

Some charges dropped

Witness, detective concerns cited in Weinstein case

BY JOHN RILEY

john.riley@newsday.com

A state judge in Manhattan on Thursday dismissed criminal charges against film producer Harvey Weinstein involving one of three sexual assaults identified in his indictment amid questions about the truthfulness of a key witness and an NYPD detective.

Judge James Burke made the ruling on charges involving actress Lucia Evans, who said she was forced to perform oral sex on Weinstein in 2004, after a disclosure that she once told a friend she had consented to the encounter in an effort to advance her acting career.

Prosecutors did not oppose the dismissal, while Weinstein defense lawyer Ben Brafman said the lead NYPD detective in the case had covered up Evans' prior inconsistent statement and Evans had perjured herself in front of the grand jury that indicted Weinstein. "This is an attack on the fundamental integrity of the grand jury," Brafman told reporters, "Perjury is as serious as sexual assault."

Weinstein still faces multiple charges relating to alleged sexual attacks on two other women; an alleged sexual assault in 2006 and an alleged rape in 2013. Prosecutor Joan Illuzzi said the rest of the case would proceed "full steam ahead."

But Burke gave Brafman permission to file motions to dismiss the entire case, based on claims the entire indictment was "contaminated" by Evans' testimony and the behavior of Det.



Harvey Weinstein, left, exits a courtroom at State Supreme Court in Manhattan on Thursday.

Nicholas DiGaudio, the lead investigator, who allegedly told Evans' friend that "less is more" and did not report her statements contradicting Evans.

Brafman contends one of the remaining counts in the indictment is also defective because prosecutors have admitted they didn't disclose to grand jurors emails between Weinstein and the woman involved in the alleged 2013 rape indicating a consensual relationship both before and after the alleged attack.

The bombshell developments were quickly denounced by Evans' lawyer, Carrie Goldberg, who said her client stood by her accusation and felt betrayed.

"People ask why survivors of sexual assault don't come forward in the criminal system," Goldberg said. "This is why."

The NYPD, which has sparred with Manhattan District Attorney Cyrus Vance in the past over his handling of the Weinstein allegations, said DiGaudio no longer had an active role in the Weinstein case and is the subject of an internal affairs probe, but defended the remaining charges.

"The overall case remains strong," NYPD Police Commissioner James O'Neill said. "The evidence is compelling."

Evans, in an interview with The New Yorker, said Weinstein forced her to perform

oral sex in a meeting at his TriBeCa office. Her accusation became the basis for a sexual assault charge against Weinstein earlier this year. Vance's office first revealed issues about her claim in a Sept. 12 letter kept under seal until Thursday. In the letter, prosecutors said the new witness revealed she was with Evans in a bar in 2004 when Weinstein approached them and offered them money to reveal their breasts. Evans' friend refused, but said Evans later told her she had shown her breasts to Weinstein in a hallway, and later visited Weinstein in his office.

Evans told the friend, ac-

ording to the letter, that Weinstein offered her an acting job if she agreed to perform oral sex.

"According to the witness," the letter said, "the complainant told her that she thereupon performed oral sex on the defendant."

The letter said the woman reported Evans was drinking and "upset, embarrassed and shaking" when she described the encounter. The friend and her lawyer told an NYPD detective — DiGaudio — about Evans' statements during an interview on Feb. 2, the letter said.

When the woman told the detective that she hadn't gone into detail and just said "something inappropriate happened," in an interview with a New Yorker fact checker, the letter said, the detective told her that was "more consistent" with Evans' accusation and advised her that going forward "less is more."

The letter from Vance's office said the detective never informed prosecutors about the friend's recollections. It said Evans still insists the encounter with Weinstein was nonconsensual but investigators have located an email Evans sent to her husband about the incident with details that differ from her current allegations.

Weinstein was one of the earliest targets of the #MeToo movement following reports last year in both The New Yorker and The New York Times about multiple women who said he abused his power to get sex. Weinstein has said he never engaged in nonconsensual sex with anyone.

Illuzzi said in court the dismissal of the Evans charge doesn't diminish the case, including a charge that Weinstein is a sexual predator because of a pattern of assaults.

Retirees to see \$39 more a month in Social Security checks

Tens of millions of Social Security recipients and other retirees will get a 2.8 percent boost in benefits next year as inflation edges higher. It's the biggest increase most retired baby boomers have gotten.

Following a stretch of low inflation, the cost-of-living adjustment, or COLA, for 2019 is

the highest in seven years. It amounts to \$39 a month for the average retired worker, according to estimates released Thursday by the Social Security Administration.

The COLA affects household budgets for about one in five Americans, including Social Security beneficiaries, dis-

abled veterans and federal retirees. That is about 70 million people, enough to send ripples through the economy.

Unlike most private pensions, Social Security has featured inflation protection since 1975. Beneficiaries also gain from compounding since COLAs become part of their

underlying benefit, the base for future cost-of-living increases.

Nonetheless many retirees and their advocates say the annual adjustment is too meager and doesn't reflect higher health care costs for older people. Federal budget hawks take the opposite view, argu-

ing that increases should be smaller to reflect consumers' penny-pinching responses when costs go up.

With the COLA, the estimated average monthly Social Security payment for a retired worker will be \$1,461 a month next year.

— AP