

STATE OF INDIANA

IN THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM FOUR

COUNTY OF MARION, SS:

Cause No. 49G04-1807-MC-022315

IN RE: THE APPOINTMENT OF A
SPECIAL PROSECUTOR

SPECIAL PROSECUTOR'S REPORT TO THE COURT

PER I.C. 33-39-10-2(f)

I accepted this Court's appointment as Special Prosecutor In the Matter of Curtis Hill on July 24, 2018. The appointment was limited to the express purpose of investigating Mr. Hill's alleged conduct on March 15, 2018 at A.J.'s Bar on South Meridian Street in Indianapolis, Marion County, Indiana.

I am qualified to be a Special Prosecutor based upon my designation as a Senior Prosecuting Attorney as provided in the Indiana Code. This designation is based upon my prior service as an elected prosecuting attorney in Adams County, Indiana. I was informed that I was included on a list of potential, qualified prosecutors submitted to Marion County Superior Court Judge Borges by the Indiana Prosecuting Attorney's Council.

My appointment was occasioned by the recusal of Marion County Prosecuting Attorney Terry Curry. Mr. Curry removed himself based upon the extensive and ongoing contacts between his office and the office of the Indiana Attorney General. Specifically, these contacts included ongoing litigation in which Mr. Hill represented the Marion County Prosecutor's Office in both civil and criminal matters. In my view, the recusal was both appropriate and necessary.

SCOPE & PURPOSE

As a threshold matter, it must be clear that the subject matter of my appointment involves nothing related to Mr. Hill's responsibilities or duties as Indiana's Attorney General. My inquiry (as more fully explained below) was to determine whether there was probable cause to believe that Curtis Hill, as a private citizen of the State of Indiana, engaged in conduct with the intent to commit a crime.

My appointment and sole task has been to find the facts related to the events which occurred at A.J.'s Bar on March 15, 2018 and to then to apply the law to those specific facts. The ultimate goal of this investigative process is to make an informed, considered and ethical decision as to whether there has been a violation of the Indiana criminal law and whether or not any person should be prosecuted.

It is significant to note that *charging* a crime and *convicting* a person of a crime are two separate but important considerations. A prosecutor is ethically bound to neither charge nor pursue any criminal matter unless it is supported by probable cause. The probable cause standard may sometimes be satisfied upon preliminary facts or a cursory investigation. Other

times a more nuanced and deeper investigation is necessary in cases of public interest such as this appointment.

Just as critical to the analysis, however, is whether the facts and evidence produced during an investigation would later support a jury's consideration as to whether a crime occurred *beyond a reasonable doubt*. Both considerations are relevant as prosecutors weigh the filing of charges and the prosecution of a criminal case.

The decision to prosecute a citizen – any citizen – is not entered into lightly. It is a process that every county prosecutor in our state goes through each and every day he or she serves in office. No matter the level of skill a prosecutor possesses as a courtroom lawyer, the most crucial prosecutorial function is the exercise of his or her discretion as to whether to charge a person with a crime.

Accordingly, such decisions should never be made haphazardly or out of any consideration other than what the facts present. These decisions must be made with a neutral eye - by looking to defined standards, relying on professional experience and having a sense of whether convictions can reasonably be expected to result from the considered charge. These decisions can be -- and often are --exceptionally difficult.

The subject of this investigation is Curtis Hill, a man who happens to be the elected Attorney General of Indiana. His status as an elected official should neither protect him from prosecution nor enhance the likelihood that he is prosecuted. In short, I have examined this case as if it did not involve the Attorney General, but in the same manner as if the allegations had been made against any citizen of our State. What is fair for Curtis Hill must also be fair for John Q. Citizen, and vice versa.

Some have opined that public servants must be held to a higher standard. While this opinion has resonance and importance, that accounting should and must be applied in the court of public opinion. These considerations are not appropriate for my consideration and are not included in my analysis. It is imperative that the rule of law be afforded to and apply equally to all of our citizens.

INVESTIGATION

I liken this investigation to the two parallel rails of a railroad track. The rails of any railroad track are connected by wooden ties. In this case, there were two separate, distinct rails: the first rail involved a potential employment harassment and civil misconduct claim. The second rail was the criminal investigation I was asked to undertake.

Although these two rails are tied together by a particular set of facts, each rail remains distinct and independent. The facts are the ties that bind these separate legal tracks together. The issues presented by the first rail, i.e. civil liability and the involvement of a public official do not impact on the other rail, i.e. decision to prosecute.

I use this analogy because it helps describe and identify what is being decided by me today and what is not. The same facts at issue (i.e. what occurred in A.J.'s on March 15, 2018)

apply to both rails but involve an examination of the conduct of Curtis Hill in different contexts. The first rail involves Curtis Hill, the public figure and office holder, while the second rail examines Curtis Hill's conduct as a private citizen for the purpose of determining whether he violated the criminal law on March 15, 2018.

The first rail thus deals with employee claims of potential inappropriate conduct and sexual harassment against a state official and raise questions as to the appropriateness of the official's conduct in an Indianapolis bar on March 15, 2018. That investigation was not a criminal investigation but a private legal opinion regarding potential employer liability for sexual harassment. The source of that leak and the conclusions that opinion reached are not the subject of my appointment and will not be addressed in this report.

The second rail – the one I was appointed to investigate – deals only with the question of whether a man named Curtis Hill may have violated a criminal statute in an Indianapolis bar on March 15, 2018. The decision as to whether criminal laws were violated and require prosecution are appropriately and solely within the scope my authority under the Order of the Marion County Superior Court.

BACKGROUND

The alleged conduct covered by the Order of my appointment took place at A.J.'s Bar in Indianapolis, Indiana in the early morning hours of March 15, 2018 at a gathering commonly known as the Sine Die party celebrating the end of the 2018 Indiana Legislative Session. This party primarily involved members of the Indiana legislature, their staffs, legislative services agency employees and lobbyists.

The 2018 Sine Die party was not an exclusive get together or "invitation only" event but rather a loosely organized end of session party. Curtis Hill was invited to the event by a lobbyist and did attend the event with that lobbyist. Ultimately, the investigation identified four women claiming to have been touched inappropriately by Curtis Hill. These four women, along with a number of other witnesses, allege Hill's alcohol consumption to have been a potential contributing factor to his conduct on the night in question.

Specifically, three (3) staff members and one (1) legislator came forward to House and Senate leaders with information concerning alleged inappropriate behavior by Curtis Hill at the Sine Die party. The alleged behavior included a suggestive statement made by Hill and uninvited and unwanted touching by Hill of the complainants. This alleged touching involved Hill's hands to the shoulders and backs of the four women and to the buttocks of two of the women.

The women were interviewed by legislative personnel about their complaints and an outside law firm was hired to provide a legal opinion assessing the potential for workplace harassment claims, including an analysis of whether the Sine Die event could be considered an employment related event and whether the employer would have civil exposure for a harassment claim in such a setting. The requested report was provided to legislative leaders who met with Hill a week or two thereafter, in which they expressed zero tolerance for sexual harassment and

requested no contact between Hill and the women. Apparently, no further legal action was taken. In early July, a copy of the legal opinion was leaked to a media outlet and media reports began to issue about the matter and the allegations contained in the civil legal opinion.

Hill claims he was first contacted on July 2, 2018 in a conference call with Representative Brian Bosma and Senator David Long, the leaders of their respective chambers, about the allegations contained in the leaked legal opinion. Once the allegations became public knowledge, the stage was set for the appointment of a special prosecutor.

Because the allegations concerned an elected state official and because they contained potential ethical and criminal implications, the Inspector General opened a file and began an investigation. The Inspector General in turn requested the assistance of the Indianapolis Metropolitan Police to investigate and detectives were assigned to that investigation to work along side inspector special agents.

My first step was to contact Indiana State Police (“ISP”) Superintendent Doug Carter to assist in the investigation. While very cooperative and willing to assist in any way, the Superintendent ultimately was forced to decline my request given the fact that similar conflicts existed for the ISP as were encountered by Prosecutor Curry. Although the investigation involved Hill individually rather than in his capacity as an office holder, it would have presented the State police with insurmountable difficulties in both investigating him and then working with him in his role as the Attorney General.

As a result, I made contact with the Indianapolis Municipal Police Department (“IMPD”) to seek assistance in my investigation. During that initial contact, I learned that the Inspector General and detectives from the IMPD had previously opened an investigation and were gathering evidence and interviewing witnesses. I contacted Inspector General Lori Torres and she expressed her desire and willingness to cooperate with my efforts. Hence, the entirety of my investigation was conducted by and with the cooperation of the Indianapolis Metropolitan Police Department and the office of Inspector General.

POTENTIAL CHARGES

In reviewing the potential criminal charges that could reasonably apply to the allegations made against Curtis Hill, it is my professional opinion that the most viable potential charge is that of misdemeanor battery.

Misdemeanor battery requires proof that one person touched another person in a rude, insolent or angry manner. Such proof is required to be beyond a reasonable doubt in order to convict and also requires proof of a defendant’s intent to commit a crime. Such a charge could potentially apply under certain circumstances. I have specifically referred to this statute and have considered it carefully in my review of Hill’s conduct.

I am also aware that a violation of the sexual battery statute has been suggested, but proof supporting the essential elements of sexual battery is not present. “Sexual battery” – in the State of Indiana – is generally misunderstood. In order to convict a person of sexual battery, there must be proof beyond a reasonable doubt that a person was touched with a sexual intent and the

victim was compelled by force or the threat of force, the victim is unable to give consent because of his or her mental state (i.e. intoxication or disability) or they are unaware of the sexual touching. There are no facts alleged in this case sufficient to sustain a charge of sexual battery, let alone a conviction.

Jurors in criminal cases are always instructed to reconcile the facts with the presumption that every witness is being truthful. Further, they are instructed not to disregard any statement without careful consideration and good reason. In examining the conduct of Hill at A.J.'s Bar in the early morning hours of March 15, 2018, I have approached my duties in the same manner. I have endeavored to reconcile all statements as being true and discounted none.

Not only were the statements of the complaining witnesses taken in the investigation but a total of approximately fifty-six (56) witnesses were interviewed by investigators altogether. In addition, a statement was obtained from Curtis Hill as well as speaking to witnesses identified by Hill and his attorneys as persons having knowledge of this matter. Mr. Hill was cooperative with my requests throughout the process as were all witnesses interviewed.

In reviewing the matter for potential criminal charges, I also felt obligated to consider the context of the alleged conduct. The Sine Die party took place in a relatively small bar, patrons were at close quarters, the time was after midnight, free alcoholic drinks were provided and most people were consuming and feeling the effects of that consumption. These conditions can impact a person's ability to perceive and accurately recall events and circumstances. This fact, in turn, makes it difficult for a prosecutor to accurately portray an alleged occurrence to a jury in a compelling fashion with an accurate chronology of events. Adding to the challenges presented were that interviews of important witnesses were conducted weeks after the event, making accurate recall even more problematic.

I took the complaining witnesses claims as true and credible. Their motives appeared sincere and I found all to be credible in their belief that Hill touched them in a way that was inappropriate. Hill, in his statement, did not deny certain touching occurred but stated that the touching was either incidental to conversation or movement in the crowded bar. He stated that his touches were not intended to be disrespectful, sexual in nature or rude.

Hill denied excessive alcohol consumption but acknowledged consumption that I viewed to be "significant". Other witnesses claimed Hill admitted to having too much to drink. Hill also acknowledged making a statement suggesting to one witness that in order to get waited on at the bar they "needed to show some skin." Hill described it as attempted humor and claimed it to be directed at a legislator who was tending bar at the time. This statement, according to Hill, was not made to offend the women present. The women present did claim offense to the statement.

For my purposes the reconciliation of Hill's statements versus the statements made by any witness was unnecessary despite there being some differences among statements and in their detail, for the reason that I have accepted the victim statements as true. Rather than attempt to resolve different version of events, I focused on whether the conduct described by the witnesses would support a prosecution in any event.

CONCLUSION

Accepting all victim statements describing Hill's conduct as true, I nonetheless will not file charges against Hill. In support of this decision, I provide the following:

1. The evidence is not sufficient to establish that Hill's intent in the touching was rude, insolent or angry. A conviction for battery would require proof of Hill's intent beyond a reasonable doubt. While there is no doubt that the women involved viewed the touching as uninvited and rude, that is not the sole standard for a successful criminal prosecution. At issue is what was in Hill's mind at the time of the touching. At best the evidence regarding the essential element of Hill's intent is that he was overly friendly and touchy with everyone in the establishment as the apparent result of alcohol consumption. Inappropriate or intoxicated behavior does not automatically equate to criminal behavior.

2. Given the totality of the circumstances, I do not think it likely that a jury would find beyond a reasonable doubt that Hill committed a battery or batteries as a result of his conduct on March 15, 2018.

3. In my judgment, there is little public benefit to be served by filing a misdemeanor charge or charges which would likely result in a protracted, contentious and expensive legal proceeding. Most importantly, it would not resolve the issue of main concern: Did Curtis Hill behave inappropriately in the early morning hours of March 15, 2018?

Some will surely argue that there exists probable cause to file a battery charge. That opinion notwithstanding, my standard for filing a criminal charge is based upon my belief that no charge should be filed unless a conviction would likely result. I do not hold such a belief in this case and will not file a criminal charge on the mere hope of obtaining a conviction. Both the victims and the accused deserve a more reasoned decision.

As stated above, litigation of this matter would be protracted, potentially lasting months or longer. A conviction on a charge of misdemeanor battery would not dispossess Hill of his office or his ability to hold office in the future. For those who believe the alleged behavior of Hill should have a significant public consequence, including forfeiture of office, such result could not be accomplished by a misdemeanor battery prosecution. Indeed, I believe it would be inappropriate to use a criminal prosecution to advance such a goal.

I know full well that neither my decision nor this report will quell discussion or public examination of this matter. I am a prosecutor acting under the scope of my appointment and within my discretion under the law. Nothing more, nothing less. It would be a mistake or inaccurate to take my decision or this report as meaning anything more than what it specifically says.

The issues presented on rail one – did an elected official behave in a manner inappropriate to his public office? – remain unresolved and will necessarily be debated in other settings. Mr. Hill is a public official and will have to answer to the public he serves for his involvement and behavior in this matter. He is entitled to explain and defend his behavior. I presume he is prepared to do that.

Those who find his behavior reprehensible, I am just as sure, are prepared to advance their concerns moving forward. I do not, should not and will not comment on the appropriateness of their position as it is beyond the scope of my appointment.

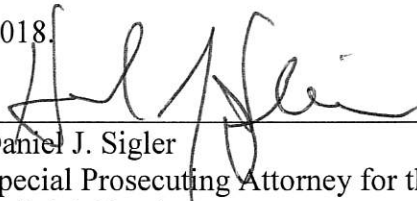
My decision today is based upon the investigation conducted and my experience and professional judgment. I believe it to be the correct decision but understand that there may be disappointment or criticism of it from some quarters. Nonetheless, I am confident that this process has produced the correct result.

I want to thank the Inspector General, her staff and the Indianapolis Metropolitan Police Department detectives for their cooperation, professionalism, hard work and valuable input.

I thank the women affected who have cooperated with this investigation despite having been placed in a position of having their privacy invaded and their credibility questioned. The decision made today should not and does not reflect on their credibility. They addressed their concerns in an appropriate fashion and forum and should be subjected to no criticism.

Thank you for this opportunity to serve.

Dated this 23rd day of October, 2018.

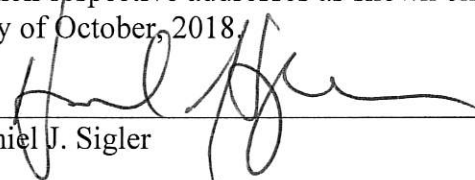


Daniel J. Sigler
Special Prosecuting Attorney for the 19th
Judicial Circuit

127 W. Berry Street, Suite 1000
Fort Wayne, IN 46802
Telephone: (260) 755-1583
Facsimile: (260) 420-1182
Attorney No. 133-01

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above and foregoing has been served on all attorneys of record for the above cause of action, via either by using the Indiana E-filing System (IEFS), hand-delivery, email, facsimile, Courthouse mail and/or U.S. mail, first class postage paid and addressed to said attorneys at their respective addresses as shown on their pleadings or papers filed herein this 23rd day of October, 2018.



Daniel J. Sigler