

Matter of Rodriguez
2019 NY Slip Op 34390(U)
August 28, 2019
Supreme Court, Westchester County
Docket Number: Indictment No. 9-0241
Judge: Susan M. Capeci
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FILED
AND
ENTERED
ON 8/29 2019
WESTCHESTER
COUNTY CLERK

At a Criminal Term of the Supreme Court of the State of New York, County of Westchester, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York on the 28th day of August, 2019.

PRESENT: HON. SUSAN M. CAPECI
ACTING SUPREME COURT JUSTICE

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

IN THE MATTER

OF

THE APPLICATION TO REQUIRE
MARIO RAMOS RODRIGUEZ TO PERMIT THE
TAKING OF A BUCCAL SAMPLE FROM HIS BODY

-----X

ORDER
Indictment No.: 19-0241

FILED
SEP - 5 2019
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

CAPECI, J.

By Order to Show Cause dated August 8, 2019, with accompanying affirmation and memorandum of law, the People move for an order pursuant to CPL §240.40(2)(b)(v) requiring defendant, Mario Ramos Rodriguez, to permit the taking of DNA samples from his body, specifically by a buccal swab of his mouth. The defendant has not submitted any response to the People's application, which was due by August 26, 2019.

The defendant was charged by indictment with assault in the second degree (P.L. 120.05 (2)), criminal possession of a weapon in the third degree (P.L. 265.02 (1), and menacing in the second degree (P.L. 120.14 (1)), based upon acts alleged to have been committed on December 28, 2018, which occurred in the victim's vehicle, outside of her place of employment, in Katonah, New York.

It is alleged that after the victim had earlier called the police because the defendant, with whom she resided, came to her job banging on doors and windows, the defendant later entered her vehicle as she attempted to leave work, and slashed her on her hand, arm, and leg with a pocketknife. During the struggle, she was able to deflect the knife at one point, causing the defendant to cut himself. It is alleged he then pushed her into the passenger seat, and drove away, with the victim in the passenger seat. She jumped out as the vehicle was moving and he threw her back into the vehicle, continuing to drive. Eventually he returned with her to their shared residence, where they each remained until the next morning. The victim contacted the police and went to the hospital for her injuries when the defendant left the apartment.

Following the incident, the Bedford Police recovered a knife matching the description given by the victim, in the residence she shared with the defendant, which has been vouchered as evidence. They also obtained swabs from the interior of the vehicle in areas where there appeared to be blood, and obtained DNA swabs from the victim and her children who resided in the home. According to the Westchester County Department of Laboratories and Research, to which all samples were sent, there is male DNA present on at least one sample from the crime scene.

The People now seek a DNA sample from the defendant in the form of a buccal swab, to be compared to the DNA profiles that may be generated from the knife and the vehicle's interior, to corroborate the defendant's commission of the crimes.

Pursuant to CPL §240.40(2)(b)(v), the People may make an application in the court in which an indictment is pending for an order permitting the taking of blood, hair or other materials from a defendant's body. The standard of review governing the

issuance of such an order requires the People to establish: "(1) probable cause to believe the [defendant] has committed the crime, (2) a 'clear indication' that relevant material evidence will be found, and (3) the method used to secure it is safe and reliable" (Matter of Abe A., 56 NY2d 288, 291(1982); see also Matter of Santorelli v District Attorney of Westchester County, 252 AD2d 504 (1998)).

It is the finding of this Court that the People have sustained their burden of proof pursuant to Matter of Abe A. After a careful balancing of the severity of the crime, the need for the corporeal evidence and the absence of less intrusive means of obtaining it against the defendant's constitutional rights (see Matter of Abe A., supra at 291; Matter of Santorelli v District Attorney of Westchester County, supra), it is hereby

ORDERED, that MARIO RAMOS RODRIGUEZ permit the taking of DNA samples via a buccal swab from his mouth; and it is further

ORDERED, that said DNA samples will be taken by an individual designated by the Westchester County District Attorney's Office who is qualified to take such samples, including but not limited to appropriate personnel at the Westchester County Jail; and it is further

ORDERED that the defendant's counsel shall be notified in advance and permitted to be present during the taking of the buccal swab from the defendant; and it is further

ORDERED, that said DNA samples will be taken by said individual in accordance with standard medical and/or forensic procedures; and it is further

ORDERED, that the samples be immediately turned over to the Westchester County Department of Laboratories and Research, or a representative of the

Westchester County District Attorney's Office.

Dated: White Plains, New York
August 28, 2019



HON. SUSAN M. CAPECCI
A.J.S.C.

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