

**People v Beecham**

2006 NY Slip Op 30162(U)

January 5, 2006

Suffolk County Ct

Docket Number: 0002882/2004

Judge: Andrew A. Crecca

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MEMORANDUM  
COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

THE PEOPLE OF THE STATE OF NEW YORK	:	
	:	By: Hon. Andrew A. Crecca, J.C.C.
-vs-	:	
JOEL BEECHAM,	:	Case No. 2882-04
	:	
Defendant.	:	

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The defendant, Joel Beecham, charged in the above indictment with the crimes of Murder in the Second Degree, Assault in the Second Degree, Criminal Sexual Act in the First Degree, Rape in the First Degree and Menacing in the Second Degree, has moved this Court for an order, pursuant to CPL § 200.20 (2), severing counts one and two of the indictment from counts three through six and also severing count seven of the indictment from all other counts contained therein, essentially seeking three separate trials.

The People have filed an affidavit with the Court opposing such relief.

In connection herewith, it should be noted that the defendant had previously moved for the same or similar relief which was, by order of this Court dated June 10, 2005, DENIED in all respects. The instant motion is, in essence, a motion to renew and reargue. Although the defendant's time for making such application has long expired, the Court will exercise its discretion and reconsider the issues raised herein and issue a decision on the merits.

Essentially, the defendant contends that the crimes charged in the indictment were improperly joined and it would be impossible for him to receive a fair trial if all the offenses were tried together especially where, as here, the offenses which were allegedly committed by the defendant in those counts were not based upon the same criminal transaction and involved three separate victims on three separate dates.

The People contend that not only were the charges set forth in the indictment properly joined pursuant to CPL § 200.20 (2) (b), but that their joinability rests solely upon that specific section of the Criminal Procedure Law. The People further contend that under such circumstances there is no authority, statutory or otherwise, which would permit a severance in this case.

In this Court's prior ruling of June 10, 2005, the Court stated therein and reiterated the following:

“CPL § 200.20 (3) defines under what circumstances a prosecutor or defendant can obtain separate trials of two or more counts contained in a single indictment. To effect a severance, the movant must either demonstrate that the counts in the indictment were not properly joinable pursuant to the statutory criteria set forth in CPL § 200.20 (2) or seek a discretionary severance under CPL § 200.20 (3). According to CPL § 200.20 (3) such discretionary severance is only available to counts in the indictment whose joinability rests solely upon the fact that such offenses are the same or similar in law and under those very limited circumstances severance will only be granted ‘in the interest of justice and for good cause shown.’ [See, *People v. Lane*, 56 NY 2d 1]

It is clear, from a reading of the aforementioned statute, that the Legislature intended to and did establish a standard to be followed on motions for severance and reserved to the courts the discretionary authority to sever counts in an indictment only in the single category of situations covered by CPL § 200.20 (3).”

The courts do have additional discretion in connection with motions for consolidation but where, as here, the charges contained in the indictment were brought about solely as a result of the actions of the Grand Jury, such discretion is unavailable. [See, CPL § 200.20(4)(5)]

Appellate authority has consistently and uniformly held that where two or more offenses contained in an indictment were properly joined from the outset, pursuant to CPL § 200.20 (2) (b), the trial court, in such instance, simply lacks the discretion and authority to order a severance. [See, *People v. Bongarzone*, 69 NY2d 892; *People v. Robinson*, 300 AD2d 65; *People v. Gaines*, 293 AD2d 550; *People v. Bell*, 286 AD2d 931; *People v. Van Duser*, 277 AD2d 1034].

Under the facts of this case, in accordance with the precedent set forth above, the People contend that the offenses contained in the indictment were properly joined from the outset pursuant to CPL § 200.20 (2)(b) and, as a result, defendant's motion for severance must be denied. Specifically, the People assert that the offenses set forth in the indictment were properly joined even though based upon different criminal transactions since such offenses, or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the others, or proof of the others would be material and admissible as evidence in chief upon a trial of the first [CPL § 200.20 (2) (b)].

By this Court's memorandum decision of June 10, 2005, the Court denied defendant's prior application for severance on the grounds that the Court was without authority to order such remedy where, as determined therein, the charges were properly joined from the outset pursuant to CPL § 200.20(2) (b).

After again thoroughly and carefully reconsidering all submissions on the motion, along with the Grand Jury minutes maintained in connection with this matter in conjunction with the applicable law, the Court is again firmly convinced, contrary to the contentions of the defendant, that the charges contained in the indictment were properly joined from the outset pursuant to CPL § 200.20(2)(b). In this regard, the crimes set forth in the instant indictment are all inextricably interwoven, inter-related and intimately connected; and, consistent with the following precedent, are admissible as evidence in chief upon the trial of the others. They are relevant to such issues as motive, intent, *modus operandi* and identity. [See, *People v. Mitchell*, 2005 NY Slip Op 9185; 2005 NY App Div Lexis 13624; *People v. Vick*, 19 AD3d 321; *People v. Torra*, 309 AD2d 1074; *People v. Colon*, 306 AD2d 213; *People v. Watson*, 284 AD2d 212; *People v. Fantanez*, 278 AD2d 933; *People v. Moore*, 275 AD2d 969; *People v. Flowers*, 245 AD2d 1088]. Upon reaching this conclusion, the Court is left with no alternative but to again DENY defendant's motion for severance inasmuch as the Court is without authority to order such relief where, as here, the charges were properly joined from the outset pursuant to CPL § 200.20(2)(b) and where, as here, the joinability provisions of CPL § 200.20(2) ( c ) are inapplicable to the facts of this case.

In connection with this application, the defendant relied heavily upon the holding in *People v. Lane*, 56 NY2d 1, in support of his proposition that severance should be granted based on the prejudicial impact of a joint trial where the defendant has both important testimony to give concerning one count and a strong need to refrain from testifying on the others. However, in the opinion of the Court, the defendant's reliance on *Lane* is misplaced and is inapplicable to the facts and circumstances of this case.

In *People v. Lane*, *supra*, the People, prior to trial, moved to consolidate two separate indictments pursuant to CPL § 200.20(4)(5). In such a situation, the Court has considerable discretion to grant or deny such relief and can consider such things as whether the defendant has both important testimony to give concerning one offense and a strong need to refrain from testifying as to the others. However, where, as here, the charges were properly joined from the outset pursuant to CPL § 200.20(2)(b), by the Grand Jury that issued the indictment, the Court in *Lane* makes clear that the trial court's authority to order a severance is strictly limited by statute, with such discretion available only in a single category of cases identified, to wit, where the joinability rests pursuant to CPL § 200.20(2)( c ).

Inasmuch as the facts and circumstances of the instant matter have nothing to do with a motion to consolidate, and whereas the Court has determined that the joinability provisions of CPL § 200.20(2) ( c ) are entirely inapplicable to this case, in this Court's opinion, the holding in *Lane* is inapplicable to the issue at hand.

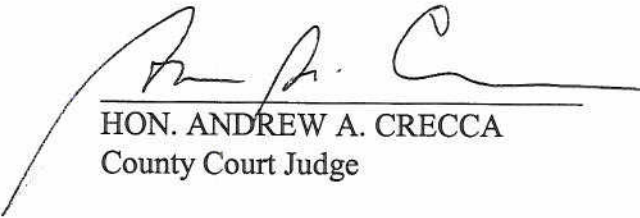
The Court has considered the defendant's remaining arguments and has determined them to be without merit.

Accordingly, based on the foregoing, defendant's motion for an order granting severance with respect to the various counts set forth in the indictment is hereby DENIED in all respects.

The above memorandum constitutes the decision and order of the Court.

SO ORDERED:

Dated: January 5, 2006



HON. ANDREW A. CRECCA  
County Court Judge