

People v Moore

2020 NY Slip Op 35584(U)

November 10, 2020

County Court, Westchester County

Docket Number: Ind. No. 2020-0050

Judge: David S. Zuckerman

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

FILED

DECISION & ORDER

OMARI MOORE,

DEC - 9 2020

Ind. No.: 2020-0050

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendants.

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ZUCKERMAN, J.

Defendant stands accused under Indictment No. 2020-0050 of, *inter alia*, Robbery in the First Degree (Penal Law §160.15 [4]). As set forth in the Indictment, it is alleged that, on or about December 6, 2019, Defendant, forcibly stole property from another person, and in the course or commission thereof, or immediate flight therefrom, he displayed what appeared to be a firearm. By Order to Show Cause dated August 24, 2020, with accompanying Affirmation, the People move to compel Defendant to submit to the taking of a DNA sample by a buccal swab. Defendant has failed to oppose the motion.

THE PEOPLE'S DNA MOTION

The People move, pursuant to Criminal Procedure Law §240.40(2)(b)(v), to compel production by Defendant of a saliva sample via buccal swab in connection with the above-mentioned matter. The swab would then be sent to the New York State Police Forensic Identification Center (FIC) for processing. The People

have affirmed that have they recovered from evidence what they believe to be a biological evidence sample suitable for DNA examination. Finally, their moving papers make clear that, subsequent to the incident, the Grand Jury has indicted Defendant for, *inter alia*, Robbery in the First Degree.

In *Matter of Abe. A.*, 56 NY2d 288, 291 (1982), the Court of Appeals held that a court may order an individual to provide a bodily fluid sample if the People establish probable cause to believe the accused has committed the crime charged, there is a "clear indication" that relevant material evidence will be found, and that the method used to secure the evidence is safe and reliable. This standard applies whether or not the suspect has been indicted.

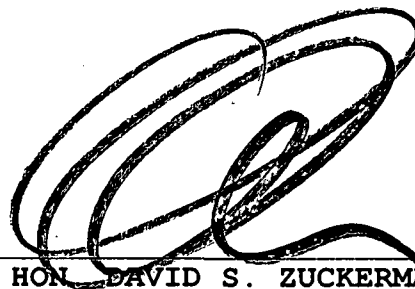
In their Affirmation, the People set forth sufficiently reliable factual allegations to establish that Defendant was known, described and identified as the person who allegedly participated in the above-described criminal acts. Therefore, there is probable cause to believe that these crimes were committed and that this defendant committed them. Combined with evidence that some biological material was recovered from an item seized, the court can say that the taking of defendant's saliva samples via a buccal swab will likely provide relevant evidence. Finally, the samples requested herein would be taken from the defendant by way of buccal swab and, as commonly done, would not constitute unreasonable intrusions or risks to the health of the defendants.

In sum, the People seek saliva samples to confirm and corroborate that Defendant is the perpetrator of the aforementioned crime. Even if it may or may not be dispositive of any single issue, evidence regarding the source of the DNA recovered from the scene of the crime may be relevant to "logically complete the evidentiary picture and avoid trial smokescreens." *People v Wesley*, 140 Misc2d 306 (County Court, Albany County, 1988); *aff'd* 183 AD2d 75 (3d Dept 1992), *aff'd* 83 NY2d 417 (1994); *People v Russell*, 165 AD2d 327 (2d Dept 1991). Therefore, the People have established *prima facie* entitlement to the relief sought.

Based on the foregoing, the People's unopposed motion for an order directing that Defendant submit to having a saliva sample taken from him is granted. Such sample shall be taken by buccal swabbing the inside cheek of said defendant by qualified medical personnel in the presence of a representative of the Westchester County District Attorney, Westchester County Department of Public Safety and/or local police department. The extraction of the samples shall be taken upon at least three (3) days notice to Defendant's counsel.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
November 10, 2020



HON. DAVID S. ZUCKERMAN, J.C.C.

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