

People v Buchanan
2017 NY Slip Op 33333(U)
June 22, 2017
Supreme Court, New York County
Docket Number: 3229-16
Judge: Melissa C. Jackson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

-----X
THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER

IND. # 3229-16
0024-17

- against -

TIMOTHY BUCHANAN,

Defendant.

-----X
Melissa C. Jackson, J.:

The alleged facts underlying the crime charged under Indictment# 0024-17 are that the defendant on July 17, 2016 unlawfully entered into a residential building and was seen leaving the building carrying a garbage bag allegedly filled with stolen property taken from the lobby area of the building. The alleged facts underlying the crimes charged under Indictment# 3229-16 are that the defendant on July 24, 2016 unlawfully entered into a residential building and was seen leaving the building carrying a bicycle that did not belong to him. Furthermore, the People allege that on July 27, 2016 defendant is seen unlawfully entering a residential building and later confronted by the complaining witness from the earlier theft of the bicycle. After being confronted, defendant flees and is caught inside Morningside Park by the complaining witness and police and a bag is recovered from the defendant containing hypodermic needles, bolt cutters and a package belonging to the complaining witness who pursued the defendant.

In January 2017, the People moved for consolidation of both Indictments arguing that consolidation was proper since the crimes charged in both Indictments were the same or similar in law and that such evidence taken together as a whole would be critical to identifying the defendant as the perpetrator of these burglaries. Furthermore, the People argued that the consolidated evidence would explain the narrative and context of defendant's custody on July 27th.

On March 23, 2017, the Court ordered the Indictments consolidated for trial. Defendant now moves to sever Count One from Counts Two through Ten under Indictment# 3229-16. In addition, the defendant further requests severance of Counts Two through Ten of Indictment# 3229-16 with that of the sole count under Indictment# 0024-17.

Severance of Count One from all other counts on Indictment# 3229-16

The defendant seeks to sever Count One from the other counts of Indictment# 3229-16 on the grounds that as to Counts Two through Ten there is substantial evidence supporting a finding of guilt as to the July 27th burglary but less substantial evidence supporting the July 24th burglary – hence consolidation is unduly prejudicial to the defendant.

The defendant contends that if he is jointly tried as to both burglaries, a jury will conflate evidence from the July 27th burglary and apply it to evidence offered to prove defendant's guilt regarding the July 24th burglary. For the following reasons, the defendant's motion to sever Count One from the other counts of Indictment# 3229-16 is denied.

CPL 200.20(3) states in pertinent part:

"3. In any case where two or more offenses or groups of offenses charged in an Indictment# are based upon different criminal transactions, and where their joinability rests solely upon the fact that such offenses, or as the case may be at least one offense of each group, are the same or similar in law, the court, in the interest of justice and for good cause shown, may, upon application of either a defendant or the people, in its discretion, order that any such offenses be tried separately from the other or others thereof. Good cause shall include but not be limited to situations where there is:

(a) Substantially more proof on one or more such joinable offenses than on others and there is a substantial likelihood that the jury would be unable to consider separately the proof as it relates to each offense." [emphasis added]

The People claim that evidence in both cases will consist of surveillance footage showing defendant entering and leaving the residential buildings with stolen property. It is important to

note that the substantial difference in the evidence between the two burglaries is that the defendant is arrested following the alleged July 27th burglary and found to be in possession of bolt cutters, hypodermic needles and stolen property. As to the alleged July 24th burglary, the bicycle is never recovered from the defendant so the sole issue is whether or not the defendant is the person on the video surveillance as there are no eyewitnesses. The Court has taken into consideration the fact that the burglaries are committed three days apart from one another and at buildings located directly adjacent to each other. Furthermore, there is no reason to believe that the surveillance footage of the July 24th burglary is any less substantial than the People's evidence of defendant's alleged commission of the July 27th burglary. Furthermore, and even more compelling is the fact that the complaining witness in the July 24th burglary is the same complaining witness in the July 27th burglary. The two cases were properly charged under a single indictment. There is no reason to believe that there is a substantial likelihood a jury will conflate the evidence of the two burglaries rendering them unable to consider separately the proof as it relates to each offense. The cases are simple. The evidence to be presented by the People is not complex nor can the Court conclude that there is "substantially more proof" of one offense over the other simply because stolen property was recovered from the defendant in one case and not the other. For the foregoing reasons, the defendant has failed to demonstrate in the interests of justice and for good cause shown why the counts under Indictment# 3229-16 should be severed.

Severance of Counts Two through Ten on Indictment# 3229-16 from Indictment# 0024-17

The defendant's argument in support of severance of the Indictments is identical to that made in his first severance motion. Similarly, the defendant contends that the amount of evidence of the July 27th burglary is so substantial and overwhelming that there is a substantial likelihood that the jury would be unable to consider separately the proof as it relates to each offense and therefore

defendant would be unable to receive a fair trial with regard to the July 17, 2016 burglary. The People's evidence with regard to the July 17th burglary consists mostly of surveillance footage allegedly showing defendant unlawfully entering into a residential building and leaving with a garbage bag filled with stolen property. The Court again will not engage in conjecture and arbitrarily measure the quantum of proof that the surveillance footage of the July 17th burglary depicts. The evidence is simple and there is only one count under Indictment# 0024-17 for the jury to consider. This is distinguishable from the facts of People v. Sable, 138 AD2d 234 [1st Dept 1988] which defendant cites for the proposition that these matters should be severed.¹

Conclusion

Trial courts should weigh public interest in avoiding duplicative, lengthy, and expensive trials against defendant's interest in being protected from unfair disadvantage in making decision whether to consolidate Indictments." People v. Gonzalez, 229 A.D. 2d 398 [2nd Dept 1996].

In People v. Lane, 56 N.Y.2d 1 (1982), the Court of Appeals held that "[t]rial courts should generally weigh the public interest in avoiding duplicative, lengthy and expensive trials against the defendant's interest in being protected from unfair disadvantage.

The People intend to introduce distinct and separate evidence for each burglary. There is no reason to believe that a jury cannot credit or discredit the People's theory as to the identity of the perpetrator of each residential burglary.

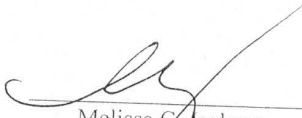
The court has carefully considered the arguments of the parties and more importantly has examined the defendant's fundamental right to receive a fair trial without undue prejudice and finds that the need for expeditious justice, judicial economy, maximum use of scarce court and jury

¹ In Sable, which was reversed on unrelated grounds, defendant went to trial on 35 robbery counts covering seven separate robberies. The Appellate Division found this to be error in light of the fact that as to some of the charges there was "[s]ubstantially more proof on one or more such joinable offenses than on others and there [was] a 'substantial likelihood that the jury would be unable to consider separately the proof as it relates to each offense.'" The Appellate Division did not specify how the proof was substantial as to one offense as compared to the other.

resources, and the perceived benefit to all parties that will be achieved by having a consolidated trial greatly outweighs any remote speculative chance of prejudice to the defendant.

The foregoing is the decision and order of the court.

Dated: New York, New York
June 22, 2017



Melissa C. Jackson
Acting Justice Supreme Court

Dated: New York, New York
June 22, 2017