

MOTION NO. (1274/17) KA 13-01173. -- THE PEOPLE OF THE STATE OF
NEW YORK, RESPONDENT, V TRELIS PRESSLEY, DEFENDANT-APPELLANT. --

Motion for reargument be and the same hereby is granted and, upon reargument, the memorandum and order entered December 22, 2017 (156 AD3d 1384) is amended by deleting the ordering paragraph and substituting the following ordering paragraph "that the case is held, decision is reserved and the matter is remitted to Supreme Court, Monroe County, for further proceedings in accordance with the following memorandum:" and by adding the following paragraph after the second paragraph of the memorandum:

"We further agree with defendant that the court erred in requiring him to proceed pro se on the People's motion to compel him to submit to a buccal swab for DNA testing (see *People v Smith*, 30 NY3d 626, 628-629 [2017]). Contrary to the People's contention, the court's error cannot be deemed harmless, inasmuch as the evidence apart from the DNA evidence is not overwhelming, and there is a reasonable possibility that the error contributed to the conviction (*cf. Wardlaw*, 6 NY3d at 559; see generally *People v Austin*, 30 NY3d 98, 106 [2017]). We therefore hold the case, reserve decision, and remit the matter to Supreme Court for further proceedings on the People's motion following the assignment of counsel to represent defendant thereon."

The motion is otherwise denied. PRESENT: WHALEN, P.J., SMITH,
LINDLEY, NEMOYER, AND CURRAN, JJ. (Filed Mar. 23, 2018.)