

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 99

THE PEOPLE OF THE STATE OF NEW YORK

-against-

HARVEY WEINSTEIN

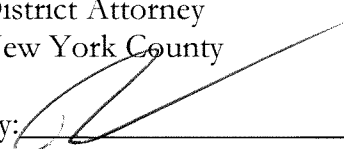
Defendant.

NOTICE OF MOTION FOR
ORDER TO CONSOLIDATE
INDICTMENT NO. 2673/2019
WITH INDICTMENT NO.
2335/2018

PLEASE TAKE NOTICE that upon the annexed affirmation of Joan Illuzzi-Orbon, dated August 23, 2019, the undersigned will move this Court at Part 99, on August 26, 2019, for an order consolidating Indictment Number 2673/2019 with Indictment Number 2335/2018, pursuant to the provisions of Section 200.20 of the Criminal Procedure Law, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 23, 2019

Cyrus R. Vance, Jr.
District Attorney
New York County

By: 
Joan Illuzzi-Orbon
Assistant District Attorney
One Hogan Place
New York, New York 10013
212-335-4156

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 99

THE PEOPLE OF THE STATE OF NEW YORK

-against-

HARVEY WEINSTEIN

Defendant.

AFFIRMATION IN SUPPORT
OF MOTION TO
CONSOLIDATE
INDICTMENT NO. 2673/2019
WITH INDICTMENT NO.
2335/2018

Joan Illuzzi-Orbon, an attorney admitted to practice before the courts of this state, affirms under penalty of perjury that:

1. I am one of the Assistant District Attorneys in New York County assigned to these cases and I am familiar with their facts.

2. This affirmation is submitted in support of the People's motion to consolidate Indictment Number 2673/2019, charging defendant with two counts of Predatory Sexual Assault, with Indictment Number 2335/2018, charging defendant with two counts of Predatory Sexual Assault, one count of Rape in the First Degree, one count of Rape in the Third Degree, and one count of Criminal Sexual Act in the First Degree.

3. Under § 200.20(4) of the Criminal Procedure Law ("CPL"), the Court may consolidate two indictments pending against the same defendant where the charged offenses are joinable pursuant to CPL § 200.20(2). *See People v. Lane*, 56 N.Y.2d 1, 8 (1982). According to CPL § 200.20(2):

Two offenses are "joinable" when: (a) [t]hey are based upon the same act or upon the same criminal transaction, as that term is defined in subdivision two of section 40.10; or (b) [e]ven though based upon different criminal

transactions, such offenses, or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first; or (c) [e]ven though based upon different criminal transactions, and even though not joinable pursuant to paragraph (b), such offenses are defined by the same or similar statutory provisions and consequently are the same or similar in law”

CPL §§ 200.20(2)(a-c). The aforementioned indictments may be consolidated on the basis of each of the subsections of CPL §§ 200.20(2)(a-c).

4. The facts underlying these indictments are as follows: In the winter season spanning 1993 and 1994, inside 60 Gramercy Park North, in New York County, defendant engaged in sexual intercourse and oral sexual conduct with [REDACTED] by forcible compulsion. On July 10, 2006, inside 76 Crosby Street, defendant engaged in oral sexual conduct with [REDACTED] by forcible compulsion. On March 18, 2013, inside 569 Lexington Avenue, defendant engaged in sexual intercourse with [REDACTED] by forcible compulsion.

5. In May/June 2018, a New York County grand jury heard evidence relating to the July 10, 2006 and March 18, 2013 incidents. On June 29, 2018, defendant was indicted on two counts of Predatory Sexual Assault, one count of Criminal Sexual Act in the First Degree, one count of Rape in the First Degree, and one count of Rape in the Third Degree.¹ On February 13, 2019, the People filed an Amended Bill of Particulars, providing further information regarding the aggravating offenses pertaining to each of the two Predatory Sexual

¹ Defendant was originally indicted on an additional charge of Criminal Sexual Act in the First Degree related to a third victim. That charge was subsequently dismissed.

Assault counts,² one of which was the sexual assault of [REDACTED] in the winter season spanning 1993 and 1994.³ On June 21, 2019, 120 days after receiving the Amended Bill of Particulars, the defendant filed a motion seeking, *inter alia*, to preclude [REDACTED] from testifying at trial because she had not testified in the grand jury. On August 8, 2019, the Court issued a decision granting that portion of defendant's motion. Following the Court's decision, the People presented evidence of all three incidents to a New York County grand jury and on August 21, 2019, defendant was indicted on charges of two additional counts of Predatory Sexual Assault. The first count charges the defendant with committing the crime of Criminal Sexual Act in the First Degree on July 10, 2006, and with engaging in aggravating crimes against one or more additional persons. The second count charges defendant with committing the crime of Rape in the First Degree on March 18, 2013, and with engaging in aggravating crimes against one or more additional persons. As will be provided in our Voluntary Disclosure Form, the victims of the underlying crimes in Counts One and Two are, respectively, [REDACTED] and [REDACTED], and the victim of the aggravating crimes in both counts is [REDACTED].

6. Accordingly, the underlying crimes of the Predatory Sexual Act charges contained in Indictment Number 2673/2019 are the very same Criminal Sexual Act in the First Degree and Rape in the First Degree of [REDACTED] and [REDACTED], as charged in

² We refer to the "aggravating" offenses as those committed against "one or more additional persons," as distinguished from the "underlying" crime in the Predatory Sexual Assault counts.

³ In the Amended Bill of Particulars, the People indicated that the events involving [REDACTED] had occurred in 1993. In a letter to the Court and defense counsel dated August 15, 2019, the People corrected the time frame alleged in the Amended Bill of Particulars.

Indictment Number 2335/2018. These charges are therefore plainly joinable under all three subsections of CPL §§ 200.20(2)(a-c).

7. First, under CPL § 200.20(2)(a), the offenses charged in both indictments are based upon the very same “criminal transaction.” CPL § 40.10(2) defines a “criminal transaction” as “conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.” The underlying charges in Indictment 2673/2019 are based on the same “criminal transactions,” as the crimes in the non-predatory count charges in Indictment Number 2335/2018—the criminal sexual act committed against [REDACTED] and the rape committed against [REDACTED]. The variation is the aggravating offense against [REDACTED].

8. Second, under CPL § 200.20(2)(b), the evidence as to each count under Indictment Number 2335/2018 is certainly “material and admissible” as evidence in chief of the counts under Indictment Number 2673/2019. *See People v. Bynum*, 275 A.D.2d 251 (1st Dept. 2000) (finding consolidation of two indictments proper where proof of one robbery would have been admissible as evidence in chief as proof in the other robbery). Both the July 10, 2006 criminal sexual act against [REDACTED] and the March 18, 2013 rape against [REDACTED] are not only admissible as evidence in chief but are elements that must be proven beyond a reasonable doubt for the trial jury to convict defendant of the charges under Indictment Number 2673/2019.

9. Finally, in addition to both CPL §§ 200.20(2)(a) and (b), CPL § 200.20(2)(c) applies here as well, because both indictments charge the same offenses. Both Indictment Number 2335/2018 and Indictment Number 2673/2019 charge defendant with Predatory Sexual Assault (PL §130.95(2)). In addition, Rape in the First Degree and Criminal Sexual Assault in the First Degree are elements of Predatory Sexual Assault. Since these offenses are defined by the same statutory provisions and consequently are the same in law, they are joinable pursuant to CPL § 200.20(2)(c).

10. Lastly, the defense has been on notice since February 13, 2019 of the existence of the additional aggravating predatory act involving [REDACTED] and indicated their readiness to proceed to trial on September 9, 2019 regardless of the Court's decision with respect to their motion to preclude her testimony. Thus, the consolidation of the two indictments should in no way cause further delay. Therefore, Indictment Number 2673/2019 is joinable with Indictment Number 2335/2018 pursuant to CPL §§220.20(2)(a-c) and, in the interests of efficiency and judicial economy, we urge the Court to exercise its discretion and consolidate the indictments. *See Lane*, 56 N.Y.2d at 8 (holding that, in exercising discretion, trial courts should consider "the public interest in avoiding duplicative, lengthy and expensive trials").

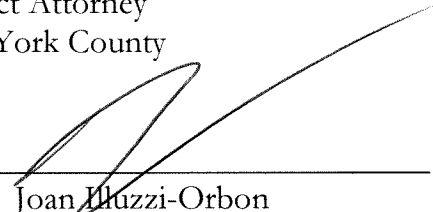
Conclusion

Wherefore, the People respectfully request that Indictment Number 2673/2019
be consolidated for a single trial with Indictment Number 2335/2018.

Respectfully submitted,

Cyrus R. Vance, Jr.
District Attorney
New York County

By: _____


Joan Iluzzi-Orbon
Assistant District Attorney
212-335-4156

Dated: New York, New York
August 23, 2019

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