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VIA eCOURTS FILING

Hon. Bernard E. DeLury, Jr., P.J.Cr.
 Cape May County Courthouse
 9 North Main Street, 2nd Floor
 Cape May Court House, NJ 08210

RE: State v. Ernest V. Troiano
Case Number: CPM-22-000535

Dear Judge DeLury:

Please accept this letter in lieu of a more formal brief addressing the State's Opposition to Defendant Troiano's Motion to Dismiss, which is scheduled for this Friday, November 17. For the reasons contained herein, as well as the issues raised in the initial Motion filing, Defendant Troiano respectfully requests that the Superseding Indictment be dismissed.

It is important to note that each of the charges in the indictment are based upon Defendant Troiano's receipt of health benefits to which he was allegedly "not entitled" according to the State. Specifically, all of the charges in this matter stem from an assumed violation of P.L.2010, C.2, which states that "a full-time appointive or elective officer whose hours of work are fixed at 35 or more per week..." is entitled to enrollment in the State Health Benefits Program. Without a violation of this particular law, then Defendant's receipt of benefits, and all of the associated actions alleged in the Superseding Indictment, are perfectly lawful.

As an initial matter, it is the State's burden to prove that Defendant Troiano failed to work those "35 hours or more per week" for the time period between "on or about July 1, 2011 and on or about December 31, 2019" as alleged in the Superseding Indictment. That's roughly 15,530 hours that the State is required to account for. To be clear, the State accounted for NONE of that time in its presentation to the Grand Jury, which means it failed to meet its burden to present even a prima facie case.

Our Courts have been clear that while "a court should not exercise its power to dismiss an indictment except on the clearest and plainest grounds . . . where evidence is clearly lacking it is the duty of the court to set aside the charges." State v. Ferrante, 111 N.J. Super. 299, 304 (App. Div. 1970). Here, there is no legal and competent evidence to support the return of the indictment by the Grand Jury

Hon. Bernard E. DeLury, Jr., P.J.Cr.

November 13, 2023

Page 2

The State's Opposition clearly acknowledges the fact it has no proof in this regard. As explained on Page 5 of the State's letter brief, the only records of timekeeping are those maintained by [REDACTED]. Specifically, the State notes:

"With regard to timekeeping, as explained by the various city officials with whom detectives spoke, for several years no one generally monitored or recorded the actual hours and days worked by the mayor and commissioners. The only such regularly generated documentation would have been timesheets created and generally completed for the commissioners by their confidential assistant, [REDACTED]." State's Opposition, Page 5 (emphasis added).

Not only does this statement confirm the lack of documentary evidence of a violation of P.L.2010, C.2, it highlights the critical nature of the testimony from [REDACTED], since she was the only one doing anything to keep track of Defendant Troiano's schedule. To withhold her prior statement from the Grand Jury, that he worked at least 35 hours per week, is clearly withholding exculpatory evidence in this matter.

Further, despite knowing that "no one generally monitored or recorded" Defendant Troiano's time, the State offered "evidence" in the form of testimony from the detective-witness that multiple city officials "all told her they considered the mayor and commissioner positions to be part-time jobs and that the defendants did not regularly work 35 hours a week." (State's Opposition, Page 22). As explained in more detail in the initial motion paperwork, each of those statements was nothing more than an individual opinion, and none of them were based on the actual, legal definition of "full-time" applicable to this case or the actual, observed hours worked by Defendant Troiano. Further, those witnesses only were discussing the time that was actually spent by the mayor and commissioners in City Hall (and not the time they were physically out of the office but still working on behalf of the City), although that fact was not presented to the Grand Jurors.

That opinion testimony, which the state suggests is "voluminous evidence" against Defendant Troiano, fails to address the key question in this matter, which is whether or not he worked 35 or more hours per week. Further, these opinions simply pale in comparison to the contradictory documents, statements, and other testimony that the State failed to present to the Grand Jury. Had the State presented more than a "half-truth" as required by State v. Hogan, it is inconceivable that a group of reasonable grand jurors would have found sufficient evidence for this matter to proceed.

For all of these reasons, it is respectfully submitted that the Superseding Indictment should be dismissed.

Respectfully,


Brian A. Pelloni, Esq.

cc: Brian Uzdavinis, DAG (via eCourts notification)