

Order Prepared by the Court

Honorable Marilyn C. Clark, J.S.C., Retired, on Recall
Passaic County Courthouse – Chambers 423
77 Hamilton Street
Paterson, New Jersey 07505

FILED

NOV 02 2022

**Hon. Marilyn C. Clark, J.S.C.
Retired, on Recall**

<p>STATE OF NEW JERSEY, State, vs. Robert Kugler Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: PASSAIC COUNTY State Grand Jury Ind. No. 21-09-00128-S CRIMINAL ACTION ORDER</p>
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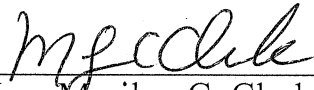
This matter having been presented to the Court by Deputy Attorney General Eric C. Cohen and by Deputy Attorney General Caroline A. Oliveira, representing The Office Of The New Jersey Attorney General, and by John Bruno, Esq., and by Kenneth Ralph, Esq., representing the Defendant, Robert Kugler, and Defense Counsel having filed a motion to dismiss the Indictment, and the Court having reviewed the written submissions of all counsel, and the Court having conducted oral argument,

IT IS on this 2nd day of November 2022,

ORDERED:

1. That the motion to dismiss the Indictment is granted without prejudice for the reasons given in court today.

2. This Court read into the record its letter decision, dated today, in this matter.



Hon. Marilyn C. Clark, J.S.C.
Retired, on Recall

Robert D. Tracy
Trial Court Administrator

Hon. Marilyn C. Clark, J.S.C.
Retired, on Recall

John J. Harrison
Criminal Division Manager

November 2, 2022

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Re: State v. Robert Kugler
State Grand Jury Indictment 21-09-00128

This is the return date for my opinion on the defendant's motion to dismiss the indictment. I am reading this letter-decision into the record in court and will thereafter provide

copies to counsel. I have received the written submissions of counsel and also heard oral argument on September 21, 2022. The State has been represented by Deputy Attorney General Eric C. Cohen and by Deputy Attorney General Caroline A. Oliveira. The defendant has been represented by John Bruno, Esq., and his associate, Kenneth Ralph, Esq.

I will first address the charges in the indictment, which was stamped as filed on September 10, 2021. I note that venue in this matter has been assigned to Passaic County, since the defendant was a Police Chief in Saddle Brook, New Jersey, which is in Bergen County.

The defendant is charged in Count 1 with committing Second Degree Official Misconduct, in violation of N.J.S.A. 2C:30-22.

The defendant is charged in Count 2 with Second Degree Conspiracy to Commit Official Misconduct, in violation of N.J.S.A. 2C:30-2 or N.J.S.A. 2C:27-12(a)(1), N.J.S.A. 2C:5-2. I note that the alleged co-conspirators are not named as co-defendants.

The defendant is charged in Count 3 with Corruption of Public Resources, in violation of N.J.S.A. 2C: 27-12 (a)(1).

Particularly since the indictment is quite detailed, I am attaching a copy of the indictment to this opinion as Exhibit A, and will now read the indictment into the record.

(Read into Record)

This matter was presented to the Grand Jury on either September 10, 2021 or September 13, 2021. Both dates are cited in various documents. Whatever the correct date, the indictment was then handed up and docketed.

On July 15, 2022, Defense counsel Kenneth Ralph, on behalf of the defendant, filed the motion to dismiss the indictment. As I just referenced, I have reviewed the written submissions from both sides. Since there were a number of legal arguments presented, I will substantially quote from the submissions of both sides.

Mr. Ralph's preliminary statement in his first brief alleged that the Grand Jury presentation "relied upon a scattershot approach of conflicting theories and unsupported allegations to obtain an indictment for the 'crime' that it had decided on. Simply absent from the facts is criminal intent by Chief Kugler that would justify criminal charges for these allegations."

Defense counsel asserted that the time range dates of June 5, 2020 to February 22, 2021 were “arbitrary dates selected by the State, ...demonstrating the confusing and unfocused nature of the charging. In Count One of the indictment, the State postures fourteen alternative theories for how Chief Kugler might have violated the Official Misconduct statute. Count Two is a related charge of Conspiracy to Commit Official Misconduct. Count Three charges Corruption of Public Resources. All charges rely on the same evidence, two funeral processions escorts that occurred in the same period.”

Defense counsel argued that the Grand Jury was incorrectly told that police escorts have been banned since the adoption in 1978 of Saddle Brook Ordinance 768, “even though the State knew police escorts were provided continuously since then and that Chief Kugler, the mayor and the business administrator stated that the ordinance did not apply to funeral escorts.”

He further argued that the prosecution “claimed that the town was allegedly ‘injured’ by the assignment of police officers to funeral escorts; but the State knew that the assigned officers were on duty and received no extra compensation for this task performed during their regular shifts.”

He further argued that “the State implied that the town should have been compensated by Kugler Funeral Home for providing the police escorts. However, the State knew that for

decades, numerous funeral escorts were conducted without charge. The State's claim that a town ordinance requires payment for funeral escorts also contradicts its position that the funeral escorts were outright banned by the 1978 ordinance."

He further asserted that "clearly exculpatory evidence" was omitted from the Grand Jury presentation," and that if this information had been presented, "there would not have been an indictment returned against Chief Kugler."

He further wrote "critically, the most essential element of Official Misconduct – an unlawful 'purpose' underlying the acts is conspicuously absent here. Police funeral escorts are widely practiced and inherently lawful, were never banned in Saddle Brook and have been provided by the Saddle Brook Police Department for funeral homes from the Kugler Funeral Home (and for other out of town funerals with no connection to Chief Kugler) for many years, both before Chief Kugler's tenure and during it. No compensation by either the funeral home or the decedent's estate has ever been required to be made to Saddle Brook for providing a police funeral escort. Police funeral escorts were routinely provided either 1) as necessary for traffic control relating to the funeral procession travelling through town or 2) as an honor that the town provided recognizing the decedent's public service to the Saddle Brook community."

He further argued that Chief Kugler had no unlawful purpose to obtain a benefit for himself when a funeral escort was provided, and that no unlawful benefit flowed from the funeral escorts to Chief Kugler, the funeral home or the decedent's estate. Further, he argued, there was no unlawful purpose to "injure" the Township when a funeral escort was provided. He asserted that, absent unlawful purpose, there cannot be a conviction for official misconduct.

He further asserted that "Based upon the errors in the presentation and the lack of proof supporting the required statutory elements of the crimes charged, this indictment is 'palpably defective.' The Court should intervene and dismiss the indictment. If the courts are unwilling to dismiss an indictment on these grounds, then the New Jersey Constitution's requirement of grand jury review prior to criminal charging is a hollow right, and citizens may as well acquiesce to the State filing any criminal charges that it wants to without any independent review or oversight."

Defense counsel then summarized the Grand Jury testimony. He indicated that Detective Sergeant Yevgeniy Redko testified for the State. The witness told the Grand Jurors that during the time range indicated, Robert Kugler held the Office of Chief of the Police Department in Saddle Brook, where he owned a business, Kugler Funeral Home. (GJT16)

Defense counsel related that the witness testified that on June 2, 2020, a funeral was held for L.W., and that along with mourners assembled to honor the deceased, State Police Investigators saw two marked Saddle Brook police vehicles, and two on duty officers, as well as Chief Kugler, at the funeral home. The officers later escorted the procession to a cemetery in Paramus. Videos and photos were taken of the procession. (GJT17-19;31).

He further related that the witness testified that another funeral was conducted on August 14, 2020 for the deceased, J.P. He testified that State Police surveillance revealed that Chief Kugler was there, and that one on duty police officer was there, at the request of Chief Kugler. The one officer escorted the procession to a cemetery in Saddle Brook.

Defense counsel asserted that the witness, when asked, could not specify if the escorts for these two funerals were provided for traffic control reasons or not. (GT 57).

Defense counsel then referenced that the Grand Jury presentation included testimony that during the investigation, an undercover state investigator went to the funeral home and spoke to Kaila Kugler, who is the Chief's daughter and an employee. He wrote that Ms. Kugler, "thinking that she was assisting a grieving family member," allegedly told the undercover investigator, "in so many words" as the witness

expressed it, that police funeral escorts “are never a problem,” and that there was no charge involved. Defense counsel argued that “the State chose to cover the fact that it was the undercover investigator who brought up the request for a police escort, it was not an unsolicited offer by Ms. Kugler.” (GJT 49-50). He wrote that the “State characterized this to the grand jurors as an example of how Chief Kugler, even though he was not present for the conversation, offered his clients a service that they did not have to pay for, and that the township ultimately paid for these services.” (GJT51).

Defense counsel then referenced the testimony that Officer Matthew Benus was interviewed and stated that he provides four to five police escorts per year at the Kugler Funeral Home,(GJT20), and that Sgt Giuseppe Califano was interviewed and said that he performs one to two escorts a year.(GJT29).

Further, defense counsel referenced that the testimony indicated that Captain James Galbo was interviewed and said that Chief Kugler had directed him to assign funeral escorts. Further, Business Administrator Peter Lodico was interviewed and provided town records which were subpoenaed as to these escorts. (GJT80-81).

Defense counsel further wrote, “The State told the grand jurors that ‘the Township of Saddle Brook has an ordinance that prohibits the use of police vehicles for the purpose of providing

escort services for private businesses.’ (GJT35-37:67). The ordinance, enacted in 1978, was read to the grand jurors. The grand jurors were also told that Saddle Brook has an ordinance for reimbursement for posting police officers at ‘construction sites,’ and that this ordinance should have bound the Kugler Funeral Home just like a public utility company and made payments to the township for the funeral escorts. (GJT64-65). The grand jurors were also told that in 2003, Chief Kugler issued rules and regulations for the police department, including a code of ethics.” (GJT39-43).

Defense counsel further wrote that “Chief Kugler agreed to an interview during the investigation. He confirmed that police escorts were provided for funeral processions, and that no fees were paid to the town by the funeral home or its clients. (GJT33-35). Chief Kugler was aware of the referenced ordinance and stated that it was his understanding that it only applied to banks. Chief Kugler stated that Saddle Brook Police Department escorts were provided for funeral homes in other towns unrelated to the Kugler Funeral Home.” (GJT63).

At this point in the brief, Defense counsel referenced Footnote 4 which reads, “A grand juror inquired if police escorts were provided for other funeral homes. The witness stated that Chief Kugler said this happened but implied to the grand jury that this was not confirmed. In fact, the State knew or should have known that this was true as Chief Kugler had stated, a material

omission.”

Defense counsel wrote “In sum, the State’s presentation offered the following theories of liability: (1) that Chief Kugler ordered the escorts to take place for funerals from the funeral home that he owns; (2) that the officers were paid by Saddle Brook and used town vehicles; (3) that Saddle Brook was ‘deprived of a benefit’ because the officers that were providing the escorts were allegedly not available to answer other service calls; (4) that Saddle Brook has ‘a specific ordinance, as well as rules and regulations, that prohibit police vehicles from being used as escorts for private businesses;’ and (5) that the Kugler Funeral Home never paid Saddle Brook for the escorts.” (GJT3-4)

Defense counsel then cited State v. Hogan, 144 N.J. 216 (1996), and wrote that “the grand jury is not a mini trial in which the defendant’s defense must be presented, although the State is obligated to present ‘clearly exculpatory evidence.’” He argued that “the State should have made the grand jurors aware of undisputed, material facts that are favorable to Chief Kugler and provide context to the allegations so that they could make an informed decision in this matter.”

He further wrote that “The State omitted important context from the presentation about the two funerals that were surveilled. The State did not tell the grand Jurors that L.W. was a long-time volunteer in Saddle Brook. The escort was in

recognition of his service to the community. The State did not tell the grand jurors that J.P. was a long-time Saddle Brook resident, volunteer and his family members serve in positions in the local government. The escort was in recognition of his community involvement. Neither escort benefitted Chief Kugler or harmed the town.”

Defense counsel further asserted that the grand jurors were not told that in the time range indicated in the indictment, June 5, 2020 to February 22, 2021, “70 funerals were arranged at the Kugler funeral home; only four of the funeral processions (including those of L.W. and J.P.), had police escorts. There was also one police escort for an out- of- town funeral home with no connection to Chief Kugler.”

Defense counsel then wrote “because of this omission by the State, the grand jurors did not learn about the circumstances of these other three Saddle Brook funeral escorts provided during the period cited in the indictment. On June 8, 2020, a police escort was provided for a Saddle Brook firefighter’s funeral procession, including numerous pieces of fire equipment, requiring street closures and traffic control.”

He continued, “On October 24, 2020, a police escort (that included vehicles from other police agencies) was provided for

the funeral of Edward Kugler, Chief Kugler's father and former Saddle Brook mayor. A funeral escort is tradition provided for former elected officials."

At this point, defense counsel cited Footnote 6 which reads, "Apparently funeral escorts were provided freely during late-Mayor Kugler's tenure as township office holder, (mayor 1969-77; councilman, 1985-2011), without ramifications from the State, further evidence that Chief Kugler cannot now be charged with criminal intent and knowledge that funeral escorts were banned or required compensation to the town."

Defense counsel further wrote that, "On December 19, 2020, a Saddle Brook police escort was provided for the funeral of a longtime community member, from the Vander Platt Funeral Home in Fair Lawn." He further wrote that "the State also selectively withheld the two police funeral escorts that were provided in the days right before the period that it selected; the funeral of a Saddle Brook Police officer's grandmother on June 1st from the Vander Platt Funeral Home in Fair Lawn and the funeral of a Saddle Brook police officer on June 2nd."

Defense counsel then wrote "The State told the grand jurors that Chief Kugler said that he was aware of the 1978 ordinance but his understanding was that it only applied to banks. But the State did not tell the grand jurors that the ordinance only addressed police escorts for businesses after hours deposits, not

funeral escorts. (Exhibit A). This is directly related to the issue of whether Chief Kugler acted with criminal intent and knew that funeral escorts were banned.”

Defense counsel further wrote “The State did not tell the grand jurors that continuing for four decades after the 1978 ordinance was enacted, the Saddle Brook Police Department provided numerous police escorts for funeral processions without charge, including for out- of- town funeral homes, pre-dating and during Chief Kugler’s tenure.”

Mr. Ralph further wrote that “the State did not tell the grand jurors that on prior occasions, Business Administrator Lodico, as well as Saddle Brook Mayor Robert White, had themselves requested that Chief Kugler have the department provide police escorts as an honor for deceased community members, with no expense being charged. The State also did not tell the grand Jurors that both Mayor White and Mr. Lodico stated that they did not believe that the 1978 ordinance applied to police funeral escorts, as Chief Kugler had stated.”

Defense Counsel then referenced Footnote 7, which reads “Mr. Lodico is a former councilman and mayor.” He also then referenced Footnote 8, which reads, “Mayor White has held office for seven years and is a former Saddle Brook Police Officer who retired as Deputy Chief of the department after 33 years of

service. He told the Investigators that police funeral escorts had been provided 'as long as he could remember.'"

Defense counsel then wrote "Regarding the fee ordinance, the grand jury was not advised of the plain language of the ordinance which when read, clearly does not apply to funeral procession escorts." He then cited Exhibit B, the 1978 Ordinance 768, and Footnote 9 which reads, "See eg. Ordinance 768, paragraph one, 'Whereas, there has been an increase demand upon the Saddle Brook Police Department for escort service to and from places of business to banking institutions....' Note, the State omitted this statement in the ordinance when it was read to the grand jurors."

Defense counsel wrote that "these undisputed facts give context to the allegations, casting doubt on the basis for the charges and whether Chief Kugler had criminal intent when assigning the police funeral escorts. Absent consideration of these undisputed facts that the State withheld from the grand jury, the review process was unfair and the indictment returned is defective."

Defense counsel then made the following specific legal arguments:

1. "The State failed to establish a prima facie case for the three charges in the indictment because evidence of the elements of the charged crimes is missing from the record."
2. "The State did not establish that Chief Kugler knew that the official act of assigning police funeral escorts was unauthorized or was an omission of his performance of his official duties." Defense counsel then cited the Model Jury Charge for Official Misconduct and wrote the following:

"The State must prove that the public servant must know that the act (or refraining from performing the act) was unauthorized or that the act or refraining was done in an unauthorized manner." Counsel then went on to cite the Model Jury Charge's guidance to a jury when considering such charge and referenced the following language:

"An act is unauthorized if it is committed in breach of some prescribed duty of the public servant's office... The duty to act must be so clear that the public servant is on notice as to the standards that he must meet. In other words, the failure to act must be more than a failure to exhibit good judgement. Not every unauthorized act committed by a public servant rises to the level of official misconduct; an unauthorized act amounts to official misconduct only if the public servant knew at the time that his conduct was unauthorized and unlawful."

Defense counsel argued that “This element of Official Misconduct requires the State to demonstrate that police funeral escorts were unauthorized in Saddle Brook or required compensation to the town – and that Chief Kugler knew it.” He further asserted that it is the State’s burden to establish this crime, “and the burden cannot be shifted onto Chief Kugler to demonstrate that the police funeral escorts were authorized.”

Defense counsel argued that “police funeral escorts are not banned by the 1978 Saddle Brook ordinance as suggested by the State. The plain language of the ordinance (Exhibit B) is silent on funeral escorts, despite what the State told the grand jurors.”

Defense counsel further wrote that “the inapplicability of the ordinance to funeral escorts is further supported by local news articles from the time, relating that there was concern that the police department was serving as “armored car service” for local businesses. (Exhibit A). No mention of funeral escorts being an issue at the time that the ordinance was adopted.”

Defense counsel wrote that the “ordinance predates Chief Kugler’s tenure considerably” and “by past practices in Saddle Brook, funeral escorts have been continuously provided in the over four decades since the ordinance was enacted under each of Chief Kugler’s predecessors. Yet, for the narrow period cited in the indictment about merely two funeral escorts that were provided, the prosecution asserts that the escorts are prohibited

by the ordinance or were an abuse of authority (or, maybe, the escorts were permitted but should have been paid for, the State's position is unclear."

Defense counsel wrote that "The State cannot establish that Chief Kugler knew that this conduct was unlawful (as the State claims) and engaged in it anyway. Local officials, (such as the mayor and business administrator) were aware of this practice, and often requested police escorts themselves in appropriate circumstances. Of course, the grand jurors were not told of this information because it did not fit with the State's narrative that Chief Kugler knew that police escorts were either banned by the 1978 ordinance or required payment of a fee to the town by the funeral home." Under these circumstances, he argued, "Chief Kugler could not have known that police escorts were banned, which is a requisite element of the statute."

Defense counsel next argued that "As a matter of law, payments for funeral escorts to the township of Saddle Brook are not required by ordinance." Citing Exhibit C, Saddle Brook Ordinance 33-15---33-26, a separate ordinance titled "Use of Police Officers to Supervise Traffic in Connection with Road Excavations," adopted on June 12, 2003, he wrote that "Saddle Brook's fee ordinance for police services only applies if a public utility provider needs a roadway closed or monitored by police. By its plain language, the ordinance pertains to these situations and not to funeral escorts."

He further argued that “the passage of this ordinance for public utilities does demonstrate that if Saddle Brook wanted to charge the funeral home of decedents’ estates for a police funeral escort, it knew how to legislate for that to happen. The town never enacted such an ordinance and frequently provided funeral escorts for decades at no charge, sanctioning this arrangement. The State selectively did not advise the panel of this past practice.” Counsel then cited Footnote 12 which reads, “The State never offered proof that other municipalities receive payments for funeral escorts or that billing is the customary practice.”

Defense counsel further argued that the State did not establish that Chief Kugler had the purpose to obtain a benefit for himself or another when assigning these two police escorts. Once again quoting the Model Jury Charge for Official Misconduct, he wrote “The State must prove beyond a reasonable doubt that the act, or refraining, was done purposely to benefit either the defendant or another, or to harm, injure or deprive another of a benefit.”

Defense counsel further wrote, “Here, there is no evidence that Chief Kugler had the requisite state of mind – purposeful conduct – required by the statute. Police funeral escorts are inherently lawful. In Saddle Brook, funeral escorts are not barred by ordinance, are regularly practiced, and do not require

compensation from the town from either the funeral home or decedent's estate. Because funeral escorts are permitted and do not require payment to the town, Chief Kugler did not circumvent any requirements of the law when assigning police officers to funeral escorts at the Kugler funeral home. He did not have the purpose to use his official position to obtain an unlawful benefit for himself, the decedent's estate, or the funeral home when the funeral escort was arranged for and provided."

Defense counsel then wrote, "Hypothetically, had the duty for assignment of funeral escorts been delegated to another Saddle Brook police officer because of Chief Kugler's relationship to the funeral home, the outcome would have been the same: a police funeral escort would have been sent to the Kugler Funeral Home for the funeral escorts for L.W. and J.P., with no payment to the town being required."

Defense counsel further asserted that "In fact, the State never demonstrated to the grand jury that Chief Kugler, the funeral home, or L.W. or J.P.'s estates derived any benefit from the assignment of the funeral escorts. The State did not tell the grand jurors that during the relevant period in the indictment, funeral escorts were provided either for traffic control as the procession made its way from the funeral home to the cemetery or to serve as a sort of honor to the decedent recognizing their public service. These are legitimate, lawful reasons why these escorts take place throughout the State of New Jersey. The State presented no evidence to the grand jury of how Chief Kugler

personally, the funeral home, or the decedent's estate derived any unlawful benefit for the escort being provided."

Defense counsel further argued that "The State did not establish that Chief Kugler had the purpose to injure or deprive the Township of Saddle Brook of a benefit when assigning these police escorts." He repeated that the escorts were done by on duty police officers during their shifts and they did not receive overtime pay.

Defense counsel further wrote that "It was suggested to the grand jurors that Chief Kugler 'knew' that some loss to the township occurred from the on duty officers being at the funeral escorts when they might be needed for a call. But 'knowingly' is not the state of mind required by the statute. For criminal liability to attach, the harm cannot be merely the byproduct of an official act. Rather, the infliction of the specific harm must be the purpose of the actor's unlawful official act or omission under the statute. This state of mind is absent from the State's proofs."

Defense counsel then referenced Footnote 13 which reads, "No evidence was presented that the officers being at the funeral escort made them unavailable to respond to a specific police service call during the funeral surveillances conducted by the State police."

Defense counsel then again referenced Exhibit C, which he again referred to as the fee ordinance. He wrote that "This ordinance sets compensation rates for 'street openings' and references the specific utilities that it applies to." He argued that the ordinance "is inapplicable to the activities involved in a police funeral escort, provides no basis to bill a funeral home for a police escort, and that there is no proof that the town was injured or deprived a benefit by having on duty police officers who were receiving no additional compensation providing funeral escorts or that Chief Kugler had the purpose to injure the town."

Defense counsel then argued that the State did not establish a prima facie case for Count Three, Corruption of Public Resources. He wrote that "There is no Model Jury Charge for this statute, and that the statutory elements reflect that it must be proven that (1) the defendant acted knowingly and (2) used a public resource for an unauthorized purpose." He argued that the State would have to prove that Chief Kugler knew that assigning Saddle Brook Police officers to funeral escorts for the Kugler funeral home was an unauthorized purpose and did it anyway for his benefit.

Defense counsel asserted that, for all the arguments expressed in his brief, "There is no evidence that Chief Kugler knew that this practice was unauthorized and, conversely, that it is apparently authorized and no reimbursement is required."

Defense counsel further wrote, "The allegations against Chief Kugler are hardly clear cut." He wrote, "As one grand juror put it to the prosecutor, 'You often see police escorts for funerals everywhere. What makes this different? Is it because it's the Chief and the owner of the funeral home and they got paid by Saddle Brook? You see it everywhere. Please understand that I am struggling with that.'" (GT76).

Defense counsel concluded his brief by writing that "When the actual legal issues are scrutinized, it is apparent that the 'facts' presented by State do not meet the elements of the applicable statutes. The true and correct law – not the State's interpretation that was presented to the grand jury – simply do not support charging Chief Kugler for the crimes under these circumstances. For the foregoing reasons, it is respectfully submitted that the indictment should be dismissed."

The State thereafter submitted its brief, co-signed by Deputy Attorney General Eric C. Cohen, who presented the case to the Grand Jury, and by Deputy Attorney General Caroline A. Oliveira. It is noted therein that both attorneys are assigned to the Attorney General's Office of Public Integrity and Accountability.

Counsel, citing State v. Hogan, supra, wrote that an "indictment cannot be dismissed unless it has been shown to be 'manifestly deficient' or palpably defective." Citing State v.

Williams, 441 N.J. Super 266 (App.Div.2015), they wrote “a dismissal of an indictment is a draconian remedy and should not be exercised except on the clearest and plainest ground.”

Counsel argued that “The defendant’s arguments that the indictment is deficient lack merit to justify dismissal. The State provided ample evidence before the State grand jury to sustain each of the counts charged in the indictment. For each count the State met its burden to present a prima facie case and the State did not fail to introduce clearly exculpatory evidence. The State’s presentation to the jurors was fair. For these reasons, defendant’s motion to dismiss should be denied.”

Counsel then presented what they captioned as “Facts before the Grand Jury.” I will now fully, as I did with the defense brief, quote from this section. Counsel wrote:

“The State presented the defendant’s matter before the State Grand Jury on September 10, 2021. New Jersey State Police Detective Sergeant First Class Yevgeniy Redko testified for the State. (T14:15).

The jurors learned that the defendant is the Police Chief in the Township of Saddle Brook and that he was a public servant. (T16:15-14). Sfc. Redko testified that the defendant owned a private for-profit business called Kugler Funeral Home. (T16:15-23). Sfc. Redco explained that the defendant’s daughter, Kaila

Kugler, told an undercover detective that the defendant was the Funeral Director at the Home. (T49:19-50-12.)”

“Sgt. Redco explained that New Jersey State Police received an allegation that the defendant ordered police officers to perform funeral escorts at his privately-owned funeral home. (T16:1-16). To investigate the allegations, on June 5, 2020, NJSP detectives surveilling the funeral procession on June 5, 2020, took photographs and videos of the event. (T20:10-13.)”

“The jurors learned that, on June 5, 2020, NJSP detectives observed two police marked vehicles at the funeral home – one in the funeral home parking lot and the other across the street. (T17:14-22). The detectives also saw two uniformed police officers in front of the funeral home. The detectives also saw the defendant – in his police uniform – at the funeral home. (T17:11-12; T8:2-8). The jurors learned that Police Officers Matthew Benus and Joseph Scrafani performed the escort captured on surveillance footage on June 5. (T19:1-2). Sfc. Redko testified that the defendant knew that the police officers were escorting the procession. (T25:7-11).”

“The jurors learned that the detectives observed Officer Benus and Officer Scrafani escort a funeral procession from the defendant’s funeral home to a cemetery in Paramus. Sfc. Redko explained that the cemetery in Paramus was about 5 or 6 miles away from the defendant’s business. (T18:11-15). The jurors

also learned that the Township paid Officer Benus and Officer Scrafani for the time that they spent escorting the funeral procession – and, that the cost to the township for the officers' time was at least \$213.” (T19:7-10; T54:15-20).

“Officer Benus told Sfc. Redko that his supervisor ordered him to escort the procession (T20:3-4). The jurors learned that Officer Benus said to Sfc. Redko that he performed about four or five funeral escorts at the defendant’s business each year.”

“The jurors also learned that on August 14, 2020, NJSP detectives again observed the defendant and a uniformed officer – in a marked police vehicle – escort a funeral to a cemetery in Saddle Brook. (T26:9-13). The uniformed officer conducting the escort was Saddle Brook Sergeant Giuseppe Califano. The township also paid Califano for the time that he spent performing the funeral escort at the defendant’s private business. (T26:20-24:T52:17-21).”

“Sfc. Redko affirmed that the defendant knew that the police officer and marked vehicles were being used at his funeral home on August 14. (T29:6-9). Sgt. Califano told SFC Redko that he conducted one or two funeral escorts each year on orders from his supervisor, Saddle Brook Captain James Galbo. (T29:16-25). Captain Galbo provided to Sfc. copies of text messages from the defendant ordering Captain Galbo to assign patrol officers to the funerals. (T30:9-12).”

“SFC Redko affirmed that the defendant knew of and approved of the escorts at his business. (T33-10-15). Sfc. Redko explained that Captain Galbo agreed to do what the defendant asked because he was following orders. (T56:16-21).”

“The jurors also learned the defendant’s funeral home clients never paid the Township for the use of police vehicles or officers. (T33:20-25:T34:1). Nor did Kugler’s funeral home have a contract or agreement for police escort services with the Saddle Brook Township. (T35:1-7). Sfc. Redko affirmed that the defendant himself told him that he never paid for use of police resources for the escort. (T35:19-22). The juror also learned that Kaila Kugler told an undercover detective that a police escort could be arranged for no charge. (T50:10-21).”

“Sfc. Redko testified that Saddle Brook did have an ordinance that prohibits the use of police services to escort private businesses (T35:23-36:1-2). The ordinance reads:

‘Effective immediately upon the adoption of this ordinance, the use of police vehicles for escort services, both within and outside the township of Saddle Brook, is hereby prohibited, and police vehicles shall not be used for those services with the exception of the municipal government of Saddle Brook and non profit organization. (T37:16-22).’”

"Sfc. Redko testified that the defendant violated the ordinance when he ordered that on duty police officers conduct police escorts at his private business."

"Sfc Redko also explained to the jurors that the Saddle Brook Police department had various rules and regulations that the defendant was responsible for complying with. The jurors learned that the defendant knew of the rules and regulations, evidence by the defendant's signature on the first page of the Rules and regulations manual. (T39:13-20.)"

"Sfc Redko recited various provisions in the manual to the jurors. The jurors learned that 'the rules and regulations contained (in the manual) are designed to guide members in the areas of conduct, which allow very little latitude in their interpretations.' (T40:08). Sfc. Redko further informed the jurors that the manual imposed a duty on each police officer to 'thoroughly familiarize himself or herself with all provisions of the manual.'"

"The jurors also learned that Saddle Brook police officers are required by their Code of Ethics to be 'exemplary in obeying the laws of the land and the regulations of the police department.' (T40:20-41.1). The jurors learned that employees of the police department swear an oath that they will 'support and comply with... the Ordinances of the township of Saddle Brook and the rules and regulations of the police department' and that they

‘shall obey all laws, ordinances, rules, policies, and procedures and directives of the department.’ (T41:3-15:T42:16-20). Specifically, Sfc. Redko testified that, under section 3:1 of the manual, ‘members shall abide by the rules, regulations and departmental procedures and directives.’ (T41:11-16).”

“Furthermore, the defendant, as the Chief of Police, was subject to various provisions that applied to him – as Chief – beyond that of other officers. In particular, section 3:3-1 states that the Chief of Police is responsible to ‘organize, control and maintain all property and resources of the department.’ (T41:24-42:15). Likewise, the jurors heard that section 4:2-2 of the manual states that ‘no superior officer shall knowingly issue any order that is in violation of any law or ordinance,’ and under section 4:2-2, ‘that no supervisor shall knowingly issue any order that is in violation of any department rule, policy or procedure.’(T42:21-43:1-5). The jurors also learned that under section 4:7-4 of the manual – titled ‘Prohibited Activity on Duty,’ that ‘Members and employees who are on duty are prohibited from engaging in activities which are not directly related to the performance of their duty (eg. Sleeping, conducting private business or gambling.’ (T43:9-16).

“The jurors also learned that section 4:9-5 of the manual – titled ‘Use of Department Property and Equipment’ states ‘**Members and employees shall not use any departmental property or equipment for personal business or pleasure.**’) T43:21-2). Emphasis added.”

“Sfc. Redko explained that he determined that the defendant violated a number of provisions of the police department’s rules and regulations manual. (T44:1-15). Sgt. Redco testified that the defendant – as Chief of Police – should have been familiar with these provisions because ‘he’s the one who is responsible for enforcing it.’ (T44-20-22). The jurors also learned that the defendant signed the first page of this manual that contained the provisions. (T44:16-22.)”

“Sfc. Redko testified that the defendant told him that he (the defendant) believed that the Ordinance only applied to escorts to banks and that the defendant told him that he believed that ‘(the ordinance) does not apply to his business...’(T45:3-6). Sfc. Redko testified that the defendant’s own stated opinion was that assigning officers to his funeral home did put the citizens of Saddle Brook and other officers in more danger because they were not in town doing general police work. (T46:1-6). The jurors also learned that the Saddle Brook Police Department was understaffed. (T48:1-3). The jurors also learned that the defendant stated the following to NJSP investigators:

“DL: So, in your opinion An order comes down from you through your captain...to your patrolman. You have three of them on the road. You say two of them go to the escort... In your opinion, utilizing those two guys off the road does not... put the

public in any increased danger or lack... of police services to them?

RK: Well, sure it does. Sure it does. I'm not gonna say....no it doesn't... because if something happens we want...as most police officers in the town as possible." (T46:18-47.9)."

"Sgt. Redko testified that he concluded that the defendant ordered the police officers to perform funeral escorts at his private business even though the defendant knew that the police department was understaffed. (T48:16). The jurors also learned that other police officers told him that the escorts at the defendant's private business compromised the police services in Saddle Brook. (T48:22-49:1-4). Sfc. Redko affirmed that the defendant's clients received the benefit of a free police escort. (T50:25-51:10). Sfc. Redko affirmed that no one who received the benefit (that is, the defendant or the defendant's clients) actually paid for the escort, rather it was the township that paid. (T51:7-14)."

"The jurors also learned the police vehicles are the property of the township. (T49:5-8). Sfc. Redko affirmed that police manpower is a public resource. (T56:12). Sfc. Redko explained that the Township's ordinance 'clearly stated' that police vehicles cannot be utilized by private business. (T49:12-18). The jurors heard that the ordinance and the rules and regulations manual did not authorize the defendant to use police vehicles to

escort his private funeral business, in fact, police escorts for private business is explicitly prohibited. (T55:2-9). Sfc. Redko stated that nothing in his investigation suggested that these escorts had anything to do with traffic. (T57:1-5). The jurors learned that the Township was thus deprived of the benefit of having all of its on duty police officers working in the township. (T56:8)."

The State's brief then proceeded to legal argument. The State argued that the evidence presented demonstrated that 'the defendant did know that ordering subordinate officers to provide escorts at his privately owned business was unauthorized under a number of provisions of the police department's rules and regulations manual. And, the State presented sufficient evidence that the defendant acted with purpose to obtain a benefit for himself or to injure or to deprive another of a benefit."

The State then recited the 1978 Ordinance 768 which reads as follows:

"An ordinance prohibiting the use of Police Vehicles of the Township of Saddle Brook for the purpose of providing police escorts or police escort service to and from banks, or for any other purpose, both within and Outside the Township of Saddle Brook." (emphasis added.)

"The Ordinance further reads:

Now, therefore, be it ordained by the Township Council of the Township of Saddle Brook, Bergen County, New Jersey:

Section 1 – Effective immediately upon the adoption of this ordinance, the use of police vehicles for escort services, both within and outside the township of Saddle Brook, is hereby prohibited, and police vehicles shall not be used for those services with the exception of the Municipal Government of Saddle Brook and non-profit organizations.”

The State then referenced the defense argument “that, as a matter of law, the ordinance does not apply to funeral escorts and that the Chief did not know that ordering subordinate officers to perform funeral escorts at his private business was ‘unauthorized.’” The State argued that the “language of the ordinance clearly and undeniably prohibits police vehicles from being used for escort services, (with an exception for the municipal government and nonprofits.)” The State argued that “nowhere in the ordinance is there an exception for funeral escorts.”

The State further referenced that the defense produced newspaper articles which had been written in 1978, and had argued that the ordinance was passed because the police department was being “drained by their overuse, escorting private businesses to local banks, and that the defendant had relied upon ‘past practices.’”

The State then argued that Chief Kugler acknowledged that he knew of the ordinance but said that he did not believe it applied to his business.

The State further asserted that the grand jury presentation did not rely upon the ordinance alone. It wrote “The indictment alleges that the ordinance is just one of many sources of duties imposed on the defendant as the Saddle Brook Police Chief. Even if defendant’s arguments is to be believed – that is, that he honestly believed that the ordinance did not apply to his business – the grand jurors were presented with evidence that the defendant knew that police vehicles could not be used for personal business by the police department’s own rules and regulations. (T43:21-24.) And the grand jurors were presented with evidence that he knew that he could not knowingly issue any order that is in violation of any police department rule, policy or procedure, (T43:1-4). The jurors learned that police vehicles were used for Kugler’s personal business and that Kugler himself ordered subordinate officers to violate the police department rule violating the use of police vehicles for personal business. (T30).”

The State then referenced again that the Chief had signed the first page of the manual and that he was familiar with it. Sgt. Redko “also affirmed that the Police Department’s Code of Ethics requires all Saddle Brook police officers to be ‘exemplary in

obeying the laws of the land and the regulations of the police department' and that "the Police Department's oath of office states that all officers will 'support and comply with... the ordinances of the Township of Saddle brook and the rules and regulations of the police department.'"

The State also wrote that the jurors learned that section 3.3 of the manual states that "The Chief of Police is responsible to organize, control and maintain all property and resources of the department." The State further cited section 4:7-4 of the manual, titled "Prohibited Activity on Duty" – which reads "members and employees who are on duty are prohibited from engaging in activities which are not directly related to the performance of their duty. (e.g. sleeping, conducting private business or gambling.)"

Further, the State wrote, "And, directly on point, the jurors learned that section 4:9-5, titled 'Use of Department Property and Equipment' reads – "members and employees shall not use any department property or equipment for personal business or pleasure."

The State further wrote that "Sgt. Redko affirmed that he determined that not only did the defendant violate the township's ordinance regarding police escorts, but that he violated a number of the rules and regulations of the manual,

that he should have been familiar with it, and that he is the one responsible for enforcing it.” (T44-1-15.)

The State further argued that “New Jersey Courts have recognized that police officers and other public servants with access to public property and resources have an inherent duty to refrain from using public property for private purposes, citing State v. Glietsmann, 62 N.J. Super, 20-21, (App.Div.), certif. denied. 33 N.J. 386, (1960), affirming a conviction of official misconduct based upon the use of police vehicles for a private business.”

The State then cited Driscoll v. Burlington-Bristol Bridge Company, 8 N.J. 433, 474-476 (1952), and wrote that “The New Jersey Supreme Court held that all public servants, whether elected or appointed, occupy positions of trust and stand in a fiduciary relationship to the public.”

The State further argued that it presented sufficient evidence for the jurors to conclude that the defendant acted with purpose to obtain a benefit for himself or another or to injure or deprive another of a benefit. The State argued that it does not assert that a violation of the police departments rules and regulations is, in itself, a per se criminal act of official misconduct. The State alleged that in addition to the unauthorized act, the defendant “acted with the purpose to obtain a benefit for himself or to

obtain a benefit for another or to injure another or to deprive another of a benefit.”

The State further argued that evidence of purpose/intent may be shown by direct or circumstantial evidence. The State argued that intent is a question for the jury, and then referenced the defendant’s interview, supra, where he was asked if “pulling two guys off the road” increases the danger to the public, and he had acknowledged that it does “because if something happens we want... as most police officers in the town as possible.” (T46:18-47:9).

The State also argued that the Chief knew that the department was understaffed and that “the township was deprived of the benefit of having all of its on duty officers available and working in town.” (T48:16 and T56:8).

The State then again referenced the undercover investigator’s conversation with Kaila Kugler, and also texts that the defendant sent to Captain Galbo to arrange escorts for the two funerals cited in the indictment. The State argued that the defendant’s knowledge and purpose should be a question for the jury and that sufficient evidence was presented to sustain the indictment.

Finally, specifically as to Count 3, Corruption of Public Resources, the State argued that sufficient evidence was presented to sustain this count. Counsel argued that Sgt. Redko testified that police personnel and vehicles are a “public resource that are obligated to be used for the purpose of policing the township.” (T49:5-8). Counsel referenced that Sgt. Redko testified that the “township’s ordinance clearly stated that police vehicles cannot be used for a private business,” and that the defendant knew about the ordinance. (T49:12-18 and T45:12-18.)

The State further wrote that “Defendant makes much noise about how it is his belief that the Ordinance does not apply to funeral escorts, an exception nowhere to be found in the actual language of the Ordinance.”

The State then reasserted the sections of the manual, cited above herein, that prohibit the use of police vehicles for personal business, and argued again that the defendant was responsible for enforcing these rules and regulations.

The State concluded its brief by asserting that the indictment should not be dismissed and requesting oral argument.

Defense counsel Kenneth Ralph filed a reply brief, and he wrote the following, "Based upon the State's brief, the State's theory of the case can be summarized as follows:

1. Funeral escorts are prohibited by a 1978 Saddle Brook ordinance.

2. Violating local rules or general principles of honesty and good faith by a public employee are criminal acts of Official Misconduct.

3. Chief Kugler 'knew' that he was causing harm to the town when he assigned the funeral escorts for his 'personal business.'"

Defense counsel then wrote that the State's brief "ignored the defense arguments as follows:

1. "Funeral escorts have been provided for decades since the adoption of the 1978 ordinance through other town administrations and police chiefs proving that the State's interpretation of the ordinance is wrong."

2. "The context for adopting the 1978 ordinance showed that it applied to bank escorts for businesses, based on news coverage at the time."

3. "The current mayor and business administrator do not believe the 1978 ordinance bans funeral escorts and have requested escorts themselves, as they told investigators."
4. "Only two funeral escorts were discussed with the Grand Jury, void of any details or relevant context which showed the escorts were provided for legitimate reasons."
5. "Neither funeral escort 'benefitted' Chief Kugler."
6. "The town has never requested, nor do its ordinances require, compensation from the funeral home or the decedents' estates for providing police officers for funeral escorts."

Defense counsel argued that this exculpatory evidence should have been presented to the Grand Jury and thus, dismissal is required.

Defense counsel further argued that the 1978 ordinance does not "clearly and unambiguously bar police escorts," that it does not define "escorts" and does not expressly prohibit funeral procession escorts. He also argued again that this ordinance was meant to apply to escorts to banks. He again referenced past practices of police funeral escorts when appropriate, and that the mayor, business administrator and Chief Kugler did not believe that it applied to funeral escorts. He cited State v. Gelman, 195 N.J. 475, 482, (2008) holding "If a statutory

ambiguity cannot be resolved by analysis of the relevant text and the use of extrinsic aids, the rule requires that the ambiguity be resolved in favor of the defendant.”

He further asserted that if the State argues unethical conduct and violations of rules and regulations, such alleged violations “have administrative penalties up to termination from public employment but are not crimes. The proper response to an alleged rule or regulation violation is an administrative charge, not criminal prosecution.”

He further argued that “a police chief’s assignment of funeral escorts is an authorized function of duties and is widespread throughout the state. Just like any other police chief assigning police escorts, this was a discretionary act done for reasons relevant to the community, whether to honor a citizen’s public service and for traffic control. So – it was not an unauthorized function of Chief Kugler to assign the funeral escorts.”

Defense counsel again argued that “the assignment of police officers to these funerals was not ‘personal business.’ And clearly the funeral escorts were not police-related tasks; the officers were not detailed to paint the funeral home, shovel snow from the parking lot or drive the hearse. They were there because it served the interest of the community to be there for these two funerals. For similar reasons police chiefs throughout the state assign funeral escorts on a regular basis.”

Finally, he repeated that there was no harm or intent to harm the community and no benefit accrued to Chief Kugler.

As referenced above, this Court conducted oral argument in this matter on September 21, 2022. During the oral argument, both sides reiterated the prior arguments presented in their briefs.

Mr. Ralph noted that at page 37 of the Grand Jury transcript, Ordinance 768 was not read in its entirety to the grand Jurors. He stated that the omissions pertained to the “whereas” sections which explained why the ordinance was being passed. These sections, he said, referred to the drain on police resources by providing such escorts for local businesses taking proceeds to local banks.

He argued that this Ordinance does not apply to police funeral escorts. He noted that the current mayor is a former deputy police chief and the business administrator is a former councilman, and both told investigators that they did not believe that the ordinance applied to police funeral escorts.

He again criticized the State for disregarding the news articles at the time of the passage of the 1978 ordinance, which reported on why it was being passed, and since then the decades long practice of funeral escorts being provided under appropriate circumstances. He argued that there was no harm inflicted and no harm intended to the town. He argued that the State's theory of whatever benefit the Chief allegedly received has been a "moving target" throughout the Grand Jury presentation and the State's briefs.

He further argued interpretation of this ordinance is a matter of law and should be decided by this Court, as to whether the Ordinance applies to police funeral escorts. He stated that a violation of the rules and regulations manual, and he denies any occurred, does not amount to official misconduct, and that administrative penalties normally inure to such violations. He asserted that the State's real objection to the circumstances here is that the police chief also owned the funeral home, that some police funeral escorts were conducted, and that they view that as "wrong."

He argued that if the township wanted to charge either the funeral home or the decedents' estates for the escort, then they could have enacted an ordinance or other provision to do so. He said again that exculpatory evidence regarding details of the two funerals, which form the basis of the indictment, were omitted, and re-asserted that these escorts were to honor two members of the community who had given service to the community – and

not to benefit the Police Chief or the decedents' estates or to cause harm to the community.

At oral argument, Deputy Attorney General Oliveira argued again that the phrase in the 1978 ordinance, "and for no other purpose," prohibits the use of police escorts. She argued that this provision/language is "clear and unambiguous."

Ms. Oliveira argued that Chief Kugler ordered these escorts, which involved public resources, to be used for funerals emanating from his personal business. She argued that these were unauthorized acts which also violated the Rules and Regulations manual. She asserted that benefit inured to the Chief by enhancing the reputation of the funeral home as one where a person could go to obtain an escort for a loved one. She argued the town was harmed by police escorts since police resources were then diverted from general police coverage for the town. She argued, essentially in the alternative to the State's argument that police escorts were prohibited, that special police officers could have been used and the town compensated, as is done for road openings and repair.

During oral argument, this court, noting that it was in the context of a grand juror asking about whether other officers who followed orders would be co-conspirators, asked Ms. Oliveira about the prosecutor's recommendations of an indictment at

page 77 and 78 of the Grand Jury transcript. I stated that this recommendation was clearly a violation of case law.

Ms. Oliveira responded that reference to the co-conspirators not being charged was the context in which those words were said, and that it was not meant to influence the outcome at the Grand Jury. She asserted that all grand jurors are instructed at the beginning of their service that it is up to them entirely whether to return a bill of indictment or not in any particular case.

Decision

First, I wish to repeat that I have reviewed all of your arguments, both written and oral, very carefully. This motion has been very hard fought and I respect the vigorous advocacy on both sides.

I also want to state that there is no question but that the Attorney General's Office's responsibility of investigating and prosecuting public corruption, and ensuring appropriate accountability, as the circumstances of each case may require, is an extremely important function which I deeply respect.

On the other side, strong defense advocacy to ensure that defendants' due process rights, both at the Grand Jury and

throughout all stages of any criminal matter, is also an extremely important function which I deeply respect.

I also wish to state that I am very aware, having reviewed motions to dismiss indictments in dozens, if not hundreds, of other cases over the years, that consideration of the dismissal of an indictment, which has voted upon by the Grand Jury, must be conducted with the utmost caution. Dismissal should be entered only when the court finds that the indictment is “manifestly deficient” or “palpably defective.” State v. Hogan, supra. An indictment should not be dismissed except upon “the clearest and plainest ground.” State v. Williams, supra.

I will first address the 1978 Ordinance 768, S-6 in the Grand Jury presentation and Exhibit B of the defense brief. The State has argued that this ordinance prohibits police funeral escorts, has acknowledged that it specifically addressed escorts for businesses to local banks, but that it also includes the language ‘and for no other purpose’ – thus prohibiting police funeral escorts.

The defense has argued that the legislative purpose and intent of this ordinance, enacted by the Town Council, and the four-decade interpretation of this statute by many public officials, and by Chief Kugler, was that the ordinance was intended to cease the practice of police escorts for businesses transporting proceeds to local banks, thereby draining police

resources and effectively providing "armored car service" or "private security" for them.

I have reviewed the language of the statute and the news articles at the time to determine my conclusion as to the legislative intent of the Municipal Council in 1978. I have reviewed a total of 5 newspaper articles, attached as Exhibit A in the defense brief. These articles were published in the Herald News, The Record and the Fair Lawn News Beacon and Dispatch, in May and June, 1978. Four of the articles speak of the town council meeting which had just occurred, where the proposed ordinance was discussed. The articles describe it as an ordinance which would eliminate police escorts to banks. The fifth article talks about the Ordinance which had just been passed. I will now go through each article.

The first article, published in the Record on May 24, 1978, was titled, "Escorts on Way Out?" Then Police Chief Lars Olsen is quoted as saying that police escorts took up 2000 hours in the past year, and that, with the department short-staffed, "it should be cut back."

The next article, published in the Record on May 2, 1978, was titled "Town May Cut Back Police Escorts," and reported essentially the same information.

The third article, entitled "Escort Plan Studied," was published in the Herald News on May 25, 1978. It reported police escort service for businesses to banks may be eliminated, and quoted Councilman Raymond Santa Lucia as saying that he was concerned that if such service was entirely eliminated, some people would be "unjustly penalized."

A fourth article, titled "Town Limit on Escorts," published in the Herald News, dated May 30, 1978, reported that the ordinance was introduced at the previous Thursday night meeting, and that the public hearing was scheduled for June 8. The article indicated that the township plans to continue free bank escort service to churches and other non-profit groups but will eliminate the same services to businesses.

This fourth article further reported that Municipal Council President Raymond Santa Lucia said that originally the plan was to scrap the entire service, but that it was changed since eliminating the service "might be a hardship for these groups (meaning Church and other non-profit groups as referenced in the article) while private business would be able to assume the cost for the escort themselves."

The fifth article, dated Friday, June 16, 1978, published in the Fair Lawn News Beacon and Dispatch, titled "Police Escorts Ended by Council" reads: "Saddle Brook – The Police Department has officially been banned from continuing its long time service

of escorting businessmen to community banks. Non-profit organizations are exempt from the new law, and can continue to receive free police escorts.”

I note that this 1978 Ordinance 768 is titled “An Ordinance Prohibiting the Use of Vehicles of the Township of Saddle Brook for the Purpose of Providing Police Escorts or Police Escort Service to and from Banks, or for any other purpose, both within and without the township of Saddle Brook. “

After close consideration of the arguments and documentation regarding the legislative intent of this Ordinance, I strongly conclude that it was not the intention of this municipal council to eliminate police funeral escorts via this ordinance. Nor do I think they ever considered it, or ever thought about police funeral escorts. In this court’s view, every indication is that the Council was concerned with addressing the extremely time-consuming practice of police escorting businesses to banks, and some of the articles also referenced concern about insurance liability if someone were to be injured during such escort.

I strongly conclude that the phrase “for any other purpose” applied to businesses requesting police escorts for any type of protection or similar use. Again, I do not believe that the topic of banning police funeral escorts ever occurred to them, or was ever in any way their intention.

Hence, as a matter of law, this Ordinance was not “clear and unambiguous. See State v. Gelman, 195 N.J.475, 482 (2008), and that such conclusion must favor the defendant. Under these circumstances, there was no violation by Chief Kugler of this ordinance, as it was intended to be enforced. I agree with the defense position that the four decades since then, as police escorts have continued without any objection from town officials, and sometimes at their request, is additional strong evidence of this conclusion. Hence, this ordinance cannot be used as a predicate basis for an unauthorized act under the Official Misconduct statute. For this reason, as well as other reasons I will now detail, this indictment must be dismissed.

In the alternative to their argument that police funeral escorts were banned, the State has argued that there should have been either a mechanism for reimbursement of the town or the use of special police officers, to be reimbursed by the funeral home. The Defense has argued that Ordinance 33-17, the so-called fee ordinance, is an example of how the township could have set up a fee service for these escorts if it had chosen to – and it did not.

This second Ordinance, as referenced above, is titled “Use of Police Officers to Supervise Traffic in Connection with Road Excavations, adopted 6-12-2003 by Ord. 1277. It begins with “The purpose of this article is to establish regulations and fees for the opening of municipal streets within the township of Saddle Brook.”

This ordinance addresses Public Utilities, such as N.J. Bell, PS&G, a cable company, and any other company subject to regulation by the Public Utilities Commission of the State of N.J. making application for road openings/repair, with notification to the Department of Public Works and the Chief of Police, and reimbursement to the town if police supervision is needed to ensure the safety of the public.

I agree with the defense that this ordinance has nothing to do with police funeral escorts, but it does provide an example of how the town could have passed an ordinance providing for reimbursements for police funeral escorts, either from the funeral home requesting it, whether it belonged to Robert Kugler or not, or from the decedent's estate if it chose to do so. It did not.

Having reached these conclusions I now turn to the Police Rules and Regulations Manual, which includes the Code of Ethics and the section on Chief of Police Responsibilities. This manual "prohibits the use of police department property or equipment for personal business or pleasure." The State has argued that, "whatever may have been the belief of the municipal officials regarding the propriety of the police funeral escorts, the Chief knew of the Department rules and regulations forbidding the same."

The defense has argued that the Chief was not using these public resources for any inappropriate purpose related to his business, and that these police funeral escorts were meant to honor long- time volunteers who would have received escorts whether he owned the funeral home or not.

I conclude that this question, whether Chief Kugler committed unauthorized acts, in violation of the manual, and whether he was using these resources for his personal business, as opposed to these escorts being utilized to honor the deceased and/or for traffic control, is a fact issue to be determined by the grand jury, and ultimately, if indicted again, by the petit jury at trial.

These questions of course do not end the inquiry. The additional issues of whether Chief Kugler had a specific purpose to benefit himself or his business and/or the decedents' estates, or a purpose to deprive the town of a benefit or to harm the town, would also have to be considered by the grand jury, and, if indicted, by the petit jury at trial.

I also conclude that due process requires that, if the State returns to the Grand Jury to seek a second indictment, that the jurors be made aware of the long history of such police escorts, that no mayor or member of the town council, which included the mayor as a former deputy police chief, and the business administrator as a former mayor and councilman, had ever

questioned it, that they had made requests for escorts themselves, and that there had never been a request from the town to reimburse the town for such escorts. During all of these years, there also would have been a township attorney and I have heard no evidence that anyone in this position ever questioned it.

While these officials were not then police officers subject to the manual, the mayor was a former deputy police chief who would have been familiar with it. Further, I have no doubt that all of these officials knew that public resources cannot be used for a private business but apparently no one interpreted the police funeral escorts as use for this private business, and, again, sometimes these escorts were at the request of the mayor and business administrator.

I note that the defense has proffered all of this background information, and that it has not been contradicted by the State. Whether the conclusions of these officials, and of the defendant, were right or wrong, I strongly conclude that all of this is exculpatory evidence which is highly relevant to the issues of the defendant's knowledge, intent and purpose.

Further, the details of the circumstances of these two funerals absolutely should be presented to the grand Jury so that the jurors could fairly evaluate whether these escorts were arranged for personal gain or benefit or to harm the town, or

rather to honor these deceased community members. I note that there was testimony in the grand jury by the witness that he did not know if there was any issue of traffic control in either instance. Specifically, the witness was asked, "In your investigation, did you learn one way or the other whether these police escorts were being done for any reason having to do with traffic? Answer – No."

It has also been represented by the defense that there were 70 funerals conducted from the Kugler funeral home during the time period in the indictment, and only four had police escorts. The other two were for Chief Kugler's father, a former Police Chief, and for a deceased firefighter. I conclude that, that in virtually any other New Jersey municipality, these funeral processions would have been accompanied by a police escort to the cemetery. Jurors should know how many funerals were conducted during this time and the circumstances of them – so that they may have a more informed understanding of how often and when police funeral escorts were arranged. Again, I conclude that this information is relevant to the issues of knowledge, intent and purpose.

I recognize fully that the proof needed to obtain an indictment is relatively low, but presenting evidence in fair context, and presenting material exculpatory evidence is certainly required.

I further note that in the presentation, the prosecutor, although within the context as described above, did twice state that he "recommended" an indictment in this case. This is in violation of case law. See State v. Hart, 139 N.J. Super, 565, 567 (App. Div. 1976). I note that these recommendations occurred here, along with presentation of a municipal ordinance which I have concluded does not apply, and without reference to exculpatory evidence being presented. I note further the multiple questions by grand jurors who themselves cited the widespread use of police funeral escorts.

I also note that the defense has indicated that there was no extra charge imposed by the Kugler Funeral Home to the decedents' estates for the police escort. This should be specifically included, as exculpatory evidence, in a subsequent Grand Jury presentation if there is one.

I also disapprove of the following reference. In the reference to Kaila Kugler, there were very few details provided as to the conversation between her and the investigator. The witness described her reference to free police escorts as having been said "in so many words," and I note the reference in the defense brief that the undercover investigator had raised the topic, not her. There were no details as what was said by the investigator about the "deceased. I find it unfair that there was not greater context to this reference, particularly since Chief Kugler was not present.

Finally, I note that on multiple occasions the witness, Sfc. Redko, in response to leading questions by the prosecutor, opined that Chief Kugler had violated the 1978 ordinance, had violated various sections of the Police manual, that he “knew” that he was prohibited from doing so, and also that benefits inured to the decedents’ estates, and that harm was done to the township. As already decided herein, the 1978 Ordinance 768 is not applicable to this case. If there is a re-presentation to the Grand Jury, since the indictment is being dismissed without prejudice, there can be no opinion expressed by the witness as to these issues which must be decided by the Grand Jurors.

A witness, particularly a non-expert witness, cannot express opinion on matters to be decided by the Grand Jury. New Jersey Evidence Rule 701 permits the opinion of a lay witness if “it is rationally based on the witness’s perception and will assist in understanding the witness’ testimony or determining a fact in issue.” Here the witness testified, again in response to the prosecutor’s leading questions, as to the areas just referenced. See State v. Trinidad, 241 N.J. 425, 446-447 (2020), holding that a police officer, during testimony, may not testify that “the defendant’s actions appeared to be criminal” and “may not opine directly on a defendant’s guilt.”

Obviously, a Grand Jury Panel must be fully informed of the language of these sections of the Police manual and of the details

of the investigation. However, it is then up to the Grand Jurors to decide whether, under all of the complex and highly unusual circumstances of this case, unauthorized acts occurred, the state of mind of the defendant, and whether benefits or harm occurred. As detailed herein, these questions are strongly in dispute.

Finally, this court wishes to stress that it expresses no opinion about the outcome of a second presentation to the grand jury, if that occurs, or the outcome of a trial if it is indicted. My opinion herein is limited to the issues that were raised in the motion to dismiss the indictment.

The indictment is dismissed without prejudice. I have prepared an order memorializing this decision.

Respectfully submitted,

A handwritten signature in cursive script that reads "Marilyn C. Clark".

Hon. Marilyn C. Clark, J.S.C.

Retired, on Recall.

SEPTEMBER 10, 2021

State Grand Jury Judge

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

State Grand Jury
Number SGJ760-21-7
Superior Court
Docket Number 21-9-128-S

EXHIBIT A

STATE OF NEW JERSEY)

V.)

INDICTMENT

ROBERT KUGLER)

The Grand Jurors of and for the State of New Jersey, upon their oaths, present that:

COUNT ONE

(Official Misconduct - Second Degree)

ROBERT KUGLER

between on or about June 5, 2020 and on or about February 22, 2021, in the Township of Saddle Brook, County of Bergen, in the Borough of Paramus, County of Bergen, elsewhere, and within the jurisdiction of this Court, did commit the offense of official misconduct, in that the said ROBERT KUGLER, acting with the purpose to obtain a benefit for himself or to obtain a benefit for another or to injure another or to deprive another of a benefit, did commit one or more acts relating to his office, but constituting an unauthorized exercise of his official functions, knowing that such act(s) were unauthorized or that he was committing them in an

unauthorized manner, or did knowingly refrain from performing one or more duties imposed upon him by law or clearly inherent in the nature of his office, that is, the said ROBERT KUGLER, then and there being a public servant, that is, Police Chief of the Saddle Brook Police Department, having thereby the official functions and duties, among others: to refrain from using police vehicles for escort service, both within and outside the Township of Saddle Brook; to refrain from using department property or equipment for personal business or pleasure; to be exemplary in obeying the laws of the land and the regulations of the Saddle Brook Police Department; to support and comply with the Ordinances of the Township of Saddle Brook, the Rules and Regulations of the Department of Police, and the Law Enforcement Code of Ethics; to abide by all rules, regulations and departmental procedure and directives; to administer and enforce the Rules and Regulations of the Police Department; to obey all laws, ordinances, rules, policies and procedures and directives of the Department; to refrain from knowingly issuing any order that is in violation of any law or ordinance; to refrain from knowingly issuing any order that is in violation of any department rule, policy or procedure; to refrain from engaging in activities which are not directly related to the performance of his duty (e.g., conducting private business) while on duty; to refrain from using public property for private purposes; to serve the public with the highest fidelity;

to display good faith, honesty and integrity; and to be impervious to corrupting influences, did order one or more individuals employed by the Saddle Brook Police Department, and whose identity(ies) are known to the Grand Jurors, but who are not named as defendant(s) herein, to assign Saddle Brook police officers to perform funeral escorts for funerals at Kugler Community Home for Funerals, with the purpose to obtain a benefit for himself or to obtain a benefit for another or to injure another or to deprive another of a benefit, contrary to the provisions of N.J.S.A. 2C:30-2, and against the peace of this State, the government and dignity of the same.

COUNT TWO

(Conspiracy - Second Degree)

ROBERT KUGLER

who is named as a defendant herein, and other persons whose identities are both known and unknown to the Grand Jurors, who are named as coconspirators but not as defendants herein, between on or about June 5, 2020 and on or about February 22, 2021, in the Township of Saddle Brook, County of Bergen, in the Borough of Paramus, County of Bergen, elsewhere, and within the jurisdiction of this Court, with the purpose of promoting or facilitating the commission of the crimes of Official Misconduct or Corruption of Public Resources, did agree that:

A. One or more of them knowingly would engage in conduct which would constitute the aforesaid crime(s), or

B. One or more of them knowingly would aid in the planning, solicitation or commission of said crime(s), that is:

knowingly did order an individual who is employed by the Saddle Brook Police Department, and whose identity is known to the Grand Jurors, but who is not named as a defendant herein, to assign Saddle Brook police officers to perform funeral escorts for two or more funerals at Kugler Community Home for Funerals, including, but not limited to those acts and omissions described in Count One, which allegations are incorporated by reference as fully set forth herein, contrary to the provisions of N.J.S.A 2C:30-2 or

N.J.S.A. 2C:27-12(a)(1), all in violation of N.J.S.A. 2C:5-2, and against the peace of this State, the government and dignity of the same.

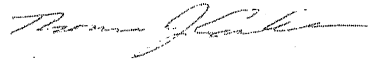
COUNT THREE

(Corruption of Public Resources - Third Degree)

ROBERT KUGLER

between on or about June 5, 2020 and on or about February 22, 2021, in the Township of Saddle Brook, County of Bergen, in the Borough of Paramus, County of Bergen, elsewhere, and within the jurisdiction of this Court, did commit the offense of Corruption of Public Resources, that is, the said ROBERT KUGLER, with respect to a public resource which is subject to an obligation to be used to perform or facilitate the performance of a governmental function or public service, to wit: the services of one or more officers of the Saddle Brook Police Department, acting on behalf of the Township of Saddle Brook, did knowingly use or make disposition of that public resource or any portion thereof for an unauthorized purpose, that is, the said ROBERT KUGLER did knowingly use one or more officers of the Saddle Brook Police Department, which use of said resource involved a value of less than \$75,000, to perform escort services for funerals conducted by the Kugler Community Home for Funerals, in violation of N.J.S.A. 2C:27-12(a)(1), and

against the peace of this State, the government and dignity of the same.



Thomas Eicher, Director
Office of Public Integrity &
Accountability

A TRUE BILL:

s/Kimberly Barrett, Deputy Foreperson

Dated: 9/13/2021