

**Murray v City of New York**

2023 NY Slip Op 33404(U)

October 3, 2023

Supreme Court, New York County

Docket Number: Index No. 154266/2023

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. JUDY H. KIM **PART** **05RCP**

*Justice*

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ROBERT MURRAY,

Petitioner,

- v -

CITY OF NEW YORK,

Respondent.

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**INDEX NO.** 154266/2023

**MOTION DATE** 06/13/2023

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 5, 6 were read on this motion to/for DISCOVERY - PRE-ACTION.

Upon the foregoing documents, Petitioner’s petition seeking pre-action discovery pursuant to CPLR §3102(c) is granted in part, to the extent set forth below:

Petitioner alleges that on April 26, 2023, while he was incarcerated at Rikers Island, he was assaulted, pepper sprayed, and not taken to be decontaminated while in cell C95, Quad 4 Upper, AMKC at Rikers Island (NYSCEF Doc. No. 1 [Petition at ¶ 7]). In the early morning of April 27, 2023, a group of approximately five to six masked Correction Officers assaulted and pepper sprayed petitioner while he was in his cell (Id. at ¶8). Thereafter he was taken to Lincoln Hospital and then Bellevue Hospital (Id. at ¶¶9-10). On April 28, 2023 he was taken back to Rikers Island, to West Facility (Id. at ¶11). Upon his arrival, he was “dragged” off the transport bus by a group of Correction Officers and taken to a cell where these officers assaulted him and “cut up his arms” (Id.). From April 28, 2023 through May 6, 2023, petitioner was denied food and water (Id. at ¶¶12-13)]. From April 28, 2023 through April 30, 2023, correction officers would place food

trays just out of petitioner's reach at mealtimes but by Sunday, April 30, 2023, the officers stopped leaving food or water at all (Id. at ¶12)

On May 6, 2023, he was found unresponsive in his cell and taken to Elmhurst Hospital and then Bellevue Hospital, where he was currently being treated (Id. at ¶13). Petitioner asserts that he “does not remember much about what happened before he was found unresponsive, other than the fact that he begged officers for water and was denied on every occasion” (Id. at ¶14).

In light of the foregoing, petitioner now seeks an order compelling respondent the City of New York to preserve and produce surveillance footage for:

- a. C95, Quad 4 Upper, Anna M. Kross Center (“AMKC”) on April 26, 2023 and April 27, 2023; and
- b. Mr. Murray at West Facility from April 28, 2023 through May 6, 2023

Petitioner further requests an order compelling the City to preserve the following:

- a. All surveillance footage of Robert Murray and his movements from April 26, 2023 to May 6, 2023, including but not limited to:
  1. the surveillance footage described above;
  2. Surveillance footage of Mr. Murray's transport from AMKC to Hart's Island on April 27, 2023;
  3. Hart's Island from 12AM to 8PM on April, 27, 2023;
  4. Surveillance footage of Mr. Murray's transport from Hart's Island to Vernon C. Bain Correctional Center (“VCBC”) on April 27, 2023;
  5. Outside, immediate entrance, intake area, and medical facility of VCBC on April 27, 2023 from 3PM to 12PM and on April 28, 2023; and,
  6. Surveillance footage of Mr. Murray's transport from VCBC to West Facility on April 28, 2023.
- b. All logbooks for C95, Quad 4 Upper, AMKC on April 26, 2023 and April 27, 2023; Hart's Island on April, 27, 2023; VCBC on April 27, 2023 and April 28, 2023; and West Facility from April 28, 2023 to May 6, 2023;
- c. The personnel and disciplinary records of all DOC staff on duty in Quad 4 Upper, AMKC on April 26, 2023 and April 27, 2023; Hart's Island on April, 27, 2023; VCBC on April 27, 2023 and April 28, 2023; and West Facility from April 28, 2023 to May 6, 2023; and,

d. Any and all complaints, grievances, or other correspondence received by the DOC from Mr. Murray since his entry on Rikers, including all appeals and responses all written requests for involuntary or voluntary protective custody; audio, video, or photographs taken in connection with any reported assault; any PREA reports and related records made by or on behalf of Mr. Murray; all incident or injury reports; medical records; transport records; internal or external investigation records into these incidents; movement records; any and all other records related to any allegation of assault against Mr. Murray, including, but not limited to, the incidents occurring from April 26, 2023 through May 6, 2023 in the various areas of Rikers Island/at the times outlined above.

Respondent does not oppose that portion of the petition seeking the preservation of the foregoing material and represents that it has already requested that DOC preserve this material to the extent it exists and is in DOC's possession (NYSCEF Doc. No. 6 [Armstrong Affirm. in Opp. at ¶6]). However, respondent opposes that branch of the petition which seeks the production of this material as pre-action discovery.

### DISCUSSION

In light of respondent's preservation of the material sought by petitioner, the Court turns to that branch of the petition seeking an order that the respondent produce this material as part of pre-action discovery.

CPLR § 3102 provides, in pertinent part, that “[b]efore an action is commenced, disclosure to aid in bringing an action [or] to preserve information... may be obtained, but only by court order” (CPLR § 3102[c]).

“Pre-action discovery is not permissible as a fishing expedition to ascertain whether a cause of action exists and is only available where a petitioner demonstrates that he or she has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong. Generally, the determination of whether a party has demonstrated merit lies in the sound discretion of the trial court” (Bishop v Stevenson Commons Assocs., L.P., 74 AD3d 640, 641 [1st Dept 2010] [internal citations and quotations omitted]). As such, pre-action discovery

is permissible to preserve evidence and ascertain the identities of prospective defendants but may not be used as a means to determine whether plaintiff has a cause of action (Holzman v Manhattan and Bronx Surface Tr. Operating Auth., 271 AD2d 346, 347 [1st Dept 2000]).

In this case, petitioner is already in possession of sufficient facts to frame his complaint, “except for the identities of the additional possible defendants in the form of the corrections officers and supervisors” involved in the events outlined in the petition (Feliciano v The City of New York, 2020 NY Slip Op 32303[U] [Sup Ct, New York County 2020]). Accordingly, the Court grants the petition to the extent that respondent is directed to produce any and all surveillance footage of cell C95, Quad 4 Upper, Anna M. Kross Center on Riker’s Island on April 27, 2023 between 2:00-4:00 am, the period in which the alleged assault of petitioner took place. To the extent petitioner also seeks the immediate production of video footage of plaintiff in West Facility from April 28-30, 2023, to “better understand the circumstances of how he ended up beaten, dehydrated, and starved in order to properly frame his pleadings and properly assess the City’s liability” (NYSCEF Doc. No. 1 [Petition at ¶10]), this demand is overbroad and well beyond the intended purpose of CPLR §3102(c).

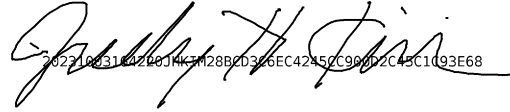
Accordingly, it is

**ORDERED** and **ADJUDGED** that the petition is granted to the limited extent set forth above, and is otherwise denied; and it is further

**ORDERED** that petitioner shall serve a copy of this decision, order, and judgment, with notice of entry, upon respondent within ten days of the date of this decision and order; and it is further

**ORDERED** that respondent shall, within thirty days of the date of this decision, order, and judgment surveillance footage of petitioner in cell C95, Quad 4 Upper, Anna M. Kross Center on April 27, 2023 from 2:00 am to 4:00 am.

This constitutes the decision, order, and judgment of the Court.



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10/3/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE