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February 3, 2022

Hon. Ron Kim, Mayor
City of Saratoga Springs
474 Broadway
Saratoga Springs, New York 12866

Re: Request for grand jury review

Via email, hand-delivered and US Mail

Dear Mayor Kim:

I am in receipt of your letter dated January 11, 2022 and received in my office on January 14, 2022.

I understand that your letter is prompted by a motion made by Saratoga Springs Public Safety Commissioner James Montagnino and adopted by the Saratoga Springs City Council on January 4, 2022, requesting my Office conduct a “non-criminal” Grand Jury investigation into the death of Darryl Mount, Jr., pursuant to **Article 180** (*sic*) of the Criminal Procedure Law. Your letter modified this request to **Article 190** of the Criminal Procedure Law with a specific reference to **CPL §190.55(1)**, as Article 190, not Article 180, is the applicable statute regarding Grand Jury proceedings.

I am aware that people have expressed concerns surrounding the incident involving Mr. Mount on August 31, 2013 that concluded with Mr. Mount sustaining injuries following a fall from scaffolding in alleyway adjacent to Broadway down to an area near the Gaffney’s garden patio. While my heart goes out the Mount family and to anyone who loses a loved one, I am bound by my legal and ethical duties to ensure that a Saratoga County Grand Jury is only empaneled to hear matters provided for in Article 190 of the Criminal Procedure Law of the State of New York, and in accord with the New York Rules of Professional Conduct of Attorneys admitted to practice in the State of New York.

Criminal Inquiry by a Grand Jury

The most common function of a Grand Jury is to determine whether there is reasonable cause to believe a person or persons committed a crime, and hence to vote an indictment or a no true bill. A Grand Jury, as you requested, cannot be convened to decide a “criminal matter” if there is no modicum of evidence to indicate that any member of the Saratoga Springs Police Department ever engaged in any form of criminal conduct on August 31, 2013. Under Rule 3.8[a] of the New York Rules of Professional Conduct, “a prosecutor...shall not institute, cause to be instituted or maintain a criminal charge when the prosecutor... knows or it is obvious that the charge is not supported by probable cause”. No such evidence has been identified indicating there was any criminal conduct by a member of the Saratoga Springs Police Department. To the contrary, all information regarding that incident demonstrates the police acted appropriately that night.

On the other hand, evidence did exist that would have supported criminal charges against Mr. Mount after two members of the Saratoga Springs Police Department at approximately 3:02 am observed Mount allegedly shove his girlfriend’s head into a brick wall (i.e. Harassment and/or Assault 3rd) in Saratoga Springs on August 31, 2013, and for his immediate flight from the police (i.e. Resisting Arrest and/or Obstruction of Government Administration). At the time of flight from police, it is my understanding that Mr. Mount was on parole pursuant to a felony conviction and his conduct that evening would allegedly put him in violation of the terms and conditions of his parole.

The Saratoga Springs Police Department and the District Attorney at that time exercised their discretion not to seek immediate charges against Mr. Mount for reasons that included the serious physical injuries he suffered from the fall and his girlfriend’s reluctance to cooperate. Subsequent to that incident, the Saratoga Springs Police Department posted on-line video that captured the incident involving Mr. Mount and his girlfriend, along with the actions of the police in response to observing Mr. Mount’s actions towards his girlfriend. Mr. Mount was never charged before he passed away on May 13, 2014, and therefore, the only possible criminal case ended with Mr. Mount’s death.

Non-criminal Matter

Another action of the Grand Jury, albeit extremely rare, is to issue a Grand Jury report “[c]oncerning misconduct, non-feasance or neglect in public office by a public servant *as the basis for a recommendation of removal or disciplinary action.*” (emphasis added). It is important to know, however, that the authority granted to a Grand Jury for non-criminal investigations under NYS Criminal Procedure Law (“CPL”) §190.55(1) is limited by the restraints of §190.85.

Your letter addresses a second incident, a non-criminal one, whereby then-Police Chief Gregory Veitch allegedly admitted (in 2017) to having “misled” a reporter about a second (or internal) investigation regarding the August 31, 2013 incident involving Darryl Mount. Gregory Veitch retired as the Saratoga Springs Police Chief in 2019. Therefore, it would be improper to convene a Grand Jury to consider allegations against Mr. Veitch for “misconduct, non-feasance or

neglect” when the only actions a Grand Jury could take, assuming they even made an affirmative finding, would be to make “...a recommendation [for his] removal or disciplinary action.” CPL §190.85. Such an endeavor would be an improper use of the Grand Jury and all records of such an attempt, would inevitably be sealed by a reviewing court, pursuant to Criminal Procedure Law §190.85, as well as being moot because Gregory Veitch is no long a public servant.

On January 4, 2022, Commissioner Montagnino’s statement that only my Office can conduct a “non-criminal” Grand Jury investigation because our prosecutors have the power to confer immunity also needs to be clarified. The power to confer immunity occurs in criminal matters, not non-criminal matters. Again, there is no basis to believe anyone other than Darryl Mount committed any crimes that could have been prosecuted.

While it is not proper to convene the Saratoga County Grand Jury regarding the series of events involving Darryl Mount on August 31, 2013, there is a forum and judicial process available to those concerned about that day in the civil courts of the State of New York. In fact, as you are aware, the representatives of the Estate of Darryl Mount have commenced civil litigation alleging improper conduct by representatives of the City of Saratoga Springs regarding actions on and following August 31, 2013. I am advised that action has been proceeding in New York State Supreme Court, and that motions have been filed and that a timeline for various proceedings, including a trial date in November, 2022, have been established by the Supreme Court. I am also aware that all filings regarding that civil action are available to the public for inspection and review, and that those filings include over 1000 pages of depositions, documents, video and other evidentiary materials regarding the August 31, 2013 incident. I have found nothing in that information that would support the actions of a grand jury as requested by the City Council.

Notwithstanding the public’s access to these materials, not one person has been able to offer a modicum of proof that any police officer, generally described or specifically named, engaged in any crime, misconduct, non-feasance or neglect on August 31, 2013, or during the criminal investigation thereafter.

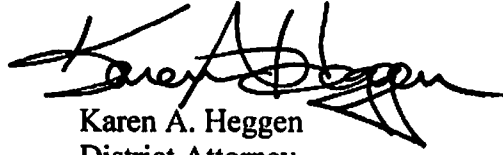
I note that newly elected Commissioner James Montagnino made a promise to the community of Saratoga Springs in the fall of 2021, to produce a “draft report” as to his findings regarding the Darryl Mount incident that would be completed upon his inauguration in January, 2022. I also realize that Commissioner Montagnino was very ill during the month of December, 2021, and that delayed the production of his written report. While I continue to wish Mr. Montagnino good health, I look forward to reviewing his promised written report. Perhaps he is aware of some information and facts that have not yet been raised. Again, I would need specific information and proof that a particular officer currently employed by the Saratoga Springs engaged in some type of misconduct, non-feasance or neglect for there to be a “non-criminal” Grand Jury investigation.

Finally, the Grand Jury should not be utilized as a substitute for a policy making board. For example, should the Saratoga Springs City Council and/or the Commissioner of Public Safety decide, after reviewing all the materials available to them regarding the incident involving Darryl

Mount, that the Saratoga Springs Police Department should implement a different internal affairs/public integrity unit that would be well within their power to do so.

I recognize that the events that occurred on August 31, 2013 have sparked much discussion in your community. However, I am ethically bound to exercise my discretion and responsibility as the Saratoga County District Attorney to present cases to a grand jury only in those instances where I have a good faith belief that either a crime has been committed, or a current public servant has engaged in misconduct, nonfeasance or neglect. For all of the foregoing reasons, I decline to present this case to the grand jury at this time.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Karen A. Heggen". The signature is stylized and cursive, with a large, sweeping flourish at the end.

Karen A. Heggen
District Attorney

KAH/ms