

Matter of Oakley

2024 NY Slip Op 34785(U)

June 3, 2024

Supreme Court, Westchester County

Docket Number: Indictment No. 73002-23

Judge: Susan M. Capeci

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FILED
AND
ENTERED
ON 6-3 2024
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 3rd day of June, 2024.

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

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
IN THE MATTER

ORDER
Indictment No.: 73002-23

OF

THE APPLICATION TO REQUIRE
HOSANI OAKLEY TO PERMIT THE
TAKING OF A BUCCAL SAMPLE FROM HIS BODY

FILED
JUN - 3 2024

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----X
CAPECI, J.

By Notice of Motion dated April 26, 2024, with accompanying affirmation and memorandum of law, the People move for an order pursuant to CPL 245.40 (1) (c) requiring defendant, Hosani Oakley, to permit the taking of DNA samples from his body, specifically by a buccal swab of his mouth. The defendant, represented by counsel, has submitted his opposition dated May 16, 2024, to the People's application.

The defendant was charged by indictment with burglary in the second degree (P.L. 140.52 (2)); strangulation in the second degree - causing physical injury (P.L. 121.12); menacing in the second degree (P.L. 120.14 (1)); criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)); assault in the third degree (P.L. 120.00 (1)); three counts of endangering the welfare of a child (P.L. 260.10 (1)); two counts of criminal contempt in the second degree (P.L. 215.50 (3)); two counts of criminal

contempt in the first degree (P.L. 215.51 (b)(iv)); burglary in the first degree (P.L. 140.30 (2)); four counts of assault in the second degree (two under P.L. 120.05 (6), one under 120.05 (2), and one under 120.05 (12)); two counts of aggravated criminal contempt (P.L. 215.52 (1)); criminal mischief in the fourth degree (P.L. 145.00 (1)); and petit larceny (P.L. 155.25), based upon acts alleged to have been committed on four dates, May 30, 2023, May 31, 2023, August 12, 2023, and August 17, 2023.

As part of this indictment, it is alleged that on May 30, 2023, the defendant, who had been in a prior relationship with the victim, came to the victim's apartment, where the victim buzzed him into the building, believing it was actually her mother coming by to observe work being done in the apartment. When the defendant arrived at the door to her apartment, she told him to leave, however, he pushed his way inside the apartment. While in the apartment, he produced a serrated black handled knife from his pocket, and directed the victim to sit on the bed, where he then grabbed her cell phone from her. He grabbed their 3-month-old baby daughter from her swing and threatened the victim that if she moved, he would stab her and the baby. The victim ran towards the workmen who were in the apartment, pleading for them to call the police.

The defendant placed the baby unsecured on the bed, and pursued the victim. He grabbed her by the neck, squeezing and impeding her ability to breathe, and dragged her to the floor. He then headbutted her face and nose, causing her nose to bleed, while continuing to squeeze her neck with one hand, while holding the knife in the other. Upon the arrival of members of the police department, he got off the victim and hid the knife in a dresser drawer. The defendant was placed under arrest, and the victim's cell phone was found on his person. The police recovered the knife from the

dresser drawer.

The People indicate that preliminary results from the swabs of the knife yielded a male DNA profile from the knife handle. The People now seek a DNA sample from the defendant in the form of a buccal sample, to be compared to the profile obtained from the knife handle.

The defendant objects to the collection of his DNA, contending that there is no "clear indication" to believe that any relevant material evidence will be found. He argues that the People have not completed a full lab report for DNA testing on the sample obtained, thus far. In addition, the defendant further argues that testing cannot establish whether his DNA would be found as part of any crime, since it is impossible to know how old it is, or whether it was transferred to the area where it was found.

Pursuant to CPL 245.40 (1) (e), 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)).

Here, the Grand Jury indictment provides the requisite probable cause for the order (People v Vieweg, 155 AD3d 1305, 1308 (3d Dept 2017); People v Douglas, 2024 WL 1558744, at *2 (3d Dept 2024)). Although the defendant contends the People have not obtained a full DNA analysis for comparison, the People indicate that the preliminary

results for the swabs of the knife yielded a male DNA profile from the knife handle.

Given these circumstances, the Court finds a "clear indication" that the buccal swab sample would supply relevant material evidence (see People v Watkins, 180 AD3d 1222 (3d Dept 2020); People v Roshia, 133 AD3d 1029, 1030 (3d Dept 2015), aff'd, 28 NY3d 989 (2016)).

Accordingly, 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 Hosani Oakley 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 or County Courthouse in White Plains, NY; and it is further

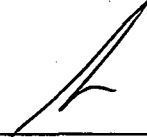
ORDERED that the defendant's counsel shall be notified in advance and permitted to be present during the taking of the buccal swab from the defendant; and it is further

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
June 3, 2024



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

To: Hon. Miriam E. Rocah
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601
By: Michelle Lopez, Esq.
Assistant District Attorney

Legal Aid Society
Attorneys for Defendant
150 Grand Street
White Plains, New York 10601
Att: Netikka Seward, Esq.