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May 24, 2023

Hon. Bernard E. DeLury, Jr., P.J.Cr.
 Cape May County Courthouse
 Criminal Division
 9 North Main Street
 Cape May Courthouse, New Jersey 08210

Re: State v. Ernest V. Troiano, Jr., et al.
 Indictment No. 23-3-00038-S
 Case No. CPM-22-000535

Your Honor,

Please accept this letter in lieu of a more formal brief in response to the Court's request for supplemental submissions on the issue of State Grand Jury qualification, as raised by the defense in its motion to dismiss the indictment. For the reasons set forth below, and in the State's prior submission, this Court should deny defendant's motion.

Members of a grand jury "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) (emphasis added). That is, although each juror voting on an indictment must be informed of all evidence presented to the panel, those voting jurors need not necessarily attend every session of a multi-session presentation. Ibid. Noting that such proceedings are stenographically recorded, our Supreme Court has held that "[i]f any necessary juror voting to indict has been obliged for important cause to be absent from a particular session, that juror may read the transcript of the proceedings in order to become informed." Ibid. (citing United States v. Camiel, 503 F.Supp. 769 (E.D.Pa. 1980) (absent jurors may keep abreast of the evidence by reviewing transcripts or tapes of missed sessions)).

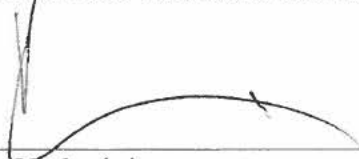
This approach is consistent with that taken in federal courts, which have made clear that nothing in the federal rules of criminal procedure requires "every juror voting to indict [to] attend every session." See United States v. Leverage Funding Systems, Inc., 637 F.2d 645, 649 (9th Cir. 1980). In that respect, prosecutors can follow the process of giving absent jurors the opportunity to review transcripts of missed sessions and, in the event that such a review raises questions, recall a witness in order to ensure that each grand juror is fully informed of the evidence presented. See United States v. Provenzano, 688 F.2d 194,

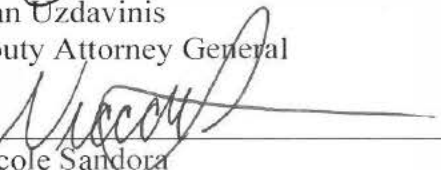


201-203 (3d. Cir. 1982).

Additionally, even where it can be shown that participating grand jurors had not been fully informed or qualified, the remedy is not an immediate and wholesale dismissal of the indictment. The question as to whether to dismiss that indictment in whole or in part instead requires weighing the impact of such error as to each count of the indictment. See State v. Ciba-Geigy Corp., 222 N.J. Super. 343, 356 (App. Div. 1988) (citations omitted). Even though a given grand jury “may have improperly overlooked evidence essential to a consideration of some of the counts, others might well have been based on competent evidence and not subject to such an attack.” Ibid. As such, a nexus must exist between the evidence that was overlooked or not properly presented and specific counts of the indictment for those particular counts to be dismissed. Ciba-Geigy Corp., supra, 222 N.J. Super. at 355. Moreover, the burden of establishing that nexus lies with the defendants, and they “should be prepared to point out precisely how the evidence which was not adequately reviewed would serve to undermine the integrity of the grand jury’s vote as to each of the counts.” Id. at 356 (citation omitted). That is, defendants must establish that the missed or overlooked evidence in question possessed “a clear capacity to produce an unjust and different result concerning particular counts.” Id. at 355.

Here, more than sufficient evidence to indict was presented to the State Grand Jury on March 10, 2023. None of those participating jurors would have had to rely on any of the evidence previously taken from ██████████ during her testimonial session on February 17, 2023 to make that decision. Additionally, nothing ██████████ said during that February session could be considered in any way as clearly exculpatory, or as negating anything substantive that was later presented in March. Thus, none of the voting grand jurors could be said to have overlooked evidence essential to consideration of any counts of the indictment. Even if a participating juror had been absent for, and not “informed” of, ██████████’s February testimony, the defense must establish what count of the indictment may have been impacted, how it was impacted, and that the error led the jury to a result it otherwise would not have reached. Defendant has failed to do so. At any rate, such inquiry is irrelevant here. As the attached Certification confirms, any grand juror who was absent from the February session but participated in the March session and the vote, was fully qualified in the interim by reading the transcript of the missed proceeding. In short, all participating jurors were qualified, there was no error and defendant’s motion should be denied.


 Brian Uzdevinis
 Deputy Attorney General


 Niccole Sandora
 Deputy Attorney General

c. Brian A. Pelloni, Esq.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF

BY: BRIAN UZDAVINIS, D.A.G. (No. 012262007)
NICCOLE SANDORA, D.A.G. (No. 240632017)
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TRENTON, NEW JERSEY 08625

SUPERIOR COURT OF NEW JERSEY
COUNTY OF CAPE MAY
LAW DIVISION – CRIMINAL
INDICTMENT NO. 23-3-00038-S
CASE NO. CPM-22-000535

STATE OF NEW JERSEY, :

Plaintiff, :

v. :

ERNEST V. TROIANO, JR., et al., :

Defendants. :

CRIMINAL ACTION

CERTIFICATION

TO: HON. BERNARD E. DELURY, JR., P.J.Cr.
Cape May County Courthouse
Criminal Division
9 North Main Street
Cape May Courthouse, New Jersey 08210

BRIAN A. PELLONI, ESQ.
Hornstine & Vanderslice LLC
501 Cambria Avenue, Suite 300
Bensalem, PA 19020

I, JANICE DAVIS, being of full age, hereby certify as follows:

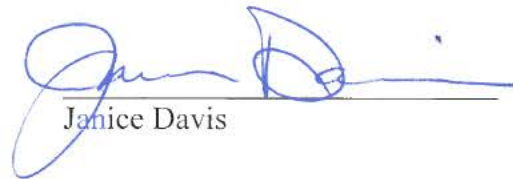
1. I am the New Jersey State Grand Jury Clerk. In this position, I am responsible for overseeing the day-to-day operations of the State Grand Jury and coordinating the required activities of members of the same.

2. On February 17, 2023, Deputy Attorneys General Brian Uzdevinis and Niccole Sandora appeared before State Grand Jury Panel 783 to take testimony from a witness, [REDACTED], in Division of Criminal Justice (DCJ) Case No. 2019-13690. Seven members of that 23-member panel were absent on that date, including jurors 1, 3, 8, 15, 17, 21 and 23.

3. On February 24, 2023, four of those absent members, jurors 1, 3, 17 and 23, were “qualified” by reading a transcript of the February 17, 2023 session.

4. On March 10, 2023, Deputy Attorneys General Uzdavinis and Sandora appeared again before State Grand Jury Panel 783 to present an indictment in the same matter, DCJ Case No. 2019-13690, specifically State v. Ernest V. Troiano, Jr., et al. On that date, before the proceedings began, two more members of that panel who were absent on February 17, 2023, jurors 15 and 21, were “qualified” by reading a transcript of that prior session.

5. The only member of State Grand Jury Panel 783 who was absent from the February 17, 2023 session and never “qualified” by reading that session’s transcript, juror 8, was also absent from the March 10, 2023 session and did not vote on the indictment presented that day.



Janice Davis

Sworn to and subscribed
before me this 24 day
of May, 2023.



Max G. Lesser
An Attorney-At-Law of New Jersey