

**People v Carcamo**

2022 NY Slip Op 34788(U)

February 24, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 21-00764-02

Judge: Robert A. Neary

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**FILED  
AND  
ENTERED  
ON 2-24 - 2022  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

TYQUAN CARCAMO and LAQUAN JONES,

Ind. No. 21-00764-02

Defendants.

-----X  
NEARY, J.

The defendant, Laquan Jones, has been charged with the crimes of Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation in support thereof. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

NR  
**FILED**  
**FEB 24 2022**  
TIMOTHY G. DONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

1. MOTION TO DISMISS THE CHARGE OF THE ACCUSATORY INSTRUMENT AS FACIALLY INSUFFICIENT PURSUANT TO CPL §§170.30(1)(A), 100.40 AND 100.15

This motion is denied. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment [See CPL §200.50]. The indictment charges each and every element of the crimes and alleges that the defendant committed the acts which constitutes the crimes at a specified place during a specified time period and, therefore, is sufficient on its face. [See *People v. Iannone*, 45 NY2d 589, 412 NYS2d 110, 384 NE2d 656; *People v. Cohen*, 52 NY2d 584, 439 NYS2d 321, 421 NE2d 813].

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed (see *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418) and the evidence presented, if accepted as true would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

2. MOTION TO SUPPRESS PHYSICAL EVIDENCE

This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property other than from a search warrant (see *Mapp v. Ohio*, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081) and whether any evidence was obtained in violation of the defendant's Sixth Amendment right to counsel and/or obtained in violation of the defendant's Fourth Amendment rights. [See *Dunaway v. New York*, 42 US 200, 99 S Ct. 2248, 60LE2d 824].

3. MOTION TO SUPPRESS PHYSICAL PROPERTY RECOVERED FROM INSIDE OF 40 MEMORIAL HIGHWAY APT 15E, NEW ROCHELLE, NEW YORK, MOTION TO SUPPRESS ANY AND ALL DIGITAL, COMPUTER AND TELEPHONIC DATA FROM A BLUE IPHONE RECOVERED FROM LAQUAN JONES' PERSON and MOTION TO INSPECT SEARCH WARRANT APPLICATIONS, COMPEL THE PRODUCTION OF THE SEARCH WARRANT MINUTES AND CONTROVERT THE SEARCH WARRANTS

The defendant's motion to suppress physical evidence obtained pursuant to several search warrants is denied. The Court has reviewed the affidavits in support of the search warrants in question and finds that they did provide the signing magistrate with probable cause to believe that evidence could be located at the location described in the warrant. The information provided in the affidavits, excluding the statements attributed to the defendant, were sufficient to establish the required probable cause.

The defendant's motion to controvert the search warrant is denied as he has failed to make the necessary substantial preliminary showing that the warrant was based upon an

affidavit containing false statements made knowingly or intentionally or with reckless disregard for the truth.

The People are directed to provide the defense with the search warrants in question and all supporting documentation or promptly move for a protective order pursuant to CPL 245.70. For the limited purpose of disclosure to defense counsel, the warrant and supporting papers are unsealed.

4. MOTION TO PRECLUDE ALL TESTIMONY AND EVIDENCE CONCERNING ANY IDENTIFICATION OF THE DEFENDANT OR IN THE ALTERNATIVE GRANTING A WADE HEARING TO DETERMINE ITS ADMISSIBILITY

The defendant's motion to suppress identification testimony is denied without a hearing. The noticed identifications involve the viewing of crime scene videos by investigating detectives and their opinion that the person depicted in the video was the defendant. This type of viewing is not an identification procedure within the meaning of CPL 710.30 and is not the type of procedure which is subject to suppression. [See *People v. Tas*, 51 NY2d 915].

5. MOTION TO SUPPRESS STATEMENTS

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335),

obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

6., 7. and 8. SANDOVAL MOTION and MOTION PURSUANT TO VENTIMIGLIA

This branch of the defendant's motion is granted to the limited extent of conducting a *Sandoval* hearing immediately prior to trial at which time: (1) the People must notify the defendant of all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the People intend to use at trial for the purposes of impeaching the credibility of the defendant (see CPL §245.20[3]) the defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf. [See *People v. Malphurs*, 111 AD2d 266, 489 NYS2d 102, *lv. denied* 66 NY2d 616, 494 NYS2d 1039, 483 NE2d 243].

9. MOTION FOR DISCOVERY AND INSPECTION

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245. If any items set forth in CPL Article 245 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and

*Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguably exculpatory, but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d 605, 737 NYS2d 52, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

10. LEAVE TO FILE ADDITIONAL MOTIONS

Upon a proper showing, the Court will entertain appropriate additional motions based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised in this motion. [See CPL §255.20(3)].

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
February 24, 2022

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

*People v. Laquan Jones*  
Indictment No. 21-00764-02

James J. Bavero  
Assistant District Attorney  
Westchester County  
Office of the District Attorney  
Richard J. Daronco Courthouse  
111 Martin Luther King Blvd.  
White Plains, New York 10601  
[jbavero@westchesterda.net](mailto:jbavero@westchesterda.net)

Robert A. Gross, Esq.  
Attorney for Defendant Jones  
46 Gramatan Avenue #5  
Mt. Vernon, New York 10550  
[robert@robertgrosslaw.com](mailto:robert@robertgrosslaw.com)