

**People v Carcamo**

2022 NY Slip Op 34789(U)

February 24, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 21-00764-01

Judge: Robert A. Neary

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**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. 21-00764-01

Defendants.

-----X

NEARY, J.

The defendant, Tyquan Carcamo, 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.

**FILED**  
**FEB 24 2022**  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

1. MOTION TO INSPECT GRAND JURY MINUTES; MOTION TO DISMISS AND/OR REDUCE THE INDICTMENT; MOTION TO DISMISS THE INDICTMENT FOR DEFECTIVE GRAND JURY PRESENTATION

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

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.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

2. MOTION TO SEVER THE INDICTMENT AND ORDER SEPARATE TRIALS FOR EACH DEFENDANT

The defendant moves for a severance from his co-defendant. The defendant was properly joined in the same indictment. [See CPL §200.40(1)]. The Court may, however, for

good cause shown order that defendant be tried separately. Good cause includes a showing that defendant would be “unduly prejudiced by a joint trial.” [See CPL §200.40(1)]. Further, where the proof against all defendants is supplied by the same evidence, “only the most cogent reasons warrant a severance.” [See *People v. Bornholdt*, 33 NY2d 75, 87, cert. denied 416 US 95 and *People v. Kevin Watts*, 159 AD2d 740]. And, “. . . a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . . .” [*People v. Mahboubian*, 74 NY2d 174, 183].

This Court must determine the admissibility and possibility of the redaction of the co-defendant's statements and whether the co-defendant will be testifying at defendant's trial.

According, the defendant's motion for a severance is denied as premature, with leave to renew upon a determination of the admissibility of co-defendant's alleged statements, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

3. MOTION TO UNSEAL THE SEARCH WARRANT AFFIDAVIT(S), MINUTES, AND ALL MATERIALS RELIED UPON IN SUPPORT, OR FOR AN *IN CAMERA* INSPECTION OF THESE MATERIALS; MOTION TO RESERVE RIGHT TO FILE MOTION TO CONTROVERT THE SEARCH WARRANT

The defendant's motion to suppress physical evidence obtained pursuant to two (2) 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 FOR PRECLUSION OF NOTICED STATEMENTS OR IN THE ALTERNATIVE FOR A HUNTLEY/DUNAWAY HEARING

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).

5. MOTION TO SUPPRESS IDENTIFICATIONS

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [See *United States v. Wade*, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. Specifically, the Court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the Court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification. The hearing will also address whether the evidence in question was obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment right. [See *Dunaway v. New York*, 442 US 200.90, 99 S. Ct. 2248, 60 LE2d 824].

6. MOTION FOR PRECLUSION OF EVIDENCE OF PRIOR BAD ACTS

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].

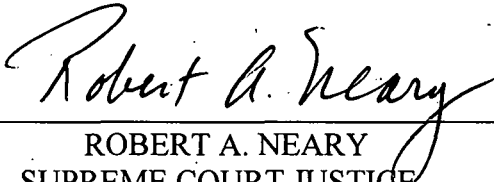
7. MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

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

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