

Matter of Stevens v Schiro

2013 NY Slip Op 31910(U)

August 6, 2013

Supreme Court, New York County

Docket Number: 118045/09

Judge: Lucy Billings

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SCANNED ON 8/15/2013

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C.

PART 46

TIJAWANA STEVENS

FILED

AUG 15 2013

INDEX NO. 118045/2009

-v-
DR. DORA SCHIRO, et al.

COUNTY CLERK'S OFFICE
NEW YORK

MOTION DATE _____

MOTION SEQ. NO. 002

The following papers, numbered 1 to 2, were read on this motion for disclosure

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1

Answering Affidavits — Exhibits _____ No(s). 2

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that ~~this motion is~~:

The court grants petitioner's motion for disclosure to the extent set forth in the accompanying decision. C.P.L.R. § 408.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 8/6/13

Lucy Billings, J.S.C.

LUCY BILLINGS

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46

-----x

In the Matter of the Application of
TIAJWANA STEVENS,

Petitioner,

Index No. 118045/09

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules

-against-

DECISION AND ORDER

DR. DORA SCHRIRO, Correction Commissioner
of the New York City Department of
Correction; NEW YORK CITY DEPARTMENT OF
CORRECTION; and CITY OF NEW YORK,

Respondents

-----x

FILED
AUG 15 2013
COUNTY CLERK'S OFFICE
NEW YORK

APPEARANCES:

For Petitioner
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61 Broadway, New York, NY 10006

For Respondents
Benjamin Traverse, Assistant Corporation Counsel
100 Church Street, New York, NY 10007

LUCY BILLINGS, J.:

The court grants petitioner's motion for disclosure from respondents to the following extent. C.P.L.R. § 408. The disclosure ordered consists of limited, discrete documentary evidence and identification of witnesses, which are necessary for petitioner to prepare for the trial ordered in this proceeding; to support her claims, which respondents dispute; and to minimize her surprise by the evidentiary bases for respondents' defenses.

Roth v. Pakstis, 13 A.D.3d 194 (1st Dep't 2004); People v.

Zymurgy, Inc., 233 A.D.2d 178, 179 (1st Dep't 1996); Marqolis v. New York City Tr. Auth., 157 A.D.2d 238, 243 (1st Dep't 1990); Niagara Mohawk Power Corp. v. City of Saratoga Springs Assessor, 2 A.D.3d 953, 954 (3d Dep't 2003). The disclosure thus will assist in and expedite the resolution of the disputed issues, as the evidence is easily produced in advance of the trial scheduled September 18, 2013. E.g., Town of Pleasant Val. v. New York State Board of Real Prop. Servs., 253 A.D.2d 8, 16 (2d Dep't 1999).

In addition to the names of witness respondents expect to call to testify at the trial, petitioner specifically seeks:

- (1) all videotapes of the incident involving the use of force that petitioner witnessed and its aftermath September 20, 2008;
- (2) a map of the George Motchan Detention Center inmate housing area where petitioner was stationed September 20, 2008, that designates the cell numbers and inmates who occupied each cell at 7:40 p.m. on that date;
- (3) all statements of inmates that respondents obtained throughout their investigation of the incident; and
- (4) all work orders, work order summaries, records of inmate infractions, logbook pages, and other documents that refer to an inoperable cell door or an inmate's ability to open a cell door at the George Motchan Detention Center from June 2008 through December 2009.

I. VIDEOTAPES

Respondents admit that they possess a video surveillance tape of the George Motchan Detention Center inmate housing area where petitioner was stationed around the time of the incident involving the use of force that she witnessed September 20, 2008. Respondents maintain that the tape does not depict the cell that inmate Dennis Ricks, who was involved in the incident, exited beforehand or whether he manipulated the cell door to exit, or Correction Officer Kenju Strunkey opened it. Insofar as petitioner seeks the tape to show whether Ricks was stabbed in his buttocks during the incident, respondents point out that the parties do not dispute the injury and that, weeks afterward, respondents' investigators canvassed the housing area where the use of force incident occurred and found nothing that may have punctured Ricks.

Petitioner does not seek the videotape to show merely whether Ricks incurred a puncture wound to his buttocks. She seeks the tape to show whether he was suffering the wound while still in the inmate housing area. If he incurred the wound then, the tape likely would show him bleeding or blood nearby. If the tape depicted no injury or bloody condition, the absence of such indications would suggest that he incurred the wound after being escorted away from Officer Strunkey. In that event, the officer would not have been the perpetrator, and Ricks would have incurred his wound otherwise, such as by self-infliction to give the false suggestion that an officer did use force against the

inmate. Petitioner points out that, if the tape did depict Ricks injured or any bloody condition, suggesting Officer Strunkey's use of force, respondents would have presented the tape in support of their motion to dismiss or answer to the petition.

Moreover, a videotape, if it depicts the relevant scene at or immediately after the relevant time, is the most reliable account over the investigators' account of their findings much later. Petitioner is entitled to her own findings from the depiction, rather than relying on respondents' findings. For these reasons, respondents shall produce complete and accurate copies of all videotapes requested within 20 days after entry of this order.

II. MAPS OR FLOOR PLANS

Respondents insist that production of a map or floor plan depicting the layout of the inmate housing area, designating the cell numbers, and identifying the inmates who occupied each cell at a specified time would pose a safety risk for correction officers and inmates. Petitioner seeks this information to ascertain whether the inmates respondents present as witnesses to Ricks' exit from his cell and his encounter with Officer Strunkey in fact were in a position to observe either of them.

Respondents do not dispute that they possess such a map or floor plan or that it would be instructive for the purpose petitioner articulates, nor do respondents articulate how this information would pose a safety risk. They need not produce information that depicts any means of egress or ingress or any

areas of the detention center unfamiliar to inmates. Therefore respondents shall produce a map, floor plan, or similar depiction of the layout of the cells, with the cell occupants identified, as requested, within 20 days after entry of this order. Before the expiration of that period, respondents may propose a confidentiality stipulation to petitioner and, if they are unsuccessful in reaching a stipulation, respondents may seek a confidentiality order from the court covering this information. C.P.L.R. § 3103(a).

III. STATEMENTS OF INMATES

Petitioner acknowledges that she has received statements of 14 identified inmates reported or summarized by respondents' investigators. Respondents have not attested on personal knowledge, however, whether their investigators or other employees or officials obtained any further statements of those 14 inmates or interviewed any other inmates and obtained their statements about the use of force incident: statements executed by the inmates or reported or summarized by respondents' personnel. Petitioner seeks all such information. The response, that respondents provided the 14 statements and, "upon information and belief," the investigator who obtained most of those statements did not obtain any statements from the inmates she interviewed written by the inmates themselves, misapprehends petitioner's request.

Absent any other objection, respondents shall produce all statements of inmates that respondents obtained throughout their

investigation of the incident, including statements written by or for inmates or accounts of interviews with inmates, or an affidavit on personal knowledge that no such statement not already produced is in respondents' possession, custody, or control. This information is necessary to ascertain whether all interviewees' statements supported respondents' version of the use of force incident. Respondents shall produce this information also within 20 days after entry of this order.

IV. RECORDS OF INOPERABLE OR MANIPULATED CELL DOORS

Respondents similarly respond to petitioner's request for documents that refer to an inoperable cell door or an inmate's ability to open a cell door, by resting on respondents' prior production of work order summaries for one month preceding September 20, 2008, and for approximately two weeks afterward, through October 7, 2008. For reasons similar to the reasons for seeking all inmates' statements, petitioner seeks the underlying records from which respondents compiled their summaries.

Respondent do not offer any reason why she must be limited to relying on their summary of what the data show. The information sought is necessary to ascertain the extent of respondents' awareness that inmates were capable of manipulating their cell doors to exit the cells. Such facts would reveal a known security threat at the detention center that enabled Ricks to exit his cell and initiate the altercation with Officer Strunkey and that respondents would be motivated to cover up by finding another cause for Ricks' exit and the altercation.

The period over which petition seeks this information, however, is overly extensive. The court allows petitioner to obtain the records for a full quarter before September 20, 2008, extending back to June 20, 2008, and until, as petitioner contends, respondents began targeting petitioner at the end of March 2009, looking for support of their explanation for Ricks' exit from his cell and altercation with Officer Strunkey. See Allocca v. Kelly, 44 A.D.3d 308, 309 (1st Dep't 2007); Town of Wallkill v. New York State Bd. of Real Prop. Servs., 274 A.D.2d 856, 859-60 (3d Dep't 2000); Grossman v. McMahon, 261 A.D.2d 54, 57-58 (3d Dep't 1999). This period is adequate for petitioner's purposes in preparing for the trial. Therefore respondents shall produce all work orders, work order summaries, records of inmate infractions, logbook pages, and other documents not already produced that refer to an inoperable cell door or an inmate's ability to open a cell door at the George Motchan Detention Center from June 20, 2008, through March 31, 2009.

V. CONCLUSION

Although respondents do not oppose petitioner's reasonable request for identification of the witnesses respondents intend to call to testify at the trial, the court permits respondents to condition their provision of this information on petitioner's reciprocal identification of the witness she intends to call to testify at the trial. The parties may agree to the time by which they will exchange this information and the specific identifying information to be exchanged. The parties also may agree to

modify the deadlines for and contents of the production ordered above.

This decision constitutes the court's order. The court will mail copies to the parties' attorneys. A decision on respondents' pending motions will follow.

FILED

AUG 15 2013

**COUNTY CLERK'S OFFICE
NEW YORK**

Lucy Billings

DATED: August 6, 2013

LUCY BILLINGS, J.S.C.

**LUCY BILLINGS
J.S.C.**