

IN THE SUPERIOR COURT OF BULLOCH COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,
Plaintiff,

vs.

DANNY JOE SALDANO and
VINCENT SALDANO,
Defendants

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CASE NO: SUCR2021000198M

DEFENDANT VINCENT ANTHONY SALDANO'S
SPECIAL DEMURREK TO INDICTMENT

COMES NOW Defendant Vincent Anthony Saldano, by and through his undersigned attorney (Craig S. Bonnell), and Defendant Danny Joe Saldano by and through his counsel, Que' Andrea Campbell, and jointly files this their Special Demurrer To Indictment, showing this honorable Court the following:

1.

Defendant Vincent Saldano was initially indicted under an indictment charging a single count of rape of alleged victim. SU19CR663M. That indictment was returned in open court on November 5, 2019.

2.

Defendant Danny Joe Saldano, brother of Vincent Saldano, was initially indicted under an indictment charging one count of aggravated sexual battery against SU19CR515P. That indictment was returned in open court on September 24, 2019.

3.

Defendant Danny Joe Saldano was also indicted in a separate indictment, SU19CR514P, alleging that he had committed the crime of aggravated sexual battery against 1. That indictment was returned in open court on September 25,

2019 and the case was tried to a jury from March 23rd through March 26th, 2021, resulting in a hung jury and a mistrial.

4.

Defendant Vincent Saldano filed a Georgia statutory motion for speedy trial and is scheduled for jury selection on April 22, 2021.

5.

Two days after Defendant Danny Joe Saldano's mistrial was declared in case number SJ19CR514P, and twenty-three days before jury selection, the State reindicted both Danny Joe and Vincent Saldano, individually and as parties concerned in the commission of a crime, alleging that both had committed the offenses of rape, aggravated sexual battery and aggravated sodomy against

6.

Generally, the State is free to obtain a second indictment against a defendant for the same acts which served as the basis for an initial indictment, without dismissing that first indictment. Such an indictment is denominated as a superseding indictment. "However, '[a] reindictment increasing the severity of the charges following the exercise of certain procedural rights may create an appearance of vindictiveness, and where it does so, the burden is shifted to the government to prove that the decision to reindict with more severe charges did not result from any vindictive motive.'" Larochele v. State, 219 Ga. App. 792, 794 (1996) (quoting 42 C.J.S. Indictment and Informations § 27 (1991)).

7.

Defendant Vincent Saldano asserts that his initial indictment had been pending for over 17 months when the State, immediately following his brother's mistrial, reindicted him. Absent the new indictment's "party to the crime" allegations concerning acts allegedly committed by Danny Joe Saldano, the State would be unable to muddy the waters of Vincent's trial with allegations against Danny Joe, some characterized as 404(b) evidence and some involving the crimes against¹ with which Danny Joe is charged.

The State's reindictment of Vincent Saldano is the proximate result of its unsuccessful prosecution of Danny Joe Saldano and his rejection of all plea offers extended to him, combined with Vincent Saldano's adherence to his demand for speedy trial.

The United States Supreme Court in *U.S. v. Goodwin*, 457 U.S. 368, 379 (1982), suggested legitimate reasons that the State might have for a reindictment that otherwise smacks of vindictiveness, such as this one. It cited the uncovering of new or additional information that suggests a basis for further prosecution or the realization that previously discovered information has a broader significance. The State can cite to no such legitimate rationale for its reindictment of Vincent Saldano.

Defendant Vincent Saldano is aware that a general demurrer challenging the existence of evidence supporting the State's decision to charge him as a party to crimes which, if committed, were committed solely by his brother, Danny Joe, is generally inappropriate. Case law makes clear that a defendant does not have a right to have the State identify how a defendant is concerned in the commission of a crime if he is charged as a party to that crime, nor must the State identify which of two or more co-defendants directly committed a crime as the perpetrator and which is a party to that crime. See, e.g. State v. American Levee, 2020 Ga. Super. LEXIS 504 (Jan. 16, 2020); State v. Corbett, 306 Ga. App. 495 (2010).

Nonetheless, this last-minute decision to charge both Vincent and Danny Joe Saldano as parties to the crimes with which each has been charged for the last year and a half raises the appearance of vindictiveness and casts a shadow on this prosecution that can only be lifted, if at all, by both an explanation for the rationale behind the superseding indictment and an identification of how the Saldanos are alleged to have committed or participated in each crime that is alleged. Failure to provide a

meaningful, justifiable explanation merely confirms that vindictiveness is the State's rationale for this reindictment.

11.

The result of the State's last-minute aggregation of charges and accusations contained in the superseding indictment is to increase the potential penalty against Vincent Saldano from one life sentence to three life sentences. The superseding indictment also increases the potential penalty against Danny Joe Saldano similarly. The State seeks to change the nature of Vincent Saldano's trial on the eve of that trial.

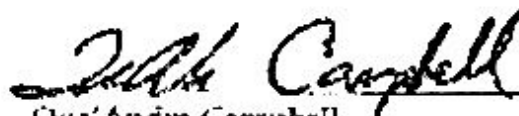
WHEREFORE, Defendant Vincent Saldano prays that this Court set this Special Demurrer down for a hearing before jury selection scheduled on April 22, 2021 and dismiss the State's superseding indictment of Vincent Saldano.

Respectfully submitted this 5th day of April, 2021.



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