CIRCUIT COURT

OF THE FIRST JUDICIAL CIRCUIT OF ILLINOIS
JACKSON COUNTY, ILLINOIS

IN RE:	)	
	)	
DEATH INVESTIGATION	)	
OF PRAVIN VARUGHESE[1],	)	
	)	Case No. 2015-MR-21
	)	
	)	
	)	

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO TERMINATE THE APPOINTMENT OF THE SPECIAL PROSECUTOR

NOW COME the People of the State of Illinois, by its attorney, David J. Robinson, Special Prosecutor, Chief Deputy Director, Illinois State's Attorney Appellate Prosecutor, and respectfully request that this Honorable Court **DENY** defendant's motion to terminate the appointment of the special prosecutor on "the subject matter of . . . the potential offense of homicide" (see the Chief Judge's March 2, 2015 Order Appointing Special Prosecutor), case No. 2015-MR-21, and in support thereof states as follows:

Assuming *arguendo* this Honorable Court grants defendant's motion to intervene, defendant seeks to "disqualify and terminate the special prosecutor appointment in this matter." (Def's Motion at pg. 1) For the reasons that follow, this Honorable Court should deny defendant's motion.

[1] As part of his motion, defendant uses a caption that, to the People's knowledge, has never been used in 2015-MR-21. The People have provided the caption assigned by the Chief Judge in the matter.

I. DEFENDANT'S INTRODUCTION

Defendant begins, as he did in his motion to intervene, by noting that as part of the People's motion for *nolle prosequi*, the People have asked that their appointment be continued to "complete their work." (Def's Motion at pg. 1) The People made no such request, as this matter (the MR appointment) is an open appointment and no such motion or request is required. What the People requested was that this Honorable Court grant the motion for *nolle prosequi* so that, in the interest of justice, the People could continue their work in 2015-MR-21. (People's Motion at ¶ 4)

Defendant continues his introduction section by noting as follows: "Pravin Varughese's death was an unfortunate event that has been distorted by those with agendas into something it is not – a crime." (Def's Motion at pg. 1) The evidence suggests otherwise; indeed, a grand jury found probable cause to believe a crime was committed by this defendant and the trial judge found on multiple occasions – including at the time the judge awarded this defendant a new trial – that the State's evidence was sufficient to prove this defendant guilty of that crime beyond a reasonable doubt. Certainly defendant is cloaked in the legal presumption of innocence prior to a retrial, but to assert that no crime occurred here and that this was simply the result of an "unfortunate event" ignores the evidence that has been presented in this case.

Defendant then adds, "To permit this appointment to continue, open-ended, while the prosecution fishes for another crime with which to charge Mr. Bethune, would be unjust." (Def's Motion at pg. 1) This special prosecution appointment is neither "open-ended" nor a fishing expedition. The Chief Judge in this matter was quite specific in accepting the state's attorney's motion to appoint the special prosecutor: "[T]he interests of justice require the

appointment of a Special Prosecutor [and] the subject matter of this case involves the potential offense of homicide." (See the Chief Judge's March 2, 2015 order) This case has been and continues to be a thorough and professional prosecution conducted in strict accordance with the Chief Judge's March 2015 order appointing special prosecutor, which was in full compliance with 55 ILCS 5/3-9008.

II. DEFENDANT'S CLAIM THAT THE INITIAL APPOINTMENT WAS IMPROPER

Defendant first argues that the appointment of a special prosecutor was "unnecessary, unmandated, and improper," and therefore this Honorable Court "should terminate the appointment." (Def's Motion at pg. 2) In support of his argument, defendant states as follows: "The criminal matter underlying this appointment had already been adequately investigated by the police and other law enforcement, a grand jury was impaneled, and – after hearing the evidence – determined that [a] no true bill should be returned. Subsequent to that decision, no new information about the case surfaced. The inquiry should have ended there. Nonetheless, a different prosecutor decided that the original grand jury's decision was not to his liking and brought an indictment." (Def's Motion at pg. 2)

Defendant's assertions are simply unmoored from the fact of this case. First, the state's attorney specifically noted in his Memorandum of Decision that the first grand jury was presented only (i) intentional murder (720 ILCS 5/9(a)(1)), (ii) knowing murder (720 ILCS 5/9(a)(1)), and (iii) strong-probability murder (720 ILCS 5/9(a)(2)) under the First Degree Murder Statute. (See Feb. 24, 2015 "NO BILL MEMORANDUM OF DECISION" from State's Attorney Carr). The charge ultimately brought against defendant by the second grand jury, which the trial judge repeatedly found was supported by the State's evidence beyond a

reasonable doubt, was never put before the first grand jury. That charge, of course, was First Degree Murder under 720 ILCS 5/9(a)(3), commonly referred to as Felony Murder.

Additionally, as was revealed at a pre-trial hearing in the 17-CF-332 case, certain information from that first grand jury was not adequately investigated[2]. It was, in part, that information that revealed the true nature of the events from February 2014. To say that "no new information about the case surfaced" after the first grand jury, or that the special prosecutor convened a second grand jury simply because the first grand jury decision was "not to his liking," is simply factually inaccurate and brings unnecessary disrepute on the process.[3]

Defendant adds that he was "not given advance notice of the filing, nor was he afforded the opportunity to weigh in before a special prosecutor was appointed." (Def's Motion at pg. 2) There is, of course, no such requirement, and for good reason. A citizen, like Mr. Bethune, is not a party to the case and, for the reasons outlined in the People's response to defendant's motion to intervene in this cause, he lacks standing to voice an opinion about who is ultimately selected to investigate a criminal matter in which he may be implicated. See *In re Appointment of Special Prosecutor*, 388 Ill. App. 3d 220 (3rd Dist. 2009)[4].

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[2] The information here related to a juvenile witness who spent the night with defendant after defendant drove from the scene of the crime to her house before ultimately arriving at defendant's father's house. The testimony of this witness revealed a number of lies defendant had told, and ultimately defendant admitted telling under oath at trial.

[3] It should be noted that no single special prosecutor made decisions about the steps taken as part of this prosecution, as the State's Attorneys Appellate Prosecutor ("SAAP") was appointed to represent the People here. This case, as with all serious felony cases assigned to SAAP, incorporated more than one prosecutor into the process of exercising prosecutorial discretion. The Chief Deputy Director of the agency and a Special Prosecutor, who formerly served as the Grundy County State's Attorney, were assigned day-to-day oversight and primary duties in the case.

[4] Again, for purposes of issue preservation, the People also note that defendant acquiesced to the appointment of a special prosecutor in 2015 and never objected to the appointment of a special prosecutor before, during, or after the trial in this matter.

Accordingly, these points should be disregarded as unhelpful to this Honorable Court's ultimate decision regarding whether the appointment in this case was improper.

Citing section 3-9008(c) of the Counties Code (55 ILCS 5/3-9008(c)), defendant argues that "[t]he order here is void because in this case it failed to adequately define the role of the special prosecutor. It was silent on the issue." Defendant describes the appointment as "carte blanche" to exercise "unbounded authority." (Def's Motion at pg. 3) The plain language of the appointment from the Chief Judge could not be more narrowly tailored and succinct: "[T]he interests of justice require the appointment of a Special Prosecutor [and] the subject matter of this case involves the potential offense of homicide." (See the Chief Judge's March 2, 2015 order) (Emphasis added.) The Chief Judge's order could not be more direct: SAAP was appointed to investigate, for potential prosecution, the death of Pravin Varughese, the potential offenses involving homicide. To say the order was "silent on the issue" of the role of the special prosecutor utterly ignores the plain language of that March 2, 2015 order. This argument too should be rejected.

Having challenged the integrity of the special prosecutors, the findings of the second grand jury, and the order of the Chief Judge, defendant turns to State's Attorney Michael Carr: "The state's attorney had a constitutional obligation to defend the grand jury's 'no true bill' decision, not to run away." (Def's Motion at pg. 4-5) The elected state's attorney in this case was under no obligation to "defend" the decision of the first grand jury, nor was he running away; he was acting responsibly in light of the totality of circumstances.

The law has long recognized that a State's Attorney may come to find that in light of the totality of circumstances, he cannot objectively and/or sufficiently investigate a particular crime

or incident, or simply conclude that the appearance of impropriety in a cause is too great. See *People v. Bickerstaff*, 403 Ill. App. 3d 347, 352 (2nd Dist. 2010) ("The parties agree that, under our case law, a prosecutor will be deemed "interested" under section 3-9008 . . . where the attorney's continued participation would create the appearance of impropriety in the prosecution of a defendant"). Prosecutors and reviewing courts have long accepted, as sufficient grounds for recusal on the basis of the appearance of impropriety, the provision of section 3-9008(a-5) which states that "whenever the State's Attorney . . . is interested" in any criminal cause that may be his duty to prosecute, the court may appoint a special prosecutor. 55 ILCS 5/3-9008(a-5)(West 2012) (emphasis added). When, as here, the State's Attorney believes based upon the totality of the circumstances that he is "interested" or concludes that the appearance of impropriety is too great, the court may accept that representation. State's Attorney Carr was clear in his motion seeking the appointment of a special prosecutor that although he did not feel he was required by law to step aside, he felt that it was appropriate to step aside to avoid even the appearance of any impropriety. (See SA Carr's March 2, 2015 Motion for Appointment of Special Prosecutor)

This, of course, was entirely proper and the historical precedent that guided State's Attorney Carr has been recently codified under section 3-9008(a-15):

"Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section." 55 ILCS 5/3-9008 (a-15) (West 2016) (eff. Jan. 1, 2016).

The cases cited by defendant in support of his argument that State's Attorney Carr was somehow not permitted to request the appointment of a special prosecutor are all easily distinguishable: each case involved a party, who was not the State's Attorney, seeking to have the State's Attorney removed as the prosecuting authority at the time of the appointment.[5] Indeed, the People can locate no case– and defendant has not cited a case – wherein a state's attorney sought a special prosecutor based upon his assessment of the appearance of impropriety and a reviewing court in this State reversed a Circuit Judge for appointing a special prosecutor on the state's attorney's request. In fact, cases like *Bickerstaff* indicate quite the contrary. 403 Ill. App. 3d at 352 ("under section 3-9008 . . . where the attorney's continued participation would create the appearance of impropriety in the prosecution of a defendant" the State's Attorney may seek a special prosecutor).

Defendant first cites *County of Cook ex rel. Rifkin v. Bear Sterns*, 215 Ill. 2d 466 (2005) for the proposition that State's Attorney Carr is somehow barred by the Illinois Constitution from requesting a special prosecutor under these circumstances. (Def's Motion at pg. 3) A close reading of *Rifkin*, however, reveals that the case stands for no such proposition. In fact, *Rifkin* merely emphasizes that "the State's Attorney is a constitutional officer whose powers may not be stripped or transferred to another by a legislative body." *Id.* at 475. (Emphasis added.)

Defendant then cites *People v. Jamison*, 197 Ill. 2d 135 (2001) and *People v. Novak*, 163 Ill. 2d 93 (1994) for the unremarkable proposition that state's attorneys are vested with exclusive discretion whether to prosecute, adding that under Illinois Rule of Professional

[5] Note the distinction between a party seeking to have a special prosecutor appointed, for which the statute provides standing, and an intervenor who – as here – is seeking to vacate an order appointing a special prosecutor at the state's attorney's request. As previously discussed, the latter lacks standing.

conduct 3.8(a), a prosecutor must carefully assess the evidence and move forward where probable cause exists and the evidence could prove a defendant's guilt beyond reasonable doubt. (Def's Motion at pg. 3-4) Here, of course, State's Attorney Carr asked that the special prosecutor assume those discretionary responsibilities pursuant to statute. The Chief Judge accepted State's Attorney Carr's request and appointed SAAP to act as a special prosecutor. After a professional and thorough investigation and review, SAAP determined that the evidence demonstrated that this defendant committed first degree murder beyond a reasonable doubt. The grand jury agreed that probable cause existed and Judge Clarke, who oversaw that trial, concluded (as did the jurors) that the evidence was sufficient to prove this defendant guilty of first degree murder beyond a reasonable doubt.

Defendant next cites *In re Harris*, 335 Ill. App. 3d 517 (1st Dist. 2002), *People v. Morley*, 287 Ill. App. 3d 499 (2nd Dist. 1997), *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394 (1977), *People v. Lanigan*, 353 Ill. App. 3d 422 (1st Dist. 2004), and *McDonald v. County Board of Kendall County*, 146 Ill. App. 3d 1051 (2nd Dist. 1986) to argue that State's Attorney Carr "had a constitutional obligation to defend the [first] grand jury's 'no true bill' decision, and not to run away." (Def's Motion at pg. 4-5) But, these cases are unhelpful to the resolution here.

Harris, 335 Ill. App. 3d at 520, involved a third party trying to remove a state's attorney, which was an argument the court rejected by noting it is within the trial court's discretion whether to appoint a special prosecutor. Similarly, *Morley*, 287 Ill. App. 3d at 499, held that it was not an abuse of the court's discretion to reject the defendant's attempt to remove the State's Attorney. *EPA*, 69 Ill. 2d at 394 too involved an outside party trying to remove the

Attorney General as the prosecuting authority. And *Lanigan*, 353 Ill. App. 3d at 422, like the rest of them, involved a third party seeking to remove the state's attorney. The vital distinction between the case at bar and the above-cited cases is that the prosecutor in those cases fought to stay in because he found it appropriate to prosecute the case. Here, State's Attorney Carr did not wish to prosecute the case based upon an apparent concern for personal interest and the appearance of impropriety, and asked that a special prosecutor be appointed. In so doing, he was clearly concerned about cases like *McDonald*, 146 Ill. App. 3d at 1051, where the appellate court found on appeal that the State's Attorney was sufficiently interested in the cause and reversed, in part, on that basis.

Citing *People v. Lang*, 346 Ill. App. 3d 677 (2nd Dist. 2004)[6], defendant posits that the "recusal provision is for the extraordinary circumstance where, through the state attorney's own conduct, continued participation creates the appearance of impropriety in the prosecution of a defendant." (Def's Motion at pg. 5) *Lang* actually demonstrates the appropriateness of State's Attorney Carr's request for a special prosecutor.

In *Lang*, the reviewing court reversed the defendant's conviction and remanded for retrial where, although there was no true conflict, an appearance of impropriety existed in that an assistant state's attorney had surreptitiously followed the defendant until he witnessed the defendant commit a crime. 346 Ill. App. 3d at 684. The appellate court concluded as follows: "the facts herein suggest that a special prosecutor should have been appointed so as to not risk diminishing the public's esteem and confidence in the criminal justice system." *Id.* State's

[6] Defendant also cites *People v. Bickerstaff*, 403 Ill. App. 3d 347 (2nd Dist. 2010) as part of this argument. (Def's Motion at pg. 5-6) As noted previously, *Birckerstaff* is yet another case of a third party attempting to remove the state's attorney, but beyond that the Second District notes that "interested" for purposes of section 3-9008 can include, as here, the appearance of impropriety. *Id.* at 352.

Attorney Carr clearly followed the directive (and certainly the spirit) of cases like *Lang* when he decided that the appearance of impropriety in this case was simply too great to continue prosecuting the case, as it would risk diminishing the public's esteem and confidence in the criminal justice system. (See SA Carr's March 2, 2015 Motion for Appointment of Special Prosecutor) Rather than being ridiculed, State's Attorney Carr should be applauded for his willingness to recognize that the public's confidence could be impacted if he continued on with the case.

Defendant further argues that State's Attorney Carr should not have been allowed to recuse himself because "the special prosecutor has not identified any bias, wrongdoing, or malfeasance by the State's Attorney."[7] (Def's Motion at pg. 6) This argument betrays a fundamental misunderstanding of the appointment process. It is not for the special prosecutor to identify any bias, wrongdoing, malfeasance, or any other acts or failures to act on the part of anyone in this case, because the special prosecutor did not make the motion to have a special prosecutor appointed. State's Attorney Carr made that motion because he believed it was the right thing to do under the circumstances where there was a real risk of the appearance of impropriety. (See SA Carr's March 2, 2015 Motion for Appointment of Special Prosecutor) His action is supported by the case law outlined above. See *Lang*, 346 Ill. App. 3d at 677 and *Bickerstaff*, 403 Ill. App. 3d at 347.

[7] The People would be remiss if they did not note that defendant also claims as part of this argument that the special prosecutor should not continue the appointment here because the special prosecutor "merely has a difference of opinion as to the merits and now desires a third bite at the apple." (Def's Motion at pg. 6) This is a bizarre statement for two reasons: (1) the special prosecutor did not request to be appointed in the first place and (2) the trial judge vacated defendant's conviction and ordered a new trial after concluding that the State presented sufficient evidence to convict him beyond a reasonable doubt.

Defendant, citing *McCall v. Devine*, 334 Ill. App. 3d 192 (1st Dist. 2002) and *Baxter v. Peterlin*, 156 Ill. App. 3d 564 (3rd Dist. 1987), next argues that State's Attorney Carr's "motion filed here was insufficient to properly plead a claim for the appointment of a special prosecutor because the allegations were grounded entirely on a non-party's suspicions, rather than facts, and the allegations were denied in the motion." (Def's Motion at pg. 7) Both *McCall* and *Baxter*, again deal with third-party requests for the appointment of a special prosecutor. When, as here, a State's Attorney determines for himself that he has an "interest" such that the appearance of impropriety exists (see *Bickerstaff*, 403 Ill. App. 3d at 347), the Circuit Court may accept that as part of the court's exercise of discretion. When, however, a third-party is seeking to remove a State's Attorney, that third party must point to specific facts which make it "improbable for the prosecutor to carry out his duties in a specific case." *Baxter*, 156 Ill. App. 3d at 566-67.

After explaining how unreliable news reports are in a criminal case[8] – a point the People agree with – defendant concludes this section of his motion, as follows: "Permitting a state's attorney to recuse himself every time his discretionary decisions are questioned, or pressure to change them exists, sets a dangerous precedent." (Def's Motion at pg. 8-9) This argument is problematic for two reasons: (1) it utterly disregards the thoughtful, responsible, and no-doubt difficult decision State's Attorney Carr made in filing the request to have a special prosecutor

[8] Despite citing a case for the proposition that newspaper reports are unreliable, two pages later in his motion, defendant cites a quote from a newspaper attributed to a prosecutor in this case. (Def's Motion at pg. 10, fn. 3) The People also note that in the same footnote 3, defendant accuses the People of having "slung insults at the defense" in a previous filing by pointing out that his motion was "full of misapprehensions and misstatements." (Def's Motion at pg. 10, fn. 3) But when, as again here in this motion, defendant misapprehends the law and makes misstatements of fact, it is the duty of the opposing party to point that out – that, of course, is not an "insult," it is responsible advocacy. Furthermore, the People's motion for *nolle prosequi* is in no way a "tacit agreement" with defendant's positions in this case, as defendant claims (Def's Motion at pg. 10, fn. 3); it is simply a recognition that a new charging instrument is required before proceeding.

appointed; and (2) even assuming the substance of the claim – which should not be assumed – the question of whether such a "precedent" would be "dangerous" was addressed and soundly rejected when the Illinois General Assembly amended section 3-9008 to include the following language (cited earlier in this response):

"Notwithstanding subsections (a-5) and (a-10) of this Section, the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section." 55 ILCS 5/3-9008 (a-15) (West 2016) (eff. Jan. 2016). (Emphasis added.)

For the reasons stated, this Honorable Court should reject defendant's claims under heading "II" that the initial appointment of the special prosecutor in this case was improper and that it should be terminated.

Before proceeding to defendant's heading "III," the People feel compelled to address the following final paragraph under defendant's heading "II":

"Even now, those same forces are at work. Since the court ordered a new trial in this matter, the prosecutors have accused Judge Clarke of corruption and ethical breaches[9]; that the Illinois Supreme Court is corrupt for denying a *mandamus* action[10]; that Illinois Attorney General Lisa Madigan is corrupt for failing to support the *mandamus* action[11]; and even that the

[9] Judge Clarke, in fact, repeatedly acknowledged that the evidence here was sufficient to convict, and simply ordered a new trial because he had concerns about a "syntax" error in the indictment that he felt could have confused the jury.

[10] The Supreme Court did not deny the People's action in prohibition; it simply denied the People's leave to file the petition without ruling on the merits.

[11] The Attorney General, through her victim's advocate specifically indicated to the victim's family her support – to the People's knowledge, the Attorney General filed no motions at the Supreme Court in 17-CF-332.

re-assignment of the case in light of the trial judge's retirement was nefarious[12]." (Def's Motion at pg. 10) (Emphasis added.)

"Corruption" is defined in relevant part as, "The act of an official or fiduciary person who unlawfully and wrongfully uses his station and character to procure some benefit for himself or for another person, contrary to duty and the rights of others. See Bribe; Extortion." See Black's Law Dictionary, 5th ed. 1979 (pp. 311).

Defendant – through his counsel — has represented to this Honorable Court that not one, but multiple "prosecutors" have "accused" the trial judge in this matter, the Illinois Supreme Court, and Illinois Attorney General (all three), of engaging in the above-quoted conduct. This is not just troubling because it is pernicious (as the lowest form of advocacy), it also adds absolutely nothing to assist this Honorable Court in resolving defendant's legal claims.

Defendants should be, and are, entitled to wide latitude in making arguments before a tribunal; these are important matters and a defendant ought to have a wide breadth. But, there are limits.[13]

Contrary to defendant's assertions here, the prosecutors have gone out of their way to assure the public and the victim's family that, while the People disagree with the decision to order a new trial, we accept it. In fact, the People have repeatedly and publically described this as one of the hallmarks of our system of criminal justice.

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[12] As best they can tell, the People believe this reference to "nefarious" comes from a letter the People sent to the Clerk of the Court in 17-CF-332. That letter, informing the Clerk about the status of service on the re-assignment in this matter was to inform the Clerk that the defense failed to notice-up the State, not that the re-assignment was somehow "nefarious" – a review of the filing makes that obvious.

[13] See Illinois Rule of Professional Conduct 3.3(a)(1):" (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]"

III. DEFENDANT'S CLAIM THAT "THERE WAS NO CRIME COMMITTED"

Finally, defendant – while acknowledging that trial court has repeatedly rejected this argument – asserts that no crime was committed. (Def's Motion at pg. 10, fn. 3) This Honorable Court lacks jurisdiction to consider this argument in this matter, 15-MR-21. But even if this Court did not lack jurisdiction, defendant's argument (1) should be dismissed as moot and (2) is meritless.

Jurisdiction

Illinois courts have an independent duty to consider jurisdiction. The circuit court can raise the issue *sua sponte* at any time because the lack of jurisdiction deprives the trial court of all power except to dismiss the action. *Bradley v. City of Marion*, 2015 IL App (5th) 140267, ¶13.

This Honorable Court lacks jurisdiction to review the merits of an order entered in case No. 2017-CF-332, as this case, 2015-MR-21 involves the subject matter of the appointment of the special prosecutor. The legal question posed by defendant in 2015-MR-21 is the law of the case in 2017-CF-332 (*People v. Patterson*, 154 Ill. 2d 414 (1992)); the court in 2017-CF-332 retains exclusive jurisdiction of the matter. (This Court need not get to this question in any event, for the reasons outlined under the "mootness" heading below, once the People's motion for *nolle prosequi* is granted.)

Mootness

Even if this Honorable Court concludes that it has subject matter jurisdiction over this matter, it is clearly moot and controlled by Fifth District precedent. See *In re Appointment of Special Prosecutor*, 253 Ill. App. 3d 218, 225 (5th Dist. 1993) (dismissing as moot the State's Attorney's appeal and refusing to "send a message to" trial judges where the case against the

defendant had been dismissed). The People have filed a motion to *nolle prosequi* this case. Unless and until new charges are brought, this issue is moot pursuant to binding Fifth District precedent.

Lack of Merit

But even if this Honorable Court finds that it has jurisdiction and that the issue is not moot, the issue lacks merit and has been repeatedly rejected.

Defendant claimed in his second posttrial motion that the offense for which the jury convicted him was a "legal nullity" because "felony murder always requires a predicate offense with an independent felonious purpose, one that is not already inherent in the conduct giving rise to the killing itself." (Def. Second Posttrial Mot. at 4) Citing *People v. Morgan*, 197 Ill. 2d 404 (2001) and *People v. Pelt*, 207 Ill. 2d 434 (2003), defendant invites this Honorable Court to analyze it again. [14] These cases are unhelpful for the reasons that the People have previously outlined and for the reasons that the trial court has already explained.

Here, defendant was charged and convicted of felony murder predicated on aggravated battery (great bodily harm), a forcible felony. The State did not allege, the jury was not instructed, and the jury did not find that the victim died of the injuries he sustained at the hands of defendant. Compare, *Morgan,* at 197 Ill. 2d at 448-49 (where felony murder was based upon the same act as the predicate felony) and *Pelt,* 207 Ill. 2d at 434 (where felony murder was based upon the same act as the predicate felony). Instead, the State proved (as it addressed in response to defendant's first posttrial motion (State's Response to First Posttrial

[14] The People note that this is essentially a motion to reconsider the trial court's ruling in 2017-CF-332. If this Honorable Court is want to reconsider, the People would ask leave to address all the findings from that hearing, to include the order directing a new trial.

Mot. at 3-7) and the trial court found in its written order (Order at 7-11)) that the victim died of hypothermia premised upon the chain of events set into motion by the predicate forcible felony committed by defendant. See *People v. Smith*, 56 Ill. 2d 328 (1974) (cited by the trial court in its written order, where a resident of the room being burglarized by the defendant jumped from the window of that room and subsequently died of her injuries). This is a crime in Illinois and the People have sufficient evidence to demonstrate this defendant committed it.

Defendant's analysis had nothing whatsoever to do then, and has nothing whatsoever to do now, with the facts or the law involved in this case. Accordingly, if the issue is addressed, it should be rejected.

WHEREFORE, the People of the State of Illinois respectfully request that this Honorable Court DENY defendant's motion to terminate the appointment of the special prosecutor.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS

By: _____

David J. Robinson
Special Prosecutor
725 S. Second Street
Springfield, IL 62704

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

AFFIDAVIT

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, I certify that the above statements are true to the best of my knowledge and belief.

David J. Robinson
State's Attorneys Appellate
Prosecutor

Subscribed and sworn to
before me on this 28th day of
November 2018.

NOTARY PUBLIC

OFFICIAL SEAL
JANICE K. BEIERMANN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 01-30-2019

IN THE COURT OF THE FIRST JUDICIAL CIRCUIT
JACKSON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
v.	)	2015-MR-21
	)	
GAEGE BETHUNE	)	

NOTICE AND PROOF OF SERVICE

TO: Cindy Svanda, Clerk
Jackson Cty Circuit Court
1001 Walnut, PO Drawer 70
Murphysboro, IL 62966

Steven A. Greenberg
Steven A. Greenberg & Assoc., Ltd.
53 W. Jackson Blvd., Suite 1260
Chicago, IL 60604-3631

The undersigned certifies that the original and one copy of Plaintiff's Response to Defendant's Motion to Terminate The Appointment Of the Special Prosecutor were served upon the Clerk of the Circuit Court; and one copy of same was served upon the defendant's Attorneys of Record by enclosing said copy in an envelope addressed as indicated above and by depositing said envelope with postage prepaid in the United States Mail in Springfield, Illinois, on this 28th day of November 2018.

Subscribed and sworn to
before me on this 28th
day of November 2018.

Janice K Beiermann
NOTARY PUBLIC

OFFICIAL SEAL
JANICE K. BEIERMANN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 01-30-2019

Shirley M. Bagby

Shirley M. Bagby, Secretary
State's Attorneys Appellate Prosecutor