

SUPREME COURT, SUFFOLK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK,

ORDER

Case No.73544-2024

HON. RAYMOND A. TIERNEY

District Attorney, Suffolk County

ADA Andrew Lee

Assistant District Attorney

200 Center Drive

Riverhead, NY 11901

-against-

SABATO CAPONI, ESQ.

Attorney for Defendant

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Bohemia, NY 11716

REX HEUERMANN

Defendant.

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By notice of motion dated January 29, 2025, the defendant moves for an order severing counts one through six of the indictment from counts seven through ten for separate trials, and for an order severing counts seven through ten of the indictment for separate trials.

The People oppose the motion by affirmation dated February 25, 2025.

Defendant submitted a reply affirmation dated March 10, 2025.

The defendant asserts that count one through count four of the indictment charge him with three counts of Murder in the First Degree (Penal Law § 125.27 [1] [a] [xi]) for intentionally causing the deaths of Melissa Barthelemy, Megan Waterman, and Amber Costello. Counts four through six of the indictment charge him with three counts of Murder in the Second Degree (Penal Law § 125.25 [1]) also for intentionally causing the deaths of Melissa Barthelemy (on July 10, 2009), Megan Waterman (on June 6, 2010), and Amber Costello (on September 2, 2010). The remaining counts of the indictment—counts seven through ten—each charge the defendant with Murder in the Second Degree (Penal Law § 125.25 [1]) for the intentional killing of different victims, to wit, Maureen Brainard-Barnes, Jessica Taylor, Valerie Mack and Sandra Costilla. Defendant argues that counts one through six of the indictment are properly joined pursuant to CPL 220.20 [2] [b] as even though they are based on different criminal transactions, the offenses are of such a nature that either proof of the first offense would be material and

admissible as evidence in chief upon the trial of the second, or evidence of the second would be material and admissible as evidence in chief upon a trial of the first. However, the defendant asserts that counts seven through ten of the indictment are only properly joined because of the fact that they charge offenses defined by the same or similar statutory provisions and are the same in law, and therefore, are properly subject to a motion to sever. Defendant states that count seven charges him with the murder of Maureen Brainard-Barnes on or about July 9, 2007, count 8 charges him with the murder of Jessica Taylor on or about July 21 to July 26, 2003, count 9 charges him with the murder of Valerie Mack on or about September 1 to November 19, 2000, and count 10 charges him with the murder of Sandra Costilla on or about November 19 to November 20, 1993. Thus, each murder in counts seven through ten are separated by years from one another as well as from the murders alleged in counts one through six. As a result, the offenses alleged in counts seven through ten would not be admissible in the trial of the Murder in the First Degree charges as proof of the multiple murder element of those offenses. Furthermore, defendant argues that there is no evidence that any of the crimes alleged in counts seven through ten would be admissible in the trial of counts one through six to show motive, intent, absence of mistake or accident, common plan or scheme or the identity of the defendant as the perpetrator.

In addition, defendant asserts that the crimes alleged in counts seven through ten would not be admissible in the trial of counts one through six to show that the defendant was acting in concert, or as necessary background information on the nature of a relevant relationship or to complete a narrative. The defendant argues that before evidence of another crime may be introduced as evidence, there must be a showing that the defendant was the perpetrator. However, here, defendant asserts that the People's evidence of his identity as the perpetrator is circumstantial at best. Defendant also argues that there is no unique and consistent *modus operandi* common to all seven murders as some of the bodies were found intact, others were found dismembered, some bodies had indication of mutilation and others did not, some were wrapped in burlap and others were not, and some were deposited in Gilgo Beach and others were deposited in Manorville and North Sea. As a result, the defendant argues that the offenses charged in counts seven through ten cannot be properly joined with counts one through six.

Defendant further argues that the interest of justice demands that counts seven through ten be severed and tried separately from counts one through six, and that counts seven through ten should be severed and tried separately from each other. Here, defendant asserts, that there is substantially more evidence applicable to counts one through six. In addition, evidence regarding the victims in counts seven through ten will be introduced to show that each of those victims was contacted shortly before their disappearances by a burner phone. There will also be evidence with respect to the locations of those victims' cell phones as well as the location of the burner phones used to contact those victims, evidence of the defendant's phone records and evidence that those victims' phones were used by the person alleged to be the killer after the victims disappeared. However, no such evidence will be introduced as to the victims in counts one through six. Furthermore, with respect to victim Amber Costello, evidence will be introduced with respect to witness' observation and description of a vehicle and person seen with Amber Costello. However, no such evidence will be offered with respect to any of the other six victims.

Defendant also asserts that there is a significant disparity among and in between counts seven through ten as well. The murders of each of those victims occurred years apart from one another. In addition, with respect to victim Jessica Taylor, evidence will be introduced to describe a dark-colored pickup truck seen in the vicinity of where her remains were found as well as testimony that the defendant owned a dark-colored pickup truck. However, no such evidence will be offered in relation to victims of counts seven through nine. There will also be evidence introduced concerning the victim in count 7 regarding contact with a burner phone that is not related to the victims in counts eight through ten.

In conclusion, defendant argues that a trial of all ten counts would make it difficult for the jury to segregate the evidence by its separate and distinct relevance to each incident thereby creating a risk that the defendant is improperly convicted based on the cumulative effect of the evidence. The defendant would further be prejudiced as the jury is more likely to find the defendant guilty when it is suspected that he engaged in similar crimes. Thus, due to the danger of unfair prejudice to the defendant, and the fact that his right to a fair trial would be compromised, severance is appropriate.

In opposition, the People assert that although counts seven through ten represent separate criminal transactions, proof of each offense is material and admissible as evidence in chief of the other charged crimes making severance of any of the counts inappropriate (CPL 200.20 [2] [b]). Despite minor differences in each of the seven homicides, the People argue that the pattern used by the defendant in each murder was distinctive to establish a specific *modus operandi* thereby making the evidence of the other murders probative of the defendant's identity, his specific intent and motive, and also completes the narrative of events leading up to his arrest. In addition, the People assert that severance is also inappropriate because the victims are inextricably interwoven by geographic proximity (where they were found), victimology (their gender, age, physical characteristics and socioeconomic standing), digital and physical evidence (hairs, mementos-retention of publications specific to each crime, etc.), forensic analysis, the defendant's own planning document found on his computer (his blueprint of the murders he used to plan each one) and his internet searches for violent acts of rape and the sexualization of mutilation.

The People point out that the defendant lists *modus operandi* as a "problem" in his planning document and also explains the minor inconsistencies between the condition in which the bodies of his victims were found and the material he used to package them in. The People assert that even though there were minor inconsistencies with respect to some of the murders, the victims the defendant targeted, the method of the defendant's initial encounters with the victims, and the defendant's postmortem behavior all followed the same exact pattern.

The People further state that there are numerous witnesses, including expert witnesses, who significantly overlap with regard to each of the victims. Additionally, the scientific and forensic evidence in each of the charged murders is so inextricably interwoven that such evidence pertaining to one victim would necessarily be admissible as to each of the remaining six victims. The People assert that separate trials would preclude the jury from hearing the full narrative of

events, reduce judicial economy and significantly prolong the process and expenses incurred by taxpayers. Thus, justice and judicial economy require a single trial.

The People also argue that the defendant has not established good cause for severance nor has he established that he will be unduly prejudiced by a joint trial. The People argue that any prejudice defendant alleges can be easily cured by proper jury instruction, and that contrary to defendant's argument, the jury will be able to segregate the proposed evidence.

In reply, defendant asserts that the People's argument that there is a common *modus operandi* applicable to all seven murders is without merit as the only commonalities among the victims are their gender, ages, and their occupations as prostitutes. The victims remains were left in different "dump sites," some were wrapped up in burlap, and some were decapitated, amputated and mutilated. In addition, the defendant asserts that the People's argument that there is overlapping evidence common to all seven murders is lacking in merit. Defendant states that the publications specific to each crime that were found in the defendant's home were found among dozens of other non-related publications in his home and were not preserved in any fashion or cut out or earmarked. The defendant further argues that while the planning document found on his computer could be relevant with respect to the murders of Sandra Costilla, Valerie Mack and Jessica Taylor, it does not relate to the other murders. The defendant also argues that while the searches of pornographic websites made on his computer which depict sexual torture could relate to the murders of Sandra Costilla, Valerie Mack and Jessica Taylor, it is not relevant to the four other murders. Thus, all of this evidence would prejudice the jury. Further, the cell site evidence which purports to place the defendant in close proximity to the areas where the calls were made at the time they were made, this evidence only applies to some of the victims.

It is well settled that multiple offenses are joinable in a single indictment when:

"[e]ven though based upon different criminal transactions, 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 second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first" (CPL 200.20 [2] [b]).

"[E]vidence may be deemed material and admissible within the meaning of CPL 200.20 (2) (b) if such proof would be admissible under any of the recognized *Molineux* exceptions . . . including motive . . . intent . . . and *modus operandi*" (*People v Raucci*, 109 AD3d 109, 117 [3d Dept 2013], *lv denied* 22 NY3d 1158 [2014] [internal citations omitted] [holding counts properly joined pursuant to CPL 200.20 [2] [b] where the proof adduced with respect thereto was material and admissible as to the defendant's motive, intent and *modus operandi*]).

It has also been held that where the charged crimes were committed against more than one victim, joinder was found to be proper pursuant to CPL 200.20 (2) (b) "[b]ased on the remarkable similarity in the manner in which the crimes against both complainants were

committed” (People v Animshaun, 186 AD3d 497, 497 [2d Dept 2020], *lv denied* 35 NY3d 1111 [2020]). In addition, it has been held that joinder is appropriate pursuant to CPL 200.20 (2) (b) where there is an overlap in evidence between the charged crimes (*see People v Alston*, 265 AD2d 685 [1st Dept 1999], *lv denied* 94 NY2d 876 [2000]). Joinder pursuant to CPL 200.20 (2) (b) was also found appropriate where it “completed the narrative of all of the events charged in the indictment” (People v Rodriguez, 199 AD3d 712, 714 [2d Dept 2021], *lv denied* 37 NY3d 1164 [2022]; *see also People v Smith*, 187 AD3d 941 [2020], *lv denied* 36 NY3d 1059 [2021]).

In the case at hand, the People argue, and this Court agrees, that while counts seven through ten represent separate criminal transactions, proof of each charged offense is admissible and material to the proof of the other offenses (*see* CPL 200.20 [2] [b]). Here, the common overlapping evidence including the defendant’s pattern and *modus operandi* among each offense not only establishes the defendant’s identity as the perpetrator of the murders, but his intent and motive to commit each murder (*see Raucci*, 109 AD3d 109). The victims were all petite women in their twenties who worked as prostitutes. While defendant argues that there was no unique *modus operandi* due to the fact that the remains were dumped at different places, the evidence shows that Gilgo beach was used as the main site for discarding six victims entire remains or parts of their remains, and that some other parts of victims remains were found in Manorville. While defendant also points out that only some of the victims were wrapped up in burlap, and only some were decapitated, amputated or mutilated, it has been held that a unique *modus operandi* was established even though where, as here, there were “minor differences in each attack [but] the pattern of the initial encounter and the specifics of the sexual attacks . . . followed the same pattern” (People v Beam, 57 NY2d 241, 252 [1982]).

Additionally, the Court finds no merit to defendant’s contention that the published newspaper or magazine articles with respect to the murders of all seven victims found in his home were not mementos as they were found among dozens of other publications and were not preserved in any fashion or cut out or earmarked.

While the defendant contends that the planning document found on his computer does not relate to some of the murders, this Court disagrees as within the planning document the defendant references, makes notes, and quotes from a book written by John Douglas, entitled, “Mindhunter: Inside the FBI’s Elite Serial Crime Unit.” In addition, there are other notes made by the defendant which could be easily attributed to all of the murders such as, “More Sleep & Noise Control = More Play Time,” “Wash Body Inside and All Cavities,” “Remove Marks From Torture,” etc. These notes also relate to the defendant’s various internet searches which the defendant claims may be related to a few of the murders but not all of them. The Court disagrees.

The joinder of all of the charges also explains the narrative of events leading up to the defendant’s arrest (*see Rodriguez*, 199 AD3d 712) including the forensic evidence, *to wit*, hairs found on six of the victims which were all found to be attributed to someone who either resided with or was related to the defendant at the times of the murders.

Thus, counts seven through ten were properly joined with counts one through six in the indictment based on the fact that evidence of the first six charges would be material and admissible as evidence in chief upon a trial of charges seven through ten, and vice versa (*see* CPL 200.20 [2] [b]). In addition, joinder was proper based on the overlapping evidence, the similarity in the manner in which the crimes against all of the complainants were committed, to prove the identity, pattern, motive and modus operandi of the defendant, and for the completion of the narrative of all of the events charged in the indictment (*see* Beam, 57 NY2d 24; Rodriguez, 199 AD3d 712; Animshaun, 186 AD3d 497; Raucci, 109 AD3d 109; Alston, 265 AD2d 685).

Finally, in light of the foregoing, and in the interest of judicial economy, counts one through six will not be severed from counts seven through ten, and counts seven through ten will not be severed from each other for a separate trial for each of those counts. Therefore, it is

ORDERED that the defendant's motion is denied.

Dated: September 18, 2025



HON. TIMOTHY P. MAZZEI, J.S.C.