SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY, PART H92
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THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 651/2017
Decision and Order

-against-

WILLIE BOWMAN,
Defendant.
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FABRIZIO, J.

Defendant is charged in a twenty-nine count indictment with crimes including Rape in the Second Degree (Penal Law § 130.30(1)), Sexual Abuse in the Second Degree (Penal Law § 130.60(1)), and Endangering the Welfare of a Child (Penal Law § 260.10(1)). The victims referred to in the indictment only by initials are three children who resided at the Henry Ittleson Center, a residential treatment facility for children between eight and fourteen years old operated by The Jewish Board of Children and Family Services, a not for profit agency. The Ittleson Center is located at 5050 Iselin Avenue in Bronx County. Defendant had been an employee of the facility whose duties included providing direct care and counseling to the children at Ittleson, as well as transporting them for home visits in a van owned by the agency.

The defendant moves to dismiss all counts of the indictment, arguing that this Court does not have proper geographic jurisdiction over any of the counts in the indictment, as the actual crimes alleged occurred in places other than Bronx County. After review of the evidence before the grand jury and the specific “venue” charge given by the prosecutor, the Court dismisses counts four through twelve of the indictment.

Although the evidence before the grand jury was sufficient to establish the statutory elements of each of those crimes, this Court lacks the geographic jurisdiction to preside over the prosecution of those counts. The remaining counts are not only supported by legally sufficient evidence, but venue is also properly fixed in Bronx County for those counts.

At common law, as well as under the New York State Constitution, a criminal defendant could only be prosecuted in the county in which the crime occurred, unless the legislature provided otherwise. See People v. Greenberg, 89 NY2d 553, 557-58 (1997); People v. Giordano, 87 NY2d 441, 446 (1995); People v. Moore, 46 NY2d 1, 6 (1978); People v. Goldswer, 39 NY2d 656, 659-61 (1976). The legislature, by statute, has provided narrow exceptions to this common law rule. See generally Penal Law §20.40. None of the statutes fixing venue in a county other than the one in which a crime actually occurred has ever been found to be unconstitutional. Even though the People are required only to establish proper venue by a preponderance of the evidence at trial, a defendant may nonetheless raise an objection to the "county of prosecution prior to trial." Cf. Greenberg, 89 N.Y.2d at 556. If no challenge to the court's geographical jurisdiction is ever raised, the argument is waived for appellate purposes. Id.

Here, the prosecutor chose to instruct the jury to find this Court was the proper venue in connection with several counts voted concerning allegations of crimes committed against the complaining witness named as "M.P." The People specifically asked the grand jury to find venue based on CPL § 20.40 (4)(g) in connection with those counts. This statute provides that "[a]n offense committed in a private vehicle during a

trip thereof extending through more than one county may be prosecuted in any county through which such vehicle passed in the course of such trip." Id.

Defendant moves to dismiss all counts of the indictment under the mistaken assumption that the People relied on this statute to establish Bronx County Supreme Court's geographical jurisdiction to preside over all the charges involving all the victims. In fact, the evidence before the grand jury concerning indictment counts fifteen through twenty-one, relating to the complaining witness named "S.C.'" established that all elements of all crimes charged in those counts occurred at locations actually in Bronx County. Moreover, the evidence before the grand jury concerning indictment counts twenty-two through twenty-nine, all relating to the complaining witness named "L.A.," also established that all elements of all crimes charged in those counts also took place at locations actually in Bronx County. Accordingly, the motion to dismiss those counts for lack of proper venue is denied.

The allegations raised by defendant are only relevant to the counts involving "M.P." Count thirteen of the indictment, charging the defendant with Sexual Abuse in the Second Degree, is actually based on evidence of an act of sexual abuse that took place in Bronx County. Accordingly, the motion to dismiss that count for improper venue is denied. CPL § 20.40 (4)(g) is relevant for counts one through twelve. Defendant's specific legal challenge to the Court's geographic jurisdiction is actually quite narrow. He argues that the location of the sex acts alleged to have occurred in these counts could not be considered a "private vehicle" because it was owned by the not-for-profit organization that operates Ittleson. Defendant cites no case or any authority for this remarkable proposition. Simply put, this allegation is at odds with the plain meaning of

the words chosen by the legislature.

A court must always interpret the meaning of a statute with the word or words the legislature chose to use when it enacted the statute. See e.g People v. Finnegan, 85 NY2d 53, 58 (1995). If the legislature failed "to include a significant [exception] in a statute, [that] is a strong indication that its exclusion was intended." Id. "Private," the word chosen by the legislature to modify "vehicle" in this statute, means just what is intended to mean –a "non-public" vehicle. The legislature carved out no exception in the statute for a crime committed in someone else's private vehicle, let alone the exception defendant asks this Court to read into the statute – a vehicle owned by a not-for-profit corporation. Defendant conflates the common and intended meaning of the word "private" with the word "personal." If the legislature meant to place any restriction on the ownership of the vehicle used to commit the crime, it would have done so. Id.

The fact that legislature expected courts to interpret the word "private" in connection with the vehicle used according to its plain, common meaning and not in the way suggested by counsel is also apparent when considering the venue prescribed for cases where crimes are alleged to occur in vehicles that can be used by any member of the public. In CPL § 20.40 (4) (f), the legislature states that crimes alleged to have been "committed on board a railroad train, aircraft, or omnibus operating as a common carrier may be prosecuted in any county through or over which such common carrier passed during the particular trip, or in any county in which such trip terminated or was scheduled to terminate." "Common carriers" are not the same as "private" vehicles, and the venue rules are decidedly different for these crimes. See Greenberg, 89 NY2d at 557. Thus, in terms of defendant's specific challenge, the motion is denied.

This does not end the Court's inquiry. As the People acknowledge, in Moore, 46 N.Y.2d at 7- 8, the Court held that CPL § 20.40(4)(g), which it calls the "private vehicle trip statute," cannot be invoked to assert venue in any county through which the vehicle travels where the "complainant [is] able to identify the place where the crime was committed despite the use of the automobile." In their response, the People assert that "M.P." never referred to any specific county as the place she alleges the defendant raped her after the vehicle was stopped. That is not completely accurate. In terms of the evidence relating to counts four through six, the witness clearly identified the county in which those crimes occurred as "Queens." This complaining witness specifically identified the location of the crimes alleged in counts seven through nine as having occurred on a specific street in Brooklyn, which is Kings County. Finally, the complaining witness testified that the crimes charged in counts ten through twelve specifically occurred at a different location in Brooklyn.

Given that evidence, this Court is constrained to dismiss those counts based on Moore, a case in which a defendant was convicted of raping and sexually abusing a teenager in a car that transported the victim between Brooklyn and Queens. The Court is sympathetic to the People's argument that "strictly construing . . . CPL § 20.40(4)(g) . . . would result in placing upon a teenaged complainant the onerous task of participating in three trials, in the Bronx, Queens, and Kings." This position was strongly articulated by dissenting Judge Jasen in Moore, 46 N.Y.2d at 11: "the pity of this case is that . . . a defendant guilty by overwhelming evidence of a heinous crime, obtains a retrial for which if it ever happens, will add further insult to the injury already sustained by a victim who was a teenager at the time of the crime." Moore has been the law for thirty-eight

years. It has never been overruled. Nor did the legislature amend the statute to provide a venue exception when teenaged victims are involved after the Court of Appeals's decision. Thus, that decision binds this Court.

The Court denies the motion to dismiss counts one through three. The evidence before the grand jury showed that the crimes charged in these counts occurred in the vehicle somewhere after it left Ittleson in the Bronx and arrived at a destination in another county. In her testimony before the grand jury, "M.P." never identified any specific location at which the vehicle was parked when she alleges these crimes occurred. Thus, Bronx County Supreme Court is, at this time, a proper venue for these charges. See Moore, 46 N.Y.2d at 8. Count fourteen charges the defendant with Endangering the Welfare of A Child, specifically "M.P.," based on a course of conduct for all the crimes charged in counts one through thirteen. Since Bronx County's venue is unquestionably proper based on the evidence relating to count thirteen, an essential element of this properly charged course of conduct crime is alleged to have occurred here. Accordingly, this Court is the proper venue for prosecuting this count pursuant to CPL § 20.40(1)(a). See e.g People v. English, 172 AD2d 215, 216 (1st Dept 1991).

The Court dismisses eight of the twenty-nine counts of this indictment based on lack of geographic jurisdiction. The motion to dismiss all other counts is denied.

This constitutes the decision and order of this Court.

Dated: September 26, 2017

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Hon. Ralph Fabrizio