

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 81

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION and ORDER
Ind. No. 2335-2018
IND-74118-24

HARVEY WEINSTEIN,

Defendant.

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CURTIS J. FARBER, J.:

The People move to consolidate indictments 2335-2018 and 74118-24.

The pertinent case history is as follows: on June 29, 2018, the defendant was charged by Indictment Number 2335-2018 with, among other charges, Criminal Sexual Act in the First Degree, in violation of PL §130.50(1) and Rape in the Third Degree, in violation of PL §130.25(1), involving two separate complainants. Defendant was thereafter charged by Indictment Number 2673-2019 with two counts of Predatory Sexual Assault, in violation of PL §130.95, counts that included allegations relating to a third complainant, and which was subsequently consolidated with the 2018 indictment for trial. On February 24, 2020, the defendant was convicted by jury of Criminal Sexual Act in the First degree and Rape in the Third Degree (counts Two and Five of the 2018 indictment), and acquitted of the two counts of Predatory Sexual Assault charged in the 2019 indictment. On April 25, 2024, the Court of Appeals reversed defendant's conviction and ordered a new trial.

On September 5, 2024, a grand jury indicted the defendant on one count of Criminal Sexual Act in the First degree, in violation of PL §130.50(1). This charge involved another complainant, and was unrelated to the 2018 indictment other than that it is alleged to have occurred within a few months of one of the charged events contained in the 2018 indictment. The People now move to consolidate both indictments for trial.

The offenses charged in the separate indictments before this Court are joinable in accordance with the statutory criteria set forth in CPL §200.20(2)(c), in that criminal offenses in each indictment are defined by the same or similar statutory provisions. Specifically, both

indictments charge the defendant with sex crimes under Article 130 of the Penal Law, and more specifically, both indictments contain one count of the exact same statutory offense - Criminal Sexual Act in the First Degree, in violation of PL §130.50(1). The People contend that consolidation is further supported by the public interest in the efficient resolution of criminal cases, as there are significant overlapping issues that are material to the charges in both indictments. For both indictments the People aver that they intend to call many of the same witnesses, including those who will be asked to testify about defendant's status and influence in the entertainment industry, custodial witnesses to authenticate and admit documentary evidence relevant to all three charges, as well as expert opinion witnesses. The People further argue that consolidation would reduce the burdens on the court system by limiting the number of juries that must be empaneled on this high profile case.

Defendant opposes consolidation on numerous grounds. Defendant's initial contention that consolidation is improper under CPL §470.55(1) is without merit. See, e.g., People v. Minor, 148 AD3d 461 (1st Dept. 2017). Defendant further argues that consolidation should be denied under CPL §200.20(3)(a), because it "would expose Weinstein to undue prejudice by virtue of the very propensity evidence that necessitated a reversal of the first trial." See defendant's Memorandum in Opposition, p.3. This Court notes, however, that joinder of multiple sexual assault charges involving different victims pursuant under CPL §200.20(2)(c), is not, in and of itself, considered improper. See, e.g., People v. Vega, 116 AD3d 454 (1st Dept. 2014) (joinder of two unrelated rapes as "similar in law" proper); People v. Blake, 39 AD3d 402 (1st Dept. 2007) (joinder of charges relating to two unrelated rapes was proper where there was no material variance in quantity of proof); People v. Young, 158 AD2d 398 (1st Dept. 1990) (consolidation of three separate indictments involving sexual assault not error).

In his opposition papers, defendant relies upon the recent First Department decision in People v. Davis, 225 AD3d 62 (1st Dept. 2024). In reversing upon the grounds that consolidation was improper, the First Department held that the defendant had suffered undue prejudice from the risk of the jury drawing a propensity inference, which was encouraged by the prosecution during their summation. The facts in Davis are distinguishable from the instant case. Unlike in Davis, here defendant does not contend that there is a substantial difference in the level of proof

or that his defenses are inconsistent for each charged incident. Further, whereas in Davis the trial court failed to provide an adequate limiting instruction to the jury cautioning against their consideration of evidence of the two separate crimes as proof of propensity or predisposition, here the People attest they will abstain from making any propensity arguments and will additionally proactively assist the Court in drafting a limiting instruction to minimize any prejudice resulting from consolidation.

This Court observes that defendant's claim that he will be unfairly prejudiced by consolidation even with a limiting instruction is belied by the case history. The consolidation of the 2018 and 2019 indictments resulted in no prejudice to defendant, as demonstrated by the defendant's acquittal of the two counts of Predatory Sexual Assault charged in the 2019 indictment. See also People v. Blake, supra at 403-404 ("that defendant was acquitted of all of the charges relating to one of the attacks demonstrated that he was not prejudiced by the joint trial"). In defendant's previous trial, it was not the consolidation of the 2018 and 2019 indictments that necessitated reversal, but the admission of additional *uncharged* sexual assault accusations and the Court's Sandoval ruling that resulted in the undue prejudice that required a new trial. See People v. Weinstein, 2024 N.Y. Slip. Op. 02222, *10 (2024) (it was the Court's dual errors of "constitutional dimension" - the admission of three Molineux witnesses presenting evidence of defendant's "propensity to commit the crimes charged" and the "erroneous Sandoval ruling [that] served to discourage defendant from exercising his rights to present a defense and testify on his behalf" that deprived defendant of a fair trial).

This Court is tasked with weighing the "the public interest in avoiding duplicative, lengthy and expensive trials against the defendant's interest in being protected from unfair disadvantage." People v. Lane, 56 NY2d 1, 8 (1982). As the People state that they expect to call more than a dozen witnesses to testify on matters related to both indictments, a joint trial will certainly "expedite[] the judicial process, reduce[] court congestion, and avoid[] the necessity of recalling witnesses" People v Mahboubian, 74 NY2d 174, 183 (1989). Where, here, the defendant has not demonstrated that there is substantially more proof on one or more joinable offenses than on others, there is no indication that the jury will be unable to distinguish each count, or that they will be unable to follow the Court's robust limiting instructions. Nor does

defendant argue that he has important testimony to give on one indictment and a genuine need of refraining on the other. Defendant has thus failed to establish that his right to a fair trial free of undue prejudice would be violated as the “*quid pro quo* for the mere expeditious disposition” of his criminal cases. People v. Lane, supra at 8. In light the steps this Court will take to minimize any potential prejudice of joining a third count with the prior two counts of sexual assault, and in the absence of the defendant demonstrating that granting consolidation would cause him undue prejudice, the motion to consolidate is granted.

This constitutes the Decision and Order of the Court.

Dated: New York, New York
October 23, 2024

J.S.C.