

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

Alexander Gray,

*Plaintiff,*

 $\nu.$ 

City of Evanston, Evanston Police Officers  
Kubiak, Kane, Popp, Rosenbaum, and  
Pogorzelski,

*Defendants.*

Case No. 23-cv-1931

Judge Steven C. Seeger

## **DEFENDANTS' STATEMENT OF ADDITIONAL FACTS**

Defendants City of Evanston, Officers Kubiak, Kane, Popp, Rosenbaum, and Pogorzelski (Collectively “Defendants”), through their counsel, Leinenweber Daffada and Sansonetti, submits this Statement of Additional Undisputed Material Facts, pursuant to Local Rule 56.1(b)(3) in opposition to Plaintiffs Motion for Partial Summary Judgment Against Defendants. (Dkt. #30).

1. 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).
2. 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)

3. 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)
4. 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)
5. 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)
6. Officer Kane, deployed, with 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)
7. 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)
8. 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)

9. 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)
10. Officers Rosenbaum and Kane maintained their firearms in "low ready" position but did not at any point in time point their firearm at Plaintiff. (Exhibit 7, Kane Dep. 15:19-21, Exhibit 13, Kane Video 14:42:03)
11. 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)
12. 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)
13. 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)
14. The city of Evanston maintains a policy regarding use of force. This policy is set out in "Policy 300" (Exhibit 10, Evanston Force Policy)
15. 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)
16. Officer Kubiak observed Plaintiff in the same location provided by the dispatcher. (Exhibit 6, Kubiak Dep. 12:16-19). Plaintiff was wearing a wearing a dark coat and jeans. (Exhibit 12, Kubiak Video 14:41:19)

17. Officer Kubiak arrived on scene and first encountered Plaintiff at 14:41:23. By 14:47:50 Plaintiff was released, and Defendants left the scene. This entire event lasted approximately 7 minutes from Officers arriving on the scene to Plaintiff's release. (Exhibit 14 Brown Video, Exhibit 12, Kubiak Video, Exhibit 13, Kane Video)

Date: February 6, 2024,

Respectfully Submitted,  
DEFENDANTS

/s/ James V. Daffada  
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*On Behalf of Defendants*