

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

Shawn Williams, as the proposed administrator of the
estate of Antonio Williams,

**VERIFIED PETITION FOR PRE-
ACTION DISCOVERY AND
PRESERVATION**

Petitioner,

-v-

Index No.

The City of New York,

Respondents.

Shawn Williams, as the proposed administrator of the estate of Antonio Williams, by his attorney David B. Rankin of Beldock Levine & Hoffman, LLP, alleges the following as his Petition seeking to compel pre-action discovery pursuant to Civil Procedure Law and Rules (“C.P.L.R.”) § 3102(c).

Nature of the Proceeding

1. This special proceeding arises from the violations of Antonio Williams’s (“Williams”) civil rights by the City of New York (“City”).
2. The respondents violated Mr. Williams rights and negligently caused his death on September 29, 2019.
3. No previous application for the relief requested herein has been made by petitioner, and this action is not on a trial calendar.

Parties

4. Petitioner resides in the State of New York.
5. Respondent City of New York is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York. It is authorized

by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant City assumes the risks incidental to the maintenance of a police force and police officers as said risks attach to the public consumers of the services provided by the NYPD.

6. The Respondent the City of New York's principle place of business is in New York County.

Venue

7. Venue is properly laid before this Court pursuant to C.P.L.R. § 503(c) as the Respondent's principle place of business is in the County of New York.

Statement of Facts

8. Mr. Williams's rights were violated when he died on September 29, 2019 while after a suspicionless stop by member of the NYPD.

9. Mr. Williams was killed by the respondent's recklessly firing of their service weapon(s).

10. During the early morning hours of September 29, 2019, Mr. Williams was waiting for a cab at or around 1132 E. 229th Street near Laconia Avenue in the Bronx, NY.

11. The respondents had no reasonable belief any criminal activity was taking place.

12. Members of the NYPD drove up onto the sidewalk and began yelling at Mr. Williams.

13. Multiple members of the NYPD exited their vehicle while continuing to

yell.

14. In response to this, Mr. Williams ran.

15. Officers gave chase.

16. More than one officer discharged their firearms striking and killing Mr. Williams.

17. Specifically, we must know which shots, from which officers, hit Mr. Williams.

18. Further, Petitioner must know what efforts, if any, were taken to provide Mr. Williams with aid prior to his death and what officers were involved in those efforts.

19. This information should be contained in the body camera footage of the officers on the scene and the surrounding NYCHA cameras.

20. The identities of the officers who discharged their fire arms are regularly generated by members of the New York City Police Department.

21. Pre-action discovery is especially important in cases where the plaintiff has died because the estate requires the information requested to properly frame a robust, but not overly inclusive complaint.

22. Answers to basic questions can be found if Petitioner, the father the proposed administrator of the estate of the decedent, is provided with the paperwork associated with their son's ill-fated interaction with the respondents.

23. Petitioners intend to file a lawsuit against the City of New York, and others involved in the incident.

24. This Petitioner seeks an Order for the production of the following:

- a. Body worn camera footage for September 29, 2019 which depict in whole or in part the shooting of Mr. Williams and P.O. Mulkeen and the events which lead up to that shooting at or around 1132 E. 229th Street near Laconia Avenue in the Bronx, NY in and around the Edenwald Houses at approximately 12:30 am;
- b. Video from the NYCHA which reflect the incident at 1132 E. 229th Street near Laconia Avenue in the Bronx, NY in and around the Edenwald Houses at approximately 12:30 am;
- c. All shot spotter records from September 29, 2019 at or around 1132 E. 229th Street near Laconia Avenue in the Bronx, NY in and around the Edenwald Houses;
- d. Unusual Occurrence Reports (PD 370-152/PD 370-151) created consistent with PG 212-09 (“Unusual Occurrence Reports”), UF-49s, Unusual Incident Reports, DD-5s, handwritten notes, and any other records, memorializing observations, statements, or other facts about:
 - i. Mr. Williams’s conduct, or the conduct of Mr. Williams’s perceived friend(s), on September 29, 2019, prior to the shooting of Mr. Williams;
 - ii. Mr. Williams’s shooting on September 29, 2019, or the conduct of any NYPD officer leading up to or after the shooting, related to the shooting, Mr. Williams’s injuries, medical care provided to Mr. Williams, and any steps taken to ensure the integrity of the scene of the shooting;
 - iii. Investigations, disciplinary actions, or prosecutions undertaken or contemplated related to Mr. Williams’s shooting or misconduct related to Mr. Williams’s shooting, including, but not limited to, unauthorized statements made by NYPD officers to the media related to Mr. Williams’s shooting;
- e. Recordings of 311 or 911 calls regarding Mr. Williams, requests for medical assistance related to the shooting of Mr. Williams, searches related to the shooting, investigations into any of those events, or any other, related events on September 29, 2019;
- f. SPRINT or ICAD recordings including job runs related to Mr. Williams, his shooting, or any related events on September 29, 2019 and, any related SPRINT printouts or indices;
- g. Activity Log (PD112-145), Memo Book, Investigator’s Daily Activity Report, Stop Reports, Daily Activity Report (PD 439-156), or other, similar

NYPD records documenting observations and/or events created pursuant to PG 212-08 (“Activity Logs”) or other NYPD procedure covering September 29, 2019 by the officers who were in the car with P.O. Mulkeen and any other NYPD officers who:

- i. Allegedly observed Mr. Williams prior to his death on September 29, 2019;
- ii. Responded to the scene of Mr. Williams’s shooting within 2 hours of the shooting Mr. Williams on September 29, 2019;
- iii. Interacted in any way with Mr. Williams on September 29, 2019;
- h. Records related to Mr. Williams on September 29, 2019, including any related memo book entries, Stop, Question, and Frisk Reports, in either paper or electronic format;
- i. Records memorializing or reflecting the use of force on Mr. Williams on September 29, 2019, and any purported justifications for them, including, but not limited to, any such documents required to be created under PG 203-11 (“Use of Force”) or other NYPD procedure;
- j. NYPD AIDED Report Worksheet(s) (PD 304-152b), and any other NYPD records related to or reflecting Mr. Williams’s injuries, or medical treatment sought for or given to Mr. Williams, on September 29, 2019, prepared pursuant to PG 216-01 (“Aided Cases – General Procedure”), 216-02 (“Preparation Of Aided Report Worksheet”) or other NYPD procedure;
- k. Crime Scene Unit or other records depicting or reflecting related to the shooting on September 29, 2019, including, but not limited to, photographs or video or other records depicting Mr. Williams;
- l. Records reflecting steps taken by NYPD officers to preserve or document evidence related to the shooting including, but not limited to, photographs or video depicting the scene of the shooting or any related evidence, and any such records reflecting compliance with PG 212-04 (“Crime Scene”) and/or Interim Order 70 Issued November 13, 2009, or any other NYPD procedures, related to integrity and treatment of crime scenes;
- m. Records reflecting the treatment by NYPD officers and emergency medical responders of Mr. Williams’s body after he was shot and before he was pronounced dead and the chain of custody of Mr. Williams’s body, including, but not limited to, any Identification Tag (PD 317-091) or other records created consistent with PG Section 216-04 (“Dead Human Body General Procedure”), as

well as any other records reflecting who interacted with Mr. Williams's body between 12:30 a.m. and 11:00 p.m., or in what manner;

n. Records reflecting which steps NYPD officers took to notify Mr. Williams's family about his death or the circumstances surrounding his death, and when, including, but not limited to, any such records created consistent with PG 216-15 ("Notifications") regarding procedures to be followed "[w]hen it is necessary to notify relatives/friends of a deceased ... person;"

o. Records created consistent with PG Section 218-28 ("Safeguarding Property of Deceased Persons") or other NYPD procedure regarding the safeguarding, seizure, chain of custody, or testing of property related to Mr. Williams's shooting, including, but not limited to, any firearms allegedly recovered including, but not limited to, any of the following records:

- i. Property Clerk Invoice Worksheet (PD 521-141A);
- ii. Property Clerk Invoice (PD 521-141);
- iii. Evidence Transmittal Report (PD 521-158);
- iv. Request for Laboratory Examination Report – First Sheet (PD 521-165);
- v. Request for Laboratory Examination Report – Second Sheet (PD 521-165A);
- vi. Request for Laboratory Examination Report – Third Sheet (PD 521-165B);

p. Firearm Discharge/Assault Report (PD 424-151) related to the shooting of Mr. Williams and any other reports or records related to or created as a result of the discharge of firearms on September 29, 2019, including, but not limited to, reports related to any ballistics, gun residue, blood splatter, forensic, or other testing, and all documents required to be created when an officer shoots their firearm and kills someone by PG 205-08 ("Trauma Counseling Program"), 206-17 ("Removal and Restoration of Firearms"), 212-29 ("Firearms Discharge by Uniformed Members of the Service"), 212-53 ("Command Responsibilities When A Person Dies Or Sustains A Serious Injury In Connection With Police Activity"), and Interim Order No. 52, issued September 30, 2007 ("Alcohol Testing for Uniformed Members Of The Service Involved In Firearms Discharges Resulting In Injury To Or Death Of A Person") or other NYPD procedure;

- q. Records created consistent with PG Section 218-23/Interim Order 7 Issued February 13, 2009 (“Processing Firearm and Firearm-Related Evidence”) related to the shooting of Mr. Williams, the officers’ firearms, or the chain of custody, testing, or other treatment after the shooting of Mr. Williams, including, but not limited to, any relevant forms listed in Request No. 17 above, or any other forms to be created according to NYPD procedure;
- r. Records created consistent with PG Section 218-04 (“Delivery Of Evidence To The Police Laboratory”)/Interim Order 59 Issued December 12, 2007 or other NYPD procedure related to the shooting of Mr. Williams and the treatment, testing, and chain of custody of any evidence related to it, including, but not limited to, the officers’ firearms, blood splatter, gunshot residue on Mr. Williams’s clothing, or the safeguarding, seizure, chain of custody, or testing of any such evidence, including, but not limited to, any relevant forms listed in Request No. 17 above, or any other forms to be created according to NYPD procedure;
- s. Records, including video or audio recordings and handwritten notes, reflecting interviews/interrogations of or statements given by NYPD officers, including statements given pursuant to GO-15 or PG 206-13 (“Interrogation of Members of the Service”) and all other statements, related to Mr. Williams’s shooting or related events, and any related investigations, disciplinary proceedings, or prosecutions undertaken or contemplated, including, but not limited to, any such interviews/interrogations of or statements given by any NYPD officer, regarding Mr. Williams’s shooting;
- t. Records, including video or audio recordings and handwritten notes, reflecting civilian interviews or statements given by non-NYPD officers related to Mr. Williams’s shooting or any related events, and any related investigations, including, but not limited to, any such interviews by NYPD’s Internal Affairs Bureau (“IAB”) or any other NYPD officers;
- u. Records, including video or audio recordings and handwritten notes, reflecting police observations of or interactions with members of Mr. Williams’s family on September 29, 2019;
- v. Records regarding investigations and disciplinary actions contemplated or taken (including any command disciplines or charges and specifications levied) related to Mr. Williams’s shooting or other events related to Mr. Williams’s shooting (such as leaking information about Mr. Williams, Mr. Williams’s shooting, or related investigations or disciplinary proceedings, to the media), including, but not limited to, any such records created pursuant to PG Sections 206-01 (“Reporting Violations Observed By Supervisors”), 206-02 (“Command Discipline”), 206-03 (“Violations Subject To Command Discipline”), 206-04

(“Authorized Penalties Under Command Discipline”), 206-05 (“Preparation of Charges and Specifications”), 206-06 (“Service And Disposition Of Charges and Specifications”), 206-07 (“Cause For Suspension or Modified Assignment”), 206-08 (“Suspension From Duty Uniformed Member Of The Service”), 206-10 (“Modified Assignment”), 206-11 (“Member Of The Service Arrested”), 206-13 (“Interrogation Of Members Of The Service”), and 206-16 (“Review of Arrest Cases Involving Member of the Service as Defendant”), including, but not limited to, any related Charges and Specifications (PD 468-121) records, and records related to any related disciplinary processes (including such processes arising from any command disciplines or charges and specifications levied) and their dispositions;

w. To the extent not already subject to disclosure based on another request herein, any other records, including handwritten notes, video or audio recordings, including, but not limited to, any video from Video Interactive Patrol Enhancement Response (“VIPER”) cameras or other sources, and/or photographs, documenting observations of 1132 E. 229th Street near Laconia Avenue in the Bronx, NY in and around the Edenwald Houses on September 29, 2019;

x. All video recordings collected by the NYPD from any source which show all or part of the shooting involving Mr. Williams 1132 E. 229th Street near Laconia Avenue in the Bronx, NY in and around the Edenwald Houses on September 29, 2019;

y. Communications with the press by the NYPD, and statements to the press made by the NYPD, including the NYPD’s Deputy Commissioner of Public Information (“DCPI”) or DCPI officers, regarding Mr. Williams, Mr. Williams’s shooting, and any related events;

z. Notes and other records relied on, or containing information relied on by any NYPD personnel in September of 2019 in making the public statements to the press described in the various media reports of the incidents;

aa. To the extent not already subject to disclosure based on another request made herein, records related to NYPD investigations arising from Mr. Williams’s shooting or any events related to Mr. Williams’s shooting (such as leaking information about Mr. Williams, Mr. Williams’s shooting, or related investigations or disciplinary proceedings to the media), including, but not limited to, any such investigations by the NYPD’s:

- i. Crime Scene Unit;
- ii. Firearms Discharge Unit;

- iii. Internal Affairs Bureau;
 - iv. Detective Bureau;
 - v. Homicide Bureau;
 - vi. Chief of Department – Investigation Review Section;
 - vii. Disciplinary Assessment Unit;
 - viii. Personnel Bureau;
 - ix. Department Advocate’s Office;
 - x. Police Laboratory;
- bb. Records containing the names of or otherwise identifying the officers who were on duty on September 29, 2019 with P.O. Mulkeen during and prior to the fatal interaction with Mr. Williams;
- cc. Records related to any Civilian Complaint Review Board (“CCRB”) complaints or investigations related to Mr. Williams’s shooting or any events related to Mr. Williams’s shooting, including, but not limited to, any such records created pursuant to PG 211-14 (“Investigations By Civilian Complaint Review Board”) and any related Request For Records And/Or Information Regarding CCRB Case (PD 149-164) forms;
- dd. Records related to any non-NYPD investigations or prosecutions arising from Mr. Williams’s shooting or any events related to Mr. Williams’s shooting by the DOJ/USAO, USAO-SDNY, Bronx County DA, or any other entity, including, but not limited to, records disclosed by NYPD to any such entity, and all related communications between or among the NYPD and the DOJ/USAO, USAO-SDNY, Bronx County DA, or any other entity, related to Mr. Williams’s shooting or any related investigations or prosecutions;
- ee. Records reflecting communications between the NYPD and the Office of the Mayor between September 29, 2019 and the present regarding investigations, disciplinary actions, or prosecutions related to Mr. Williams’s shooting
Records reflecting communications between the NYPD and the New York City Council between September 29, 2019 and the present regarding investigations, disciplinary actions, or prosecutions related to Mr. Williams’s shooting; and
- ff. The “Firearms Discharge Manual, A Guide to the Preparation of a Shooting Incident Report” referred to in PG 212-29(14) and elsewhere in PG 212-

29.

Argument

25. Petitioner has stated a claim and is therefore entitled to pre-action disclosures and an order to preserve information.

PRODUCTION OF EVIDENCE

26. Pursuant to C.P.L.R. § 3102(c), the Court may order the disclosure or order the preservation of materials in order “to aid in bringing [an] action.”

27. Courts applying this provision have routinely granted disclosure of the identity of respondents, to aid the petitioner in bringing an action against them. See Stewart v. New York City Transit Authority, 112 A.D.2d 939, 940 (2nd Dep’t 1985) (granting the petitioners’ request for pre-action discovery because, inter alia, “the requested information was necessary to identify prospective defendants”); Rosenberg v. Brooklyn Union Gas Co., 80 A.D.2d 834 (2nd Dep’t 1981) (“Since petitioners have demonstrated that a cause of action exists, C.P.L.R. § 3102(c) would authorize pre-action discovery to allow them to frame their complaint and obtain the identity of prospective defendants.”) See also Bumpus v. N.Y.C. Trans. Auth., 66 A.D. 3d 26, 33 (2nd Dep’t 2009).

28. Petitioner seeks to identify the officers involved, as well as the supervisory officers and officers who failed to intervene, and/or who have knowledge of the incident.

29. The information sought will allow identification of potential defendants, as well as determine the form or forms which the action should take. See Stewart v. N.Y.C. Trans. Auth., 112 A.D.2d 939, 940 (2nd Dep’t 1985) (“it is well established that

disclosure ‘to aid in bringing an action’ (C.P.L.R. § 3102(c)) authorizes discovery to allow plaintiff to frame a complaint and to obtain the identity of the prospective defendants.”)

30. Without the identities of the individuals who were involved in the incident and the videos from the body worn cameras and the surveillance footage possibly from the NYCHA building cameras, we will not know who we need to proceed against, nor will we know what claims to lodge.

31. The surveillance footage will provide us the ability to possibly rule out potential defendants who fired but whose bullet(s) did not strike Mr. Williams. This could save them the embarrassment of being sued unnecessarily.

32. Additionally, records of witnesses to the incident may allow petitioner to locate witnesses that could not otherwise be located.

33. Pre-action discovery is especially necessary here because the person who had the best information on how to frame a complaint has been killed. The responsible parties must not be allowed to have their tortuous behavior hinder the prosecution of a civil action.

PRESERVATION OF EVIDENCE

34. C.P.L.R. § 3102(c) provides for pre-action discovery in order to “preserve information.”

35. Courts have repeatedly granted orders for the preservation of evidence where the possibility that evidence will be lost has been shown. See Application of Loria, 98 A.D.2d 989, 989 (4th Dep’t 1983) (ordering preservation of evidence related to police

officer's shooting of the petitioner); O'Grady v. City of New York, 164 Misc.2d 171, 175-76 (Sup. Ct. N.Y. Cty. 1995) (ordering respondent to preserve and produce for inspection documents relevant to petitioner's proposed cause of action because "broad discovery should be afforded to plaintiffs in civil rights and discrimination actions in New York"); Spraggins v. Current Cab Corp., 127 Misc.2d 774 (Sup. Ct. N.Y. Cty. 1985) (ordering preservation of physical evidence from auto collision because, "[g]iven the broad scope of C.P.L.R. § 3102(c) and its intended purpose to preserve 'information' . . . the statute clearly, by its language, anticipates the preservation of more than just testimony.")

36. Petitioners face imminent and irreparable harm should this Order be denied and in the event of spoliation, or destruction of the enumerated evidence.

37. In particular, any video evidence stands to be deleted or lost within a very short timeframe.

38. In the matter of Mercado v. The City of New York, Index Number 17888 / 2013, Kings County Supreme Court November 1, 2013, litigated by the undersigned, was a similar pre-action discovery in which a Preservation Order was entered and numerous videos and logbooks were found not preserved. Therefore, we require an affidavit indicating who the preservation order was delivered to in order to properly hold the defendants accountable, should they not fully preserve all of the relevant evidence.

39. WHEREAS no party would be prejudiced by this Court ordering the preservation of information and production of evidence referred to in the Order to Show Cause, and,

40. WHEREAS petitioner has made a good faith attempt to notify the respondents of the time, date and place of the instant application in order to provide respondents an opportunity to appear in response to the instant application. See 22 N.Y.C.R.R. § 202.7(f).

Dated: March 4, 2020
New York, New York

Respectfully submitted,

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By: _____

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VERIFICATION

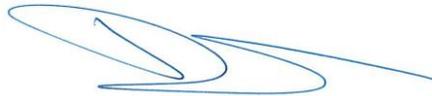
I, David B. Rankin, an attorney duly admitted to practice before the Courts of the State of New York, affirm the following to be true under the penalties of perjury:

- 1) I am the attorney of record for the petitioner, Shaun Williams.
- 2) I have read the annexed Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are alleged upon information and belief, and as to those matters, I believe them to be true. My beliefs, as to those matters therein not stated upon knowledge, are based upon facts, records, other pertinent information contained in my files.
- 3) This verification is made by me because Plaintiff does not reside in the County where I maintain my offices.

Dated: March 4, 2020
New York, New York

Respectfully submitted,

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By: _____

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