



OFFICE OF THE
ORANGE COUNTY DISTRICT ATTORNEY

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DAVID M. HOOVLER
District Attorney

September 12, 2023

Mr. Leo Glickman, Esq.
Stoll, Glickman & Bellina
5030 Broadway, Ste. 652
New York, NY 10034

Re: Request for the Orange County District Attorney
to Prosecute Detective Russell Kilgore

Dear Mr. Glickman:

I am writing in response to your letter of September 8, 2023, in which you requested that the Orange County District Attorney's Office prosecute a City of Yonkers Police Department detective for actions that occurred in Westchester County. Without getting into the merits of any such prosecution, it is unclear if the Orange County District Attorney's Office has the necessary jurisdiction to commence such an investigation. However, Executive Law Section 75 unequivocally grants authority and jurisdiction to commence criminal investigations into alleged police misconduct with the Law Enforcement Misconduct Investigative Office of the New York State Attorney General's Office, and we have therefore forwarded your letter to them.

In an Order bearing the caption, "In the Matter of the Application of District Attorney Miriam E. Rocha for the Appointment of a Special District Attorney Pursuant to Section 701 of the County Law in Relation to Certain Allegations Against Hector Santiago for His Conduct in the County of Westchester and Prosecute if Warranted Any Offense Arising from and Related to that Conduct in Westchester County," the Orange County District Attorney was appointed to act as a Special District Attorney with respect to "matters associated with allegations that on or about November 22, 2022, Hector Santiago engaged in criminal conduct while present at a public hearing before the Yonkers City Council." As you are aware, the Orange County District Attorney was appointed as a Special Prosecutor only due to Mr. Santiago having campaigned with the Westchester County District Attorney while she was running for Office. The Orange County District Attorney's Office has been, and is, without jurisdiction to investigate or prosecute matters other than those associated with whether Mr. Santiago engaged in criminal conduct at the Yonkers City Council meeting. The language of the Order bars our investigation into the actions of others which are unrelated to the issue of whether Mr. Santiago engaged in criminal conduct. There is a serious jurisdictional issue

concerning whether an investigation into actions of the detective is within the scope of the Order. For that reason, we have forwarded your request to the New York State Attorney General's Office which clearly has both the jurisdiction and resources necessary to handle such an investigation. We also believe that since the Attorney General has had no prior involvement in the case, their handling of it will increase the public's confidence in the integrity of any investigation.

I have reviewed your allegations concerning the Assistant District Attorney assigned to the case, and do not agree with your assessment that the prosecutor acted improperly. The record is clear that after carefully reviewing the criminal charges brought by the City of Yonkers Police Department before the Orange County District Attorney's was appointed, and the evidence concerning those charges, including videos of the incident, the Assistant District Attorney, on the People's Motion, dismissed all criminal charges and proceeded with two violations, one of which was for Disorderly Conduct. The Trial Judge agreed that the evidence presented at trial, when viewed in the light most favorable to the People, would support a conviction, notwithstanding that he ultimately acquitted Mr. Santiago. The Assistant District Attorney turned over all discovery and evidence to the defense attorney, including the video that you refer to in your letter, in a timely manner, presented it fairly to the Court, and asked the Court to draw what he believed to be reasonable inferences. In sum, the Assistant District Attorney acted ethically and responsibly in this matter, including in protecting the rights of the accused.

Very truly yours,



Christopher P. Borek
Chief Assistant District Attorney