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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 40

HU SIN,

Appellant.

92 Court Street
Binghamton, New York
March 13, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

THOMAS J. EOANNOU, ESQ.
LAW OFFICE OF THOMAS J. EOANNOU
Attorney for Appellant
484 Delaware Avenue
Buffalo, NY 14202

MICHAEL J. HILLERY, ADA
ERIE COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Respondent
25 Delaware Avenue
6th Floor
Buffalo, NY 14202

Traci Goff
Official Court Transcriber

1 CHIEF JUDGE WILSON: Last case on today's
2 calendar is People v. Sin.

3 MR. EOANNOU: Good morning, Your Honors. Tom
4 Eoannou, and I represent the appellant Hu Sin. And I'll be
5 asking four minutes for rebuttal.

6 CHIEF JUDGE WILSON: Four minutes?

7 MR. EOANNOU: Yes, please.

8 CHIEF JUDGE WILSON: Yes.

9 MR. EOANNOU: The testimony of the sisters of the
10 uncharged, violent rapes should not have been admitted into
11 this case. And the lower court erred in agreeing with its
12 admissibility.

13 Initially, the lower court said that it was
14 necessary to complete the narrative and talk about the
15 family dynamic. That's not true because the one that
16 talked about it was the victim in this case, Eisar Bi.
17 Eisar Bi gives you the background. She says he's the older
18 person.

19 JUDGE GARCIA: Counsel, sorry to interrupt you,
20 but your brief and I believe the people's brief do not
21 address the effect of this court's decision in People v.
22 Weinstein on your argument. Could you give us an
23 indication of your view of that?

24 MR. EOANNOU: Correct, Your Honor. Absolutely,
25 in light of Weinstein, this case should be reversed.



1 Weinstein talked about the fact that it - - - prior or
2 other witnesses should - - - Molineux witnesses should
3 really not be used for forcible consumption - - - forcible
4 compulsion, or consent, or delay in calling the police.
5 That's exactly what we have here. And absolutely, the
6 court should consider Weinstein in

7 JUDGE RIVERA: Wha - - - why isn't it - - -
8 unlike Weinstein, why isn't it evidence of a common scheme
9 or plan?

10 MR. EOANNOU: It's not evidence of common scheme
11 or plan. One of them was six years ago, and it was in Salt
12 Lake City with the one sister, and the other one was when
13 he - - - not in front of the children, and he got the other
14 sister Swa Bay D alone inside the house after asking her to
15 help carry a piece of furniture in.

16 What it really shows - - -

17 JUDGE RIVERA: Well, the famil - - - well, the
18 allegations are that he's a - - - he's a family predator.
19 So the fact that some years have - - - there's a gap in the
20 time frame may be explained by that family dynamic. Again,
21 that is not Weinstein. Weinstein is a very different case.

22 MR. EOANNOU: Right. I don't know that a gap in
23 time explains the family dynamic as it relates to the
24 defendant. But what you have are this man's propensity to
25 attempt to rape his sister-in-laws. You have repetitive

1 acts which are attempts to rape his sister-in-law. You're
2 tech - - - looking at several different offenses to come to
3 the conclusion that he should be convicted of this one,
4 that he's charged.

5 CHIEF JUDGE WILSON: So that evidence you're
6 describing comes in through the testimony of the two
7 sisters-in-law, right? But it also came in initially on
8 cross-examination of the ER - - - the head of the ER - - -
9 the head nurse at ER, right?

10 MR. EOANNOU: I'm sorry. Could you repeat that,
11 Judge?

12 CHIEF JUDGE WILSON: Yeah. The first time that
13 any testimony came in that the defendant had sexually
14 assaulted, or attempted to sexually assault, one of the
15 other sisters was actually adduced by defense counsel, yes?

16 MR. EOANNOU: That's right, Your Honor. There
17 was a strategic decision Mr. Davis made because in the pre-
18 trial rulings, Judge Bargnesi had ruled that that testimony
19 was coming in and was coming in in the case-in-chief. So
20 as a strategic - - -

21 CHIEF JUDGE WILSON: So then he - - -

22 MR. EOANNOU: I think it was - - -

23 CHIEF JUDGE WILSON: He brought it out on cross-
24 examination from the nurse?

25 MR. EOANNOU: Exactly.

1 CHIEF JUDGE WILSON: And then the next time - - -
2 not the next time. Another time that it comes in, not from
3 the two sisters, is from the complainant herself?

4 MR. EOANNOU: Yes.

5 CHIEF JUDGE WILSON: And you're not arguing that
6 that couldn't come in?

7 MR. EOANNOU: Your Honor, I think, again, it's
8 more prejudicial than probative.

9 CHIEF JUDGE WILSON: Well, you - - -

10 MR. EOANNOU: Certainly it's nowhere near as
11 damaging as allowing the two sisters in the case-in-chief.

12 CHIEF JUDGE WILSON: There was no objection when
13 she testified?

14 MR. EOANNOU: There was no objection. That's
15 correct, Your Honor.

16 CHIEF JUDGE WILSON: And you haven't argued that
17 that's an error?

18 MR. EOANNOU: I - - - it's not an error, Judge.
19 I do not think that it should have been allowed in for the
20 same reasons. Because those acts are heinous. Testifying
21 about - - -

22 CHIEF JUDGE WILSON: Well, she's testifying what
23 he said during the course of the attack on her. That's
24 what her testimony is, right? As to what his words were?

25 MR. EOANNOU: Yes. What his words were is, I'm

1 waiting on your sisters, and I tried it on your other
2 sister. That's correct.

3 Now, maybe if that came in, you could still make
4 a credibility judgment based on weighing the credibility of
5 the alleged victim. But in this case, that's vitiating.
6 It's vitiating because now you have the two sisters coming
7 on talking about very heinous acts that are clearly
8 propensity to rape the sisters, clearly repetitive acts.
9 And it doesn't pass the second prong of the Molineux test,
10 which is prejudice versus probative.

11 It's - - - it's just impossible in my mind to get
12 a fair trial. And I think the presumption of innocence
13 pretty much goes out the window once those sisters are able
14 to testify about acts that are - - - that are very similar
15 in terms of the violence and - - - and in terms of - - -

16 JUDGE SINGAS: But can't we - - - we also come -
17 - -

18 MR. EOANNOU: - - - pulling up the skirts - - -

19 JUDGE SINGAS: - - - to the conclusion that the
20 jury didn't rely on that - - - the testimony of those
21 sisters. Because during read back - - I believe they asked
22 for read back of the victim survivor and the two sisters.
23 And then after hearing the survivor's testimony, they said
24 you know what, we're done. We don't need to hear anything
25 else. What can we make of that?

1 MR. EOANNOU: Can't un-ring the bell. They did
2 what I think is significant, is that they came out and they
3 asked for the sisters' testimony. So that means it was
4 weighing on their minds in the jury deliberation. They've
5 already heard that. That's already in the jury room. The
6 mere fact that they - - - the fact that they wanted it is
7 significant, but the mere fact that they - - -

8 JUDGE SINGAS: They wanted it. Then they hear
9 the survivor's testimony, and then they wave it off. They
10 say we don't need to hear anything else. I think there's
11 an argument that could be made that they're not relying at
12 all on the sisters.

13 MR. EOANNOU: I think, with all due respect,
14 that's supposition. We don't know what was going on with
15 the jury.

16 We know two things. One is they wanted to hear
17 it. They thought it was significant enough - - - I think
18 there were very few read backs in this case - - - to ask
19 for the entirety of both Molineux sisters to be read back.

20 And then after they heard the victim in this
21 case, they may have felt that hearing the victim combined
22 with the allegations with the two sisters warrants a
23 conviction. So you don't know if they made that conviction
24 based on the independent judgment of credibility or based
25 on the two sisters. And that's the problem we have.

1 JUDGE SINGAS: I have another question, because
2 I'm not sure of the answer of this. When the judge was
3 charging the jury - - - the jury charge, how did he or she
4 charge that testimony as common plan or scheme, as
5 background, as pertaining to narrative? What - - -

6 MR. EOANNOU: It - - - it was a number of things.

7 JUDGE SINGAS: What - - - what was it?

8 MR. EOANNOU: It was a number of things. Common
9 plan or scheme, motive, intent. It was a broad general
10 definition and it was not very specific.

11 JUDGE SINGAS: Similar to what he said when the
12 evidence was coming in initially?

13 MR. EOANNOU: Correct.

14 JUDGE SINGAS: Okay.

15 MR. EOANNOU: Correct.

16 CHIEF JUDGE WILSON: He expressly said you can't
17 consider it for propensity, in the instructions.

18 MR. EOANNOU: For propensity. Right, Your Honor,
19 but you can say that all you want and - - - but you're not
20 going to un-ring that bell. Because if there ever is a
21 case of propensity, this is four sisters, married to one
22 who is pregnant, attempted to rape the other two. And now
23 the jury hears about attempting to rape the other two.

24 And what's really significant in my mind, and I
25 would ask for the court to weigh it, is especially with

1 Nozi Ma. Nozi Ma is the first sister to testify. She
2 testifies about a very violent rape, where he - - attempted
3 rape. Where he tells the kids to leave, and he grabs her
4 and he pulls up her - - - her traditional skirt.

5 Almost nothing about the family dynamic. Almost
6 nothing but the facts of his propensity to rape. And then,
7 almost as an afterthought on redirect, the prosecutor
8 throws in three or four questions about culture. This is
9 clearly a propensity case. This is clearly a repetitive ax
10 case. This is - - -

11 JUDGE SINGAS: And in Weinstein was the jury
12 charged not to consider that evidence for propensity?

13 MR. EOANNOU: You - - - yes. You - - - again,
14 you can't un-ring that bell. You can be told not to do
15 that, but once it's in it's already so prejudicial you're
16 not going to get back to a fair trial. I can't imagine - -
17 -

18 JUDGE TROUTMAN: So are you suggesting, even when
19 there's a limiting instruction, that juries are presumed
20 not to follow the court's instructions?

21 MR. EOANNOU: There are some times, Your Honor,
22 that a limiting instruction just does not complete the - -
23 - there's some times that the limiting instruction is not
24 going to work. Because the testimony is so heinous and so
25 persuasive that you - - - you can't get past it. You can't

1 un-ring that bell. And by giving a limiting instruction to
2 a jury after they've heard something like this is - - - is
3 not enough.

4 JUDGE RIVERA: Does - - - does this - - -

5 MR. EOANNOU: There are times - - - there's case
6 law when they say - - -

7 JUDGE RIVERA: Does the issue about the limiting
8 instruction go to the question of to whether or not - - -
9 as to whether or not the evidence was wrongly admitted.
10 That is, that it's an error, or to whether or not there is
11 - - - it - - - it was properly admitted because if it's
12 under an exception, but it's so highly prejudicial?

13 MR. EOANNOU: It's - - - it's - - -

14 JUDGE RIVERA: With which argument are you
15 landing this particular statement on?

16 MR. EOANNOU: It should not have been admitted in
17 the first instance because - - -

18 JUDGE RIVERA: But if we disagree with you and we
19 think if it's under an exception, is your only other
20 argument that it was so prejudicial?

21 MR. EOANNOU: Absolutely, Your Honor. It has to
22 meet the second prong - - -

23 JUDGE RIVERA: Regardless of what the judge
24 charged?

25 MR. EOANNOU: I'm sorry?

1 JUDGE RIVERA: Regardless of what the judge
2 charged?

3 MR. EOANNOU: Yes, regardless of what the char -
4 - - the judge charged. You're looking at the second prong
5 of Molineux, which is, is it more prejudice than probative.
6 A judge with a limiting instruction is not going to erase
7 it when you are talking about attempting to rape three of
8 the five sisters.

9 JUDGE RIVERA: It sounds like that rule would
10 mean you could never, even if fit clearly under an
11 exception, have evidence related to a sexual attack.

12 MR. EOANNOU: You know, I've pondered that
13 question, and I'm sure there may be times when it could be
14 admitted. But given the facts of this case and - - - and
15 the facts that the cl - - - the fact that it's so heinous
16 and the fact that it is the sister-in-laws and not just
17 one, but two.

18 So the jury is logically going to think if he
19 attempted to rape the other two, even if there's some doubt
20 in my mind, because there is no physical evidence in this
21 case that he raped the - - -

22 JUDGE RIVERA: Yeah, it sounds like - - -

23 MR. EOANNOU: - - - the victim in this - - -

24 JUDGE RIVERA: - - - a common scheme or plan
25 considering the way the act was conducted, right?

1 MR. EOANNOU: No.

2 JUDGE RIVERA: Considering his actions?

3 MR. EOANNOU: Yes, in one sense it's a common
4 scheme or plan. In the other sense it's repetitive actions
5 and propensity. And I think when a jury hears the
6 particular facts of this - - -

7 JUDGE RIVERA: Well, the assumption is on a
8 common scheme or plan that it's an exception because
9 otherwise it would suggest propensity, right?

10 MR. EOANNOU: Correct.

11 JUDGE RIVERA: That's the point.

12 MR. EOANNOU: Right. Again, it doesn't get past
13 the second prong of the Molineux test. It doesn't solve
14 the family narrative. It doesn't solve the family dynamic.
15 A limiting instruction is not going to carry - - -

16 JUDGE RIVERA: Well, why is that? I don't really
17 understand your - - - I can somewhat appreciate the
18 argument on the common scheme or plan, but I'm not sure I
19 understand why it's not giving information to the jury to
20 help the jury understand what went on amongst the sisters,
21 why they might not speak out.

22 MR. EOANNOU: As - - - as - - -

23 JUDGE RIVERA: As why he might conduct himself in
24 a particular way.

25 MR. EOANNOU: As Judge Ogden said in her dissent

1 - - -

2 JUDGE RIVERA: Uh-huh.

3 MR. EOANNOU: - - - it's unnecessary. Eisar Bi,
4 who's the first one to testify - - -

5 JUDGE RIVERA: Uh-huh.

6 MR. EOANNOU: - - - gives far more of that.

7 JUDGE RIVERA: Yeah.

8 MR. EOANNOU: She gives the entire family
9 dynamic. She gives the history, the narrative. She gives
10 it all. Nozi Ma, again, gives it only on redirect. I
11 think because the prosecutor felt even though it was
12 propensity, they had to throw it in. And Swa Bay Da, the
13 third sister, gives al - - - almost nothing whatsoever.

14 So you don't need it for the narrative, and you
15 don't need it for the family dynamic. In fact, in his
16 710.30 to the police - - -

17 JUDGE RIVERA: Except in that argument you assume
18 they're going to believe her?

19 MR. EOANNOU: I'm sorry?

20 JUDGE RIVERA: Except in your argument that
21 assumes the jury believes her, right? And I would assume
22 the people want to show that this is not some story that
23 she has constructed, it's supported by the actual family
24 dynamic.

25 MR. EOANNOU: Well, actually, the 7 - - -

1 JUDGE RIVERA: Because his argument it's by
2 consent, right?

3 MR. EOANNOU: The 710.30 through the defendant,
4 who says I owned you - - -

5 JUDGE RIVERA: Yeah.

6 MR. EOANNOU: - - - and her statement that he
7 talked about his relationship in - - - of respect and that
8 he waited on the other sister and - - - and tried it on the
9 other one. You have it. You don't need to - - - for this
10 little portion of family dynamic, you don't need two prior
11 violent attempted rapes of a sister.

12 JUDGE RIVERA: Uh-huh.

13 MR. EOANNOU: Doing a balancing test it bodes - -
14 - it should vote in favor of the defendant so he has a fair
15 trial.

16 CHIEF JUDGE WILSON: Thank you.

17 MR. EOANNOU: Thank you.

18 MR. HILLERY: May it please the court, Michael
19 Hillery for the people. There were several nonpropensity
20 reasons to admit this evidence.

21 JUDGE HALLIGAN: You want to address Weinstein
22 for starters?

23 MR. HILLERY: I don't believe Weinstein
24 definitively addresses this case, Your Honor. Because I
25 think, if I read Weinstein correctly, it was predominantly

1 concerned with the issue of intent. And I think in
2 Weinstein, again, if I'm reading it correctly, this court
3 determined that the issue was not so complicated as to
4 require a succession of incidences of similar conduct.

5 JUDGE GARCIA: It seems hard for me to understand
6 how you could have a family predator exception to
7 Weinstein, which was really an aspiring actress predator
8 case, right? What's the difference? Why would a family
9 predator be different than an aspiring actress?

10 MR. HILLERY: Well, Judge, I think the argument
11 that I'd like to address to this court, which is somewhat
12 related to that question, is the background. And the fact
13 that we're dealing with a different culture, a Burmese
14 culture with different language.

15 JUDGE GARCIA: That argument was made in
16 Weinstein, right? It's a different industry. It's a
17 different culture. It's why people would do things or not
18 do things. How is that different?

19 MR. HILLERY: Because it tends to explain the
20 odd, if not absurd, testimony of the victim in this case.
21 It may seem absurd to an American jury I think. The
22 description of how this incident occurred when the victim
23 was the sister-in-law of this defendant. They had lived
24 together for many years.

25 JUDGE SINGAS: Tell me, how is that odd? We have

1 cases where parents are accused of abusing - - - abusing
2 their children. So I don't really see the point of your
3 argument there.

4 MR. HILLERY: Well, this defendant entered into
5 this bedroom unannounced, uninvited. He sat on her bed.
6 He propositioned her before he laid a hand on her.
7 Actually, even before that point, he had shown her a piece
8 of mail that was purportedly something he needed to show
9 her. And then - - - and then she - - -

10 JUDGE SINGAS: And then he raped her, and she
11 reacted the exact same way that I think you would suggest a
12 - - - a victim of a rape should react. And she screamed,
13 and she yelled, and she banged the floor to get someone's
14 attention. And then she promptly outcried to many
15 witnesses, and she promptly reported this to the police.
16 Unlike the survivors in Weinstein.

17 MR. HILLERY: Well, she was apprehensive, Judge,
18 even at the point that he was showing her mail.

19 JUDGE SINGAS: Well, of course she was
20 apprehensive.

21 MR. EOANNOU: The testimony is apprehen - - - but
22 this is her brother-in-law. This is someone that she's - -
23 - she's known - - -

24 CHIEF JUDGE WILSON: But you're not really - - -

25 MR. HILLERY: - - - since she was young.

1 CHIEF JUDGE WILSON: You're not really saying
2 that there aren't cases of people being raped by relatives?
3 That that's uncommon?

4 MR. HILLERY: No, Judge, I'm not saying that at
5 all. But I'm saying that if a jury is listening to this
6 case and they're hearing that this family has lived
7 together - - -

8 JUDGE GARCIA: How does that - - - how do those
9 prior assaults go to her reaction to him bringing her a
10 piece of mail?

11 MR. HILLERY: Well, if she knows that - - - if
12 she knows that her sisters have been - - - well, that's a
13 good question. Because she is apprehensive according to
14 the record. That's her testimony.

15 JUDGE SINGAS: And is her testimony - - -

16 MR. HILLERY: That she knows - - -

17 JUDGE SINGAS: - - - she knows?

18 MR. HILLERY: She knows that her sisters have
19 been abused at his hand. And here he is under somewhat odd
20 circumstances - - - she can't even read mail. She can't
21 read English. Why is he here? Why is he showing this
22 mail? Why is he coming here when my husband is away and
23 I'm here alone, not feeling well with my four year old?
24 I'm a captive audience in my own home. They live
25 downstairs. There's no other male figure there but him.

1 JUDGE GARCIA: So it's to explain her
2 apprehension about him coming in her bedroom with mail?

3 MR. HILLERY: Well, I think her reaction is
4 giving context. It's given some background that allows the
5 jury to see it. The jury has to - - - we - - - the people
6 have to get a fair - - -

7 JUDGE CANNATARO: I'm sorry, it's giving
8 background in context to what? Because I thought this - -
9 - when this type of thing is admitted for background, it's
10 to explain the defendant's conduct, not the victim's state
11 of mind.

12 MR. HILLERY: It does both, Your Honor. Because
13 the defendant recalled - - - the record indicates the
14 defendant returned to the scene - - - the scene of a rape
15 very short in time. I mean, he was there when the police
16 showed up. The defendant showed up momentarily.

17 JUDGE RIVERA: So it's just - - - it's just - - -

18 MR. HILLERY: Why is he returning so quickly to
19 the scene of the crime? And I sus - - -

20 CHIEF JUDGE WILSON: It's his home; isn't it?

21 MR. HILLERY: Well, it is, Judge. But if he
22 commits a crime and she reacts to him the way that she
23 allegedly does, which is screaming and yelling. He's got
24 his hand over her mouth. She's trying to get out of there.
25 Why would he return so quickly?

1 CHIEF JUDGE WILSON: She goes. She's gone.

2 MR. HILLERY: She does - - - she does. And I
3 propose to this court that he has some inordinate level of
4 confidence that this matter, like the other two with the
5 sisters, will go away, which it did.

6 CHIEF JUDGE WILSON: So we often say that - - -
7 we often say that flight indicates guilt, and maybe
8 returning home indicates, hey, nothing really happened
9 here.

10 JUDGE GARCIA: It's a hard stretch to say you
11 have to put in two prior similar sexual assaults to explain
12 why he's in the house, right?

13 MR. HILLERY: Well, that's not all, Judge.
14 That's not the only value of the testimony. It - - - we're
15 also showing an absence of mistake. Remember, he put his
16 own state of mind - - -

17 JUDGE HALLIGAN: What could the mistake - - -

18 JUDGE CANNATARO: An absence of mistake?

19 JUDGE HALLIGAN: What could the mistake be?
20 Right here?

21 MR. HILLERY: I'm sorry, Judge.

22 JUDGE HALLIGAN: What could the mistake be?

23 MR. HILLERY: Well, the mistake would be that he
24 - - -

25 JUDGE HALLIGAN: Whose mistake? His conduct or

1 her understanding of the conduct?

2 MR. HILLERY: Both.

3 JUDGE HALLIGAN: Would you - - -

4 MR. HILLERY: Both, Judge. Because she's
5 understand - - -

6 JUDGE HALLIGAN: Given the testimony, how - - -
7 how could there be some theory of mistake given what she
8 says happened between them?

9 MR. HILLERY: Well, the defendant's position is I
10 was just doing what I always do with these sisters. It's
11 banter, it's playful. It's not a real power play. I'm
12 pretending I own them, but it's a joke and everybody knows
13 it.

14 Her position is absolutely not. He came in with
15 force. Essentially, he came in to get his will.

16 JUDGE CANNATARO: Counsel, I mean, I don't fully
17 understand what the mistake is. But even if I could wrap
18 my head around that, I think after Telfair, which tells us
19 when these events are separated by years - - - they take
20 place in different locations - - - different locations in
21 geography, and even different locations in the home,
22 there's no commonality that would connect those prior two
23 events that would inform anything about mistake. And I
24 don't understand how you can argue that that's an
25 applicable exception here.

1 MR. HILLERY: Well, I think that it goes to her
2 state of mind, and it goes to her understanding of what's
3 happening versus his proposed understanding of what was
4 happening. He did put that before the court. He put that
5 before the jury. I was joking - - - and there was a
6 statement he made to the police which was in evidence. I
7 was joking, I didn't mean any of this like they, you know,
8 she might have thought I did.

9 JUDGE SINGAS: Well, isn't that intent, and
10 didn't we put that to rest with Weinstein? And the same
11 thing with background or power dynamics of sexual assault?
12 I mean, I think everything that you tried to convince us is
13 important under Mount - - - Molineux, I think this court
14 has rejected under Weinstein.

15 MR. HILLERY: Well, I don't know that Weinstein -
16 - - I don't see Weinstein as speaking to the nuances of
17 this case, really, which are our cultural, religious,
18 ethnic. And I will say the defense attorney - - -

19 JUDGE SINGAS: It's the same thing, power
20 dynamics of men with power over women seeking to be
21 actresses. I mean, the background is the background. I'm
22 puzzled by a common plan or scheme because those assaults
23 were not committed in the same way, right? The two earlier
24 ones, so I don't see how it's a common plan or scheme.

25 In fact, I can't think of any cases off the top

1 of my head of a sexual assault or a rape case relying on
2 common plan or scheme alone.

3 MR. HILLERY: Uh-huh. Well, I agree, Judge. And
4 we're not arguing that this is exclusively a common plan or
5 scheme. I think this is an example, frankly, of going - -
6 -

7 JUDGE RIVERA: But the court below held it was.

8 MR. HILLERY: I'm sorry, Judge?

9 JUDGE RIVERA: The court - - - didn't the court
10 hold that it fit under that exception?

11 MR. HILLERY: Among others, yes. Yes, it did.

12 JUDGE RIVERA: Okay.

13 MR. HILLERY: But it also the Appellate Division
14 looked at background as being relevant, understanding the
15 family dynamic, and I think that that's important here. I
16 think we're dealing with cultural nuances that were simply
17 not present in Weinstein.

18 JUDGE HALLIGAN: I'm still not grasping how the
19 cultural background or nuances are different. They may be
20 different in the specific. By which, I mean, what are the
21 particulars of this person's life experience. But aren't
22 both about what is it about the power dynamics that shapes
23 both the victims and the accused's behavior? How are they
24 distinguishable?

25 MR. HILLERY: Well, I think that - - - I think

1 that in this situation, Judge, it's much more culturally
2 dependent. A proper understanding of what happened is much
3 more rooted in cultural differences than in Weinstein.

4 JUDGE HALLIGAN: But - - -

5 MR. HILLERY: I think Weinstein is eas - - - more
6 easily grasped, you know, to - - - by an American jury.

7 JUDGE HALLIGAN: Do you dis - - - well, then
8 maybe you're saying it's less necessary, but do you
9 disagree in both cases what there was an effort to get at
10 was to explain why the power dynamics might be as they
11 were, and how they would have impacted the behavior of - -
12 - of both the victim and the defendant in those cases?

13 MR. HILLERY: That is true.

14 JUDGE HALLIGAN: Okay. So - - -

15 MR. HILLERY: I agree with that, but I think it
16 was more vital to a jury in this case to have the
17 background. To explain the nuances of that dynamic than
18 was necessary in Weinstein.

19 JUDGE SINGAS: But how is that - - - how is that
20 true? Because in this case, the victim outcried
21 immediately. She went to the police. There was clear
22 indication of her struggle. There was violence and clumps
23 of hair.

24 And you're saying that you need that Molineux
25 evidence here in light of all of those facts. When we've



1 said you didn't need that kind of evidence in Weinstein,
2 which had none of that. Which had issues that were - - -
3 you know, consent was blurred. That had the same kind of
4 sexual and power dynamics that you're describing here that
5 were not as overt here. So we've already rejected that.
6 And that's why I'm having a problem now adopting your
7 argument here.

8 MR. HILLERY: I would just note, Judge, that the
9 Appellate Division dissent didn't see it that way. They
10 found no physical - - - according to the dissent, there was
11 no physical evidence of a forcible rape here.

12 And defendant put before the jury that - - -
13 well, in fact, the defense attorney put before the court on
14 multiple occasions that the only reason, "we're all here"
15 is because the victim's four-year-old son discovered her -
16 - - his - - - his mother in the act of consensual sex. And
17 now she's got to do damage control. That was essentially
18 what was put before - - - was what was put before the jury
19 by the defense here.

20 So I believe that there are - - - you know, that
21 the people had argued below that there were cultural
22 differences that explained the air of entitlement with
23 which the defendant entered the home, expected to get his
24 way. The things that he said using - - -

25 CHIEF JUDGE WILSON: So you don't think there's

1 something a little distasteful about determining Myanmar
2 culture based on the dynamics of this particular family?

3 MR. HILLERY: Well, the - - - I think the
4 witnesses indicated that this was a part of their family
5 dynamic. And I think, yes, it is cultural to a degree, but
6 it was specific as well to this family. That's what the
7 testimony indicated as far I could - - -

8 JUDGE RIVERA: But is - - - is it in part the
9 difference from Weinstein, that in Weinstein, the - - - the
10 prosecution's argument and the defense, sort of, going back
11 and forth about whether or not it's consent, his intent,
12 his understanding is that that's what he offered in the
13 industry, right? Sex for the ticket to a career in this
14 industry, which is not what the prosecutor and the
15 defendant were arguing about here, right? I mean, if
16 anything, the prior violent attempts at rape with the
17 sisters show that - - - that is not - - - he did not
18 expect, other than the act itself, to give them anything.

19 MR. HILLERY: Right, right. Well, I would also
20 note to, Judge - - -

21 JUDGE GARCIA: Weinstein - - - Weinstein would be
22 limited to a career benefit type evidence?

23 MR. HILLERY: I'm sorry, would it be limited to
24 that scenario?

25 JUDGE GARCIA: I don't understand the

1 distinction.

2 MR. HILLERY: I don't mean to make that
3 distinction. I think that's, sort of, a blinkered way to -
4 - - and I hope I'm not addressing it that way.

5 JUDGE CANNATARO: Would it be - - -

6 MR. HILLERY: I don't mean too.

7 JUDGE CANNATARO: - - - limited, you know, to
8 situations that involve domestic American families?
9 Because I feel like part of one of the upshots of your
10 argument is if - - - if background is necessary to explain
11 the cultural issue here, and you're dealing with a case
12 with a family predator, it could only be valuable in a case
13 involving a family predator from another culture. So you
14 bring it in for the immigrant families, but you don't
15 really need it for the multigenerational American family?

16 MR. HILLERY: Well, Judge, I think it's a matter
17 of - - - you know, it's discretionary. I think the court
18 has to look - - - and this court is uniquely positioned to
19 look at all of these nuances and facts, and decide whether
20 or not, yes, it legitimately fits within the category and
21 is not so prejudicial that it will prevent defendant from
22 having a fair trial. The people are entitled to a fair
23 trial.

24 To my initial point, I do think that, you know,
25 it does tend to explain the victim's reaction here as well

1 is significant one. You know, she - - - she virtually
2 started fleeing before there was any real obvious threat of
3 physical harm, right? I mean, he comes in, he does what he
4 does with the mail, and she's already apprehensive. She's
5 already looking to get out of that situation.

6 You're a jury there listening to this, and you're
7 wondering, well, what - - - what gives? You know, this is
8 your brother-in-law. Do I really trust that your
9 accusation is true? You're staying - - - you're saying
10 you're reacting this way. Are you overplaying your hand
11 basically by saying that?

12 I mean, I'm looking at it in the sense that, you
13 know, the defendant returning to the scene when he did, as
14 early as he did, the victim's flight before flight seemed
15 absolutely necessary. You know, the circumstances of his
16 entry into the comfort level with which he entered there.
17 It seems to me to be a story that a jury might have
18 problems with unless they had other background information
19 to put those acts and that behavior in context.

20 Unless the court has any questions, I'll rest.
21 Thank you.

22 CHIEF JUDGE WILSON: Thank you.

23 MR. EOANNOU: I'm going to be very brief. Thank
24 you.

25 There was no necessity for the other two sisters,

1 even if the prosecutor's correct. All that information
2 about family dynamic and culture, with the Burmese culture,
3 comes from the victim in this case and the defendant. The
4 other two sisters add literally almost nothing. It is
5 propensity and it's repetitive acts.

6 And in terms of responding to what the prosecutor
7 said about the actions of the complainant. The actions of
8 the complainant were that she ran out the door. She went
9 to her house because someone in her house spoke English.
10 And at that the house that person called the police. The
11 police came over, and she went to the hospital. So there
12 is no need for extra explanation based on her behavior
13 afterwards. Thank you.

14 CHIEF JUSTICE WILSON: Thank you.

15 (Court is adjourned)

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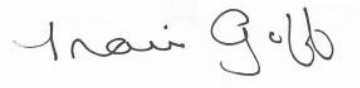
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C E R T I F I C A T I O N

I, Traci Goff, certify that the foregoing transcript of proceedings in the Court of Appeals of Hu Sin v. People of the State of New York, No. 40 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: March 17, 2025

