

From: Fritz Fremgen, State's Attorney, Stutsman County
To: Special Agent Shawn Banet, ND Bureau of Criminal Investigation
Date: 13 April 2022
Subject: 05 2022 04 12 declination Heinrich, incident numbers 22-02213, BCI22-00073

1. Thank you for your reports regarding an allegation of offensive touching alleged to have occurred on 29 January 2022 in Stutsman County.
2. There is insufficient evidence to warrant initiating a criminal prosecution.
3. On 29 January 2022, a person [hereinafter Caller] telephoned dispatch and complained that the mayor of Jamestown was "being pretty belligerent, poking me in the chest, and touching my breast."
4. Later, Jessica Willman, an associate of Caller's, claimed Mayor Heinrich pushed Caller.
5. Jamestown Police Department (JPD) officers responded initially and wrote reports. 22-02213.
6. Special Agent Banet of the North Dakota Bureau of Investigation (BCI) reported JPD asked BCI to assist with the investigation. BCI22-00073.
7. Special Agent Banet re-interviewed both Caller and Heinrich. Banet also interviewed Bartender Remillong, Heinrich's friend Brown, and Caller's associate Jessica Willman.
8. Caller reported Caller wore the same clothes to the interview with Banet that Caller had on during the 29 January 2022 incident. Banet's photographs show Caller wearing light work boots or hiking boots, blue work jeans with spots of pigment on the knees and quadriceps areas, a grey hooded sweatshirt, a ScentBlocker Dream Season Silent Shell Jacket (Mossy Oak Break - Up camouflage pattern), and a baseball cap. The hunting jacket had a pocket on the wearer's right side. The zipper for the pocket was oriented vertically. Caller's gender is not apparent from the photographs.
9. Caller told Banet Caller approached Heinrich and asked why our housing taxes were so high adding, *we have the highest housing taxes in the state of North Dakota*. Caller told Banet Caller did not know whether it was illegal to circulate a petition in a bar. Although uncertain about the legality, Caller told Banet that Caller suggested to Heinrich that he was collecting petition signatures from people who were drunk and that this was illegal.
10. Heinrich indicated to JPD's Officer Stoen that Heinrich brought the petition for his friend to sign and did not ask anyone else to sign it. Heinrich's friend, Brown, acknowledged Heinrich gave Brown two petitions, Brown signed them, and they continued to visit at the bar.

11. Brown told Banet that after Caller came between he and Heinrich, Brown turned his back and was not paying attention to Heinrich and Caller's conversation. Brown said he looked over and saw Heinrich had his business card in his hand and heard Heinrich say, "Here's my number, We can discuss this at a later time."
12. Caller told Banet Heinrich attempted to give his business card to Caller and Caller rebuffed the attempt saying, "You're the mayor and I know how to contact you if I need to contact you."
13. Heinrich told Banet the following. Caller became upset when Heinrich could not recite the number of employees working at the James River Correctional Center. Caller started arguing about high property taxes. Heinrich told Caller that "This conversation is over." Heinrich folded his business card in half and tried to give it to Caller. On the second or third try Heinrich managed to put the business card in Caller's pocket. Caller was wearing mens clothing and a baseball cap. Heinrich assumed Caller was a guy and had no idea Caller was a female. When caller refused the business card, Heinrich tried to put the card in Caller's zipper jacket pocket.
14. Caller told Banet that Heinrich put the card in Caller's jacket pocket and in so doing "grabbed" Caller's breast. Caller clarified Heinrich did not mean to touch Caller's breast and was just trying to keep the card from falling out of Caller's pocket. Caller told Banet that Caller believed Heinrich did not know Caller is female.
15. Bartender Remillong reported he saw no pushing but indicates there was a heated discussion.
16. I was given the proprietor's surveillance video from three different cameras. The video is not dispositive. The resolution is low. Caller and Heinrich are facing each other and the angles don't allow the viewer to see what is happening between them. Caller approached Heinrich and sat down in the chair next to him. Caller and Heinrich appeared to be conversing. I did not see anything in the surveillance video that corroborates Caller's claim Caller was touched on the breast or Willman's claim that Heinrich pushed Caller.
17. Bartender Remillong reported Jessica Willman was the first to make an accusation by saying, "He touched you. That's assault."
18. Caller echoed Willman's sentiment when Caller reported to Banet, "Nobody has the right to touch anyone."
19. These facts do not constitute sexual assault. N.D.C.C. § 12.1-20-07. Sexual assault requires *sexual contact*, a phrase defined by North Dakota Century Code § 12.1-20-02(5). To constitute sexual contact, touching must be done to arouse or satisfy sexual or aggressive desires. There is no evidence that any touching was for either of those

purposes. Caller acknowledged any touching of her breast was inadvertent. Caller acknowledged Heinrich was just trying to keep the card from falling out of Caller's pocket. Caller told Banet there was no touching for sexual gratification.

20. These facts do not constitute disorderly conduct. N.D.C.C. § 12.1-31-01. Disorderly conduct requires the intent to harass, annoy, or alarm another or action done in reckless disregard of that possibility. The two subsections of disorderly conduct warranting review are g and h.
 - A.
 - (1) Subsection 12.1-31-01(g) prohibits acting with the above intent to "Create a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose."
 - (2) In regard to subsection g, there was no hazard. Subsection g requires either criminal recklessness or actual intent to be physically offensive or seriously alarming. Those malicious states of mind are absent. "Recklessly" is defined at N.D.C.C. § 12.1-02-02(1)(c). Heinrich indicated placing the card in Caller's jacket pocket was a diplomatic method of discontinuing an unproductive conversation. That's a legitimate purpose.
 - B.
 - (1) Subsection 12.1-31-01(h) precludes "Engaging in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person."
 - (2) Subsection h requires intent to adversely affect another's safety, security, or privacy. That malicious state of mind is absent. Caller told Banet Caller believed Heinrich did not mean to touch Caller's breast. Caller told Banet Caller believed Heinrich did not know Caller was female or that there would be a breast behind the pocket.