

**People v Jones**

2017 NY Slip Op 33207(U)

April 20, 2017

County Court, Orange County

Docket Number: 0765/2017

Judge: Robert H. Freehill

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**ORIGINAL**

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Indictment No. 2017-065

-against-

Index No. 0765/2017

GARY JONES,

**DECISION AND ORDER**

Defendant.

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FREEHILL, ROBERT H., J.C.C.

Defendant is charged in this indictment with the crimes of Criminal Possession of a Controlled Substance in the Second Degree, Criminal Possession of a Marihuana in the Second Degree, Criminal Possession of a Firearm and Criminal Possession of a Controlled Substance in the Seventh Degree.

By this omnibus motion the defendant has moved for certain pretrial relief which the Court decides, having considered: 1.) the defendant's notice of motion and affirmation; 2.) the People's affirmation in response; and 3.) the transcript of Grand Jury proceedings.

Motion to Inspect Grand Jury Minutes  
Motion to Dismiss or Reduce Indictment

The motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury and finds that the indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

Motion for Discovery and Inspection

The defendant's motion for discovery and inspection is granted to the extent information has been provided to the defendant in the Voluntary Disclosure Form and as set forth in the

People's affirmation in response. In all other respects, this branch of defendant's motion is denied.

Motion to Be Provided with *Brady* Material

The motion is granted to the extent that the District Attorney is directed to disclose to defendant's attorney any and all documents, materials and/or information, if any, required to be disclosed pursuant to *Brady v Maryland*, 373 US 83.

Motion to Suppress Statements

The motion is granted to the extent that a hearing is hereby ordered pursuant to CPL 710.60(4) to determine the admissibility of any statements allegedly made by the defendant.

Motion to Suppress Physical Evidence

The Court has reviewed the warrant, a recorded statement of an informant made before a City of Newburgh Judge, and the application and after review determines that there was probable cause to issue the warrant for the search of the designated property at the designated location. A sworn statement was made before a City of Newburgh Judge and this statement was recorded and provided to this Court. A sworn statement of an identified person attesting to facts directly observed by that person is in and of itself sufficient to support issuance of a search warrant (*People v Tordella*, 37 AD2d 500 [2d Dept 2007]; *People v David*, 234 AD2d 787 [3d Dept 1996]). Defendant need not be provided with the identity of the informant and the warrant application papers when the suppression court "has before it the warrant papers and the transcript of the informant's testimony before the issuing Judge" (*People v Serrano*, 93 NY2d 73 [1999]; *People v Castillo*, 80 NY2d 578 [1992]). Here, instead of a transcript, a video recording of the entire statement made before the issuing judge was made available to the court for review and this court was able to assess not only the words spoken by the informant, but his demeanor as

well. As a result of this review, the Court finds that the search warrant was issued upon a proper finding of probable cause.

This Court was previously asked by the People to issue a protective order in response to defendant's Order to Show Cause seeking discovery of the search warrant application. The Court granted this application on March 2, 2017. Defendant again argues in this motion that the failure to provide him with the warrant application violates the due process clause of the Constitution. In the decision granting the People's motion for a protective order and denying defendant's motion for discovery of the warrant application, the Court found "[a]fter a review of the material provided by the Orange County District Attorney in support of this application, it is determined that there is a substantial risk that physical harm may occur to witnesses in this matter and it is also likely that disclosure would result in an adverse effect upon the legitimate needs of law enforcement (*see, People v Castillo* 80 NY2d 578 [1992]; *People v Frost*, 80 NY2d 578 [1993]; *People v Mercer*, 38 AD3d 1367 [4<sup>th</sup> Dept 2007])." Under the circumstances of this case, a protective order is appropriate and the Court has reviewed the warrant and the application in chambers.

Here, when reviewing this warrant, the court considered the presumption of reliability that attaches to the facts alleged in support of the warrant (*see, People v Parris*, 83, NY2d 342 [1994]; *People v Salgado*, 207 AD2d 918 [2<sup>nd</sup> Dept, 1994]). "Search warrant applications should not be read in a hyper technical manner but rather must be considered in the clear light of everyday experience and accorded all reasonable inferences" (*People v Hanlon*, 36 NY2d 549, 559 [1975]). The information provided by the witness under oath before the issuing magistrate was sufficient to support issuance of the warrant. Accordingly, defendant's motion for suppression and/or for an order disclosing the warrant application is denied.

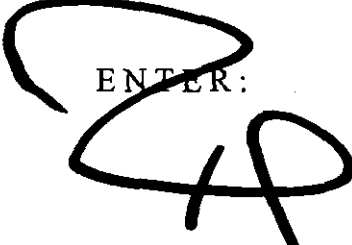
Motion for a Sandoval Ruling

The motion is granted to the extent that a hearing is hereby ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The Court further orders the District Attorney to disclose to defendant's attorney any and all bad acts and convictions which will be used to impeach defendant three days prior to the commencement of trial in accordance with CPL §240.43.

The foregoing constitutes the Decision and Order of the Court.

Dated: Goshen, New York  
April 20, 2017

ENTER:



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HON. ROBERT H. FREEHILL  
County Court Judge

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