

Blair Leah Hornstine *
 Richard L. Vanderslice *◇△†
 Buneka J. Islam *◇
 Louis F. Hornstine *◇9□
 Robert G. Sellers *◇□



* Licensed in PA
 ◇ Licensed in NJ
 9 Licensed in NY
 ✕ Licensed in FL
 △ Licensed in CA

□ Counsel to the Firm
 † NJ Managing Attorney

501 Cambria Avenue, Suite 300, Bensalem, PA 19020
 P: 609-523-2222 www.Hornstine.com F: 609-964-1849

May 16, 2023

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 reply to the May 12, 2023, Response filed by the State in connection with our pending Motion to Dismiss the Indictment. As explained below, the State has provided no additional law or supported facts to overcome the deficiencies in the State Grand Jury proceedings in this matter. Instead, the State raised a new issue which further supports Defendant's Motion, reaffirming that the indictment must be dismissed.

The State's Response to Issues Already Raised in Defendant's Motion

The State acknowledges the general proof issue in this case in its response, specifically noting that "for several years no one generally monitored or recorded the actual hours and days worked by the mayor and commissioners." (State's Response, p.5, ¶ 1). This is problematic, because it is the State's burden to show that Defendant Troiano failed to work the required 35 hours per week necessary for enrollment in the SHBP. In fact, the issue of actual hours worked is critical in this case, because if Defendant worked 35 hours per week, there is no basis for any of the charges against him.

This highlights why it was highly prejudicial to Defendant Troiano to be presented in the same indictment as Steven Mikulski, with evidence presented about other Commissioners like [REDACTED], because those individuals worked at a time where their hours were monitored and recorded in a different manner than the historical City practice. Because those particular individuals did not work full time, 35 hour per week schedules, the State wanted the grand jury and ultimately, this Court, to infer that Defendant Troiano must not have worked that time either.

Without any actual evidence of hours worked, the State has no choice but to rely on the bald opinions of several City workers, some of whom were the ones that asked the State to investigate the Defendants in the first place. Just like in its presentation to the grand jury, the State

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

May 16, 2023

Page 2

once again, in its “Relevant Facts and Procedural History” section, relies on the repeated use of vague phrases such as “full time,” “part time,” and “primary employment,” without relaying the actual legal definition of “full time” relevant to this matter or providing any actual evidence to support its statement.

As noted in our Motion, the only witness with direct, firsthand knowledge of Defendant Troiano’s actual schedule and hours was his confidential assistant [REDACTED]. The State suggests that her testimony varied between the multiple statements she made, and therefore was not reliable enough to be clearly exculpatory. What the State fails to acknowledge is that [REDACTED]’s testimony that Defendant Troiano worked at least 35 hours per week *never varied in any way*. Additionally, it is clear from reading the grand jury transcript that the State’s argument that her testimony “was inconsistent and not at all credible” has no merit.

Additional Issue Raised by the State’s Response

Defendant Troiano previously raised the issue of allowing grand jurors to vote who were not present for the testimony of [REDACTED], but who were “qualified” by giving them the opportunity to review that transcript. The State suggests that said argument was “semantics in misconstruing the State’s language...,” and that “those previously absent jurors . . . had been qualified by reading the transcripts from the prior proceeding the morning of March 10, 2023, *before the indictment presentation began.*” (State’s Response, p.22, ¶ 3) (emphasis added).

Although it appears from the March 10, 2023, transcript that all of the interaction between the prosecutor and the grand jury was captured, the State now suggests that there was some earlier interaction that went unrecorded. It would be extremely concerning to learn that the State actually addressed this matter to the grand jury off the record, and could only lead to speculation as to why that was done. Further, if the grand jurors were addressed that morning regarding the transcript, or there was any discussion or request that they should review it before the presentation began, then there has been a clear violation of Court Rule 3:6-6(c). Specifically, “[a] stenographic record or sound recording shall be made of all testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecuting attorney and witnesses of members of the grand jury...” The Defendant would take the position that this is simply one more reason why the indictment against him is defective and should be dismissed.

I thank the Court in advance for reviewing this information, and I look forward to oral argument on these issues.

Respectfully,


Brian A. Pelloni, Esq.

cc: Brian Uzdavinis, D.A.G. (via eCourts notification)