

**People v Murray**

2013 NY Slip Op 34062(U)

January 11, 2013

Supreme Court, Westchester County

Docket Number: 12-1281

Judge: Barbara G. Zambelli

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COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

FILED  
AND  
ENTERED  
ON JAN. 11 2013  
WESTCHESTER  
COUNTY CLERK

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

-against-

Ind. No.: 12-1281

**FILED**

JOHN MURRAY and BEATRICE CAMPER,

JAN 11 2013

Defendants.

COUNTY OF WESTCHESTER

ZAMBELLI, J.

The People move by notice of motion with accompanying affirmation and memorandum of law pursuant to CPL §240.40(2)(b)(v) for an order requiring defendant John Murray to permit the taking of DNA samples from his body, specifically by a buccal swab of his mouth. On December 11, 2012, the People's previous application was denied by this Court with leave to renew, on the grounds that the People failed to establish that relevant material evidence would be found by obtaining the defendant's DNA sample, as they failed to indicate whether there was any DNA at all on any of the evidence swabs taken in this case which could be compared to any sample given by the defendant.

Defendant Murray and co-defendant Beatrice Camper have been indicted and charged with acting in concert to commit the crime of murder in the second degree as to the homicide of Camper's husband, whom, on October 3, 2012, was found dead in his taxi, having been shot in the back of his head; in addition to the murder in the second degree charge, defendant Murray alone is charged with murder in the first degree and criminal possession of a weapon in the second degree. The People submit that as part

of their search of the victim's vehicle, the police took swabs of the victim's wallet, a live .25 caliber round found in the vehicle's back seat and one shell casing also found in the rear seat, the victim's cellular telephone, and also took swabs from several areas in the victim's vehicle, including six swabs from the door handles and releases therein. They allege that on October 22, 2012, they received a request from the Westchester County Department of Laboratories and Research for buccal exemplars from both defendants, as there are "results pending" on the items of evidence that have been submitted to the lab for forensic testing. The only result that the People have received thus far was from the swab taken from the rear driver interior door handle, which revealed the presence of possible epithelial cells which matched the CODIS DNA profile of the victim's nephew, who was often in the vehicle. The People further submit that on December 18, 2012, they received a Sample Review Worksheet from a forensic scientist at the lab which indicates that human DNA was detected on fourteen samples of evidence taken from the victim's car, the victim's wallet and the victim's cellular phone (People's Attachment). The People submit that upon receipt of a known buccal sample from the defendants, a DNA comparison can be made between the defendants' known DNA profiles and that of the profiles from the evidence recovered in the case.

In response, the defense has submitted an affirmation in opposition and memorandum of law which alleges that the People have failed to meet their burden in demonstrating probable cause for the taking of such buccal swabs because the People failed to establish that any of the items recovered as evidence and submitted to the lab in fact contain any DNA or that any of the samples contain a profile that is unknown absent an exemplar from the defendant, whose DNA profile is already in the CODIS system.

Defendant submits that the samples should first be tested to determine whether they contain any DNA and then a profile should be generated and compared to the victim and uploaded to CODIS to avoid any contamination or cross-contamination.


A Court order to obtain a DNA sample from a defendant may issue where the People establish that (1) probable cause that defendant committed the charged crimes, (2) a "clear indication" that relevant material evidence will be found and (3) that the method used to secure it, a buccal swab, is safe and reliable (see Matter of Abe A., 56 N.Y.2d 288, 291 (1982)). Here, the People have established probable cause based upon the indictment handed down by the grand jury before whom the evidence against the defendants were presented (People v. Pryor, 14 A.D.3d 723, 725 (3d Dept. 2005); lv. denied, 6 N.Y.3d 779 (2006)). There is also no dispute herein that the proposed method to be used to secure a defendant's DNA, a buccal swab, is safe and reliable. The People have also established that relevant material evidence will be found as such a sample will determine whether a match exists between the DNA found on the victim's belongings and defendant's DNA.

Based on the seriousness of the crime, and the importance of the evidence to the People, it is ordered that the defendant permit the taking of buccal swab samples from his mouth, that the buccal swab samples be taken from the defendant at the Westchester County Jail in Valhalla, New York by a Westchester County District Attorney's Office investigator in an appropriate and safe manner and that the samples are to be immediately transported by a representative of the Westchester County District Attorney's Office to the Westchester County Department of Laboratories and Research. The date and time when said DNA samples shall be taken will be scheduled at the mutual convenience of all parties

concerned.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York  
January 11, 2013

  
BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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