

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

ALEXANDER GRAY,                    )  
  Plaintiff,                    )  
Vs.                                        ) No. 23-cv-1931  
CITY OF EVANSTON, et al.,        )  
  Defendants.                    )

The deposition of MARCHIN KUBIAK called  
for examination pursuant to the Rules of Civil  
Procedure for the United States District Courts  
pertaining to the taking of depositions, taken  
remotely before Mary Ellyn D'Andrea, CSR,  
on November 1, 2023, at the hour of 11:00 a.m.  
Via Zoom videoconferencing.

REPORTED BY: MARY ELLYN D'ANDREA, CSR.  
LICENSE NO. 084-002317



## 1 APPEARANCES:

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## I N D E X

WITNESS

EXAMINATION

MARCHIN KUBIAK

BY MR. FLAXMAN

4

## E X H I B I T S

NUMBER

MARKED FOR ID

KUBIAK Deposition Exhibit

(NO EXHIBITS MARKED)



1 MARCHIN KUBIAK,

2 having been first duly sworn, was examined and  
3 testified as follows:

4 EXAMINATION

5 BY MR. FLAXMAN:

6 Q. Good morning, sir. Could you state  
7 your name, and spell your last name for us,  
8 please?

9 A. Good morning, it's Marchin Kubiak,  
10 K-u-b-i-a-k.

11 Q. Could you spell your first name, too?

12 A. M-a-r-c-h-i-n.

13 Q. And what's your business or occupation?

14 A. Currently I'm employed as a support  
15 staff security personnel at Stevenson High  
16 School in Lincolnshire.

17 Q. How long have you worked there?

18 A. Since May of 2021.

19 Q. Before starting at Stevenson, where  
20 were you employed?

21 A. I was employed as a police officer in  
22 Evanston.

23 Q. And when did you stop working in  
24 Evanston?



1 A. Beginning of May 2021.

2 Q. And why did you stop working at  
3 Evanston?

4 A. I retired.

5 Q. Do you receive a pension when you  
6 retired?

7 A. Yes, sir.

8 Q. Were you maxed out in your retirement  
9 funding when you retired?

10 A. If I understand correctly your  
11 question, no.

12 Q. Okay. And what do you do at Stevenson?

13 A. I work as a security officer -- not  
14 officer, I'm sorry, it's the wrong word,  
15 security personnel.

16 Q. And do you carry a firearm?

17 A. No.

18 Q. Did you look at anything to prepare for  
19 this deposition?

20 A. I did.

21 Q. Can you tell us what you looked at?

22 A. I looked at a field general which is  
23 another word for a report, I've seen footage of  
24 the body camera that I was wearing at the time.



1 Q. Did you look at any other body cameras  
2 other than the one you were wearing?

3 A. I looked at a fragment of footage  
4 recorded by another officer, one other officer,  
5 yes.

6 Q. And do you recall which other officer  
7 that was, whose body camera video you briefly  
8 reviewed part of?

9 A. It was Officer Kane.

10 Q. When you said you looked at the report,  
11 was that the incident slash investigation report  
12 of this incident that occurred on March 31st,  
13 2021?

14 A. Yes, it was.

15 Q. And did you see anything in that report  
16 that was different than the way you remembered  
17 the incident of March 31st, 2021?

18 A. No, sir.

19 Q. Okay. Do you recall responding to a  
20 dispatch in the vicinity of 501 Sheridan Road of  
21 a report of a man with a gun?

22 A. Yes, sir.

23 Q. And while you were in route to that 501  
24 Sheridan Road, were you advised by the



1 dispatcher that an unknown citizen had reported  
2 seeing a white male approximately 5 feet tall to  
3 6 feet tall in a dark coat and jeans situated  
4 just north of the beach of the trail with a gun  
5 in his right hand?

6 A. Truthfully, I don't recall. I -- now I  
7 recall after seeing the video, yes.

8 Q. Okay. Well, did the video include an  
9 audio of the dispatched message about the  
10 identification of the suspect with the firearm?

11 A. I believe so, yes.

12 Q. And which video is that?

13 A. My body camera, my camera.

14 Q. At what point -- what's the first thing  
15 that you recall seeing on the body camera video  
16 that you reviewed?

17 A. The steering wheel of my squad car.

18 Q. Let me show you -- let me share the  
19 screen and show you that video.

20 MR. DAFFADA: Is there an exhibit  
21 number to it?

22 MR. FLAXMAN: Yeah, I need to find it.

23 MR. DAFFADA: No problem.

24 (Video playing)



1 BY MR. FLAXMAN:

2 Q. Okay. What I'm showing you is what  
3 we've marked as 19 underscore Kubiak 042704-05  
4 underscore 09 MP4.

5 Is this part of your body camera video  
6 that you saw preparing for this deposition?

7 A. I believe so, yes.

8 Q. And when you watched the body camera  
9 video, did it start at the point that we're  
10 seeing on this shared screen now?

11 A. No, sir, it started earlier.

12 MR. FLAXMAN: Let me ask your  
13 Counsel -- did I mess something up, or do you  
14 have a different video than I do?

15 MR. DAFFADA: Ken, what -- I used the  
16 video -- the only videos I received until  
17 yesterday was -- or two days ago, is the ones  
18 you gave me.

19 They are -- the one he reviewed is the  
20 one you produced for me. I can look up the name  
21 here if you give me a second, and I will tell  
22 you what video it's under.

23 MR. FLAXMAN: Well, I will get that up.  
24 I have those originals.



1 MR. DAFFADA: Okay.

2 BY MR. FLAXMAN:

3 Q. Okay. We have on the screen an  
4 unmarked exhibit which is -- there's numbers at  
5 the top right, and I think the identifying  
6 number is X6030971X; do you see that?

7 A. I do.

8 Q. Okay. Let me -- do you recognize your  
9 hands in this video?

10 A. Yes, sir.

11 Q. Okay. I'm going to start playing it,  
12 and when you hear what the dispatcher said,  
13 would you speak up, and I'll stop, and we'll  
14 indicate where in the video that is, and if you  
15 can't hear the dispatcher say that, you can tell  
16 me that too.

17 Let's start. We have now watched and  
18 listened to one minute of the video. At the  
19 beginning the video did not have audio.

20 Do you know why that is?

21 A. I believe that's how the system was set  
22 up.

23 Q. All right. We're now 1 minute into the  
24 video. We're now 1 minute 30 seconds in the



1 video.

2 Did you hear the message from the  
3 dispatcher that we referred to before?

4 A. Yeah, that's just what the dispatcher  
5 said, I believe.

6 Q. Were you able to make out the words of  
7 what the dispatcher said?

8 A. I don't recall -- the --

9 MR. DAFFADA: -- that's not clear --

10 THE WITNESS: -- the audio on this  
11 video, it's pretty bad, so I didn't.

12 MR. DAFFADA: 1.20, Ken, I think that's  
13 where it starts, 1 minute 20 seconds, because  
14 it's very clear in my -- the video you produced.

15 BY MR. FLAXMAN:

16 Q. We just listened to five seconds  
17 listened -- listened and watched five seconds  
18 of the video from 1.20 to 1.25.

19 Is the description in that five second  
20 clip we just heard?

21 A. I believe so, but this audio is broken  
22 up.

23 Q. Is the audio better when you listened  
24 to it preparing for the deposition?



1 A. Yes, sir.

2 Q. Would you like --

3 MR. FLAXMAN: Did you play those 1.20  
4 to 1.30 on a local machine, Jim.

5 MR. DAFFADA: I did, yeah, on my  
6 computer, and I played it, and it's pretty  
7 clear.

8 MR. FLAXMAN: Could you play it now, or  
9 that's not possible?

10 Could you play it now?

11 MR. DAFFADA: I'm going to try.

12 MR. FLAXMAN: All right.

13 MR. DAFFADA: Did you want to take a  
14 break?

15 MR. FLAXMAN: We'll take a one minute  
16 break.

17 MR. DAFFADA: I'm not that fast, Ken.

18 MR. FLAXMAN: All right. We'll take a  
19 five minute break then.

20 MR. DAFFADA: Okay.

21 (Whereupon, a short recess was  
22 taken.)

23 MR. FLAXMAN: Back on the record.  
24



1 BY MR. FLAXMAN:

2 Q. Have you had a chance to listen to the  
3 -- to that excerpt from your body camera?

4 A. Yes, sir.

5 Q. Were you able to make out any of the  
6 words?

7 A. Yes, sir.

8 Q. Could you -- do you recall the first  
9 words that you heard spoken in the message from  
10 the dispatcher?

11 A. I believe the dispatcher said white  
12 male.

13 Q. And did you hear anything from the  
14 dispatcher about the height of the suspect?

15 A. I believe she said about 6 feet tall.

16 Q. Okay. Now, when you responded to the  
17 scene, did you see a man in the location of  
18 where the man with the gun had been reported?

19 A. Yes, sir.

20 Q. Did you ever -- about how far away from  
21 that man were you when you first saw him?

22 A. I don't know, sir.

23 Q. Well, is it more than 10 feet?

24 A. I believe that it was more than 10



1 feet, yes.

2 Q. Were you far enough from the man to  
3 estimate his height?

4 A. I don't -- I don't recall.

5 Q. Okay. When you first -- when you first  
6 saw the man, were you able to determine whether  
7 he was white or black?

8 A. No, sir.

9 Q. What did you -- were you outside of  
10 your vehicle when you first saw the man?

11 A. I don't recall.

12 Q. Do you recall what you did when you  
13 first saw the man?

14 A. I believe I parked the car and exited  
15 it.

16 Q. When you exited it, was your -- did you  
17 have a firearm with you that day?

18 A. I did.

19 Q. Did you at any time that day un-holster  
20 your firearm?

21 A. I did.

22 Q. Do you recall when you first  
23 un-holstered your firearm?

24 A. Not specifically. I can only -- I mean



1 after seeing the video.

2 Q. After seeing the video, do you have a  
3 present recollection of when you first  
4 un-holstered your firearm on March 31st, 2021?

5 A. Shortly after I exited the car; that's  
6 the best answer that I can give you.

7 Q. And why did you un-holster your  
8 firearm?

9 A. I believed that the subject Plaintiff  
10 was standing right where the dispatcher  
11 described that location, and I believe that he  
12 was holding something in his hand.

13 Q. Did you at any time during the incident  
14 we've been talking about point your firearm at  
15 that man?

16 A. I did.

17 Q. Why?

18 A. I believed he was armed.

19 Q. Had you seen a firearm in his hand,  
20 either of his hands?

21 A. I had seen a black object in his hand.

22 Q. Could you describe the black object  
23 that you saw?

24 A. No.



1 Q. Did you believe that the black object  
2 you saw was not a cell phone?

3 MR. DAFFADA: Objection, form of the  
4 question. You can answer.

5 THE WITNESS: I saw a black object in  
6 his hand.

7 BY MR. FLAXMAN:

8 Q. Was the black object pointed at another  
9 person?

10 A. I don't believe so, no.

11 Q. Was the black object in his hand being  
12 held to his ear, one of his ears?

13 A. I don't recall.

14 Q. Well, do you recall what the suspect  
15 was doing with that black object when you first  
16 saw him?

17 A. I don't recall. Based on the video,  
18 he's just standing there.

19 Q. Did you speak any verbal commands when  
20 you saw the suspect with the black object  
21 standing there in his hand?

22 A. Again, I'm -- I don't recall; based on  
23 the video, yeah, I said commands to him, yes.

24 Q. What was the first command you gave to



1 him?

2 A. I would have to watch the video again.

3 Q. Well, let me see if we can go back and  
4 do that again.

5 We're going to go back to the complete  
6 video, the man with the gun FOIA, and we will  
7 start at 1.25 in the video.

8 (Video playing)

9 MR. DAFFADA: Ken, before you ask your  
10 next question, I just want to put an objection  
11 on the record, just more as a note that the  
12 video here we can't hear the audio well on it,  
13 so I just want to make sure that the record  
14 reflects that we agree that the original that we  
15 have is the appropriate exhibit.

16 MR. FLAXMAN: I think we agree to that.  
17 I'm showing the video primarily to see if it  
18 refreshes the witness' recollection, and I  
19 didn't know that when you do screen sharing, you  
20 don't screen share audio. There is something  
21 about zoom that I don't know. I'm sure there is  
22 something about zoom that I don't know, but it's  
23 interesting.

24 MR. DAFFADA: It's here, but you just



1 can't understand that.

2 MR. FLAXMAN: No, I understand that,  
3 and it would be -- it might be a zoom problem,  
4 or it might be my problem, but next time we do  
5 this I'll have it figured it out maybe.

6 MR. DAFFADA: Yeah.

7 BY MR. FLAXMAN:

8 Q. Let's go back. We're now at 2 minutes  
9 11 seconds in the video, and you're still  
10 sitting in the car, is that correct, sir?

11 A. Yes, sir.

12 Q. All right. Let's keep playing.

13 Now, did you hear your voice speak the  
14 words I've got an eye on him?

15 A. No, sir, I didn't.

16 Q. All right. Do you recall saying that  
17 as you got out of the car?

18 A. Yes.

19 Q. Who was in the car with you, if you  
20 recall?

21 A. I was by myself.

22 Q. Okay. When you say I've got an eye on  
23 him, did you un-holster your handgun?

24 A. I don't recall.



1 Q. All right. Let's start up at 2.34.

2 Were you able to hear your voice saying  
3 put your hands up, or something of that nature?

4 A. I didn't hear it now. The audio is  
5 gone, but I probably said that, yes.

6 Q. All right. We're at 2.35.

7 Now, I heard your voice saying get on  
8 the ground, get on the ground.

9 Were you able to hear that?

10 A. Yes, I did.

11 Q. Did you speak those words?

12 A. Yes.

13 Q. Do you have any recollection of how far  
14 away you were from the suspect at this point in  
15 the video 2 minutes and 40 seconds?

16 A. I can guesstimate based on what I'm  
17 seeing.

18 Q. Well, how far does that appear to be?

19 A. 25 yards, I don't know, I don't know,  
20 sir.

21 Q. All right. Why did you tell the  
22 suspect to get on the ground?

23 A. Based on the information that I  
24 received from the dispatch, I believed that he



1 was armed.

2 Q. And why did you want him on the ground  
3 rather than standing with his hands in the air?

4 A. I believed that position of a possible  
5 armed suspect or subject on the ground is the  
6 safest for him and me.

7 Q. Is that something you were taught at  
8 the Evanston Police Department?

9 A. I believe so, yes.

10 Q. Is that something that you've -- that  
11 you consistently did with suspected armed  
12 persons in your work at the Evanston Police  
13 Department?

14 MR. DAFFADA: Objection, foundation.  
15 You can answer.

16 THE WITNESS: Yes.

17 BY MR. FLAXMAN:

18 Q. All right. We're now at 2.40, and  
19 we'll keep playing.

20 Did you hear another voice at that  
21 point?

22 A. I heard something, I don't know what it  
23 was.

24 Q. All right. We're at 2.44.



1           Do you remember saying what do you have  
2   in your pocket?

3           A.    I believe so, I said something like  
4   that at that point, yes.

5           MR. DAFFADA:   Just so you know, we  
6   can't hear -- he's doing this based on memory.  
7   We don't hear the video.

8           MR. FLAXMAN:   That's -- this is -- you  
9   know, that's fine.

10          MR. DAFFADA:   Okay.

11   BY MR. FLAXMAN:

12          Q.    Do you remember the suspect saying I'm  
13   smoking a cigarette in response to your question  
14   what do you have in your pocket?

15          A.    Possibly, yes.

16          Q.    And was the suspect standing up when  
17   you asked that question what do you have in your  
18   pocket?

19          A.    Yes, sir.

20          Q.    Did the suspect ever tell you that he  
21   had a firearm in his pocket?

22          A.    No, sir.

23          Q.    We are 2.37 in the video.

24          Did you -- do you remember telling the



1 suspect don't put your hands in?

2 A. I probably said something like that,  
3 yes.

4 Q. what did you want the suspect to do  
5 with his hands?

6 A. I believe that I wanted him to keep his  
7 hands out of his pockets.

8 Q. okay. Let's play, we're at 2.53.  
9 Do you remember telling the suspect  
10 more than once to get on the ground?

11 A. Yes.

12 Q. Do you remember telling the suspect do  
13 what we tell you, and you won't get hurt, okay?

14 MR. DAFFADA: If you're quoting, I  
15 mean, Ken, I understand you're not doing  
16 anything improper here, but since he can't hear  
17 the audio, it's hard for him to quote anything.

18 I mean, can we just figure that he said  
19 those things, you know --

20 MR. FLAXMAN: -- well, I'm testing his  
21 recollection about did he say those things.

22 MR. DAFFADA: Okay. Then he's going to  
23 say he doesn't recall unless he hears it.

24 If based on the video if he recalls,



1 it's fine.

2 BY MR. FLAXMAN:

3 Q. Do you recall telling the suspect more  
4 than one time that do what we tell you, and you  
5 won't get hurt, okay, or words to that effect?

6 A. Yes, based on the video, yes.

7 Before I saw the video, I really had no  
8 recollection of this incident.

9 Q. Well, do you remember answering  
10 interrogatories in this case?

11 A. Yes, sir.

12 Q. And was your recollection better when  
13 you answered the Answers to Interrogatories than  
14 it is today?

15 MR. DAFFADA: Objection, argumentative.

16 You can answer.

17 THE WITNESS: I've seen the video  
18 before I received interrogatories.

19 BY MR. FLAXMAN:

20 Q. Okay. And when you saw the video, were  
21 you able to hear -- before you answered the  
22 interrogatories, were you able to hear the video  
23 more clearly than you could hear it today?

24 A. Yes, sir.



1 Q. Thank you.

2 And when you answered the  
3 interrogatories, were you being as correct  
4 as you -- accurate and correct as you could be  
5 that day?

6 A. Yes, sir.

7 Q. Okay. Let me show you what has been  
8 marked as Exhibit No. 23.

9 Do you see Exhibit 23 on your screen?

10 A. Yes, sir.

11 Q. And I'll go to the last page. Is that  
12 your signature on Page 9?

13 A. Yes, sir.

14 Q. All right. Let's go back to Question  
15 11 was, do what we tell you to do, and you won't  
16 get hurt, and the question was did you state  
17 that as alleged in Paragraph 15 of the Amended  
18 Complaint, and your answer was yes.

19 Was that your answer then when you  
20 signed the interrogatory answers?

21 A. Yes, sir.

22 Q. And is that your answer today that you  
23 told the suspect do what we tell you to do, and  
24 you won't get hurt?



1 A. Yes, sir.

2 Q. Could you tell us, as best you can,  
3 what you would have done to hurt the suspect if  
4 he didn't do what you told him to do?

5 MR. DAFFADA: Objection, form, calls  
6 for speculation.

7 THE WITNESS: I'm -- I don't know how  
8 to answer that, I'm sorry.

9 BY MR. FLAXMAN:

10 Q. Well --

11 A. -- can you rephrase it?

12 Q. Yeah. When you said do what we tell  
13 you to do, and you won't get hurt, what did you  
14 mean?

15 A. I meant I wanted him to follow my  
16 directions.

17 Q. And what were you going to do if he  
18 didn't follow your directions?

19 MR. DAFFADA: Object to form, calls for  
20 speculation.

21 BY MR. FLAXMAN:

22 Q. Can you answer the question?

23 A. I don't know, sir.

24 MR. DAFFADA: You know what, he's



1 thinking about his answer.

2 MR. FLAXMAN: I'm sorry.

3 BY MR. FLAXMAN:

4 Q. If you need more time to think, go  
5 right ahead. I didn't mean to interrupt you.

6 A. I don't know, sir.

7 Q. Let's go back to the video. We are at  
8 3 minutes in.

9 Now, the video -- let's just watch five  
10 seconds of the video.

11 Does that video show you holding your  
12 firearm with two hands?

13 A. Yes, sir.

14 Q. And as you were doing that in the five  
15 seconds snip that we saw, were you walking  
16 towards the suspect?

17 A. I believe so, yes.

18 Q. At this point in the video when you  
19 were walking towards the suspect, were you able  
20 to determine whether he was a white male or a  
21 black male?

22 A. I don't believe so, no.

23 Q. Okay. We are at 3.05.

24 Did you tell him -- how many times did



1 you tell him do what we tell you to do, and you  
2 won't get hurt, or words to that effect?

3 A. I don't recall.

4 Q. Was it more than once?

5 A. Possibly, it's on the video.

6 Q. Okay. We're at 3.13.

7 Do you remember telling the suspect  
8 everything will be fine if you do what I say?

9 A. If it's on the video, sir; if I said  
10 that on the video, I said that.

11 Q. Well, as you sit here today, do you  
12 have a recollection of having said that?

13 A. Not really.

14 Q. Okay. Do you remember telling the  
15 suspect to put your hands out like superman?

16 A. No, sir.

17 Q. Have you ever told a suspect to put  
18 your hands out like superman?

19 A. Sir, I believe that is another officer  
20 who says that.

21 Q. Okay. Do you know which officer that  
22 was?

23 A. I think Officer Kane.

24 Q. Thank you.



1           Now, we're at 3.26. Is the image on  
2 the screen right now you holding your handgun  
3 with two hands?

4           A. Yes, sir.

5           Q. Do you know who the officer is to the  
6 right of the screen?

7           A. I believe it's Officer Kane.

8           Q. And why were you pointing your handgun  
9 at the suspect?

10          A. I believed that he was possibly armed.

11          Q. And were you close enough at this point  
12 in the video to see whether or not he had  
13 anything in his hands?

14          A. Yes.

15          Q. Did he have anything in either of his  
16 hands?

17          A. I don't believe so.

18          Q. Were you able to see what that object  
19 was directly in front of him at this point in  
20 the video, 3.26?

21          A. Knowing what I know now, I know that  
22 those are headphones.

23                I don't believe I knew it at the time.

24          Q. Well, did you suspect that what you now



1 know to be headphones were a firearm?

2 MR. DAFFADA: Objection to form.

3 BY MR. FLAXMAN:

4 Q. I'll rephrase the question.

5 Back on March 31st of 2021 when you're  
6 at the point shown in the video at 3 minutes 26  
7 seconds, did you believe that the object in  
8 front of the suspect was a firearm?

9 A. I don't recall, sir.

10 Q. Okay. As you look at the video now, is  
11 there anything you see in the video that could  
12 have caused you to believe that what you now  
13 know to have been headphones were a firearm?

14 MR. DAFFADA: Objection, form.

15 THE WITNESS: what I know today in  
16 looking at this particular screenshot, I know  
17 that those are headphones.

18 BY MR. FLAXMAN:

19 Q. Well, back when -- on March 31st of  
20 2021 when this image was captured by your body  
21 camera, did you see anything that caused you to  
22 believe that what you now know to be headphones  
23 was, in fact, a firearm?

24 A. I don't recall.



1 Q. Is there anything you could look at  
2 that would refresh your recollection?

3 A. I don't know how to answer that.

4 Q. Well, is there any other videos that  
5 might refresh your recollection?

6 A. I don't know.

7 Q. Are there any reports you could look at  
8 that might refresh your recollection?

9 A. I don't think so, no.

10 Q. Did you prepare any report about your  
11 encounter with the suspect on March 31st of  
12 2021?

13 A. No, sir.

14 Q. Let's continue playing at 3.26.  
15 Now, did you continue walking until you  
16 were closer to the suspect?

17 A. Yes, sir.

18 Q. And did you keep your firearm pointed  
19 at the suspect?

20 MR. DAFFADA: Objection, form.

21 You can answer, if you can.

22 THE WITNESS: Yes, sir.

23 BY MR. FLAXMAN:

24 Q. When did you stop pointing your firearm



1 at the suspect?

2 A. I don't recall specifically.

3 Q. We're at 3.30 in the video. All right.  
4 We're at 3.50 in the video.

5 Are you still pointing your handgun at  
6 the subject or suspect?

7 A. I'm -- I don't know, not from that  
8 shot, I don't know.

9 Q. Okay.

10 A. Possibly.

11 Q. Let's play more. We started at 3.50.

12 All right. Do you recall -- we're now  
13 at 4.28 in the video.

14 Do you recall whether or not your  
15 handgun remained un-holstered at this point in  
16 the video?

17 A. I don't recall.

18 Q. Did you see Officer Rosenbaum at the  
19 scene on March 31st, 2021?

20 A. I don't recall. Based on the video, I  
21 had to, yes.

22 Q. Did you see any officers with rifles on  
23 the scene?

24 A. I do.



1 Q. Do you recall who -- their names?

2 A. I recall Officer Rosenbaum. I don't  
3 remember the other officer's name.

4 Q. Okay. Did you see any officer pointing  
5 a rifle at the suspect?

6 A. No.

7 Q. We're at 4.40 in the video.

8 I'm going to turn the audio off,  
9 because it's distracting, and nobody can hear it  
10 anyway.

11 Did you see other officers search the  
12 suspect?

13 A. I don't recall specifically. Based on  
14 the video, I had to, yes.

15 Q. And we're at 4.48 now, that's where we  
16 started.

17 We just saw an officer come on scene  
18 wearing sunglasses. It's one where my curser  
19 is. Do you know who that is?

20 A. Yes, sir.

21 Q. Who is that; what's his or her name?

22 A. Her name is Fensen (phonetic).

23 Q. And there's an officer to the left of  
24 her; do you know who that is?



1 A. I don't recall his name.

2 Q. Okay. We're at 4.57, and we'll play  
3 some more.

4 You didn't search the suspect, did you?

5 A. I don't believe so, no. Based on the  
6 video, I did not.

7 Q. Did you ever hear someone tell the  
8 suspect, or use the word, the phrase traumatic  
9 experience in speaking with the suspect on March  
10 31st, 2021?

11 A. Yes, sir, based on the video, it was my  
12 voice.

13 Q. And what was the suspect doing when you  
14 said that?

15 A. I don't recall specifically, standing  
16 up and --

17 Q. -- why did you use that phrase  
18 traumatic experience?

19 A. I don't know, sir.

20 Q. Well, can you explain to us what the  
21 word, the phrase traumatic experience means to  
22 you?

23 A. Something bad, something scary, I  
24 mean --



1 Q. -- now, when you were in route to the  
2 scene, and you heard more information from the  
3 dispatcher about the description of the suspect,  
4 do you remember -- do you recall hearing that  
5 the suspect, that the complaint came from an  
6 anonymous person, a person who did not leave his  
7 or her name?

8 MR. DAFFADA: Objection, foundation.

9 THE WITNESS: I don't recall, sir.

10 BY MR. FLAXMAN:

11 Q. In your work at the City of Evanston as  
12 a police officer, did you receive any training  
13 about anonymous complainants?

14 A. I don't believe so.

15 Q. Did you receive any training about when  
16 it is or is not permissible to point a firearm  
17 at a person?

18 A. I believe so.

19 Q. And were your actions on March 31st of  
20 2021 consistent with your training about when  
21 it's appropriate to point a firearm at a person?

22 A. I believe so.

23 Q. Did you discuss the facts of this case  
24 with any Evanston police officer or supervisor



1 after the incident on March 31st, 2021?

2 A. I don't believe so.

3 Q. How many preventable car accidents have  
4 you been -- did you have while you worked with  
5 the City of Evanston?

6 A. Several; I don't recall a specific  
7 number.

8 Q. Did you agree that they were all  
9 preventable?

10 A. I don't recall.

11 Q. How many times have you been deposed  
12 before today?

13 A. This is the third time.

14 Q. What were the other two occasions?

15 A. The first one was a car accident that  
16 happened in the City of Evanston, and the second  
17 one was a worksite accident that happened at  
18 Northwestern University.

19 Q. Other than what you've told us today,  
20 did you see or hear anything on March 31st, 2021  
21 that caused you to believe that the suspect was  
22 in possession of a firearm?

23 A. Anything other than we hear today?

24 Q. Right.



1           A.     No.

2           MR. DAFFADA: Do you want him to repeat  
3 the question?

4           THE WITNESS: No.

5 BY MR. FLAXMAN:

6           Q.     Okay. Other than what we've talked  
7 about today, was there anything that you saw or  
8 heard on March 31st of 2021 that caused you to  
9 believe that the suspect had committed a crime?

10          MR. DAFFADA: Can you repeat the  
11 question?

12          MR. FLAXMAN: Let's have the court  
13 reporter read it back.

14                   (Whereupon, the record was read  
15 as requested.)

16          THE WITNESS: I was told that the  
17 subject was armed with a firearm in the park.

18 BY MR. FLAXMAN:

19          Q.     Anything else that caused you to  
20 believe the subjected committed a crime.

21          A.     I don't believe so.

22          Q.     Okay. Did you have any information  
23 that the subject had pointed a firearm in the  
24 direction of another person?



1 A. I don't believe so.

2 Q. Okay. Did you have any information  
3 that the subject, or the suspect was not -- did  
4 not have a concealed carry permit?

5 A. I don't recall anything of that nature,  
6 no.

7 Q. Back on March 31st of 2021, was it  
8 lawful for a person who had a concealed carry  
9 permit to carry a firearm in the City of  
10 Evanston?

11 MR. DAFFADA: Objection, form. You can  
12 answer.

13 THE WITNESS: I don't believe so, sir.  
14 BY MR. FLAXMAN:

15 Q. And why is that?

16 A. As far as my knowledge of concealed  
17 carry goes, you can't carry it in a park.

18 Q. How did you learn that?

19 A. I don't know, sir. I can't give you a  
20 specific answer, sorry.

21 Q. Just so we are clear about our terms,  
22 when you say your understanding was you could  
23 not carry a firearm in the park if you had a  
24 concealed carry permit, are you referring to



1 carrying the firearm in a way it could be seen  
2 by someone, or just carrying a firearm in a  
3 pocket?

4 A. To the best of my knowledge, concealed  
5 carry permit implies that you need to carry it  
6 concealed.

7 Q. Okay. And was it -- was your  
8 understanding in 2021 that if you had a  
9 concealed carry permit, it would be unlawful to  
10 carry a concealed firearm in a park?

11 A. Yes, sir, I believe so.

12 Q. Okay. And did you receive training at  
13 the City of Evanston about the Concealed Carry  
14 Statute?

15 MR. DAFFADA: Objection.

16 THE WITNESS: I don't believe so.

17 BY MR. FLAXMAN:

18 Q. All right. Are you planning on leaving  
19 the Chicago area in the next year or two?

20 A. I'm not planning, no.

21 Q. All right. I have nothing further.

22 MR. DAFFADA: No questions. We will  
23 waive signature.

24 MR. FLAXMAN: I will order the original



1 transcript. Thank you.

2 THE COURT REPORTER: Counsel, copy?

3 MR. DAFFADA: Yes, copy. Thank you.

4 (Deposition concluded at 12:00 p.m.)



1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF C O O K )

4 I, MARY ELLYN D'ANDREA, a notary public  
5 within and for the County of Cook County and  
6 State of Illinois, do hereby certify that  
7 heretofore, to-wit, on November 1, 2023,  
8 personally appeared before me via  
9 videoconference, MANCHIN KUBIAK, in a cause now  
10 pending and undetermined in the United States  
11 District Court for the Northern District of  
12 Illinois, Eastern Division, wherein ALEXANDER  
13 GRAY is the Plaintiff, and THE CITY OF EVANSTON  
14 is the Defendant.

15 I further certify that the said MANCHIN  
16 KUBIAK was first duly sworn to testify the  
17 truth, the whole truth and nothing but the truth  
18 in the cause aforesaid; that the testimony then  
19 given by said witness was reported  
20 stenographically by me in the presence of the  
21 said witness, and afterwards reduced to  
22 typewriting by Computer-Aided Transcription, and  
23 the foregoing is a true and correct transcript  
24 of the testimony so given by said witness as



1 aforesaid.

2 I further certify that the signature to  
3 the foregoing deposition was waived by counsel  
4 for the respective parties.

5 I further certify that the taking of this  
6 deposition was pursuant to notice and that there  
7 were present at the deposition the attorneys  
8 hereinbefore mentioned.

9 I further certify that I am not counsel  
10 for nor in any way related to the parties to  
11 this suit, nor am I in any way interested in the  
12 outcome thereof.

13 IN TESTIMONY WHEREOF: I have hereunto  
14 set my hand and affixed my notarial seal this  
15 13th day of November, 2023.

16  
17  
18   
19  
20

21 MARY ELLYN D'ANDREA  
22  
23  
24



<p><b>0</b></p> <p><b>042704-05</b> 8:3</p> <p><b>09</b> 8:4</p> <p><b>1</b></p> <p><b>1</b> 9:23,24 10:13</p> <p><b>1.20</b> 10:12,18 11:3</p> <p><b>1.25</b> 10:18 16:7</p> <p><b>1.30</b> 11:4</p> <p><b>10</b> 12:23,24</p> <p><b>11</b> 17:9 23:15</p> <p><b>12:00</b> 38:4</p> <p><b>15</b> 23:17</p> <p><b>19</b> 8:3</p> <p><b>2</b></p> <p><b>2</b> 17:8 18:15</p> <p><b>2.34</b> 18:1</p> <p><b>2.35</b> 18:6</p> <p><b>2.37</b> 20:23</p> <p><b>2.40</b> 19:18</p> <p><b>2.44</b> 19:24</p> <p><b>2.53</b> 21:8</p> <p><b>20</b> 10:13</p> <p><b>2021</b> 4:18 5:1 6:13,17 14:4 28:5,20 29:12 30:19 32:10 33:20 34:1,20 35:8 36:7 37:8</p> <p><b>23</b> 23:8,9</p> <p><b>25</b> 18:19</p> <p><b>26</b> 28:6</p> <p><b>3</b></p> <p><b>3</b> 25:8 28:6</p> <p><b>3.05</b> 25:23</p> <p><b>3.13</b> 26:6</p> <p><b>3.26</b> 27:1,20 29:14</p> <p><b>3.30</b> 30:3</p> <p><b>3.50</b> 30:4,11</p> <p><b>30</b> 9:24</p> <p><b>31st</b> 6:12,17 14:4 28:5,19 29:11 30:19 32:10 33:19 34:1,20 35:8</p>	<p>36:7</p> <p><b>4</b></p> 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