in violation of:

Original Charge	1) 2C:20-3A	2) 2C:28-7A(2)	3)
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: _____ **C V BRENNAN** _____ Date: **06/24/2022**

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the Superior Court in the county of: **CAPE MAY**
 at the following address: **CAPE MAY COUNTY COURTS**
CRIMINAL DIVISION **9 NORTH MAIN STREET** **CAPE MAY COURTHOUSE** **NJ 08210-0000**
 If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.
 Date of Arrest: **06/24/2022** Appearance Date: **07/20/2022** Time: **09:00AM** Phone: **609-402-0100**
 Signature of Person Issuing Summons: _____ **C V BRENNAN** _____ Date: **06/24/2022**

 Domestic Violence – Confidential
 Related Traffic Tickets or Other Complaints
 Serious Personal Injury/ Death Involved
Special conditions of release:

- No phone, mail or other personal contact w/victim**
 No possession firearms/weapons
 Other (specify):

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COMPLAINT - SUMMONS

COMPLAINT NUMBER				STATE V.	ERNEST V TROIANO
0514	S	2022	000131		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		

DECEMBER 31, 2019, IN THE CITY OF WILDWOOD, IN THE COUNTY OF CAPE MAY, ELSEWHERE, AND WITHIN THE JURISDICTION OF THIS COURT, ERNEST V. TROIANO, JR., WITH PURPOSE TO DEFRAUD OR INJURE, DID MAKE, PRESENT, OFFER FOR FILING OR USE ANY RECORD, DOCUMENT OR THING KNOWING IT TO BE FALSE, AND WITH THE PURPOSE THAT IT BE TAKEN AS A GENUINE PART OF INFORMATION OR RECORDS BELONGING TO, OR RECEIVED OR KEPT BY, THE GOVERNMENT FOR INFORMATION OR RECORD, OR REQUIRED BY LAW TO BE KEPT BY OTHERS FOR INFORMATION OF THE GOVERNMENT, THAT IS, THE SAID ERNEST V. TROIANO, JR., WITH PURPOSE TO DEFRAUD OR INJURE, DID KNOWINGLY MAKE FALSE STATEMENTS IN ONE OR MORE TIMESHEETS SUBMITTED TO THE CITY OF WILDWOOD FOR OFFICIAL TIMEKEEPING PURPOSES, IN VIOLATION OF N.J.S.A. 2C:28-7A(2), A CRIME OF THE THIRD DEGREE.

Original Charge			
Amended Charge			

COMPLAINT – SUMMONS (Court Action)

COMPLAINT NUMBER				STATE V.
0514	S	2022	000131	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ERNEST V TROIANO

FTA Bail Information		Date Bail Set: _____	Amount Bail Set: \$ _____ by: _____	<input type="checkbox"/> Bail Recog. Attached
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Released on Bail	R.O.R.	Committed Default	Committed w/o Bail	Place Committed: _____	Date Referred to County Prosecutor: _____
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Date of First Appearance: 07/20/2022	<input type="checkbox"/> Advised of Rights by _____	Defendant Desires Counsel: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Prosecuting Attorney Information				Defense Counsel Information					
Name:				Name:					
State	County	Municipal	Other	None	Retained	Public Def	Assigned	Waived	Other

Original Charge	1) 2C:20-3A	2) 2C:28-7A(2)	3)
Amended Charge			
Waiver Indt/Jury			
Plea/Date of Plea	Plea: _____ Date: _____	Plea: _____ Date: _____	Plea: _____ Date: _____
Adjudication (* see code)	Finding Code: _____ Date: _____	Finding Code: _____ Date: _____	Finding Code: _____ Date: _____
Jail Term	Jail time credit Susp. Imp	Jail time credit Susp. Imp	Jail time credit Susp. Imp
Probation Term	Susp. Imp	Susp. Imp	Susp. Imp
Cond. Discharge Term			
Community Service			
D/L Suspension Term			
Fines/Costs	Fines: _____ Costs: _____	Fines: _____ Costs: _____	Fines: _____ Costs: _____
VCCB/SNSF	VCCB: _____ SNSF: _____	VCCB: _____ SNSF: _____	VCCB: _____ SNSF: _____
DEDR/Lab Fee	DEDR: _____ LAB: _____	DEDR: _____ LAB: _____	DEDR: _____ LAB: _____
CD Fee/Drug Ed Fnd	CD: _____ DAEF: _____	CD: _____ DAEF: _____	CD: _____ DAEF: _____
DV Surch/Other Fees	DV: _____ Other: _____	DV: _____ Other: _____	DV: _____ Other: _____
Restitution Beneficiary: _____			

<p>Miscellaneous Information, Adjournments, Companion Complaints, Co-Defendants, Case Notes:</p> <p>Related Traffic Tickets and Complaints:</p>	<p>* Finding Codes</p> <p>1 – Guilty 2 – Not Guilty 3 – Dismissed – Other 4 – Guilty but Merged 5 – Dismissed-Rule 6 – Dismissed Lack of Prosecution 7 – Dismissed – Pros Motion/Vic Req 8 – Conditional Discharge D – Dismissed- Prosecutor Discretion M – Dismissed- Mediation P – Dismissed-Plea Agreement S – Disposed at Superior W – Dismissed-False ID</p>
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COMPLAINT – SUMMONS (Court Action)

COMPLAINT NUMBER				STATE V.
0514	S	2022	000131	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ERNEST V TROIANO

FTA Bail Information		Date Bail Set: _____	Amount Bail Set: \$ _____ by: _____	<input type="checkbox"/> Bail Recog. Attached
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Released on Bail	R.O.R.	Committed Default	Committed w/o Bail	Place Committed: _____	Date Referred to County Prosecutor: _____
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Date of First Appearance: 07/20/2022	<input type="checkbox"/> Advised of Rights by _____	Defendant Desires Counsel: <input type="checkbox"/> Yes <input type="checkbox"/> No
---	---	--

Prosecuting Attorney Information				Defense Counsel Information					
Name:				Name:					
State	County	Municipal	Other	None	Retained	Public Def	Assigned	Waived	Other

Original Charge									
Amended Charge									
Waiver Indt/Jury									
Plea/Date of Plea	Plea:	Date:		Plea:	Date:		Plea:	Date:	
Adjudication (* see code)	Finding Code:	Date:		Finding Code:	Date:		Finding Code:	Date:	
Jail Term		Jail time credit	Susp. Imp		Jail time credit	Susp. Imp		Jail time credit	Susp. Imp
Probation Term			Susp. Imp			Susp. Imp			Susp. Imp
Cond. Discharge Term									
Community Service									
D/L Suspension Term									
Fines/Costs	Fines:	Costs:		Fines:	Costs:		Fines:	Costs:	
VCCB/SNSF	VCCB:	SNSF:		VCCB:	SNSF:		VCCB:	SNSF:	
DEDR/Lab Fee	DEDR:	LAB:		DEDR:	LAB:		DEDR:	LAB:	
CD Fee/Drug Ed Fnd	CD:	DAEF:		CD:	DAEF:		CD:	DAEF:	
DV Surch/Other Fees	DV:	Other:		DV:	Other:		DV:	Other:	
Restitution Beneficiary: _____									

<p>Miscellaneous Information, Adjournments, Companion Complaints, Co-Defendants, Case Notes:</p> <p>Related Traffic Tickets and Complaints:</p>	<p style="text-align: center;">* Finding Codes</p> <ul style="list-style-type: none"> 1 – Guilty 2 – Not Guilty 3 – Dismissed – Other 4 – Guilty but Merged 5 – Dismissed-Rule 6 – Dismissed Lack of Prosecution 7 – Dismissed – Pros Motion/Vic Req 8 – Conditional Discharge D – Dismissed- Prosecutor Discretion M – Dismissed- Mediation P – Dismissed-Plea Agreement S – Disposed at Superior W – Dismissed-False ID
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COMPLAINT - SUMMONS (DEFENDANT'S COPY)

COMPLAINT NUMBER				<i>THE STATE OF NEW JERSEY</i> <i>VS.</i> ERNEST V TROIANO	
0514	S	2022	000131		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		
WILDWOOD CITY MUNICIPAL COURT 115 WEST DAVIS AVENUE WILDWOOD NJ 08260-0000 609-522-4924 COUNTY OF: CAPE MAY					
# of CHARGES 2		CO-DEFTS	POLICE CASE #: I620190008	DEFENDANT INFORMATION SEX: M EYE COLOR: BROWN DOB: [REDACTED] DRIVER'S LIC. #: [REDACTED] DL STATE: NJ SOCIAL SECURITY #: [REDACTED] SBI #: [REDACTED] TELEPHONE #: [REDACTED] (C) LIVESCAN PCN #: [REDACTED]	
COMPLAINANT NAME: C V BRENNAN				ADDRESS: 157 WEST LEAMING AVE WILDWOOD NJ 08260-1440	

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **01/01/2012** in **WILDWOOD CITY**, **CAPE MAY** County, **NJ** did: WITHIN THE JURISDICTION OF THIS COURT, BETWEEN ON OR ABOUT JULY 1, 2011 AND DECEMBER 31, 2019, IN THE CITY OF WILDWOOD, IN THE COUNTY OF CAPE MAY, ELSEWHERE, AND WITHIN THE JURISDICTION OF THIS COURT, ERNEST V. TROIANO, JR. KNOWINGLY DID UNLAWFULLY TAKE OR EXERCISE UNLAWFUL CONTROL OVER THE MOVABLE PROPERTY OF THE CITY OF WILDWOOD AND THE NEW JERSEY STATE HEALTH BENEFITS PROGRAM (SHBP) WITH PURPOSE TO DEPRIVE THE OWNER OF THE SAME, THAT IS, THE SAID ERNEST V. TROIANO, JR. KNOWINGLY DID UNLAWFULLY TAKE OR EXERCISE UNLAWFUL CONTROL OVER HEALTH AND MEDICAL BENEFITS TO WHICH HE WAS NOT ENTITLED, IN EXCESS OF \$75,000 PAID ON HIS BEHALF BY THE CITY OF WILDWOOD AND THE SHBP, CONTRARY TO THE PROVISIONS OF N.J.S.A. 2C:20-3, A CRIME OF THE SECOND DEGREE. CASE IS BEING PROSECUTED BY N.J. DIVISION OF CRIMINAL JUSTICE, DAG BRIAN UZDAVINIS, 856-414-8571.

WITHIN THE JURISDICTION OF THIS COURT, BETWEEN ON OR ABOUT JULY 1, 2011 AND
in violation of:

Original Charge	1) 2C:20-3A	2) 2C:28-7A(2)	3)
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

Signed: **C V BRENNAN** Date: **06/24/2022**

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the **Superior Court** in the county of: **CAPE MAY**
at the following address: **CAPE MAY COUNTY COURTS**
CRIMINAL DIVISION **9 NORTH MAIN STREET** **CAPE MAY COURTHOUSE** **NJ 08210-0000**
If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.
Date of Arrest: **06/24/2022** Appearance Date: **07/20/2022** Time: **09:00AM** Phone: **609-402-0100**
Signature of Person Issuing Summons: **C V BRENNAN** Date: **06/24/2022**

 Domestic Violence – Confidential
 **Related Traffic Tickets
or Other Complaints**
 **Serious Personal Injury/ Death
Involved**
Special conditions of release:

- No phone, mail or other personal contact w/victim**
 No possession firearms/weapons
 Other (specify):

COMPLAINT - SUMMONS (DEFENDANT'S COPY)

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COMPLAINT - SUMMONS (DEFENDANT'S COPY)

COMPLAINT NUMBER				STATE V.	ERNEST V TROIANO
0514	S	2022	000131		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		

DECEMBER 31, 2019, IN THE CITY OF WILDWOOD, IN THE COUNTY OF CAPE MAY, ELSEWHERE, AND WITHIN THE JURISDICTION OF THIS COURT, ERNEST V. TROIANO, JR., WITH PURPOSE TO DEFRAUD OR INJURE, DID MAKE, PRESENT, OFFER FOR FILING OR USE ANY RECORD, DOCUMENT OR THING KNOWING IT TO BE FALSE, AND WITH THE PURPOSE THAT IT BE TAKEN AS A GENUINE PART OF INFORMATION OR RECORDS BELONGING TO, OR RECEIVED OR KEPT BY, THE GOVERNMENT FOR INFORMATION OR RECORD, OR REQUIRED BY LAW TO BE KEPT BY OTHERS FOR INFORMATION OF THE GOVERNMENT, THAT IS, THE SAID ERNEST V. TROIANO, JR., WITH PURPOSE TO DEFRAUD OR INJURE, DID KNOWINGLY MAKE FALSE STATEMENTS IN ONE OR MORE TIMESHEETS SUBMITTED TO THE CITY OF WILDWOOD FOR OFFICIAL TIMEKEEPING PURPOSES, IN VIOLATION OF N.J.S.A. 2C:28-7A(2), A CRIME OF THE THIRD DEGREE.

Original Charge			
Amended Charge			

RETURN OF SERVICE INFORMATION

COMPLAINT NUMBER				<i>THE STATE OF NEW JERSEY</i> <i>VS.</i> ERNEST V TROIANO	
0514	S	2022	000131		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		
WILDWOOD CITY MUNICIPAL COURT 115 WEST DAVIS AVENUE WILDWOOD NJ 08260-0000 609-522-4924 COUNTY OF: CAPE MAY					
# of CHARGES 2		CO-DEFTS	POLICE CASE #: I620190008		ADDRESS: 157 WEST LEAMING AVE WILDWOOD NJ 08260-1440
COMPLAINANT C NAME: V BRENNAN NEW JERSEY STATE POLICE			DEFENDANT INFORMATION SEX: M EYE COLOR: BROWN DOB: [REDACTED] DRIVER'S LIC. #. [REDACTED] DL STATE: NJ SOCIAL SECURITY # [REDACTED] SBI #: [REDACTED] TELEPHONE #: [REDACTED] (C) LIVESCAN PCN #:		

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **01/01/2012** in **WILDWOOD CITY**, **CAPE MAY** County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, BETWEEN ON OR ABOUT JULY 1, 2011 AND DECEMBER 31, 2019, IN THE CITY OF WILDWOOD, IN THE COUNTY OF CAPE MAY, ELSEWHERE, AND WITHIN THE JURISDICTION OF THIS COURT, ERNEST V. TROIANO, JR. KNOWINGLY DID UNLAWFULLY TAKE OR EXERCISE UNLAWFUL CONTROL OVER THE MOVABLE PROPERTY OF THE CITY OF WILDWOOD AND THE NEW JERSEY STATE HEALTH BENEFITS PROGRAM (SHBP) WITH PURPOSE TO DEPRIVE THE OWNER OF THE SAME, THAT IS, THE SAID ERNEST V. TROIANO, JR. KNOWINGLY DID UNLAWFULLY TAKE OR EXERCISE UNLAWFUL CONTROL OVER HEALTH AND MEDICAL BENEFITS TO WHICH HE WAS NOT ENTITLED, IN EXCESS OF \$75,000 PAID ON HIS BEHALF BY THE CITY OF WILDWOOD AND THE SHBP, CONTRARY TO THE PROVISIONS OF N.J.S.A. 2C:20-3, A CRIME OF THE SECOND DEGREE. CASE IS BEING PROSECUTED BY N.J. DIVISION OF CRIMINAL JUSTICE, DAG BRIAN UZDAVINIS, 856-414-8571.

WITHIN THE JURISDICTION OF THIS COURT, BETWEEN ON OR ABOUT JULY 1, 2011 AND in violation of:

Original Charge	1) 2C:20-3A	2) 2C:28-7A(2)	3)
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Check √	Certification by Police Regarding Complaint-Summons
✓	I certify that I served the complaint-summons by delivering a copy to the defendant personally.
	I certify that I personally served the complaint-summons by leaving a copy at the defendant's usual place of abode with a competent member of the household of the age 14 or over _____ Name of family member over 14 years of age
	I certify that I mailed a copy of the complaint-summons by ordinary mail to the defendant at his or her last known address. _____ Defendant's last known address
	I certify that I served the complaint-summons by delivering a copy to a person authorized to receive service of process on the defendant's behalf. _____ Name and title of authorized person
	Other manner of service: I certify that I served the complaint-summons in the following manner: _____
	I certify that I was unable to serve the complaint-summons.

Signed: **C V BRENNAN NEW JERSEY STATE POLICE** Date of Action: **06/24/2022**
Name, Title and Department of Officer

RETURN OF SERVICE INFORMATION

RETURN OF SERVICE INFORMATION

COMPLAINT NUMBER				STATE V.	ERNEST V TROIANO
0514	S	2022	000131		
<small>COURT CODE</small>	<small>PREFIX</small>	<small>YEAR</small>	<small>SEQUENCE NO.</small>		

DECEMBER 31, 2019, IN THE CITY OF WILDWOOD, IN THE COUNTY OF CAPE MAY, ELSEWHERE, AND WITHIN THE JURISDICTION OF THIS COURT, ERNEST V. TROIANO, JR., WITH PURPOSE TO DEFRAUD OR INJURE, DID MAKE, PRESENT, OFFER FOR FILING OR USE ANY RECORD, DOCUMENT OR THING KNOWING IT TO BE FALSE, AND WITH THE PURPOSE THAT IT BE TAKEN AS A GENUINE PART OF INFORMATION OR RECORDS BELONGING TO, OR RECEIVED OR KEPT BY, THE GOVERNMENT FOR INFORMATION OR RECORD, OR REQUIRED BY LAW TO BE KEPT BY OTHERS FOR INFORMATION OF THE GOVERNMENT, THAT IS, THE SAID ERNEST V. TROIANO, JR., WITH PURPOSE TO DEFRAUD OR INJURE, DID KNOWINGLY MAKE FALSE STATEMENTS IN ONE OR MORE TIMESHEETS SUBMITTED TO THE CITY OF WILDWOOD FOR OFFICIAL TIMEKEEPING PURPOSES, IN VIOLATION OF N.J.S.A. 2C:28-7A(2), A CRIME OF THE THIRD DEGREE.

Original Charge			
Amended Charge			

Affidavit of Probable Cause

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
0514	S	2022	000131	VS.	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ERNEST V TROIANO	
WILDWOOD CITY MUNICIPAL COURT 115 WEST DAVIS AVENUE WILDWOOD NJ 08260-0000 609-522-4924 COUNTY OF: CAPE MAY				ADDRESS : 157 WEST LEAMING AVE WILDWOOD NJ 08260-1440	
# of CHARGES 2	CO-DEFTS	POLICE CASE #: I620190008		DEFENDANT INFORMATION	
COMPLAINANT c NAME: V BRENNAN NEW JERSEY STATE POLICE				SEX: M EYE COLOR: BROWN DOB: [REDACTED] DRIVER'S LIC. #: [REDACTED] DL STATE: NJ SOCIAL SECURITY #: [REDACTED] SBI #: [REDACTED] TELEPHONE #: [REDACTED] (C) LIVESCAN PCN #:	

Purpose: This Affidavit/Certification is to more fully describe the facts of the alleged offense so that a judge or authorized judicial officer may determine probable cause.

1. Description of relevant facts and circumstances which support probable cause that (1) the offense(s) was committed and (2) the defendant is the one who committed it:
 Ernest V. Troiano, Jr. was elected to Wildwood's three-member city Commission and sworn in as mayor in 2011. He then voted to pass a resolution that declared himself and the other commissioners to be full-time employees working "a minimum of 35 hours per week" for Wildwood. After passing that 2011 resolution, Troiano enrolled in the State Health Benefits Program (SHBP) and received publicly funded health benefits through the end of his last term in December 2019. During that time, Wildwood and the SHBP paid more than \$286,500 in premiums and claims on his behalf. Since May 2010, New Jersey law has required elected officials to be full-time employees "whose hours of work are fixed at 35 or more per week" in those elected positions to participate in the SHBP and receive employer-provided healthcare. Investigation showed, however, that Troiano was never eligible for those benefits because he was never a "full-time" employee in accordance with state law. Unlike all other full-time Wildwood employees, Troiano received no vacation, sick or personal days, he maintained no regular schedule and he did not document his actual time worked. Based on witness statements and other evidence, although Troiano signed and submitted timesheets to the city indicating that he worked full days Monday through Friday each week during the entire time, he was neither working a regular full-time schedule nor working hours that amounted to at least 35 per week.

Affidavit of Probable Cause

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1/1/2017

Affidavit of Probable Cause

COMPLAINT NUMBER			
0514	S	2022	000131
COURT CODE	PREFIX	YEAR	SEQUENCE NO.

THE STATE OF NEW JERSEY

VS.

ERNEST V TROIANO

2. I am aware of the facts above because: (Included, but not limited to: your observations, statements of eyewitnesses, defendant's admission, etc.)

I am aware of the facts as I am the lead detective of the case.

3. If victim was injured, provide the extent of the injury:

N/A

Certification:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: C V BRENNAN LAW ENFORCEMENT OFFICER

Date: 06/24/2022

Affidavit of Probable Cause

Page 10 of 11

1/1/2017

Preliminary Law Enforcement Incident Report

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
0514	S	2022	000131	VS.	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ERNEST V TROIANO	
WILDWOOD CITY MUNICIPAL COURT 115 WEST DAVIS AVENUE WILDWOOD NJ 08260-0000 609-522-4924 COUNTY OF: CAPE MAY				ADDRESS: 157 WEST LEAMING AVE WILDWOOD NJ 08260-1440	
# of CHARGES 2	CO-DEFTS	POLICE CASE #: I620190008		DEFENDANT INFORMATION	
COMPLAINANT C NAME: V BRENNAN NEW JERSEY STATE POLICE			SEX: M EYE COLOR: BROWN	DOB: [REDACTED]	DL STATE: NJ
			DRIVER'S LIC. #: [REDACTED]	SOCIAL SECURITY #: [REDACTED]	SBI #: [REDACTED]
			TELEPHONE #: [REDACTED] (C)		
			LIVESCAN PCN #: [REDACTED]		

Purpose: The Preliminary Law Enforcement Incident Report (PLEIR) is intended to document basic information known to the officer at the time of its preparation. It is recognized that additional relevant information will emerge as an investigation continues. The PLEIR shall be in addition to, not in lieu of, any regular police arrest, incident, or investigation reports. Note that the PLEIR is specific to each defendant charged in an investigation.

- The charge was based on the observations/statements made by an eyewitness(es).
 - The witness statement(s) were recorded via:
 - *Stationhouse interview room camera
 - *Audio recording only
- Physical evidence was seized/recovered:
 - Other Type(s) of physical evidence See evidence log
- The case involved theft and/or stolen property. The property which was stolen and/or possessed is See charges
- The case involves a search warrant(s).

Certification:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: **C V BRENNAN LAW ENFORCEMENT OFFICER** Date: **06/24/2022**

Preliminary Law Enforcement Incident Report

Page 11 of 11

7/20/2018

Brian A. Pelloni, Esq. (#026342008)

Hornstine & Vanderslice LLC
501 Cambria Avenue, Suite 300
Bensalem, PA 19020
(215) 568-4968
Counsel for Defendant Ernest V. Troiano

THE STATE OF NEW JERSEY

v.

ERNEST V. TROIANO, et al.

, Defendants

SUPERIOR COURT OF NEW JERSEY
COUNTY OF CAPE MAY

LAW DIVISION: CRIMINAL

CASE NO.: CPM-22-000535

**NOTICE OF DEFENDANT
TROIANO'S MOTION
TO DISMISS INDICTMENT**

TO: Brian Uzdavinis, Esq., Deputy Attorney General
Division of Criminal Justice
Office of Public Integrity & Accountability
25 Market Street, P.O. Box 085
Trenton, NJ 08625-0085

PLEASE TAKE NOTICE that the above Defendant has applied to the Superior Court of New Jersey, Law Division, Criminal Part, Cape May County, to dismiss all counts of the indictment returned on March 10, 2023 against Defendant Ernest V. Troiano Jr.

Counsel shall rely upon the attached certification and brief, and oral argument is requested only if opposition is timely filed.

Dated: May 1, 2023

By: 

Brian A. Pelloni, Esq.,
Counsel for Defendant Ernest V. Troiano

THE STATE OF NEW JERSEY

v.

ERNEST V. TROIANO, et al.

, Defendants

SUPERIOR COURT OF NEW JERSEY
COUNTY OF CAPE MAY

LAW DIVISION: CRIMINAL

CASE NO.: CPM-22-000535

ORDER

This matter, having come before the Court on Motion of Brian A. Pelloni, Esq., counsel for Defendant Ernest V. Troiano, and the Court having reviewed the moving papers, and all parties having had the opportunity to be heard, and for good cause shown;

IT IS, on this _____ day of _____, 20____, hereby **ORDERED AND ADJUDGED** that the indictment returned on March 10, 2023 is hereby dismissed as it relates to Defendant Ernest V. Troiano, Jr, specifically Counts One, Four, Seven, and Ten.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all parties within seven (7) days of the receipt of same.

, J.S.C.

Brian A. Pelloni, Esq. (#026342008)

Hornstine & Vanderslice LLC
 501 Cambria Avenue, Suite 300
 Bensalem, PA 19020
 (215) 568-4968
 Counsel for Defendant Ernest V. Troiano

THE STATE OF NEW JERSEY

v.

ERNEST V. TROIANO, et al.

, Defendants

SUPERIOR COURT OF NEW JERSEY
 COUNTY OF CAPE MAY

LAW DIVISION: CRIMINAL

CASE NO.: CPM-22-000535

**BRIEF IN SUPPORT OF DEFENDANT
 TROIANO'S MOTION
 TO DISMISS INDICTMENT**

BACKGROUND

Defendant Ernest V. Troiano, Jr. was an elected Commissioner and appointed Mayor in the City of Wildwood, NJ between 2011 to 2019. His job responsibilities throughout his tenure required that he work more than 35 hours per week, often making appearances or handling City business on evenings, weekends, and holidays. Those hours entitled him to benefits through the SHBP according to Chapter 2 of Public Law 2010 dealing with employee eligibility. From the time said law went into effect until the time he left office in 2019, all of the required "Certifying Officers" at the City approved, certified, and submitted Mayor Troiano's application for those benefits to the State.

At some point in time, a small handful of disgruntled employees from the City requested that the NJ Pensions and Benefits department do an investigation by calling in an anonymous tip that some of the Commissioners weren't working the required 35 hours. The subsequent multi-year investigation by both Pensions, and later the New Jersey State Police, revealed that several Commissioners between 2011 and 2022 were working other full time jobs, and most witnesses agreed that those particular Commissioners were only part time for the City. However, at no point throughout the investigation was any evidence discovered that Mayor Troiano was one of the individuals not working the required 35 hours on behalf of the City of Wildwood.

ARGUMENT

Based upon the multitude of legal, factual, and procedural deficiencies in the grand jury process in this matter, Defendant Troiano respectfully requests that all counts of the March 10, 2023 indictment against him be dismissed. The law is well settled that “the decision whether to dismiss an indictment lies with the discretion of the trial court.” State v. Hogan, 144 N.J. 216, 229 (1996) (citing State v. McCrary, 97 N.J. 132 (1984)). Further, such a decision “will not be disturbed on appeal unless it has been clearly abused.” (Id.).

Traditionally, our courts “have demonstrated a greater willingness to review grand jury proceedings where the alleged deficiency in the proceedings affects the grand jurors’ ability to make an informed decision whether to indict.” (Id.). As explained in detail in each section of this brief below, there were multiple such deficiencies, any of which on its own is sufficient to warrant the dismissal of the indictment. These issues include the joinder of unrelated offenses in a single indictment, prosecutorial misconduct by failing to inform the jury of applicable law, failing to present clearly exculpatory evidence, withholding factual answers to grand juror questions, and allowing grand jurors to vote who were not present for both days of testimony. When viewing all of these issues collectively, the only possible fair result is the dismissal of the indictment against Defendant Troiano.

In reviewing the following issues, it is critical to understand that the State’s entire case rests on the premise that Defendant Troiano failed to work the 35 hours per week necessary to claim benefits from the State Health Benefits Program. If, in fact, he did work the required hours, then his receipt of benefits was lawful regardless of how those hours were recorded and/or submitted. Obviously, any personal opinions expressed by witnesses as to whether or not he was classified as part-time or full-time by the City of Wildwood are wholly irrelevant, since it is *only* the number of hours worked that counts according to P.L. 2010, c.2.

A. The State Erred in Presenting Three Unrelated Matters Together in A Single Indictment

It was improper for the State in this matter to join all three defendants in a single indictment, since each matter was unique to each defendant, there was no common scheme between them, and the alleged evidence against one is wholly irrelevant to the others. It is well settled law in New Jersey that there are “basic principles governing joinder of offenses” in an indictment. State v. Sterling, 215 N.J. 65, 72 (2013). Those principles are set forth in New Jersey Court Rule 3:7-6, which states:

“Two or more offenses may be charged in the same indictment or accusation in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan. Relief from prejudicial joinder shall be afforded as provided by R. 3:15-2.”

The reference to, and relief afforded by R. 3:15-2, “addresses the inherent ‘danger [.] when several crimes are tried together, that the jury may use the evidence cumulatively; that is, that, although so much as would be admissible upon any one of the charges might not have persuaded them of the accused’s guilt, the sum of it will convince them as to all.’” Sterling at 73 (quoting State v. Pitts, 116 N.J. 580, 601 (1989)).

It is up to the trial court to determine whether prejudice was present in the joinder of multiple defendants and offenses in a single indictment, and its judgment is reviewed only for an abuse of discretion. (Id.). “The test for assessing prejudice is ‘whether, assuming the charges were tried separately, evidence of the offenses sought to be severed would be admissible under [N.J.R.E. 404(b)] in the trial of the remaining charges.’” (Id.) (quoting State v. Chenique-Puey, 145 N.J. 334, 341 (1996)).

Here, the facts as presented to the grand jury show the alleged offenses were clearly independent actions committed by multiple individuals without any collusion or common scheme

between them. No conspiracy was charged, and there is no suggestion at all that the three defendants were somehow working together. In fact, the issue was brought up by one of the grand jurors when they asked “Were these actions taken individually, the adding up the timesheets or were they all aware of each other’s activity? Were they individually fudging the timesheets or collectively?” (Counsel’s Certification, Exhibit F, p.113, 1.12-16.) The question was directed back to the lead detective, who indicated that there was no such indication of collusion identified by the investigation. (Id. at 1.25).

Despite no connection between the three defendants’ activities, and despite the many distinctions between Defendant Troiano and the other defendants discussed in the exculpatory evidence section of this brief, he is repeatedly and pervasively related to the other defendants throughout both days of grand jury testimony. On February 17, 2023 (Counsel’s Certification, Exhibit D), there were such references as:

- p.24, 1.10-11 – “like the two we just saw for Troiano...” (reviewing Byron’s timesheets)
- p.25, 1.7 – “so as with Troiano, who would stamp the timesheets on Byron’s behalf”
- p.26, 1.3 – “and as I asked for Troiano...” (asking about using Byron’s signature stamp)
- p.31, 1.6 – “and is it correct that like the one for Troiano that we just saw...” (comparing Byron’s timesheets)
- p.45, 1.24 and p.46, 1.3 – “they seem much more specific and varied on these timesheets compared to the hours on Byron’s or Troiano’s...” and “they don’t appear to uniformly amount to exactly 35...” (comparing Mayor Troiano to Commissioners Mikulski and ██████████ who both, of their own admission, worked less than 35 hours per week).

The attempts to compare and connect Troiano to the other defendants continued during the presentation on March 10, 2023 (Counsel’s Certification, Exhibit F):

- p.55, 1.17 – “like the one for Troiano that we just saw...” (comparing Byron’s timesheets)
- p.72, 1.7- “Like Mikulski’s timesheets and unlike Byron’s or Troiano’s...” (comparing the sheets of ██████████ Mikulski, Byron, and Troiano, and suggesting that since some of them were not working 35 hours per week, none of them actually were)

- p.78, 1.14 – “didn’t you learn that every Commissioner we mentioned today, Troiano, Byron, [REDACTED], Mikulski and of course [REDACTED] they all had other jobs or businesses...” (suggesting that all the individuals had full time work outside their City position, despite the fact that each of their jobs was significantly different)
- p.83, 1.12 – “like the others that we saw before for Troiano, Byron, [REDACTED] and [REDACTED]..” (suggesting that a “part time” designation for Mikulski on City paperwork was also true for the others)

These repeated comparisons between Troiano and the other defendants are especially concerning in light of how many witnesses reported that Troiano put in significantly more time into the job than the others, as more fully addressed in Section C. of this brief.

Further, in addition to making direct comparisons between Troiano and multiple *dissimilarly situated individuals*, the State inflated the seriousness of the matter by telling the grand jury “the grand total of all of these public funds expended based on their participation in the State Health Benefits Program exceeds a million dollars...” (Counsel’s Certification, Exhibit F, p.99, 1.1). Where Defendant Troiano only received a quarter of that amount in benefits, it was wholly inappropriate and prejudicial to tell the jury that this matter involves over “a million dollars” in allegedly fraudulent benefits.

Based upon the fact that there was no connection between the alleged actions of the defendants, and that much of the evidence offered to the grand jury would be wholly inadmissible against Defendant Troiano individually, the combined grand jury presentation was improper, and the indictment should be dismissed.

B. There Was Prosecutorial Misconduct through Incorrect and Misleading Statements of Law

A prosecutor has a well settled duty to answer valid legal questions raised by grand jurors, and that duty was breached here when the grand jurors were given incorrect and misleading answers

about what was required of Defendant Troiano under the law. Throughout the course of grand jury proceedings generally, jurors are permitted to ask questions to make sure they are fully informed. With respect to any questions involving the law, a court may intervene in an indictment “in the case of ‘prosecutorial misconduct.’” State v. Jeannotte-Rodriguez, 469 N.J. Super. 69, 89 (App. Div. 2021) (citing Sate v. Bell, 241 N.J. 552 (2020)). Such conduct “may occur when a prosecutor incorrectly or misleadingly states the law...,” or where failing to properly advise the grand jury “would ‘leave purely legal issues open to speculation by lay people.’” Id. (also citing State v. Brady, 452 N.J. Super 143 (App. Div. 2017)).

In this matter, during the February 17th presentation, the prosecutor answered a question about the law raised by the grand jurors not only incorrectly, but also in a misleading way. Specifically, it was asked “where does it say the 35 hours must be worked at City Hall?” (Counsel’s Certification, Exhibit D, p.65, l.1). The prosecutor responded, “I can answer that to the effect that I don’t believe any of the evidence that would show would address that.” (Id. at l.4). This is clearly a question of law, and the prosecutor was aware that *nowhere in the law* does it say the 35 hours had to be worked at City Hall, or at any other particular location for that matter. However, instead of accurately advising the jury that no such requirement exists under the law, the prosecutor’s answer instead suggested that it was a factual question, and that without some testimonial evidence presented it was open to speculation by the jurors.

It is important to understand the nature of the charges in the indictment to fully appreciate the gravity of this error. Every single charge against Defendant Troiano has a basis in the allegation that he didn’t work at least 35 hours per week as required by P.L. 2010, c.2. If he did work the requisite time, then he was entitled to benefits regardless of his official classification by the city as part-time or full-time, and regardless of what any timesheet said that was submitted under his name. This issue

is further significant because of the nature of his employment as an elected official (serving as both a City Commissioner and as Mayor), which requires significant activity outside the walls of City Hall.

It is clear from the transcript that the grand jurors considered this a significant issue as well based upon other questions that they asked throughout the proceedings. For example, regarding timesheets, one juror asked, “were they only reporting time when they were in the office not including the time like she said they worked 24/7, so was it only the time that they were physically in the office?” (Counsel’s Certification, Exhibit D, p.66, l.2). The same juror clarified the question and followed up with “I want to know if they were just City Hall hours.” (Id. at l.20). This issue is compounded by the fact that the prosecutor repeatedly referred only to “City Hall” when asking [REDACTED] about the defendants’ schedules.

Based on the fact that the prosecutor refused to properly answer a clear question of law, and on the obvious importance of this question to the jurors, this Court has an obligation to intervene and dismiss the indictment.

C. The State Failed to Present Clearly Exculpatory Evidence to the Grand Jury

The State was in possession of evidence from a credible and reliable source that Defendant Troiano worked at least 35 hours per week throughout his tenure with the City and failed to present it to the grand jury, despite a clear obligation to do so. Instead, the State presented other, factually inaccurate and irrelevant, information regarding the number of hours worked by Defendant Troiano.

It is universally understood that a prosecutor has a duty to include clearly exculpatory evidence when presenting a matter to a grand jury. New Jersey law specifically requires that “...in establishing its *prima facie* case against the accused, the State may not deceive the grand jury or present its evidence in a way that is tantamount to telling the grand jury a ‘half-truth.’” State v. Hogan, 144 N.J. 216, 236 (1996). In order to determine whether a prosecutor’s duty of disclosure is

triggered, there is a two part test. Specifically, the evidence “must directly negate guilt and must also be clearly exculpatory.” Id. at 237. If credible, material, and exculpatory evidence “is withheld from the grand jury, the prosecutor, in essence, presents a distorted version of the facts . . . and interferes with the grand jury’s decision-making function.” Id. at 236.

With respect to the first prong of the test, the evidence has to “squarely refute an *element* of the crime in question” and not simply relate to motive or the credibility of a witness. Id. (emphasis in original). The second prong of the test “requires an evaluation of the quality and reliability of the evidence” and “should be analyzed in the context of the nature and source of the evidence, and the strength of the State’s case.” Id. In any event, the law is clear that “the credible testimony of a reliable, unbiased alibi witness that demonstrates that the accused could not have committed the crime in question would be clearly exculpatory.” Id. at 238.

In the present matter, there are several instances where exculpatory evidence was either withheld from the grand jury completely or was misrepresented by the witness in response to generalized questions from the prosecutor, resulting in a requirement that the indictment be dismissed against Defendant Troiano.

(C.)(1.) The State Withheld Exculpatory Evidence that Troiano Worked 35 Hours Per Week

The first, and most concerning, example of the State withholding exculpatory evidence took place during the February 17, 2023 testimony of [REDACTED] [REDACTED] was a confidential assistant with the City of Wildwood, and was the one responsible for Mayor Troiano’s timesheets, calendar, and schedule. There can be no question that, besides Troiano himself, [REDACTED] is the person with the closest and most direct knowledge of his schedule and activities on behalf of the City of Wildwood.

Prior to calling her as a grand jury witness, the State was provided with a letter and audio recording of a statement that [REDACTED] provided on December 5, 2022. During that statement, she was very clearly and specifically asked whether Mayor Troiano worked more than 35 hours per week, and she replied “absolutely, without a doubt.” (Counsel’s Certification, Exhibit C). She further noted that the hours he worked were consistent throughout his tenure with the City and explained her knowledge was based on her firsthand experience with the Mayor, having frequently had communications with him during regular business hours and at off times like nights and weekends.

Despite having this information, the DAG was very careful not to ask [REDACTED] about the number of hours worked by Troiano when she was called before the grand jury. There were many questions about his timesheets, and whether or not he kept a “regular” schedule at City Hall, but at no time did the State attempt to elicit whether he worked 35 or more hours per week. Further, when that the witness was going to start talking about individual daily schedules, the prosecutor changed course in his questioning and diverted her back to referring to the Commissioners generally as a group. (Counsel’s Certification, Exhibit D, p.10, 1.2-13).

The fact that Mayor Troiano actually did work 35 hours per week directly refutes any claim that he was not entitled to benefits under the SHBP. As such, all counts of the indictment would be moot as they are all based on his presumed ineligibility. Further, there is nothing to suggest that [REDACTED] statement is anything but reliable, unbiased, and based upon her firsthand knowledge as Troiano’s secretary. For these reasons, the December 5, 2022 statement by [REDACTED] that Troiano worked 35 hours per week was clearly exculpatory and should have been presented to the grand jury.

The State cannot claim it was simply an oversight or not necessary to ask about specific hours, since the prosecutor directly asked [REDACTED] whether two of the *other Commissioners* were working 35 hours per week. (Counsel’s Certification, Exhibit D, pg.51, line 1). It is important to note that the State was aware that Commissioners Mikulski and [REDACTED] had prepared their own timesheets

showing they worked less than 35 hours per week, so [REDACTED] could not have testified otherwise as to those two individuals. By omitting the specific “hours” question about Troiano, the State intentionally deprived the grand jury of hearing clearly exculpatory evidence from a reliable source, and instead once again grouped Troiano together with Commissioners who were not similarly situated.

(C.)(2.) The State Deceived the Grand Jury by Presenting Misleading and Inaccurate Testimony

In addition to failing to ask [REDACTED] about the 35 hours worked directly, the State compounded its error when it presented other misleading and inaccurate testimony about those hours. Specifically, when the State called Detective Sergeant [REDACTED] to testify on March 10th, it asked questions in a way that both deceived the grand jury and presented them with inaccurate information.

Specifically on that date, the prosecutor gave Detective [REDACTED] a list of names of people that she had interviewed throughout her investigation, and then he asked whether “they all essentially considered the Commissioner positions as part time jobs...” and whether “they all essentially told [her] that, based on their observations and experience, Troiano, Byron, and Mikulski just didn’t maintain City work schedules of at least 35 hours a week...” . (Certification of Counsel, Exhibit F, p.43, l.5 to p.45, l.21). Detective [REDACTED] responded “Yes” to both inquiries. (Id.)

The list of names included the City of Wildwood Director of Human Resources [REDACTED] Chief Financial Officer [REDACTED] Municipal Accountant [REDACTED] and Assistant Municipal Treasurer [REDACTED] among others. As addressed individually below, it is clear from the discovery that the responses provided by Detective [REDACTED] were not only factually inaccurate as to these witnesses, but also were intentionally misleading and deceived the jury about what each individual witness actually said.

Director of Human Resources [REDACTED]

Contrary to the testimony of Detective [REDACTED], the discovery clearly shows that [REDACTED] considered Mayor Troiano to be a full time employee who worked 35 hours. In fact, Detective [REDACTED] had been provided a subpoena response certification and document production from [REDACTED] that repeatedly indicates she considered Mayor Troiano to be a full time employee during his tenure. (Certification of Counsel, Exhibit B, bates stamp -08899). Specifically, on December 10, 2019, [REDACTED] responding to a subpoena and certifying the accuracy of the documents, provided "Print-outs of 'year to date payroll register' from CASA payroll from 2012 through 2019." (Exhibit B, bates stamp -08900). She notes in her certification "the print-outs did not indicate whether employees are full-time so I manually wrote "ft" next to each full-time employee." (Id.). A review of those payroll registers shows that she consistently noted Mayor Troiano as "ft" throughout his years there. (Exhibit B, bates stamps -14063, -14219, -14431, -18620, -19068, and -19228, by way of only a few examples).

Further, on August 5, 2020, after having submitted her certification and payroll documents, [REDACTED] was interviewed by Detective [REDACTED]. At that time, "[REDACTED] stated she considers a full time employee to be someone who works any job or duties for a minimum of 35 hours per week." (Exhibit B, bates stamp -00714). She also "explained that she would see Troiano at City Hall every day." (Id.). Based on those statements, in combination with the certification, it was clearly inaccurate and misleading to tell the grand jury that Director of Human Resources [REDACTED] "essentially considered the Commissioner positions as part-time jobs" or that Troiano "just didn't maintain City work schedules of at least 35 hours a week..." (Certification of Counsel, Exhibit B, p.45, 1.8-20). She designated Mayor Troiano as "full-time," which by her own statement meant that he was performing his duties for a minimum of 35 hours per week. To represent to the grand jury otherwise was incorrect that misleading.

Chief Financial Officer [REDACTED]

Contrary to the testimony of Detective [REDACTED], at no time did CFO [REDACTED] say that Defendant Troiano didn't work 35 hours per week or that he was "part time" for purposes of participation in the SHBP. With respect to the time worked, [REDACTED] only told Detective [REDACTED] that "Troiano was always at City Hall, she would hear him and he would hold meetings often." (Certification of Counsel, Exhibit B, bates stamp -00599).

More importantly, regarding Troiano's classification as full time or part time, the discovery shows that when [REDACTED] was contacted by Pensions & Benefits about his "eligibility for the State Health Benefit Program," she replied with a certification that confirmed he was eligible. (Certification of Counsel, Exhibit B, bates stamp -00084). As the "Supervising Certifying Officer" for the City, she confirmed that Troiano had "job duties that justify full-time (35 hours/week) employment." (Certification of Counsel, Exhibit B, bates stamp -00128). When the certification form asked "Is the individual entitled to State Health Benefits Program participation?", [REDACTED] attached documentation that purportedly confirmed Troiano's eligibility. (Id.) It is important to note here that [REDACTED], as the "Supervising Certifying Officer" was the one who ultimately was required to make the decision whether the employee was part-time or full-time, and whether they were eligible for benefits through the SHBP. (See Counsel's Certification, Exhibit E, p.5, ¶9-10).

[REDACTED] did, however, note to Detective [REDACTED] that her own *personal definition* of full time was "someone who works Monday through Friday for seven hours per day, and is clocking in and clocking out using the City of Wildwood's timekeeping system." (Certification of Counsel, Exhibit B, bates stamp -00598). This is significantly different than the definition of full time stated in P.L. 2010, c.2 and therefore there has no relevance to determining the matter at hand. Any suggestion to the grand jury that, because of [REDACTED] own personal definition, Troiano should be considered part time is both misleading and highly prejudicial.

Municipal Accountant [REDACTED]

Contrary to the testimony of Detective [REDACTED] [REDACTED] never indicated any personal knowledge of how many hours Defendant Troiano actually worked. [REDACTED] merely expressed her personal opinion that “she considers a full time employee to be someone who works over 35 hours per week, and seven hours per day.” (Certification of Counsel, Exhibit B, bates stamp -00596). Further, while “[REDACTED] stated she considers *most* of the Mayor and Commissioners of the City of Wildwood to be a part time position”, she added that “Troiano put in a lot of time as the Mayor of the City of Wildwood, she would see him everywhere.” (Id.) (emphasis added). In fact, “she would see Troiano at City Hall every afternoon for quite a bit of time.” (Certification of Counsel, Exhibit B, bates stamp -00597).

Further, with respect to Troiano’s eligibility for SHBP benefits, [REDACTED] confirmed that she, as the “Certifying Officer” for the City of Wildwood, signed the same certification as [REDACTED] and agreed with all the answers. (Certification of Counsel, Exhibit B, bates stamp -00697).

Assistant Municipal Treasurer [REDACTED]

Contrary to the testimony of Detective [REDACTED], at no time did [REDACTED] say that Defendant Troiano didn’t work 35 hours per week. Indeed, she was very clear that “She could not attest to the hours a day/week Troiano, Byron, and [REDACTED] worked because her office is on the other end of City Hall”, but added “she saw Troiano the most at City Hall.” (Certification of Counsel, Exhibit B, bates stamp -00595).

Further, when discussing the issue of full time or part time, “[REDACTED] stated she considers a full time employee to be someone who is there Monday through Friday, works a five day work week, and is there at least seven hours per day.” (Id.) Based solely on her personal definition, and not the definition in P.L. 2010, c.2, Detective Brennan noted in one of her reports that “[REDACTED] considers the

Mayor and Commissioners of the City of Wildwood to be a part time position because they were not at City Hall working like the rest of them were. She further stated that maybe they work a lot from their houses, but physically being there makes someone full time.” (Id.) Once again, any suggestion to the grand jury that Troiano should be considered part time for purposes of participation in the SHBP, based solely on an individual’s personal definition instead of the legal definition, is both misleading and highly prejudicial.

D. The State Erred by Withholding Answers to Grand Juror Fact Questions Prior to Voting

In addition to improperly addressing legal questions asked by the grand jury, the State further erred by withholding answers to fact questions raised during the presentation. “[T]he presence of the right to indictment in the State’s Constitution indicates that the grand jury was intended to be more than a rubber stamp of the prosecutor’s office.” Hogan at 542-543. Therefore, as a corollary to the requirements of having a fully informed grand jury and the State not attempting to deceive the grand jury, the prosecuting attorney has an obligation to not only address any fact questions raised but also to answer those questions accurately and truthfully. Not doing so would equate to “telling the grand jury a ‘half-truth,’” which is clearly prohibited. Hogan at 542. Here, there are a number of times when factual questions by grand jurors were purposely left unanswered, despite the fact that they were directly related to elements of the alleged crimes.

On February 17, 2023, after [REDACTED] presented her testimony, she was initially excused and grand jurors were given an opportunity to raise additional questions for her. (Counsel’s Certification, Exhibit D, p.59, l.14-23). The prosecutor then recalled her to ask those questions. (Counsel’s Certification, Exhibit D, p.68, l.7). She was excused a second time, and again the grand jurors were given an opportunity to raise additional questions. (Counsel’s Certification, Exhibit D, p.74, l.8-18). Since a lot of her testimony revolved around timesheets for the defendants, one of the

jurors asked “Why have a timesheet if you’re a salaried employee at all?” (Counsel’s Certification, Exhibit D, p.76, l.23). The response provided by the prosecutor was “It’s a valid question, but we already released the witness.” (Counsel’s Certification, Exhibit D, p.76, l.25). At no time was any attempt made to recall [REDACTED] or to address the admittedly “valid” question raised through any other testimony.

Also during the February 17th presentation, one of the jurors asked “So the complaint was for the three people, not against the witness...[e]ven though she was the one that performed the sheets?” (Counsel’s Certification, Exhibit D, p.77, l.10-14). The juror was told they were correct, “[a]nd if you’re here during the presentation of the indictment, that will be addressed.” (Counsel’s Certification, Exhibit D, p.77, l.15). At no time during the subsequent proceedings on March 10, 2023 was the topic addressed or the question further answered.

The reason that these types of questions were significant goes to the 35 hour working requirement in order to be eligible for benefits, and the fact that the State focused heavily on timesheets of the defendants during the testimony. The necessity of the timesheets and Troiano’s involvement with them, if he wasn’t actually working the 35 hours as alleged, is directly related to an element of Counts One, Seven, and Ten of the indictment. Without being fully informed of the evidence related to those elements, the grand jury could not have fairly returned the indictment.

E. The State Erred in “Qualifying” Jurors to Vote Who Were Not Present for All Testimony

It is a logical and fundamental tenant of the grand jury process that jurors who vote on an indictment must be fully informed of the proceedings before doing so, and several voting jurors in this matter failed to be so informed. In New Jersey, the mandatory “Standard Grand Jury Charge” explicitly states “Jurors who vote in a case must have been present and have heard all of the evidence presented.” NJ Directives Dir. 12-06. The New Jersey Supreme Court has also made it clear that

“the court should charge the jurors that those who join in the indictment must have been present and have heard or otherwise have informed themselves of the evidence presented at each session.” State v. Del Fino, 100 N.J. 154, 164 (1985). In the event that a particular session is missed by a juror, “that juror may read the transcript of the proceedings in order to become informed.” Id. (citing United States v. Camiel, 503 F.Supp. 769 (E.D.Pa. 1980)).

Here, it is noted in the March 10, 2023 grand jury transcript that “a few members of the jury” who were present and voting that day had missed the February 17, 2023 session with [REDACTED] (Counsel’s Certification, Exhibit F, p.4, l.22). The prosecutor further notes that “they have since been qualified, that is, *provided an opportunity to review the testimony* that was taken from the witness that day by reading the transcripts.” (Id., p.4, l.23) (emphasis added). The prosecutor then explained to the jurors that the testimony they missed “was not intended to be part of our formal indictment presentment, but the close proximity in the timing of the two dates just happened to result in both appearances occurring before the same Grand Jury panel, before you, so all testimony and evidence properly before you on that day can be considered as such now as well.” (Id., p.5, l.1). In essence, the grand jurors were given the impression that it wasn’t really necessary for them to review the prior testimony, but that they could consider it if they wanted to.

Ultimately, there is no indication in the record that the absent jurors actually reviewed the February 17th transcripts, as they were required to do under the law. Indeed, it is unclear when that could have taken place, as there were no breaks noted after they were “qualified” and told that they could consider that evidence. Additionally, at no time before voting were the jurors instructed that *they had an obligation, not just an opportunity*, to review the prior testimony. Without any direct confirmation in the record that all voting jurors were properly “informed,” the grand jury process was tainted, and the indictment must be dismissed.

CONCLUSION

For all of these reasons, the Defendant respectfully requests that Counts One, Four, Seven, and Ten of the indictment returned on March 10, 2023 be dismissed.

Respectfully Submitted,

A handwritten signature in black ink that reads "Brian A. Pelloni". The signature is written in a cursive, flowing style.

Brian A. Pelloni, Esq.
Counsel for Defendant Ernest V. Troiano

