

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

HARVEY WEINSTEIN,

Appellant.

NO. 24

20 Eagle Street
Albany, New York
February 14, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUSTICE BETSY BARROS
ASSOCIATE JUSTICE CHRISTINE M. CLARK

Appearances:

ARTHUR L. AIDALA, ESQ.
AIDALA, BERTUNA & KAMINS, PC
Attorney for Appellant
546 5th Avenue, 6th Floor
New York, NY 10036

STEVEN C. WU, ADA
MANHATTAN DISTRICT ATTORNEY'S OFFICE
Attorney for Respondent
One Hogan Place
New York, NY 10013

Christian C. Amis
Official Court Transcriber

1 CHIEF JUDGE WILSON: The last matter on today's
2 calendar is People v. Weinstein. And I wanted to tell you,
3 we're delighted to have our colleague from the Second
4 Department, Justice Betsy Barros, and from the Third
5 Department, Justice Christine Clark joining us for argument
6 today.

7 Counsel?

8 MR. AIDALA: Thank you.

9 Good afternoon, Your Honors. My name is Arthur
10 Aidala, and at the table with me is Diana Fabi Samson and
11 Barry Kamins. And we are not only the counsel of record on
12 the appeal, but we were part of the team that tried the
13 case, along with our colleagues from Chicago.

14 And you know, just now I was in the lawyers' room
15 and I was reading a quote from Justice - - - Judge Judith
16 Kaye. It says, "The role of courts as impartial protector
17 of individual rights can provoke controversy, especially in
18 hard cases involving unpopular causes of litigants. These
19 cases must be decided on the law and not on opinion polls."

20 Your Honors, this is one of these hard cases.
21 And on behalf of the three of us who tried this case, who
22 between the three of us have over one hundred years of
23 trial experience and appellate experience in not only this
24 state, and not only this city, but this actual borough, we
25 could tell you with as much sincerity and credibility as we

1 can muster that our client did not get a fair trial. And
2 I'm just going to rattle off the topics - - -

3 JUDGE RIVERA: Before - - - before you rattle.

4 MR. AIDALA: Sure.

5 JUDGE RIVERA: If I may ask.

6 MR. AIDALA: Sure. Of course.

7 JUDGE RIVERA: And welcome. Is there something
8 unique or particular to the kinds of conduct - - - right -
9 - - with which your client was charged and then found
10 guilty that requires a rethinking of how Molineux is
11 applied to that kind of a case.

12 MR. AIDALA: No, Your Honor.

13 JUDGE RIVERA: Why not?

14 MR. AIDALA: This is basically a court - - - this
15 is a case of courting, of a man courting a woman. The only
16 - - -

17 JUDGE RIVERA: Well, I mean, in this sense. I'm
18 sorry. Let me clarify. I mean, in this sense to - - - to
19 the extent that the - - - the victims who testified are,
20 perhaps given history of misogyny and sexism, start out not
21 being believed and credible, given the perhaps not well
22 understood reaction of a female who is attacked in the way
23 the government argued they were attacked by the defendant.
24 Does that matter is what I'm saying.

25 MR. AIDALA: Okay. Well, first and foremost,

1 regarding someone being misunderstood, the People called a
2 world-renowned expert, Dr. Ziv, who was fantastic on the
3 stand. She had all kinds of PowerPoint presentations, all
4 kinds of statistics to explain all of that. So that does
5 not go to Molineux. No, you do - - - no, a jury is not
6 going to be helped by figuring out the nuanced relationship
7 of one woman - - -

8 JUDGE RIVERA: Uh-huh.

9 MR. AIDALA: - - - and man looking at five or six
10 other nuanced relationships with a man and a woman. If you
11 look at the appellate - - -

12 JUDGE RIVERA: But why aren't they right that you
13 - - - I'm not going to question your point, of course,
14 about the expert. Why aren't they right that the - - - the
15 necessity for the other witnesses to testify - - -

16 MR. AIDALA: Okay. May I - - -

17 JUDGE RIVERA: - - - was to - - - yes. Well, the
18 three women specifically I'm thinking of - - - but was
19 necessary under Molineux for purposes of the jury being
20 able to understand intent and the consent.

21 MR. AIDALA: As a matter of law - - -

22 JUDGE RIVERA: Uh-huh.

23 MR. AIDALA: As a matter of law, it should not
24 have been allowed. And the reason why it should not have
25 been allowed as a matter of law - - -

1 JUDGE RIVERA: Uh-huh.

2 MR. AIDALA: - - - is intent. If intent is very
3 clear by the complaining witness who's testifying to the
4 jury and is clearly understood, and there's no ambiguity as
5 to what was happening to her, then intent does not come in.
6 As a matter of law, it doesn't come in.

7 JUDGE RIVERA: Well, I just find - - -

8 MR. AIDALA: So if you look at the - - - if you
9 look at the facts of the case, she's yelling and screaming,
10 no, no, no, I don't want this. She's kicking. She's - - -
11 she's basically fighting for her life. That's her
12 testimony.

13 JUDGE SINGAS: Excuse me, Mr. Aidala, aren't you
14 fundamentally misunderstanding the nature of this kind of
15 sexual assault for people that know each other? And isn't
16 Molineux exactly the kind of evidence, if there's something
17 ambiguous about it, if a jury might not understand what's
18 going on, to bring in that Molineux evidence?

19 MR. AIDALA: But Your Honor - - -

20 JUDGE SINGAS: Do you think this - - -

21 MR. AIDALA: - - - there was nothing ambiguous.
22 There was nothing ambiguous about the actual crime itself.
23 The actual - - - there was nothing ambiguous. She - - -
24 it's a straight up run of the mill, we went on a date. We
25 went home. I didn't want to fool around with him. He

1 wanted to fool around with me. He muscled me into my bed -
2 - - into his bedroom. He threw me down. He ripped my
3 clothes off. He had me pinned behind my head - - -

4 JUDGE SINGAS: So is that the way that you think
5 all sexual violence against women is played out?

6 MR. AIDALA: No, but I don't think it's hard for
7 a jury to understand what - - - that she was lacking
8 consent. The judge said it can be used to determine lack
9 of consent.

10 JUDGE SINGAS: But Mr. Aidala - - -

11 MR. AIDALA: They didn't - - - they didn't need
12 help to figure out lack of consent.

13 JUDGE RIVERA: - - - the point - - -

14 MR. AIDALA: She was screaming, I don't consent.

15 JUDGE RIVERA: No, no, no. But the point is that
16 there's also testimony that the victims continue to
17 interact, and do have, at some point, at least one of them
18 consensual sexual relations. And that's the point that
19 perhaps Molineux, as it has in the past, been interpreted
20 for other kinds of cases, needs to be more flexible with
21 this kind of a case.

22 MR. AIDALA: Well, I don't think that that jives
23 with a two-and-a-half-month-old decision from Telfair that
24 this court handed down, with all due respect, Your Honor.
25 I don't think you could put in a similar acts or - - - that

1 even though they're very far in time, there's acts that are
2 ten years apart. You just said in Telfair that they should
3 be similar acts proximate in time.

4 The fact that the young woman - - - it - - - Mimi
5 Haleyi, here - - - she was very clear that she was not
6 consenting. And if she - - - you found her credible, it
7 was very clear what the defendant's intent was. How
8 admitting a - - - another act with Tarale Wulff where he
9 meets a waitress, says, I want - - - follow me, escorts her
10 willingly up to a roof where she stands there and he
11 masturbates, and then they leave, how does that help a
12 jury?

13 All it does - - - it's just propensity. It does
14 not help a jury. It doesn't answer any of the questions
15 you just asked me, Judge Singas. Had - - - absolutely not.
16 One has nothing to do with the other except to say, look
17 how bad he is. Look what he's done in the past. How does
18 him - - -

19 JUDGE RIVERA: Well, if it's - - - if it's
20 nothing like it, it's not propensity then, right?

21 MR. AIDALA: Well, it's - - - okay, it's a bad
22 act. It's just a bad act. She's a - - - fine. It's not
23 propensity. He's just a bad guy.

24 Dawn Dunning - - Judge Singas, Dawn Dunning, she
25 comes to his room. He says, I want you to have a threesome

1 with me and my partner - - - with me and my manager. She
2 says no and runs out of the hallway crying. How does that
3 help the jury figure out what kind of sexual assault took
4 on Mimi Haleyi? It doesn't. One makes - - - it has
5 nothing to do with the other, except see how bad - - - look
6 what another bad thing he did. It was his - - - it was his
7 character that was on trial. It wasn't the evidence that
8 was on trial.

9 JUDGE BARROS: So are you making a distinction
10 between the same victim, right, the - - - Ms. Mann, for
11 example - - - and what may have preceded and happened
12 afterwards as being perhaps irrelevant to what occurred and
13 to explain her conduct and his conduct, versus bringing in
14 people who are separate and apart from this particular
15 relationship?

16 MR. AIDALA: Yeah - - - yes, Judge Barros,
17 especially, what happened beforehand. If you - - - an
18 analysis of the Appellate Division ruling is it could come
19 in to show you what the defendant's state of mind is at the
20 time of the assault. Why it's relevant - - - what happened
21 afterwards to Mr. - - - to the defendant regarding Ms.
22 Mann, it's irrelevant.

23 In other words, at the - - - they're trying to
24 say, well, at the time he assaulted Ms. Mann, he knew or
25 should have known she was going to reject him because of

1 what happened after the time of assault. That doesn't make
2 sense. What happened before, yes, Your Honor, I will
3 concede that. But what happened after, that doesn't go to
4 his mindset at the - - - at the time of the charged crime.

5 And also Judge Singas, if you look at - - - if
6 you look at Mimi Haleyi, when she testified, there were ten
7 other acts - - - ten other models - - - it was a ten to one
8 ratio. That's unheard of.

9 I mean, we - - - I don't want to talk about abuse
10 of discretion at this point because I'm still at it
11 shouldn't have come in. Intent was clear from the
12 testimony. It wasn't complicated. Molineux, Alvino, these
13 are cases where there's financial fraud and credit card
14 fraud, and - - - and sometimes they're doing legal acts
15 that turn illegal. This was a horrible - - - if you
16 believed her, it was a horrible sexual assault.

17 JUDGE GARCIA: And your defense, Counsel, was
18 that it never happened?

19 MR. AIDALA: Excuse me?

20 JUDGE GARCIA: Your defense was it was - - -
21 never happened - - -

22 MR. AIDALA: It was that it was consensual. That
23 yes, they were - - - they were together - - -

24 JUDGE GARCIA: All right. Why wouldn't this - -
25 - why wouldn't these acts go to intent then if it's not

1 consensual?

2 MR. AIDALA: Because Your - - - because Your
3 Honor, these rulings were made before we put on any
4 defense. These rulings were made without us saying a word.

5 JUDGE SINGAS: That's not how it works.

6 JUDGE CANNATARO: Are you saying the court wasn't
7 aware of the - - - of the defense of consent?

8 MR. AIDALA: Correct. Well, excuse me, I think
9 somewhere they said they read it in the newspaper that - -
10 - I - - - I don't know if it was in the Appellate Division
11 or the lower court. They said, oh, we read in the
12 newspaper that Mr. Weinstein's lawyers were going to say it
13 was consensual.

14 But - - - but Judge Garcia, they don't need help
15 with intent when you have a woman, who, if they find her
16 credible, she's telling me - - - she - - - she says the
17 vice. He takes me, throws me on the bed. I'm screaming,
18 no, no, no. He gets on his knees. He rips a tampon out
19 from under me and puts his mouth on my vagina. What is his
20 intent? What - - - what does a New York City jury need
21 help with? And if they did, they had the expert. They had
22 the expert. All of those ten other acts were just in there
23 to say, he's a bad guy. Look what the - - -

24 JUDGE CANNATARO: What can - - - I don't
25 understand the comment about the expert. What can an

1 expert tell you about the defendant's intent to commit a
2 nonconsensual sexual act?

3 MR. AIDALA: She addressed, I think, what Judge
4 Singas or Judge Rivera was just saying about how often - -
5 - not often, but more often than you would think, women
6 stay friendly with the people who have assaulted them, and
7 - - -

8 JUDGE CANNATARO: That explains the failure to
9 report. You know, I could see it going to that. I could
10 see it going to explaining the dynamic of how you could
11 have, with the same person, both consensual and
12 nonconsensual sexual episodes. But I don't understand what
13 it tells us about the defendant's state of mind, vis-a-vis
14 his intent to engage in a nonconsensual act.

15 MR. AIDALA: Judge, having been at the trial, you
16 can - - - when you read the transcript, those words are
17 dead, but they're still there, and they still check off the
18 box that as a matter of law and shouldn't come in. But
19 when you were there and you watched her telling the jury,
20 there was no doubt what his intent was. I - - - she said,
21 I wanted to leave. He didn't let me leave. He used his
22 body. He used his girth, and he backed me into my bedroom
23 and put me on a bed. What is his intent? It's not to make
24 her macaroni and cheese. His intent is to sexually assault
25 her. The intent was not an issue. I could read to you - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-
JUDGE CANNATARO: But that's what she said his intent was - - -

MR. AIDALA: - - - black letter law that says when intent - - - it - - - excuse me?

JUDGE CANNATARO: That's what she says his intent was. But if - - -

MR. AIDALA: And if she's believable - - -

JUDGE CANNATARO: But - - - but your - - - your defense - - - and with all - - - you know, I'm letting you have your argument that they didn't - - - this wasn't known at the time the Molineux ruling was made, but certainly by trial, your defense is these are - - - it's not what she's saying they are, they're consensual acts. And the evidence seems to be equivocal about whether these - - - some of these episodes are being entered into with both sides consenting or only one side wanting to move forward and the other side not wanting to move forward. And that to me seems like what Molineux was made for.

MR. AIDALA: Judge Cannataro, we were there. There was no equivocation. This was a woman, a grown, intelligent woman on the stand looking at the jury, saying, I did not want that. Any man - - - any man living in 2020 knows when a woman is screaming, I don't want this. Get off me. She's kicking and pulling and scratching, I - - -

1 do we really - - - do we need to have - - -

2 JUDGE SINGAS: Mr. Aidala - - -

3 MR. AIDALA: - - - ten other acts to know what
4 his intent was? It's obvious what his intent was. If you
5 believe her, his intent was despicable.

6 JUDGE SINGAS: I believe you're describing a case
7 like Vargas, and I would agree with you that intent there
8 is clear. But in some sexual violence, intent is not so
9 clear. And his position is, look, this is very
10 transactional. I give them movie roles. I invite them to
11 my hotel room. We have consensual sex. The jury has a
12 right to know that when these women are put into that
13 position, that he has done this time and time again, and he
14 knows this isn't a consensual situation because he knows
15 these other women haven't consented to that and have run
16 out. And amongst all the power plays of his power in
17 Hollywood, his power over their careers, there has to be a
18 different assessment because sexual violence is different
19 in these kinds of cases than in a stranger rape rooftop
20 Vargas situation. Do you reject that?

21 MR. AIDALA: I reject the fact that you think - -
22 - with all due respect, Your Honor - - - and that - - -
23 that's been the problem with this case in the lower court
24 and at the Appellate Division because - - - because he's an
25 executive and who became the poster boy for a movement,

1 there's a different standard.

2 JUDGE SINGAS: I didn't say anything about a
3 movement.

4 MR. AIDALA: I know you didn't, Your Honor, but
5 the bottom line is the - - - it was so obvious that the
6 jury did not need help figuring out his intent. We could
7 talk about - - - would I have been able to bring in the
8 thirty other relationships where there was quid pro quo,
9 where he did have sexual relations consensually. Would I
10 been able to do that? Of course not. I wouldn't even ask
11 to do that. That's not how I was trained to practice law.
12 It would be inadmissible. But they're saying between - - -
13 the decade between Jessica Mann and Mimi Haleyi, these
14 other four people he had negative interactions with - - -
15 what about the forty that he had positive interactions
16 with?

17 There was - - - Judge Garcia, there was no - - -
18 no one needed any help in that courtroom knowing what that
19 individual's consent was if you found the witness credible.
20 It was - - - this is what happened. They didn't - - -

21 JUDGE RIVERA: An that - - - and that - - - isn't
22 that the point? And I think there - - -

23 MR. AIDALA: Excuse me? I apologize - - -

24 JUDGE RIVERA: - - - isn't that the point in
25 where there - - - where you disagree. I think you see this

1 testimony of these other witnesses as merely bolstering the
2 credibility of the victims and doing nothing else. Am I
3 understanding you?

4 MR. AIDALA: A hundred percent. And if you break
5 it down - - - look, it's a very fact in - - -

6 JUDGE RIVERA: And that - - - and now I'm going
7 to come back to my point where I started. Are these not
8 the kinds of charges and conduct that perhaps requires a
9 rethinking of Molineux, given the history of misogyny and
10 sex discrimination and distrust of women's voices and
11 descriptions of sexual assault.

12 MR. AIDALA: Not if you really look at the very
13 simple, precise testimony of the complainant here. It - -
14 - there - - - there was - - - we could try to make this
15 more complicated than it was, but it - - - it wasn't. It
16 was simple. It was - - - people who have been prosecutors
17 and defense attorneys, there is sadly sex assault cases we
18 try all the time. But even - - - even if I follow your
19 premise, Judge Rivera, the Molineux that came in was not
20 helpful. How does it help - - - Judge Singas, how does it
21 help a jury understand - - -

22 JUDGE SINGAS: No, I ask the questions. Okay.

23 MR. AIDALA: I apologize. I'm sorry. I'm sorry.
24 It was rhetorical. I apologize. But how does it help a
25 jury understand - - - well, I - - - because I don't know

1 the answer. I don't know the answer. Okay. I'll be
2 affirmative. It doesn't help. It doesn't help a jury - -
3 -

4 JUDGE RIVERA: Yes, you know the answer.

5 MR. AIDALA: - - - understand what happened in
6 that bedroom in - - - in 2006 by hearing what happened in a
7 shower with Lauren Young in 2013. They're not even - - -
8 they're not even closely related. They're not related in
9 time, which you said that it needed to be in Telfair.
10 They're not related - - - closely related in - - - in what
11 took place.

12 JUDGE CLARK: Could they be a common - - - I know
13 this wasn't raised this way - - - but - - - but couldn't it
14 be looked at as a common scheme or plot? He's this
15 powerful executive, and he gets these women alone, and
16 they're poor, and they want a job. And if you look at
17 those similar facts, couldn't - - - that falls under a
18 Molineux exception?

19 MR. AIDALA: No, because I mean - - - not based
20 on the fact scenarios that I - - - we've researched
21 regarding comma, scheme, or plan. There's much more - - -
22 there are much more acts that are much more interrelated,
23 number one. But I believe we're supposed to be looking at
24 what the jury was told, and the jury was told, this comes
25 in for two reasons, to figure out his intent, and to figure

1 out whether they - - - whether the women consented.

2 Now, I don't think there's a Molineux exception
3 for consent, but even so, if you have a witness who they
4 find credible screaming, I don't want this. No, no, no, I
5 don't want this. We need to call other witnesses in to
6 explain that. To explain that, well, when I was in a
7 shower a decade later - - - a decade later, and he started
8 doing things, I didn't want that. How does - - - how does
9 three or four other nuanced, weird relationships explain
10 this one? But this wasn't a nuanced, weird relationship.
11 They met. She asked for a job. He gave her a job. It
12 went well. They went out. They went to dinner. They went
13 back to his apartment. And he did - - - and if you
14 believed her, he did a horrible thing. That doesn't need
15 any explanation. There's no explanation.

16 JUDGE SINGAS: Well, I mean, but in some
17 circumstances, a jury might not know that that's not the
18 way things happen, because his position is, this is what
19 happens. They come to my hotel room. We engage in sex
20 acts consensually because I give them roles - - - movie
21 roles, or I give them internships, or I give them anything.
22 The jury has the right to know, wait a minute, this woman
23 walked into this situation not understanding that - - -
24 that that is what's going on. And he demonstrating his
25 knowledge of their lack of consent because he's been down

1 this road before. So he just says, look, it was
2 consensual. Just look at the facts here. And that's what
3 we got.

4 But if it's not that clear because of the power
5 dynamics, because of different levels of sexual assault and
6 the way it looks in different circumstances, Molineux can
7 be used to explain that to help aid the jury.

8 And here the jury - - - I mean, you're acting as
9 if the jury just believed everything they said. But the
10 fact is, the jury acquitted on some charges. So clearly
11 they were in a position to accept some things and reject
12 others. Right? It's not as simple as you're laying out.

13 MR. AIDALA: Well, it actually is, Your Honor.
14 The - - - the charges he was acquitted on, Annabella
15 Sciorra, which should have never been there because it was
16 the first time - - - in this trial of first - - - it was
17 the first time a time-barred crime was permitted to be used
18 as the predicate crime to charge predatory sexual assault.
19 The first time ever.

20 JUDGE SINGAS: And he was acquitted.

21 MR. AIDALA: Ever. And the reason why he - - -
22 first of all, it shouldn't have been there because it
23 taints the jury to all these horrible things.

24 But you know why, Your Honor - - - I don't mean
25 to ask you a question. I'm sorry. The reason why was her

1 best friend - - - she didn't report it for thirty years.
2 Her best friend came in kicking and screaming as a witness
3 so the defense said, yeah, she called me the next day. She
4 said she had sex with Harvey Weinstein. She never said
5 anything - - - and she never said anything else. And there
6 were other witnesses that just - - - just blew her story
7 out of the water.

8 And Jessica Mann, if you want to talk about
9 another mistake that the trial court made, in her direct
10 testimony, she never alleges force. They had no choice.
11 He should have dismissed the rape one right there. Her
12 testimony she didn't allege force.

13 To my point, Mimi Haleyi checks off all the boxes
14 if you find her credible in a simple act. I feel like the
15 court is making this much more complicated and nuanced. It
16 wasn't a complicated nuance - - -

17 JUDGE RIVERA: Counsel, your red light is on, so
18 could you just quickly, if the Chief Judge will permit,
19 address the juror eleven issue?

20 MR. AIDALA: Sure. I would just - - - yeah - - -
21 yes, Your Honor. I just want to make sure that the court
22 understands, when Mimi Haleyi testified regarding Molineux,
23 an abuse of discretion, there were ten - - - ten other sex
24 acts. We looked in every search engine possible to man.
25 We do not see any case where anything close to ten prior

1 Molineux came in. If that's not a textbook abuse of
2 discretion, I don't know what is. And I - - -

3 JUDGE CANNATARO: What - - - what's the legal
4 limit, just so we know?

5 MR. AIDALA: I'm going to say - - - I'm going to
6 quote Justice Powell about pornography. You'll know it
7 when you see it. You know that there's no legal limit.
8 But when the prejudice - - - and this is major prejudice
9 saying he's a bad guy, he's a bad guy, he's a bad guy.
10 There was no weighing by the trial court of let's see what
11 Mimi is saying, which is already horrible. Let's allow all
12 this other horrible stuff to - - -

13 JUDGE RIVERA: Do you - - - do you - - - do you
14 want an opportunity to talk about juror eleven?

15 MR. AIDALA: I - - - I'm sorry, Judge. I was
16 just answering Judge Cannataro's - - -

17 JUDGE RIVERA: No, I understand. I understand.

18 MR. AIDALA: And - - - and - - - we had a jury
19 consultant. It's in the record. So there's a veneer and
20 they're about to come. We do our research. We find out
21 that she's writing a book, and we get the little blurb, and
22 it says it's about a predatory professor and students. In
23 voir dire, she comes into the panel, we ask her about that,
24 and she denies it. And we tell the judge, judge, you know,
25 and he says, I believe her. Okay.

1 We move for cause. We ran out of - - - of
2 challenges. We asked the judge for an extra challenge. We
3 asked the judge for more time. We didn't get it - - - in a
4 case of this magnitude. We get more information that this
5 book is about a predatory man.

6 Now, we go in the back. So there's no one
7 around. She's not going to be embarrassed. We - - - and
8 we confront her with it. And basically, she says, yeah, I
9 lied. I was mistaken. I wasn't sure. I didn't know what
10 you mean. I mean, it was a very simple question. Is it -
11 - - is the book about predatory or is it not about
12 predatory? She says - - - in jury selection she says no.
13 And then when we actually hand her the piece of paper in
14 the back, oh, this? Okay.

15 And then - - - and the judge initially says he's
16 going to knock her off the jury. And then he's like, well,
17 I'm not sure. I said, judge, she's going to try to sell a
18 book about predatory men. If she acquits Harvey Wein - - -
19 this is a - - - she's got a financial interest here to sell
20 this book. If she's one of the jurors who acquits Harvey
21 Weinstein, what do you think that's going to do with her
22 book sales?

23 So she's not qualified, first of all, because she
24 lied about a material issue, not how many children you have
25 or have you ever been skiing in Vermont? It's a case about

1 a predatory older man going after younger women. She
2 writes a book about predatory older men going after young
3 women and lied about it.

4 JUDGE RIVERA: What - - - well, I'm going to ask,
5 and you can correct me if I'm - - - I'm not remembering the
6 record correctly. I thought that she tried to explain that
7 predatory in this context was not what she thought was
8 meant by predatory in terms of the case itself. Can you
9 address that?

10 MR. AIDALA: Sure, Judge. She's - - - she's - -
11 - she's a very smart, very well-educated woman. She could
12 have - - - she could have hedged - - - she could have
13 explained herself, but she - - - it was an unequivocal no.
14 In other words, is this about a predatory man? No.

15 She could have said, well, not really, she said
16 it was a coming-of-age story about young people in school.
17 She didn't touch on - - - she never used the word
18 predatory. She didn't say, well, it was a professor who
19 was hitting on a young person. She just made it sound like
20 - - - like we were nuts. And it was - - - it was - - - it
21 was more than one man. It was like three men, I think, in
22 the - - - in the book. And that was coming after - - - and
23 then she admits it. Then she admits it to us, and then she
24 admits it to the world when the book comes out.

25 So this court's going to send the message that,

1 yeah, a juror on this most important case could look in a
2 Supreme Court judge's eye and lie about a material issue in
3 the case where they have a financial interest and it's
4 okay. It's no - - - let it sit.

5 CHIEF JUDGE WILSON: I have a very unrelated
6 question. I think you may be able to answer very shortly -
7 - - or briefly - - - with regard to your statute of
8 limitations argument, the one that says the statute
9 continues to run until the police know that there is a
10 crime. Are you with me?

11 MR. AIDALA: Yes. Uh-huh.

12 CHIEF JUDGE WILSON: Where in the record can I
13 find the date that the police knew that there was a crime?

14 MR. AIDALA: I'm - - -

15 CHIEF JUDGE WILSON: Okay. You have a rebuttal.

16 MR. AIDALA: Okay.

17 CHIEF JUDGE WILSON: See if you can figure it out
18 in between.

19 MR. AIDALA: Yes, Judge. Thank you.

20 CHIEF JUDGE WILSON: Thank you.

21 MR. WU: May it please the court. Stephen Wu for
22 the People. The Molineux testimony here was properly
23 admitted because under the distinctive facts of this case,
24 the evidence was material to the contested issue of the
25 defendant's knowledge and intent for the charge in this

1 case - - -

2 JUDGE GARCIA: How do you distinguish Vargas?

3 MR. WU: Well, Vargas is quite different in a
4 number of ways. One is that the actual incident in Vargas
5 used - - - had - - - had extreme facts that are simply not
6 present here. This was a stranger encounter, according to
7 the victim. There were threats of physical violence.
8 There was blindfolding and gagging of the victim, and there
9 was actual physical violence in dragging her onto the
10 rooftop. And because of that, the court was able to say
11 that on those extreme facts, there was really no other
12 reasonable inference that could be drawn except that it was
13 nonconsensual.

14 The other important distinction from Vargas is
15 that there the defendant had a contrary story. He provided
16 an account that was diametrically the opposite of the
17 victim's. He said they met in the bar. They had a
18 consensual relationship. He went up to the rooftop - - -
19 rooftop at her invitation. And we don't have any competing
20 account here similar to that.

21 JUDGE CANNATARO: My reading of Vargas is that
22 when the question is binary, unequivocally binary, you
23 don't really need Molineux evidence. One says it happened
24 like this, it was with consent, and the other one says
25 absolutely not, no consent. But I read Vargas as admitting

1 that Molineux evidence as to intent is admissible if there
2 is equivocal record evidence of whether or not there was
3 consent. Do you agree with that?

4 MR. WU: No, I agree, and I'll say two things
5 about that. One is that it's important to put Vargas on
6 one extreme end of the spectrum. I mean, the case that
7 Vargas relied upon, which is McKinney, was one where
8 somebody was stabbed in the stomach with a butcher knife,
9 and the court said there's no way to infer anything but
10 intent to cause serious physical injury from that act.
11 That's sort of the standard for what's extreme here.

12 And the other part, and this was the subject of a
13 lot of discussion previously, is that these were not
14 unequivocal - - - this was not unequivocal testimony about
15 defendant's intent or knowledge in these scenarios.

16 For Jessica Mann, there was testimony that she
17 almost immediately relented upon him putting some force on
18 her. She immediately relented and gave up because of her
19 experience from the first assault that she had experienced
20 from him.

21 And even as to the second victim here, it was not
22 as extreme as defense counsel has tried to lay out here.
23 It is true she physically resisted, and she said no. But
24 what she also admitted on the stand was she was not
25 screaming out loud. She almost immediately gave up at some

1 point and allowed him to have his way with her. And as
2 defendant kept emphasizing during the trial, she had a
3 relationship with defendant that involved this repeated
4 pattern where she would resist, resist, resist, and then
5 ultimately relent to massages, to attending events with
6 him, accepting his invitations - - -

7 JUDGE RIVERA: So how is Molineux evidence at all
8 like any of that?

9 MR. WU: Well, so the Molineux evidence was
10 important for a couple of reasons. One, as to Mann, what
11 it showed was it provided background and context for that
12 relationship. Defendant's argument was that they had a
13 consensual and loving relationship both before and after
14 the charge incidents. And the Molineux testimony from her
15 as to her relationship just rebutted that characterization
16 completely. And as to the other - - -

17 JUDGE RIVERA: Sorry. Go a little further. How
18 did it do that?

19 MR. WU: Well, it did so by showing, again,
20 contrary to defendant's characterization, that what she
21 experienced was actually something that she described on
22 the stand as a degrading and diminishing relationship, one
23 where defendant had exerted control and intimidation over
24 her, highlighted by the fact that she had suffered two
25 sexual assaults in California, bookending the charge

1 incident in New York. That - - - that was how the
2 incidents for Mann were able to come in.

3 And as to the other three Molineux witnesses,
4 what they showed was something that was very distinctive
5 about this defendant. His argument was that these were
6 transactional relationships that he experienced. That
7 women in Hollywood, because of his exalted position, came
8 to him for favors and willingly - - - willingly traded sex
9 in order to get auditions, roles, any opportunities that he
10 could provide.

11 CHIEF JUDGE WILSON: But that sounds like a
12 common scheme argument.

13 MR. WU: Well - - - well, it doesn't fit within
14 what this court has narrowly defined as common scheme,
15 which is really an identity type argument. But what it
16 does match is what this court has recognized, which is when
17 there is a consistent pattern of similar behavior from
18 somebody. So like the robberies in Ingram or other types
19 of behavior, then the court can look to the repetition of
20 that activity - - -

21 JUDGE RIVERA: No, what - - - I'm sorry - - - are
22 you saying some unique behavior?

23 MR. WU: Excuse me - - -

24 JUDGE RIVERA: What's unique about a powerful man
25 trying to get a woman to have sex with him?

1 MR. WU: It - - - it doesn't have to be unique.
2 It just has to be distinctive, distinctive to a defendant.
3 So - - -

4 JUDGE RIVERA: Okay. So again, what's
5 distinctive?

6 MR. WU: Well, what's distinctive is that this
7 defendant did have a distinctive role in Hollywood. He was
8 uniquely powerful. And this was all evidence that came
9 out. It was even emphasized by defense counsel to say,
10 here's how you can understand why people would find this
11 defendant attractive because he could make opportunities
12 for them. And that fact was what the Molineux witnesses
13 helped to highlight. What it showed - - -

14 JUDGE RIVERA: I don't see how the Molineux
15 witnesses do that. I mean, especially since you're - - -
16 you're making very clear that he has, as I think you said,
17 an exalted position. I mean, in that case, you really
18 don't need very much to establish that. They're so well
19 known. There's a lot of publicity around them. Why - - -
20 why would you need other people to say, yeah, he wanted - -
21 - he made a few passes at me or whatever else they may be
22 saying.

23 MR. WU: Right. And I think where I'd start is
24 that the definition of consent under New York law requires
25 not just that the individual not consent, but also that a

1 person in the defendant's situation and under all the
2 circumstances understand that they are not consenting.

3 And what the Molineux witnesses showed was that
4 defendant knew from these past experiences that just
5 because an aspiring actress was willing to accept favors
6 from him, ask favors, and even voluntarily go up to his
7 room by themselves, right? By themselves, to his private
8 space, that did not mean they were consenting to sexual
9 activity. That's what Molineux witnesses were - - -

10 JUDGE RIVERA: Why isn't it just - - - why isn't
11 it just the opposite? If they're not willing to do it, but
12 someone else is willing to do it, it must mean that it's
13 consensual.

14 MR. WU: Well - - -

15 JUDGE RIVERA: Doesn't it establish the absolute
16 opposite of your argument?

17 MR. WU: Well - - - well, I guess what I'd say is
18 this. Sure, there is a response to the Molineux evidence.
19 There's a way of rebutting it. But Molineux evidence
20 doesn't have to be dispositive to be admitted. It just has
21 to be probative to a material element.

22 And here the connection that was drawn that
23 showed that these women who testified had sort of visibly,
24 you know, physically showed that they did not consent. And
25 that defendant recognized that in these incidents. He even

1 apologized to one of the women after she made clear that
2 she was not consenting to his outreach, showed that he did
3 not equate the two.

4 JUDGE CLARK: But under - - - under rape third,
5 it's an objective standard, though, right? It's not a
6 subjective standard. I mean, if we take out the
7 intentional, take out the rape first - - -

8 MR. WU: That's correct.

9 JUDGE CLARK: - - - and the criminal sexual act,
10 which are intentional, if we're talking about when the
11 judge gave the instructed and said it can only - - - it can
12 come in for intent - - - and I'm talking about the three
13 women, it can come in for intent, but it can also come in
14 as far as consent. When you're talking about rape third,
15 it's an objective standard, though. It's not his state of
16 mind.

17 MR. WU: Well, it's an objective standard, Your
18 Honor, but it still relies upon somebody in a situation
19 under the circumstances. Right? It is saying somebody
20 standing in the defendant's shoes. And I think the key for
21 this trial is to understand how defendant defined what his
22 situation was like, what the relevant circumstances were
23 like. And what they emphasized over and over and over
24 again with all of the victims in this case was that they
25 were out there to get something from him. They got things

1 from him. They said repeatedly, for example, that one of
2 the victims, the day after the charged incident, accepted a
3 plane ticket from him to go to Los Angeles for - - -

4 JUDGE CLARK: But I'm not talking - - - I'm
5 talking about the other three women.

6 MR. WU: That's correct.

7 JUDGE CLARK: I - - - I can understand relative
8 to their own actions, because that state of mind is
9 important relative to their consent, but when we're talking
10 about his state of mind, his state of mind is not an
11 element of rape in the third degree.

12 MR. WU: Well - - - well, what - - - I think,
13 what the other incidents still show - - - and there's a
14 second thing that I do want to mention too - - - but what
15 they still show is that somebody in his position sort of
16 receiving favors from these ambitious women who are willing
17 to be personal and friendly and somewhat flirtatious with
18 him is not the same as consent. Right. That that is what
19 it showed for someone in his situation.

20 But there's another - - - an important, closely
21 related inference that can be drawn, which is the fact that
22 defendant here didn't do this just one time. That he had -
23 - - I won't call it a common scheme - - - but he had a
24 pattern where he would reach out to these women, make
25 offers for them to come to his place in the guise of

1 getting some sort of reward from him professionally, and
2 then immediately moved to a sexual encounter - - -

3 JUDGE RIVERA: That - - - that sounds like
4 propensity.

5 MR. WU: Excuse me?

6 JUDGE RIVERA: That sounds like propensity.

7 MR. WU: Well, it's - - - the reason - - -

8 JUDGE RIVERA: He did it before. He likely did
9 it now.

10 MR. WU: Well, so - - - so propensity is only
11 when repeated behavior is used for nothing more than the
12 possibility that somebody will do it the same way. But
13 repeated behavior is permissible under Molineux when it
14 sheds light on the defendant's state of mind. And what
15 this - - - and for instance, this is what Alvino said, the
16 repetition of the unlawful conduct makes an innocent
17 explanation unlikely. And - - -

18 JUDGE CLARK: Right. But you said the
19 defendant's state of mind, and that's what I'm struggling
20 with, because when we're talking about consent and rape
21 third, his state of mind is not an element of that crime.

22 MR. WU: He - - - he still or somebody in his
23 position still has to be aware that the acts or words
24 expressed by the individual is expressing a lack of
25 consent. Now, that is an objective standard, but it is

1 about his - - - it is about evaluating this particular
2 defendant's state of mind here. So it doesn't have to be
3 like what's going on through his head at the moment.

4 And the reason that the - - -

5 JUDGE SINGAS: Are we - - - are we constrained at
6 all by Telfair?

7 MR. WU: Excuse me, I - - -

8 JUDGE SINGAS: Are we constrained by Telfair?

9 MR. WU: No. Telfair made a point of emphasizing
10 that the incidents in that case were both temporally
11 distant or a decade removed, and importantly, factually not
12 similar to the charged incidents in that case. And there
13 was no attempt by the People there to draw that action - -
14 -

15 JUDGE BARROS: It was similar - - - they were gun
16 charges.

17 MR. WU: Well, they were gun charges. But I
18 think what both this court and the court below sort of
19 emphasized was that these were gun charges that had nothing
20 to do with each other. Right? The gun was in different
21 places. There were different times. He had different
22 excuses for them. But the difference in this case was that
23 these are - - -

24 JUDGE GARCIA: The main excuse was, I didn't know
25 I had a gun there. It was somebody else's, right?

1 MR. WU: And look, could an inference be drawn,
2 it could draw - - - this court decided otherwise in Telfair
3 because there was no attempt to show that there was a
4 consistent pattern of behavior from the defendant with
5 regard to his gun possession. And that's what's different
6 here.

7 In this case, the defendant, the Molineux
8 witnesses here testified to a type of outreach from
9 defendant bringing them into their rooms, their private
10 rooms, and then immediately - - - immediately moving to
11 sexual behavior.

12 JUDGE CANNATARO: So the consistent pattern here,
13 just so I understand, is this promises of career
14 opportunity, career advancement, something like that. In
15 order to get the individual, whether it's a complainant or
16 a Molineux witness, in - - - isolated, alone, or maybe with
17 a third person, and - - - and then to do what? I kind of
18 have a little bit of a difficulty making the leap to
19 whatever it is that the intent - - - subjective intent of
20 the defendant is.

21 MR. WU: Well, it was to immediately that
22 initiate a sexual encounter without waiting for any
23 indication of consent from the other side. And the point
24 of raising this - - - and again - - -

25 JUDGE CANNATARO: Is that problematic in terms of



1 if you - - - if you approach this from the view - - - and I
2 think we heard it in a question before - - - that in his
3 mind, this is all transactional. I say I'm going to do
4 these things. And we all know that the reason why, you
5 know, I'm saying I'm going to do them is because you're
6 going to give me sex and that's - - - we have a deal. So
7 I'm not sure if that really is what we're saying his frame
8 of mind is why you need intent to do something
9 nonconsensual.

10 MR. WU: Right.

11 JUDGE CANNATARO: Because in his mind it is
12 consensual.

13 MR. WU: Well, and I think part of our answer is
14 that that was not the mind - - - that was not his mindset
15 entering into these encounters. It was not - - - they - -
16 -

17 JUDGE CANNATARO: He knew he was going to meet
18 resistance.

19 MR. WU: Well, and he knew he was going to
20 initiate a sexual encounter regardless of their consent.
21 And the point - - - the point of this is to say that if you
22 believe that mindset - - - and again, the jury was free to
23 reject that inference from the Molineux evidence. But if
24 you accept that mindset, that is inconsistent with somebody
25 being attentive to consent, being willing to pay attention

1 to consent, even inconsistent with somebody who is just
2 going to wait to see if somebody is willing to give him
3 sexual favors for his professional help. That is not the
4 story - - -

5 JUDGE RIVERA: So did you make - - - did you make
6 the argument the way you're making it now about a pattern
7 of behavior as the basis for the court permitting this
8 particular Molineux evidence?

9 MR. WU: Yes, but both of these arguments were
10 made. The argument that says he couldn't just assume from
11 the fact that these women were coming to him - - -

12 JUDGE RIVERA: That it's a - - - that's a
13 pattern.

14 MR. WU: That's right. So the pattern went - - -
15 correct.

16 JUDGE RIVERA: But you presented it that way.

17 MR. WU: It was presented to the court that way.
18 The court referenced that. And I think most clearly in the
19 re-argument decision where the court said, you know, I'm
20 going to allow Molineux evidence for this reason. It was
21 actually one of the arguments made to the jury about the
22 Molineux evidence was to adhere to this very narrow theory
23 of admissibility for Molineux. And - - -

24 CHIEF JUDGE WILSON: So let me ask you this. You
25 would agree, I guess - - - I hope - - - that if the purpose

1 of introducing somebody's past bad behavior or crimes was
2 propensity, Molineux forbids that?

3 MR. WU: That - - - that's absolutely correct,
4 yes.

5 CHIEF JUDGE WILSON: So an element of the crime
6 is intent. So why is it that you could introduce it
7 essentially for propensity of intent, but not for
8 propensity of the crime?

9 MR. WU: Well, I think this is maybe using the
10 word propensity in two different ways. I mean, what, you
11 know, Alvino and other cases have recognized is that in
12 situations where somebody's intent can't readily be
13 inferred - - - and - - - and as I've explained, it can't
14 readily be inferred in these cases - - - you can look to
15 what the defendant has done in similar situations to
16 discern their intent.

17 And Alvino is the case that that is most clear on
18 this. The defendant was the driver of a getaway car. He
19 said as to the charged incident, I had no idea that my
20 accomplice was going to go rob a store. People came in and
21 said, you did the same thing. You did the same thing just
22 a few weeks later. And the court agreed that the fact that
23 the conduct repeated made this innocent explanation, we had
24 no idea what was going on, seemed really unlikely.

25 JUDGE CLARK: Is it different from Alvino in

1 respect that that was all allowed on rebuttal, where here,
2 all of this came in on the case-in-chief before you heard
3 any sort of defense?

4 MR. WU: Well, let me say two things about that.
5 One, it is not distinct in a way that harms us. It is true
6 that Alvino said that you could bring that up in rebuttal.
7 But Alvino also said - - - and I believe - - - I believe
8 the exact line is that people could have brought it up in
9 their original case and probably should have, right, I
10 think is what the court said in Alvino. So I don't think
11 these are mutually exclusive. Molineux is not exclusively
12 available to rebut a defense theory.

13 But the other point is that it was fairly clear
14 before the trial what defendant was going to say here, in
15 both his omnibus motion and in press statements that the
16 lawyers and the court referenced without dispute, the
17 defendant had been saying these events, sure they happened,
18 but they were consensual. That was similar to his trial
19 strategy as well, where he never disputed that these events
20 occurred, but said that they were consensual, and the women
21 were lying by claiming otherwise.

22 JUDGE BARROS: You - - - you keep talking about
23 it as if he testified. He didn't testify, right? So it's
24 one person's word against the other, and now he can't
25 testify. Am I correct? This Sandoval ruling, I don't

1 think anybody in their right mind would testify.

2 So how is this a fair trial when you're not able
3 to put in your side of it? Believable or not, it's - - -
4 the evidence was slim by your own - - - your own account
5 and as much as you needed the other - - - the Molineux
6 evidence. Right. You know - - - you needed that to - - -
7 to strengthen your case. So how is this Sandoval ruling,
8 as a matter of law, abuse of discretion?

9 MR. WU: Well, let me address the Molineux part
10 of that and then I'll talk about Sandoval. I think the
11 argument that says that it was permissible to admit the San
12 - - - the Molineux evidence is not premised on the case
13 being weak. The point is not that the case is weak, but
14 rather that it doesn't fit within that narrow band of cases
15 like Vargas, like McKinney, where the act is so
16 unequivocal, so unequivocal that there's no need to bring
17 in additional evidence. So I don't think it's the same
18 type of argument we're making here.

19 But the Sandoval ruling here was also
20 appropriate. And I think the - - - I'll say a couple of
21 things - - - as a threshold matter, the question before
22 this court is only whether the court followed the right
23 process in adjudicating Sandoval. This court made very
24 clear in Walker that it does not redo the balance. It
25 doesn't disagree with the balance. And it specifically

1 said that the sheer amount of Sandoval evidence and the
2 timeliness of it is not a basis for overriding the lower
3 court's discretion. So I think it's the threshold argument
4 - - -

5 JUDGE BARROS: We'll also look at the prejudice,
6 though, right, and the type of act that is being permitted
7 in.

8 MR. WU: Well, I think encompassed with - - -

9 JUDGE BARROS: Encompassed you have - - - you
10 mentioned Walker, which is a narcotics case, the - - - the
11 sale of narcotics or the purchase of narcotics, very
12 different type of - - - and they didn't allow the
13 underlying facts in that case, right?

14 MR. WU: Sure. But - - -

15 JUDGE BARROS: You rely on that case. In this
16 case, you're allowing, I think, maybe eight sexual offenses
17 and an additional, I don't know, thirty other bad acts,
18 also not convictions - - - but - - - so untested in that
19 sense.

20 MR. WU: Well - - - well, so - - - so if we set
21 aside that the legal question is not about rebalancing, I -
22 - - the judge did - - - the judge severely limited the
23 Sandoval evidence that was permitted by the prosecutor.
24 And you can see that from the hearing where the judge from
25 the beginning said, I'm not going to allow anything about

1 sexual misconduct and adhered to that - - - outright
2 excluded categories of Sandoval evidence that was about
3 sexual misconduct that was different from the Molineux
4 evidence. For instance - - -

5 JUDGE BARROS: There were inferences, right, that
6 - - - that he led the woman up into an elevator to the
7 wrong floor.

8 MR. WU: Right.

9 JUDGE BARROS: There was at least two - - - two
10 inferences he did sanitize - - -

11 MR. WU: Well - - -

12 JUDGE BARROS: - - - because they were originally
13 charged - - - would have been charged as or described as
14 sexual acts. So he did sanitize, but the inference was
15 also that there were these additional women.

16 MR. WU: Right. But I think the sanitizing, what
17 you're accurately referring to as a sanitizing is important
18 here, because the judge in his ruling said, for those
19 incidents, you may not talk about the sexual misconduct.
20 You can only focus on the things that Sandoval is designed
21 to address, which is his honesty and credibility.

22 And beyond that, in his re-argument ruling, when
23 the judge also did the same thing, he said no sexual
24 misconduct, but evidence of dishonesty is perfectly fine.
25 The judge said, if on those incidents that he's limiting,

1 you start talking about the sexual misconduct, you can't
2 ask about them at all, right? So the judge put out there
3 in his ruling that he was going to vigorously enforce the
4 restriction there. And I think that shows that the judge
5 was very careful in determining and limiting the Sandoval
6 evidence to those pieces of evidence that would go to what
7 Sandoval is meant to address, which is his credibility on
8 the stand. Right? And - - - and what he ended up focusing
9 on were incidents of dishonesty where defendant showed that
10 he couldn't be honest with respect to other people, and
11 repeated incidents where the defendant showed that he
12 considered himself above the rules of society, and which is
13 again a classic Sandoval category that (indiscernible) - -
14 -

15 JUDGE RIVERA: So - - -

16 JUDGE SINGAS: Shouldn't we be concerned about
17 the Molineux witnesses? I'm talking about the three of
18 them, that they distracted the jury in the sense that now
19 that we - - - they had to assess credibility of three
20 additional witnesses that had nothing to do with the
21 charged crimes. And Molineux speaks to that, that we don't
22 want to - - - we want to make sure that trials don't turn
23 into mini trials on credibility issues that might distract
24 the jury. How do you respond to that?

25 MR. WU: Well, a couple of things. One is the

1 judge was very attentive to that. There was a specific
2 exchange on this question where the judge referenced
3 exactly that concern, said, I don't want this to become a
4 series of mini trials. I don't want this to drag on
5 forever. I think it's one of the reasons it was limited to
6 just those three witnesses, not the People's originally
7 request for five.

8 It is also important to note that this was a case
9 where, although there was - - - there were these three
10 Molineux witnesses, in addition to Ms. Mann, they occupied
11 maybe a quarter of the trial. The vast majority of the
12 trial was about the charged incidents and corroborating
13 evidence for those witnesses. And the judge was very
14 careful to repeat over and over again his limiting
15 instructions, to make sure the jury could follow the
16 principle that says, you only use this for permissible
17 purposes, and repeatedly invited defense counsel to propose
18 any other limiting instructions that they wanted.

19 And we know that this worked. We know that this
20 worked because the jury ultimately did acquit defendant,
21 not just of a random assortment of charges, acquitted
22 defendant of all the top charges in this case. The most
23 serious charges - - - including the more serious charge
24 against one of the victims in this case.

25 And what this shows is that the jury was able - -



1 - with all the Molineux evidence in here - - - was able to
2 evaluate the evidence carefully and draw distinctions both
3 between the different witnesses - - - different victims - -
4 - as well as for the same victim. They were able to draw a
5 distinction.

6 JUDGE CANNATARO: Counsel, I want you to get back
7 to the Sandoval question, but what was the judge's limiting
8 instruction on Molineux? Because I feel like it was
9 something along the lines of, you should only consider the
10 evidence for intent to use forcible compulsion and lack of
11 consent of the - - - the complainants.

12 MR. WU: Right.

13 JUDGE CANNATARO: Neither of which sound exactly
14 like what you're arguing here today. So can you just make
15 sure I'm - - - check me on what the limiting instruction
16 was?

17 MR. WU: So that's not inaccurate. That is what
18 the judge's - - - he basically followed the CJII instruction
19 for Molineux purposes. Made a point of saying don't
20 consider this evidence for propensity.

21 JUDGE CANNATARO: Right. Right.

22 MR. WU: But the thing I will say about that is
23 that that was entirely appropriate. That is consistent
24 with our theory. Our theory from the trial to the appeal
25 is to say the evidence was relevant to intent and

1 knowledge. And although the judge - - -

2 JUDGE CANNATARO: Yeah, but the judge didn't say
3 intent. He said intent to use forcible compulsion, which
4 seems very limiting.

5 MR. WU: Well - - -

6 JUDGE CANNATARO: Like we're talking a lot about
7 intent. And at times it seems to me like we're talking
8 about the defendant's intent to engage in a nonconsensual
9 sex act, which has - - - you know, doesn't really - - -
10 there might be forcible compulsion involved, but there
11 might not be. So there seems to be a disconnect in my mind
12 between the limiting instruction and what we're now saying
13 the purpose of the evidence was.

14 MR. WU: Well, the reason there isn't this
15 disconnect is because in every sex offense under article
16 130, lack of consent is an element whether or not it's
17 explicitly stated. This court has recognized that the
18 element of forcible compulsion subsumes that the victim did
19 not consent because otherwise, as this court has explained,
20 you wouldn't need to forcibly compel somebody who was
21 consenting. And although the judge just used the phrase
22 lack of consent, that has a very defined meaning under the
23 statute. It isn't just sort of the common meaning of the
24 word lack of consent. It instead is whether the victim
25 clearly expressed lack of consent, and then whether the

1 defendant or somebody in the defendant's situation under
2 the circumstances would understand it to be lack of
3 consent.

4 JUDGE CANNATARO: You stand behind the notion
5 that the Molineux evidence was properly admitted for
6 showing the - - - the complainants' or the victims' lack of
7 consent?

8 MR. WU: Well, only - - - only to the extent that
9 by doing so it informed how the defendant would perceive
10 what was happening in these encounters, which is a
11 convoluted answer to give you. But - - - but I think the
12 point is to say it wasn't brought in just to bolster their
13 credibility. I disagree that that was the purpose for this
14 evidence. It was instead brought in to explain how someone
15 in defendant's situation, who hasn't done this for the
16 first time, might understand this unique situation, which
17 would be unfamiliar to most jurors, right? Where many
18 young women were willing to have certain types of
19 relationships with him and to appear in his hotel room, his
20 apartment, on a terrace, alone with him, and yet were not
21 consenting to sexual activity - - -

22 JUDGE RIVERA: I have to say, I don't know what's
23 unique about that. What is unique about that? A powerful
24 man expects sex in return for favors. What - - - please
25 connect - - - choose any of those Molineux witnesses to

1 show me how that connects to what you say is something that
2 a juror could not understand.

3 MR. WU: So okay, two things. One is I don't
4 think it has to be unique. As I said the Molineux doesn't
5 come in only for one-off cases. It is meant to highlight
6 aspects of a case that might be unfamiliar to a juror.

7 But the second is, and I want to be clear about
8 this, the juror - - - the Molineux witnesses were not
9 coming in to say Harvey Weinstein is a powerful man. That
10 came in throughout the trial. Defense counsel admitted to
11 that in the opening statement. What they were coming in to
12 say - - - the first thing was that I was in a situation
13 where I was like the victims in this case. I was asking
14 for favors. I was accepting the favors. I was showing up
15 by myself to his hotel room without any chaperone or with a
16 chaperone who, like, stayed behind, right?

17 JUDGE RIVERA: Okay.

18 MR. WU: But I did not consent to sexual activity
19 and he knew that. Right. This is what Judge Kaye - - -
20 Chief Judge Kaye referred to in in Alvino as something like
21 giving defendant a warning. He should have known from
22 these encounters, and clearly did know, that it was not the
23 same for a woman to show up at his - - -

24 JUDGE RIVERA: Uh-huh.

25 MR. WU: - - - invitation to get a favor from

1 him. It was not the same that they were showing up and
2 they were consenting to sexual activity - - -

3 JUDGE RIVERA: But in that example, it's because
4 that particular person said no.

5 MR. WU: Right.

6 JUDGE RIVERA: And then you've got a victim who
7 gets up and says, I said yes. So again, I don't - - - I
8 feel like there's a mismatch. I am trying to understand
9 your argument, but I'm - - -

10 MR. WU: Yeah.

11 JUDGE RIVERA: - - - perhaps it's my - - -
12 perhaps it's my block.

13 MR. WU: There may - - - there may very well be
14 other individuals who will come in and say under the same
15 circumstances I said yes, right.

16 JUDGE RIVERA: Uh-huh.

17 MR. WU: I won't dispute that. If - - - if they
18 had wanted to bring that forward, sure.

19 JUDGE RIVERA: Uh-huh.

20 MR. WU: But what these witnesses showed was that
21 it was not invariably true in these circumstances that
22 somebody in, even in defendant's unique shoes, would
23 interpret their willingness to come to him as consent to
24 sexual behavior.

25 And the reason that that was important - - - and

1 the reason that that was important was because - - - it was
2 in part because that was the defense that defendant came in
3 with. What he said throughout the trial - - - and again,
4 this is from opening to summation - - - was he said, these
5 victims - - - these victims got - - - got something from
6 me, right? But the reason why in cross-examining these
7 individuals, one of their defenses was to say, well, didn't
8 you actually get the role? Didn't you actually get the
9 audition was to repeat over and over again that they got
10 the benefit of the bargain, and that bargain was to give
11 him sexual favors. And - - -

12 CHIEF JUDGE WILSON: Your time is up, but do you
13 want a minute on the juror issue?

14 MR. WU: Sure, sure. So the juror issue, under
15 whatever standard of review, is not a basis for reversal
16 here. What defense counsel points out here is a supposed
17 lie was not a lie whatsoever. The juror was asked about
18 the contents of her book and accurately described it as not
19 being about nonconsensual sex. When she was originally
20 approached and said, was it about predatory older men?
21 Without being confronted with her author website, she said,
22 no, this is a coming-of-age story. You know, this is like
23 an unusual relationship, but it was consensual, and she
24 made that very clear.

25 What they are referring to is that in the second

1 round of questioning, when they confronted her with the
2 author website, they used the phrase predatory older men.
3 And far from saying that she had lied, what the juror said
4 when confronted with this was, no, that is not an accurate
5 description of my book, and again repeated - - - and again
6 repeated, like, sure, she did have this time where she
7 said, sure, they're predatory older men, but the
8 relationships were consensual. And - - -

9 JUDGE BARROS: But wasn't the suggestion - - -
10 the argument that she was withholding that information?
11 She wasn't being candid. You have to be candid, especially
12 in a case where they're delving into your attitude about
13 predatory men, right?

14 MR. WU: Well - - -

15 JUDGE BARROS: I mean, it was right on point.

16 MR. WU: Yeah. She was consistent throughout
17 about the contents of the book. If you look at the
18 contents of the book, what she described, she was
19 consistent throughout. The one thing - - - and she - - -
20 the judge talked to her about this - - - the one thing that
21 she was embarrassed about was being confronted with the
22 copy from her website, and she explained what happened.
23 She said, I didn't write that. That was from my publisher,
24 and I disavow it. I don't think it's about predatory older
25 men, right? There are older men in here, but these are

1 consensual relationships.

2 And then for purposes of the juror, the really
3 important thing is, multiple times the judge said, can you
4 be impartial notwithstanding this? And she unequivocally
5 said yes. She understood this defendant had rights, would
6 respect them. I think both of those factors permit her to
7 sit on the jury.

8 JUDGE BARROS: Just - - - just a real quick
9 question about that. I'm not sure about - - - I'll check
10 the record, but the three - - - was there evidence or
11 testimony about who the three people were in the novel, the
12 men, or is that something that's outside of the record?

13 MR. WU: It's - - - it's outside of the record.
14 I mean, they - - - you know, I mean, the book is public,
15 obviously.

16 JUDGE BARROS: I understand that.

17 MR. WU: There's no factual similarity between
18 the book and here. I mean, as described in the Atlantic
19 article and in some of the descriptions of the book, this
20 was meant to be a coming-of-age story about teenage girls
21 with their teachers. All right. That - - - that's the
22 story - - -

23 CHIEF JUDGE WILSON: Didn't she at one point
24 testify, there are predatory older men in my book?

25 MR. WU: So this is in the same exchange. And I

1 think you'll have to forgive a juror from being
2 discombobulated at this point where she is confronted with
3 the author website. And - - - and - - - and the question
4 is, you said before there were no predatory older men, as a
5 factual statement about the book, not did you ever say
6 this? You said before there are no predatory older men.
7 Here's a website that says they're predatory older men in
8 this book. What is your answer? Is that an accurate - - -
9 a fair and accurate description of the book? Her initial
10 answer is no, not exactly. Right. Not exactly. What she
11 says that after is, there are predatory older men in the
12 book, but everything here is consensual, right? This is
13 not about a nonconsensual relationship here.

14 And again, that - - - there's never been any
15 dispute that the book is not about a factual circumstance
16 like this case. The victims in this case are not teenage
17 girls. They did not have consensual relationships with the
18 defendant. This is not a coming-of-age story for them,
19 right? They were adults when they were assaulted by the
20 defendant. So the - - -

21 JUDGE RIVERA: What about her interest in the
22 #MeToo movement?

23 MR. WU: I'm not sure that that came out that
24 extensively there. I mean, the focus of the arguments on
25 this appeal are about these three books. One that she

1 wrote, one that she reviewed, one that she marked as
2 currently reading on Goodreads.

3 And - - - and there's no - - - I mean, I want to
4 take a step back here. I mean, the notion - - - the notion
5 that a juror's sort of fiction reading, right, is going to
6 be a basis for disqualifying her as either partial or as
7 grossly unqualified when she has given unequivocal
8 assurances that she can set aside her prejudices and judge
9 this trial fairly, I think that is a truly unprecedented
10 argument here. And they have nothing more than identifying
11 a few instances of what she enjoys in reading fiction.

12 JUDGE RIVERA: Okay.

13 CHIEF JUDGE WILSON: Thank you.

14 MR. AIDALA: Judge Barros, just to follow up, we
15 asked to enlarge the record in the Appellate Division to
16 include the book so there'd be no issue, and they objected,
17 and they won.

18 Judge Cannataro, Alvino and Leonard say evidence
19 of prior criminal acts to prove intent will often be
20 unnecessary and therefore should be precluded, even though
21 marginally relevant, where intent may be easily inferred
22 from the commission of the act itself. And you picked up
23 on the fact that the act itself is not intent in general.

24 The jury was charged. They could use the
25 Molineux evidence for intent to use force. You do not need

1 help from any Molineux witnesses when a man - - - they got
2 into the size disparity between the complaining witness and
3 the defendant. And every act that he did, there was no
4 question that a reasonable common-sense juror knew what his
5 intent - - - his intent to use force. It was as simple
6 intent. There's - - - there could be no question that he
7 didn't mean to use force. She said, he had me pinned over
8 my head. I was kicking him to let me go and he wouldn't
9 let me go. Why do we need to hear about what happened a
10 decade later in a shower, in a hotel room about him
11 masturbating? How does that help the jury figure out that
12 essential element of was he using force or wasn't he using
13 force?

14 JUDGE GARCIA: Do you think Telfair is relevant
15 to that point?

16 MR. AIDALA: Evidence of prior incidents may be
17 admissible to prove - - - to prove a subjective element
18 such as state of mind but held that conduct similar only in
19 broad respects and occurring at a remote, indeterminate
20 time, would disclose only the defendant's violent
21 propensity and the manner of its expression, and not
22 sufficiently relevant. Those are your words in Telfair,
23 Judge, if I - - - if I may.

24 JUDGE SINGAS: If we agree with you, are we
25 effectively going to say that Molineux evidence - - - we

1 cannot use Molineux evidence in rape cases?

2 MR. AIDALA: No, Your Honor. I think if you
3 disagree with me, I think you're going to throw Molineux
4 out the window. And it's already started, by the way, in
5 the courthouses around the state. Oh, the Appellate
6 Division said we could let it in. Let it - - - Molineux
7 and Sandoval. It - - - the floodgates have been opened by
8 People v. Weinstein. And just the opposite, there are
9 plenty of times when Molineux is very, very valuable over
10 the last 120 years - - -

11 JUDGE SINGAS: How in a rape case? So you're
12 saying it's - - -

13 MR. AIDALA: Excuse me?

14 JUDGE SINGAS: How in a rape case? You're saying
15 it's not. It's not admissible in a case like Vargas where
16 - - - where it's evident what's going on, a violent
17 incident sexual assault - - -

18 MR. AIDALA: Well, I didn't say it's not - - -

19 JUDGE SINGAS: Okay. And you're saying here it's
20 not admissible to explain, you know, the dynamics of a
21 sexual relationship between people with different power - -
22 -

23 MR. AIDALA: Well, I mean, here - - -

24 JUDGE SINGAS: So give me an example where you
25 would be able to use Molineux in a sexual assault.

1 MR. AIDALA: Oh, M.O., modus operandi, for the -
2 - - the exact same way, the exact same time. And I will
3 tell you, listening to my - - - my friend - - -

4 JUDGE RIVERA: So you think he's wrong about this
5 pattern of behavior?

6 MR. AIDALA: Yeah. And - - -

7 JUDGE RIVERA: Address that, please.

8 MR. AIDALA: Okay. I was just about to Judge
9 Rivera. I mean, I'll be honest with you, I'm a little
10 offended by it. You know why I'm a little offended by it?
11 If you follow his theory - - - and which is - - - he's
12 mimicking what they said in the Appellate Division - - -

13 JUDGE RIVERA: Uh-huh.

14 MR. AIDALA: - - - do you know what they're
15 saying? All women are alike. All women react the same
16 way. So if I'm a high school senior right now, and I want
17 to ask a young lady out to the prom, and she says no, and
18 she rejects me, I'm - - - that's lack of consent to go to
19 the prom with me. Am I now supposed to assume, if I ask
20 the next young lady, she's going to reject me as well? All
21 women are different. This isn't like fire. If you put
22 your finger on the fire once, it burns. Ten times later it
23 burns. A year later it burns, and 10,000 years later it
24 burns. They're saying, well, because this one man had this
25 negative interaction with this one woman, he is supposed to

1 assume every woman is alike, and she's going to reject me
2 as well. That's against humanity. It makes no sense.
3 It's a ridiculous argument.

4 Before I run out of time, I have to address
5 Sandoval and Judge Singas is talking about mini trials.
6 First of all, the - - - the ten Molineux - - - it was a ten
7 to one ratio talking about abuse of discretion, and the
8 trial judge allowed in corroborating witnesses to the
9 Molineux. So it was - - - there were all these mini
10 trials.

11 He went from being charged with three to six
12 because then they got to bring in their - - - my friend
13 from the Manhattan DA's office says, oh, the judge kept
14 tight reins. Yeah, he kept tight reins on us putting
15 anything good in, but he didn't put tight reins - - - and
16 then I've never had a trial where a Molineux - - - three
17 Molineux witnesses get to have their - - - their backing up
18 witnesses behind them. It did turn into a mini trials - -
19 - three other mini trials.

20 And we had a defendant who was begging to tell
21 his side of the story. It's a he said she said case, and
22 he's saying that's not how it happened. Let me tell you
23 how it - - - it had - - - there was an interaction. I'll
24 tell you how it happened.

25 And this Sandoval ruling came down unlike

1 anything we've ever seen. We've looked everywhere in every
2 county in the State of New York. There's never been
3 anything like it. We all know, those of us who are
4 criminal practitioners for years, in the beginning of a
5 trial, the people, what's your position on Sandoval? Your
6 Honor, this is the first arrest. There is no sense. We're
7 not bringing anything in.

8 In this case, you have a sixty-eight-year-old
9 man. No contacts with the system ever. Had he been
10 thirty-five and arrested three times with five felonies, a
11 trial judge says, well, I'm going to let you bring in this
12 felony and that felony, but none of the underlying facts,
13 and we'll move on.

14 But the precedent that would be set here is, if
15 you don't have a criminal record, we're going to go back to
16 the Ronald Reagan administration. We'll go back forty
17 years, because that's the first thing. And he flipped over
18 a table somewhere. He had a fight with his brother. Are
19 we going to start mini trials where, well, you can talk
20 about the fight with your brother. Let's see. How did you
21 guys get along when you were five years old? And what
22 about when you were in high school? The things that were
23 allowed in had nothing to do with truth and veracity. It
24 was all, he's a bad guy. And this trial, they - - - they -
25 - - they tried his character to the point where they

1 stripped him naked literally and took pictures and handed
2 it to the jury in a case where identification meant nothing
3 - - - meant nothing.

4 Why was the jury looking at naked pictures of
5 him? They had - - - they had a hotline, Your Honor, after
6 he was arrested for the first time ever. It wasn't a tip
7 line like we have a crime. Who did it? They had him, the
8 chief of the Manhattan DA's office held a press conference.
9 Call us if you know anything bad about this guy. 1-800-
10 GetHarvey, and they got calls, and they got - - - then they
11 - - - it's everyone who ever interacted with said something
12 bad about him, and they went in front of a judge. They
13 wanted to put in fifty bad acts.

14 The right to testify on your behalf is such a God
15 given right in the United States of America. And judges,
16 thank God, over the last fifty years of Sandoval, they've
17 been very, very tight with letting things in. So you don't
18 - - - you don't want to stop a defendant from testifying?
19 Yes. Jurors should know if someone has cheated on his
20 taxes, et cetera, et cetera.

21 But the last thing I'll say is, of all this
22 evidence that came in and that was going to come in on
23 Sandoval and did come in on Molineux, the one that was
24 subjected to the adversarial process, one Lauren Young in
25 California, and he was acquitted.

1 Your Honors, please. Please. Molineux and
2 Sandoval, of course they affect my client. They affect
3 everyone. Tomorrow morning when we start trials in this -
4 - - in this state, the first thing is going to be, I'll
5 hear you on Sandoval. As of today's ruling, everything
6 comes in. You would be giving judges unfettered access to,
7 he's a bad guy. I'm going to help the prosecutor. We got
8 to tell prosecutors you can't have 1-800 numbers.

9 CHIEF JUDGE WILSON: Okay. Thank you.

10 MR. AIDALA: Please, re-instill our faith in the
11 system. Thank you so much, Your Honors. I appreciate your
12 time. And happy Valentine's Day.

13 (Court is adjourned)

14

15

16

17

18

19

20

21

22

23

24

25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Harvey Weinstein, No. 24 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers
Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020
Date: February 22, 2024

