

MSC Opinion: A court may but need not order separate trials to determine whether a defendant is guilty of both sexual delinquency and an underlying sexual offense

29. April 2011 By Jeanne Long

On April 29, 2011, the Michigan Supreme Court published its opinion in *People v Breidenbach*, No. 140153. The Court held that separate trials to determine whether a defendant is guilty of sexual delinquency as well as an underlying sexual offense that gave rise to the sexual delinquency charge are discretionary, not mandatory. The Court's holding partially overturned *People v Helzer*, 404 Mich 410; 273 NW2d 44 (1978), which held that when a defendant is charged with both sexual delinquency and an underlying offense, the two charges require evaluations by separate juries. Justice Young wrote the opinion, in which Justices Markman, Kelley and Zahra joined. Justice Cavanagh concurred in result only, and Justices Kelly and Hathaway each filed an opinion concurring in part and dissenting in part.

The defendant, Anthony James Breidenbach, was convicted of indecent exposure as a sexually delinquent person. The Court of Appeals vacated Breidenbach's conviction and, concluding that the single conviction violated *Helzer*, the trial court granted Breidenbach's motion for a new trial. The prosecutor appealed both decisions, arguing to the Supreme Court that *Helzer* was wrongly decided. The Court held that a trial court *may* bifurcate a trial for separate determinations by separate juries as to whether a defendant is guilty of sexual delinquency and a principal sexual offense, if the trial court determines that "bifurcation is necessary in order to protect a defendant's rights or ensure a fair determination of guilt or innocence." Because bifurcation is not mandatory, though, the Court vacated the trial court's order granting a new trial and reinstated Breidenbach's conviction.

In *Helzer*, the Supreme Court held that because a conviction for sexual delinquency can only occur if a defendant is convicted on a principal charge, "sexual delinquency is a matter of sentencing that is unrelated to proof of the principal charge." *Breidenbach* at 5. Because a jury would evaluate whether a defendant was sexually delinquent shortly after deciding that he was guilty beyond a reasonable doubt on a principal offense, "the likelihood of an automatic conviction in this subsequent proceeding" was simply too high. *Id.* at 6 (quoting *Helzer* at 523-24). Further, fairness concerns mandated separate trials because it would be impossible to determine whether allowing the same jury to evaluate both charges actually prejudiced a defendant until after a single trial and double conviction occurred.

In *Breidenbach*, the Court revisited the *Helzer* opinion in light of the plain language of MCL 767.61a, the statute governing prosecution for sexual delinquency. The Court held that the statute does not require separate juries for the underlying offense and the sexual-delinquency determination. Holding that the statute unambiguously permits one jury to determine both issues, the Court held that it was not permitted to read in an additional requirement. *Id.* *Helzer's* separate-jury mandate, the Court held, was unsupported by any statutory basis.

Further, the Court determined that *Helzer's* policy justifications also failed to support its conclusion. The Court noted that a potential for prejudice exists any time juries must evaluate two charges: the evidence and conclusion as to one charge could always impermissibly influence the jury's finding as to the other, and a trial court can never predict whether or when this potential prejudice will actually materialize. Even if separate juries evaluate whether a defendant is guilty of an underlying sexual crime and sexual delinquency, the Michigan Rules of Evidence would permit the jury to hear extensive evidence of a defendant's history of sexual misbehavior, so the Court concluded that separate juries would not even further *Helzer's* purported intention of preventing prejudice.

Finally, the Court held that the Michigan Court rules, and particularly MCR 6.120(B), allow the trial court discretion in determining whether to conduct joint or severed trials. The Court found that there should be no exception to this discretion when a defendant is charged both with a principal sexual offense and sexual delinquency.

After holding that *Helzer* was wrongly decided, the Court further determined that principles of *stare decisis* did not require the Court to adhere to its precedent. First, the Court held that although holding separate jury trials for two charges "is not practically unworkable," the *Helzer* rule imposes substantial and unnecessary costs on the judicial system. *Id.* at 14. Second, the Court determined that the *Helzer* rule "has not become so embedded in, or fundamental to, society's general expectations that overruling it would produce significant dislocations," because citizens do not look to the *Helzer* rule for guidance in directing their actions. *Id.* at 15-16.

Accordingly, the Court overruled *Helzer* to the extent it requires bifurcated trials for defendants charged of both a principal sexual offense and sexual delinquency. It further vacated the order granting Breidenbach a new trial, reinstated Breidenbach's conviction, and remanded the case to the trial court for proceedings consistent with its opinion.

Justice Cavanagh concurred in the result only, but did not file an explanatory opinion.

Concurring in part and dissenting in part, Justice Kelly agreed with the majority's decision to reinstate Breidenbach's conviction, but she would have decided the case based on Breidenbach's forfeiture by failing to assert at trial the *Helzer* right. Further, Justice Kelly disagreed with the majority's conclusion that Michigan's doctrine of chances would permit juries to hear evidence of prior misconduct even in a single trial, so bifurcating would not prevent prejudice. Justice Kelly noted that because the doctrine of chances applies only if the facts of a case support it, so the doctrine would not apply to every case. She additionally noted a concern that a defendant's likelihood of being prejudiced is greatly increased in cases that are not bifurcated, in part because the evidence necessary to prove sexual delinquency is itself highly prejudicial. As a result, Justice Kelly would hold that it is highly likely that cases involving charges of sexual delinquency alongside a principal crime of sexual misconduct *will* require separate juries.

Justice Hathaway, also concurring in part and dissenting in part, also would have reinstated Breidenbach's conviction on the sole ground that Breidenbach forfeited his right to appeal his trial before a single jury because he never objected on that issue at trial. As a result, Justice Hathaway would hold that the circumstances of the case did not justify overruling the established precedent in *Helzer*.