

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Alexander Gray,)
Plaintiff,) Case No. 23-cv-1931
v.) Judge Steven C. Seeger
City of Evanston, Evanston Police Officers)
Kubiak, Kane, Popp, Rosenbaum, and)
Pogorzelski,)
Defendants.)

DEFENDANTS' LOCAL RULE 56.1(a)(2) STATEMENT

1. Plaintiff Alexander Gray is a 50-year-old, (Exhibit 2, Gray Dep. 4:17), resident of Evanston, Illinois. (Exhibit 3, EPD Report at 1)
2. Defendant City of Evanston is an Illinois municipal corporation. (Exhibit 1, Answer to Amended Complaint, ¶3)
3. Defendants Marcin Kubiak, Michael Kane, Kyle Popp, Daniel Rosenbaum, and Pauline Pogorzelski were police officers of the City of Evanston on March 31, 2021. (Exhibit 1, Answer to Amended Complaint, ¶4)
4. On March 31, 2021, at or about 2:35 pm the Evanston Police Department (“EPD”) received a 911 call from citizen who reported seeing a man with a gun in his right hand at a lakefront public park located in the 500-block of Sheridan Square, Evanston. (Exhibit 3, EPD Report, Exhibit 4, CAD ticket, Exhibit 7, Kane Dep. 30:13-16, Exhibit 8, Popp Dep. 14:5-8, Exhibit 9, Kubiak Dep. 35:6-17)
5. On March 31, 2021, it was unlawful for any person to carry a firearm in a public park in Evanston Illinois. (Exhibit 6, Kubiak Dep. 36:7-24, 37:1-14)

6. The 911 caller described the man as white male, approximately 5 to 6 feet tall, and wearing a dark coat and jeans. (Exhibit 3, EPD Report, Exhibit 12, Kubiak Video at 14:40:10)
7. Police were later able to identify the 911 caller as Madeline Pitman. Ms. Pitman was located by Officer Svendsen at approximately 2:40 p.m. and interviewed to reconfirm the report. (Exhibit 3, EPD Report, Exhibit 15, Pitman Video 14:49:23)
8. Ms. Pitman re-confirmed that on 3/31/21 she was walking northbound on the east side of the 500 block of Sheridan square when she observed Plaintiff ahead of her, standing in the path facing westbound with what she believes to have been a gun in his right hand. (Exhibit 3, EPD Report, Exhibit 15, Pitman Video 14:49:23)
9. At about 2:38 pm, an EPD dispatcher radio broadcast the that a 911 caller reported a white male, approximately 5 to 6 feet tall, wearing a dark coat and jeans was at the lakefront public park in the 500-block of Sheridan Square, Evanston with a gun in his right hand. (Exhibit 1, Answer to Amended Complaint ¶5, Exhibit 3, EPD Report, Exhibit 4, Cad Ticket, Exhibit 6, Kubiak Dep. 6:19-24, 7:1-7, Exhibit 7, Kane Dep. 9:12-18, 11:18-24, Exhibit 8, Popp Dep. 26:8-24, 27:1-3, 29:5-11, Exhibit 5, Rosenbaum Dep. 11:18-22).
10. Officer Kubiak was on patrol in a police vehicle in the area at the time and drove to the location. (Exhibit 9, Kubiak Int Ans at ¶15, Exhibit 12, Kubiak Video 14:39:11)
11. At 2:40 pm, as Officer Kubiak was pulling up to the location, he asked the dispatcher to repeat the description of the subject. The dispatcher responded “male, white 5’- 6’, dark coat with jeans, the gun is in his right hand, it should be a black handgun.

[inaudible background noise] Also, he's supposed to be north of the beach...on the trail." (Exhibit 12, Kubiak Video 14:40:10)

12. Less than one minute later, Officer Kubiak observed Plaintiff in the same location provided by the dispatcher. (Exhibit 6, Kubiak Dep. 12:16-19). Plaintiff was wearing a dark coat and jeans. Kubiak parked and exited his police vehicle and proceeded toward the man from behind a non-police vehicle that was parked between him and the subject. (Exhibit 12, Kubiak Video 14:41:19)
13. Officer Kubiak observed Plaintiff holding a black object in his hand. (Exhibit 6, Kubiak Dep. 14:7-21) Officer Kubiak, believing the man was armed, radioed that he had "eyes on him" upon which, he unholstered and drew his firearm, pointed it in the direction of man and ordered him to remove his hands from his pocket and put his hands up. (Exhibit 6, Kubiak Dep. 18:1-12, Exhibit 12, Kubiak Video 14:41:22)
14. Immediately after Kubiak drew his firearm, Defendants, Kane, Popp, Rosenbaum, Pogorzelski, and other Evanston police officers responded to the scene based on the dispatch report. (Exhibit 1, Answer to Amended Complaint, ¶¶ 4, 6.) Officer Kane, who had also heard the dispatcher's broadcast arrived at the scene at or about the time Officer Kubiak began his approach toward Plaintiff. (Exhibit 7, Kane Dep. 9:12-18, Exhibit 13, Kane Video 14:41:22)
15. Officer Kane, deployed, his firearm drawn in a low ready position and assisted in effectuating Plaintiff's compliance with Officer Kubiak's instructions. (Exhibit 7, Kane Dep. 15:19-22, Exhibit 13, Kane Video 14:41:40)

16. “Low ready position” describes when a weapon is held by an officer with the barrel pointing down towards the ground. (Rosenbaum Dep. 49:23-24, 50:1-3, Popp Dep. 22:6-16)
17. At or about this same time, other Evanston police officers, including Popp, Rosenbaum and Pogorzelski arrived; however, they did not actively assist Officers Kubiak and Kane in engaging Plaintiff, nor did they point their firearm at Plaintiff. (Exhibit 5, Rosenbaum Dep 25:4-12, Exhibit 8, Popp Dep. 22:6-23)
18. Officer Kane maintained his firearm in “low ready” position but did not at any point in time point his firearm at Plaintiff. (Exhibit 7, Kane Dep. 15:19-21, Exhibit 13, Kane Video 14:42:03)
19. When Officers Kubiak and Kane approached Plaintiff, he was wearing a dark coat and jeans, holding a black object in his hand. (Exhibit 12, Kubiak Video 14:41:45, Exhibit 2, Plaintiff Dep. 8:20-24, 9:1-4)
20. As Kane and Kubiak approached, Plaintiff was holding a black cell phone in his hand. (Exhibit 2, Plaintiff Dep. 8:20-24, 9:1-4) Plaintiff also had a pair of black headphones on his person at this time. (Exhibit 12, Kubiak Video 14:42:17)
21. Officer Kubiak instructed plaintiff to put his hands up (Exhibit 12, Kubiak Video 14:41:24) and to get on the ground. (Exhibit 12, Kubiak Video 14:41:30)
22. Plaintiff voluntarily complied with Officer Kubiak’s direction. (Exhibit 12, Kubiak Video 14:41:51, Exhibit 2, Plaintiff Dep. 17:17-24)
23. Officers Popp, Pogorzelski and Rosenbaum and other Evanston police officers, had responded to the scene and were present as Plaintiff was complying with Kubiak’s directive. (Exhibit 12, Kubiak Video 14:43:31)

24. Defendant Officers are depicted via bodycam footage as follows:

- a. Officer Rosenbaum is holding a rifle and standing with his back to the camera.
(Exhibit 7, Kane Dep. 28:24-29:3)
- b. Defendant Kane is the officer without a mask standing to plaintiff's left.
(Exhibit 7, Kane Dep. 28:5-7)
- c. Defendant Popp is the officer wearing a mask, crouching to plaintiff's right.
(Exhibit 8, Popp Dep. 15:17-22)
- d. Defendant Kubiak is wearing a dark uniform and no hat, standing to the right of defendant Rosenbaum. (Exhibit 5, Rosenbaum Dep. 40:13-17)
- e. Defendant Pogorzelski is wearing a hat, standing up, and close to the tree toward the left of the frame. (Exhibit 5, Rosenbaum Dep 35:12-17)

25. Officers Kane and Popp handcuffed plaintiff. (Exhibit 7, Kane Dep. 32:21-23, Exhibit 8, Popp Dep. 16:5-10)

26. Officers explained to Plaintiff that they had received a call about a man with a gun in the park, with a handgun in his right hand. (Exhibit 12, Kubiak Video 14:42:52)

27. Officers Kane and Popp performed a protective pat down search of plaintiff's outer clothing. (Exhibit 12, Kubiak Video 14:42:24, Exhibit 13, Kane Video 14:42:24, Exhibit 14, Brown Video 14:42:24)

28. Plaintiff was then helped to his feet by officers, upon which Officer Pogorzelski requested Plaintiff's consent to search his person for firearms. Plaintiff replied, "Of course." (Exhibit 12, Kubiak Video 14:43:55)

29. After determining Plaintiff did not have a weapon, they released him immediately.

(Exhibit 4, Cad Report, Exhibit 3, Field General Report, Exhibit 12, Kubiak Video 14:47:28)

30. Officer Kubiak arrived on scene and first encountered Plaintiff at 14:41:23. By 14:47:50 Plaintiff was released. This entire event lasted approximately 7 minutes.

(Exhibit 14 Brown Video, Exhibit 12, Kubiak Video, Exhibit 13, Kane Video)

31. The City of Evanston maintains a policy regarding use of force. This policy is set out in “Policy 300” (Exhibit 10, Evanston Force Policy)

Date: March 6, 2024,

Respectfully Submitted,
DEFENDANTS

/s/ James V. Daffada
James V. Daffada

James V. Daffada
Thomas More Leinenweber
John R. Stortz
Leinenweber Daffada & Sansonetti LLC
120 N. LaSalle Street, Suite 2000
Chicago, Illinois 60602
jim@ilesq.com
thomas@ilesq.com
jrs@ilesq.com

On Behalf of Defendants