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THE STATE OF NEW JERSEY

v.

ERNEST V. TROIANO JR., 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 SEVER DEFENDANTS**

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, for severance of Defendant Troiano from the defendants named in Superseding Indictment 23-07-00109-S for purposes of trial.

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

Dated: January 9, 2024

By: 

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

Brian A. Pelloni, Esq. (#026342008)

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THE STATE OF NEW JERSEY

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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 SEVER DEFENDANTS**

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 N.J.S.A. 52:14-17.26(c)(2), which defines 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 anonymously contacted NJ Pensions & Benefits and requested an investigation, because 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 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

It would constitute a significant prejudice to Defendant Troiano to be tried with the other two defendants, since each matter is unique to each defendant, there was no common scheme between them, and the alleged evidence against each one is wholly irrelevant to the others. It is well settled law in New Jersey that there are “basic principles governing joinder of offenses.” 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)). Further, “Although joinder is favored, economy and efficiency interests do not override a defendant’s right to a fair trial.” Sterling at 72. It is up to the trial court to determine whether prejudice would be present in the joinder of multiple defendants and offenses in a single trial, and its judgment is reviewed only for an abuse of discretion. Sterling at 73.

In evaluating the evidence against each defendant here, it is crucial to acknowledge that the State will have the burden of proving whether each of them, individually, worked the 35 hours per week required under N.J.S.A. 52:14-17.26(c)(2) to claim benefits from the SHBP. Equally important is the fact that whether one of them worked the required hours is wholly irrelevant to the others, and therefore any evidence of timekeeping, schedules, or outside employment would only be relevant and admissible if related to that particular defendant. Stated differently, the schedules, timesheets, hours worked, and employment classifications of the other defendants would not be “relevant evidence” as

defined in N.J.R.E. 401, because it would have no tendency to prove or disprove any fact of consequence to determining whether Defendant Troiano, himself, worked 35 hours per week. Therefore, any such evidence or testimony would be inadmissible at trial against Defendant Troiano, and allowing the matters to be tried together would likely create significant confusion for the jury in trying to sort out what evidence applied to which defendant.

Here, while the crimes charged are the same, the witnesses would likely be the same, and the benefits received are the same, the proofs as to whether any one of the three defendants worked the required 35 hours is personal to that individual and clearly distinct from the actions of the others. This is particularly true where each defendant had a different position and job responsibilities for the City of Wildwood. While each was a Commissioner, Defendant Troiano was also appointed as the Mayor (“President of the Board of Commissioners”) and had additional responsibilities associated with that role. (Exhibit B, p.28). Further, he was responsible for 23 divisions within the Department of Public Works and Parks and Public Property, unlike the 12 or 15 (mostly smaller) divisions managed by the other defendants. (Exhibit B, p.29-30). His additional job duties required significantly more hours than the other defendants, as noted by many of the State’s witnesses who singled him out as being much more present both at City Hall and around the city in general.³

Further, the facts 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.

³ As noted in prior motions before this Court, most witnesses from the City distinguished Defendant Troiano from the others:

- Witness ██████ noted that she saw Troiano at City Hall every day, unlike the others. (Exhibit B, p.24)
- Witness ██████ said that, of the three, “Troiano was always at City Hall.” (Exhibit B, p.8)
- Witness ██████ noted that although she considered “most” of the Commissioners to be part time, “Troiano put in a lot of time..., she would see him everywhere.” (Exhibit B, p.5)
- Witness ██████ noted that she “saw Troiano the most at City Hall” when asked about the Commissioners. (Exhibit B, p.4)
- Witness ██████ stated that she “would see Troiano a lot, he was at City Hall every day,” unlike the others who were there less days per week. (Exhibit B, p.26)

In fact, as addressed in prior motion proceedings in this matter, the issue was brought up by one of the grand jurors in the first indictment proceeding 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?” The question was directed back to the lead detective, who indicated that there was no such indication of collusion identified by the investigation.⁴

Despite the significant situational differences between the defendants, and no connection between their respective activities, it is clear from the grand jury proceedings that the State intends to compare and equate Defendant Troiano with the others at trial.⁵ Such comparisons are irrelevant at best, and at worst could create an unfair impression on the jury that Defendant Troiano is simply guilty by association (i.e., since some of the other Commissioners clearly did not work the required 35 hours per week, he must not have either). This is a particularly concerning possibility where the State has previously acknowledged that there is simply no direct evidence of how many hours the Commissioners were working for several years, and that no one generally monitored or recorded their time.

⁴ This particular testimony was redacted from the presentation that resulted in the superseding indictment. Duplicate copies of the original transcripts have been excluded from this motion for purposes of judicial economy.

⁵ By way of example, the following are just some of the comparisons made to the grand jury (All from Exhibit C):

- p.46 – “like the two we just saw for Troiano...” (reviewing Byron’s timesheets)
- p.47 – “so as with Troiano, who would stamp the timesheets on Byron’s behalf”
- p.48 – “and as I asked for Troiano...” (asking about using Byron’s signature stamp)
- p.53 – “and is it correct that like the one for Troiano that we just saw...” (comparing Byron’s timesheets)
- p.130; p.131 – “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).
- p.116 – “like the one for Troiano that we just saw...” (comparing Byron’s timesheets)
- p.133 - “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.139 – “didn’t you learn that every Commissioner we mentioned today, Troiano, Byron, ██████████ Mikulski and of course ██████████ 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.143-144 – “like the others that we saw before for Troiano, Byron, ██████████ and ██████████...” (suggesting that a “part time” designation for Mikulski on City paperwork was also true for the others)

Essentially, allowing these three defendants to be tried together would be the same as trying three independent shoplifters together who all committed their acts on the same day at the same store. The alleged crimes charged would be the same, the witnesses (loss protection officers) would likely be the same, the types of evidence (video surveillance, receipts, etc..) would all be similar, and the physical acts of concealing or removing merchandise would probably be very similar in description. However, clearly the proofs against each of those individuals would be distinct and irrelevant to the others. The same applies here, since the proofs as to any other Commissioner working 35 hours (or not) would be irrelevant to whether Defendant Troiano worked that same amount of time. Therefore, the only reasonable and fair way for the present matters to proceed would be through individual trials.

CONCLUSION

For all of these reasons, Defendant Troiano respectfully requests that the Court sever the defendants in Superseding Indictment 23-07-00109-S, returned on July 31, 2023, for purposes of trial.

Respectfully Submitted,



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

THE STATE OF NEW JERSEY

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, 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, Jr., 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 Defendant Ernest V. Troiano, Jr., shall be severed from the other named defendants in Superseding Indictment 23-07-00109-S, returned on July 31, 2023, for purposes of trial.

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)

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

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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 SEVER DEFENDANTS**

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 sever the defendants in Superseding Indictment 23-07-00109-S, returned on July 31, 2023, for purposes of trial.

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).

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).

4. According to the new law, after the effective date of P.L.2010, c. 2, an SHBP eligible employee was defined as (i) a full-time appointive or elective officer whose hours of work are fixed at 35 or more per week . . ." N.J.S.A. 52:14-17.26(c)(2).

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/xxxxxxx" (Exhibit B, consisting of the pages from that discovery relevant to this Motion).

6. As evidenced by documents the State received from the City of Wildwood during its investigation, Defendant Troiano served the City of Wildwood as both the "President of the Board of Commissioners' (Mayor)" and the Commissioner of the "Department of Public Works and Public Property." (Exhibit B, p.28).

7. In that role, he was responsible for 23 different divisions, and all of the employees within those divisions. By comparison, the other Commissioners managed only 12 or 15 divisions, many of which were small or even one-person units. (Exhibit B, p.29-30).

8. On July 31, 2023, the State re-presented¹ this matter to the State Grand Jury, calling New Jersey State Police Detective Sergeant [REDACTED] to testify. (Exhibit C, Transcript from the July 31, 2023 State Grand Jury Presentation).

9. The majority of the testimony presented that day consisted of DAG Uzdavinis and Detective [REDACTED] reading portions of the prior grand jury transcripts to the new panel of grand jurors. (See Exhibit C).

10. The same day, a twelve-count superseding 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.

¹ The matter had previously been presented on February 17, 2023 and March 10, 2023, but the resulting indictment was ultimately dismissed without prejudice.

11. Throughout the course of the presentation, Defendant Troiano was repeatedly and pervasively compared and likened to the other defendants, despite no material connection between them and despite the discovery which suggested that each individual worked very different hours.²

12. Because the State's case rises or falls on whether each individual defendant was eligible for participation in the SHBP, which in turn is based upon the specific number of hours that each of them individually worked—and not based upon a generalized determination of a Commissioner's position as "full time" or "part time" under the City's internal guidelines—any direct comparison between the individual defendants would be irrelevant at trial.

13. Further, it would not only create confusion, but would also present a significant prejudice to Defendant Troiano for the jury to be presented with generalized witness testimony that "the Commissioners" didn't work the required 35 hours, when in fact most of the same witnesses specifically distinguished Defendant Troiano from that general statement.

14. For all of these reasons, the Court should exercise the discretion provided in Court Rule 3:15-2(b) and order that the defendants in this matter shall be severed for purposes of trial.

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: January 9, 2024

By: 

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

² Multiple examples are highlighted in the Brief accompanying this Motion to Sever.

Affidavit of Probable Cause

COMPLAINT NUMBER				<p><i>THE STATE OF NEW JERSEY</i></p> <p><i>VS.</i></p> <p>ERNEST V TROIANO</p>
0514	S	2022	000131	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	
<p>WILDWOOD CITY MUNICIPAL COURT 115 WEST DAVIS AVENUE WILDWOOD NJ 08260-0000 609-522-4924 COUNTY OF: CAPE MAY</p>				
# of CHARGES 2	CO-DEFTS	POLICE CASE #: I620190008		ADDRESS [REDACTED]
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 #:	

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.

BE IT RESOLVED, by the Board of Commissioners of the City of Wildwood, County of Cape May and State of New Jersey, that Ernest Troiano, Jr. shall serve as the "President of the Board of Commissioners" (Mayor), and shall be the Commissioner of the "Department of Public Works and Public Property".

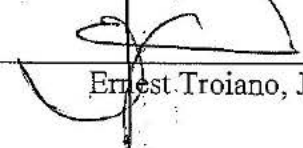
APPROVED TO BE A TRUE COPY

Karen M. Gallagher
Deputy CITY CLERK

DATE: November 15, 2019


Peter Byron, Commissioner


Anthony Leonetti, Commissioner

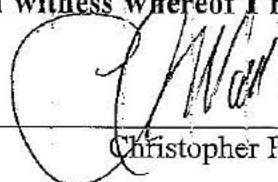

Ernest Troiano, Jr., Mayor

Resolution No. 1-1-16

Offered by: Byron

Seconded by Leonetti

I, Christopher H. Wood, City Clerk for the City of Wildwood, do hereby certify that the foregoing Resolution was adopted at the Regular Meeting of the Wildwood Board of Commissioners, held the 5th day of January, 2016 and in witness whereof I have hereunder set my hand and official seal on this date written.


Christopher H. Wood, City Clerk

11-17-2008 09:55, the Mayor and Commissioners of the City of Wildwood, County of Cape May, State of New Jersey, the Governing Body, thereof, that the designated departments within the municipality are as follows:

1. The Department of Public Affairs and Public Safety
2. The Department of Revenue and Finance
3. The Department of Public Works and Parks and Public Property

The Divisions within those departments are designated as follows:

1. **Department of Public Affairs and Public Safety**
 - Police Department
 - Fire Department
 - Municipal Court
 - Beach Patrol
 - Fire Prevention Code
 - Emergency Management
 - Animal Control
 - Public Defender
 - Prosecutor
 - Environmental Commission
 - Housing (Property) Inspectors
 - Parking Meter
 - Traffic Marking
 - Department of Law-Directors Office
 - Construction Office
2. **Department of Revenue and Finance**
 - Collection of Taxes
 - Accounts and Control
 - Revenue Collection
 - Tax Assessment
 - Liquidation of Tax Liens
 - City Clerk
 - Municipal Administrator
 - Insurance
 - Central Purchasing
 - Human Resource (Personnel)
 - Audit Services
 - Relocation Assistance
3. **Department of Public Works and Parks and Public Property**
 - Director of Public Works
 - Trash
 - Recycling Collection
 - Street Maintenance
 - Seasonal Comfort Station
 - Seasonal Boardwalk & Mall Cleaning
 - Fleet Maintenance
 - Parks Department
 - Building Maintenance
 - Snow Removal
 - Tipping Fee's
 - Environmental Maintenance
 - Boardwalk & Facility Construction
 - Tourism
 - Special Events
 - Urban Enterprise Zone
 - Redevelopment Agency
 - Economic Development
 - Land Use Administration
 - Recreation
 - Water Department
 - Sewer Department
 - Engineer

Peter Byron, Commissioner


Anthony Leonetti, Commissioner

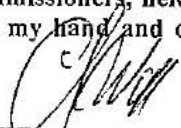

Ernest Troiano, Jr., Mayor

Resolution No. 282-7-11

Offered by: Leonetti

Seconded by Byron

I, Christopher H. Wood, City Clerk for the City of Wildwood, do hereby certify that the foregoing Resolution was adopted at the Regular Meeting of the Wildwood Board of Commissioners, held the 15 day of July, 2011 and in witness whereof I have hereunder set my hand and official seal on this date written.


CHRISTOPHER H. WOOD, CITY CLERK

CERTIFIED TO BE A TRUE COPY:

Karen M. Gallagher
Deputy CITY CLERK

DATE: November 15, 2011

Brian A. Pelloni, Esq. (#026342008)

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

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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 to Sever Defendants was served upon the following via eCourts electronic filing on January 9, 2024:

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: January 9, 2024

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