

Matter of Robinson
2017 NY Slip Op 32557(U)
July 24, 2017
County Court, Westchester County
Docket Number: 17-0036-01
Judge: Barbara G. Zambelli
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FILED 

JUL 24 2017

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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IN THE MATTER OF THE APPLICATION TO
REQUIRE **BLAIR ROBINSON** TO PERMIT THE
TAKING OF DNA SAMPLES FROM HIS BODY.

DECISION & ORDER

Ind. No.:17-0036-01

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ZAMBELLI, J.

The People move by Order to Show Cause with accompanying affirmation and memorandum of law pursuant to CPL §240.40(2)(b)(v) for an order requiring defendant Blair Robinson to permit the taking of DNA samples from his body, specifically by a buccal swab of his mouth.

Defendant has been indicted and charged with the crimes of murder in the second degree, manslaughter in the first degree, and two counts of endangering the welfare of a child allegedly committed on or about December 24, 2016 in the County of Westchester. The murder, manslaughter and one of the endangering charges arise out of the death of defendant's two year old son which occurred on that date at 44 Maple Street, Apt. 2B, Yonkers, New York for which the Medical Examiner determined the cause of death to be blunt force trauma of head and torso and the manner of death as homicide; the remaining endangering charge relates to defendant's daughter, who was approximately 10 months old on that date, which charge relates to the unsanitary and unsafe condition of the apartment in which the child was found. Pursuant to the police search of the apartment, evidence was found which included three belts, which belts were brought to the

Westchester County Department of Laboratories and Research by the Yonkers Police on March 30, 2017 for serological testing. The People submit that testing revealed the presence of skin like material on all three belts, samples of which were compared to a known buccal exemplar of the deceased child. On June 27, 2017, the People were advised by the lab that although they were able to generate a DNA profile from a thin leather brown belt, since the case involved all relatives (defendant's co-defendant Kenya Reed is the child's mother, who is charged with two counts of endangering the welfare of a child), the analysis was complex and could not be completed with only the deceased child's DNA. The People contend that the lab analysts advised that the profile contains a major and minor DNA contributor, and that the deceased child is not a match to this particular profile, but that it could belong to the female sibling of that child and that the minor contributor could belong to the parent of the major contributor and thus in order to complete the analysis, the lab requires exemplars from the entire family (both defendants and the female sibling). Additionally, as to another dark brown fabric belt that was recovered from the home, which was identified by defendant in his statement to police as the belt he used to strike the deceased child, the People submit that the lab analysts advised that they were able to generate a mixture profile on the belt that could be a match to the deceased child, defendant Robinson, or both, and that to complete the analysis, the lab requires an exemplar from defendant Robinson. Based upon the foregoing, the People seek to have a DNA buccal swab sample taken from defendant Robinson as well as from defendant Reed¹.

¹Defendant Reed did not oppose the taking of the buccal swab.

On March 10, 2017, an indictment was filed charging defendant with the above listed crimes. By Decision and Order of this Court (Zambelli, J.) filed and entered on July 24, 2017, this Court held, inter alia, that the indictment against both defendants was legally sufficient.

The defendant opposes the People's application on the grounds the people have failed to establish probable cause that a crime was committed and that defendant committed the crime. He also argues that the allegations of the lab analysts are hearsay, although he concedes at the end of his motion that counsel spoke with the lab analysts directly and was provided the preliminary results on July 7, 2017. He submits that the preliminary results are insufficient to establish probable cause because only one tested item matches the profile of the deceased child. Defendant further argues that there is no clear indication that relevant material evidence will be found because as to the thin leather brown belt, as the People contend only that a match "could" belong to the female sibling, but that there are no allegations that defendant injured this child with a belt. Should the Court order that the buccal swab be taken, defendant requests that he be able to do the swabbing himself, should he so elect, and that defense counsel be consulted and given notice as to when the procedure will be performed so that he may be present therefor. Defendant also requests that the DNA results be limited to the analysis requested in the People's moving papers.

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) (2) a "clear indication" that relevant material evidence will be found and (3) that the method

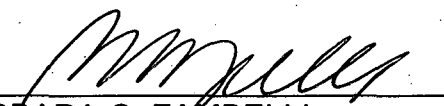
used to secure it, a buccal swab, is safe and reliable (see, Matter of Abe A., 56 N.Y.2d 288, 291 (1982)).

Here, the People have established probable cause based upon the indictment handed down by the grand jury before whom the evidence against the defendant was presented (People v. Pryor, 14 A.D.3d 723, 725 (3d Dept. 2005); lv. denied, 6 N.Y.3d 779 (2006)) and this Court's review of the grand jury minutes found the indictment to be legally sufficient. 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. While the defendant is not charged with beating his infant daughter with a belt, the People's application indicates that the dark brown fabric belt has a mixture profile that could be a match to defendant, the deceased child or both, and defendant admitted to using that belt to strike the child. Thus, the People have established a "clear indication" that relevant and material evidence would be found by the DNA testing.

Accordingly the People's application is granted. The proposed order has been signed; however, the People are further directed to schedule the taking of the swab at the mutual convenience of all parties concerned, so that counsel may be present when the procedure is performed.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
July 24, 2017



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

Hon. Anthony Scarpino, Jr.
District Attorney, Westchester County
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
Attn: Fredric Green, Esq.
Assistant District Attorney

Clare J. Degnan, Esq.
The Legal Aid Society of Westchester County
150 Grand Street, Suite 100
White Plains, NY 10601
Attn: Alan Focarile, Esq.

Richard L. Ferrante, Esq.
Attorney for Kenya Reed
399 Knollwood Road - Suite 111
White Plains, New York 10603

Lakisha C. Hickson
Chief Clerk