

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF ILLINOIS

3 EASTERN DIVISION

4 ALEXANDER GRAY,)

5 Plaintiff,)

6 vs.) No. 23-cv-1931

7 CITY OF EVANSTON, et al.,)

8 Defendants.)

9 The deposition of OFFICER KYLE POPP,

10 called for examination pursuant to the Rules of

11 Civil Procedure for the United States District

12 Courts pertaining to the taking of depositions,

13 taken remotely before Johnetta Stafford Taylor,

14 a Registered Professional Reporter within and for

15 the State of Illinois, on October 31, 2023, at

16 the hour of 11:00 a.m. via Zoom videoconferencing.

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23 Johnetta Stafford Taylor

24 License No. 084-001583



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1 THE COURT REPORTER: On the record.

2 This deposition is being taken by means
3 of Zoom audio/videoconference, and the oath will
4 be administered remotely by the court reporter
5 pursuant to Executive Order 2020-14 and by
6 agreement of counsel.

7 Will all counsel present please state
8 your name and agreement with this procedure.

9 MR. FLAXMAN: I am Kenneth Flaxman for the
10 Plaintiff. Agreed.

11 MR. DAFFADA: James Daffada for all
12 Defendants. Agreed.

13 (Whereupon, the witness was
14 duly sworn.)

15 MR. FLAXMAN: Good morning, sir.

16 OFFICER KYLE POPP,
17 called as a witness herein, was examined and
18 testified as follows:

19 EXAMINATION

20 BY MR. FLAXMAN:

21 Q. Could you state your name and spell
22 your last name for us, please.

23 A. Kyle Popp, P-O-P-P.

24 Q. And where are you presently employed?



1 A. I'm presently employed by the City of
2 St. Charles.

3 Q. In what capacity?

4 A. Police officer.

5 Q. Were you previously employed by the
6 City of Evanston?

7 A. Yes.

8 Q. When did you start and when did you end
9 at the City of Evanston?

10 A. I was hired in July of 2014, and I left
11 in August of 2021.

12 Q. Were you a police officer at the City
13 of Evanston?

14 A. Yes.

15 Q. Why did you leave?

16 A. No specific reason. My wife works
17 farther out west, and the opportunity came up to
18 go to St. Charles.

19 Q. Okay. What kind of work does your wife
20 do?

21 A. She's a nurse.

22 Q. When you worked at Evanston, were you
23 ever the subject of any citizen complaints?

24 A. Not that I recall.



1 Q. And you told us in your interrogatory
2 answers that you were disciplined for violation
3 of the EPD pursuit policy; is that right?

4 A. (No audible response.)

5 Q. Or maybe -- do I have the wrong guy? I
6 think I have the wrong guy.

7 Were you ever disciplined for violation
8 of the pursuit policy while you worked at
9 Evanston?

10 A. (No response.)

11 Q. It could be my mistake. I'm not trying
12 to trick you. I just screwed up apparently?

13 A. I don't believe I was disciplined for
14 that.

15 Q. Okay. Were you involved in a pursuit
16 that ended in a car crash of some sort?

17 A. Yes.

18 Q. Was there a lawsuit about that?

19 A. Yes.

20 Q. Were you disciplined for your
21 involvement in that incident, as best you can
22 recall as you sit here today?

23 A. No. Not that I can recall.

24 Q. Okay. As you sit here today -- well,



1 **were you the driver of the car or passenger of**
2 **the car?**

3 A. I was a passenger.

4 Q. **Was that a car chase of a vehicle that**
5 **had been stopped for a traffic violation?**

6 A. I don't recall.

7 Q. **In your interrogatories, I think you**
8 **told us that you received multiple awards.**

9 **Do you recall what you've received**
10 **awards for?**

11 A. All I remember is in general just for
12 like self-initiated arrests for unlawful use of
13 weapon, possession of stolen vehicle, different
14 narcotic arrests.

15 Q. **Did you receive any commendations while**
16 **you worked for the City of Evanston as a police**
17 **officer?**

18 A. I don't recall. It may have been part
19 of those awards.

20 Q. **Were you wearing a -- well, we're here**
21 **about an incident that occurred in 2021. I**
22 **think March 31 of 2021.**

23 **Do you have any recollection of the**
24 **incident that gives rise to this lawsuit?**



1 A. No.

2 Q. Did you look at anything to prepare for
3 this deposition?

4 A. Yes.

5 Q. What did you look at?

6 A. I looked at a video and the police
7 report.

8 Q. Did you look at any still images?

9 A. Yes, I did.

10 Q. After looking at those still images, do
11 you have a recollection of being involved in the
12 handcuffing and initial search of a suspect on
13 March 31, 2021?

14 A. In relation to a specific image?

15 Q. Well, any image. The question was do
16 you have a recollection.

17 After looking at any of those images,
18 of the video, do you now recall any involvement
19 in that incident?

20 A. Only as to what I saw in the video or
21 on any image.

22 Q. Okay. Did you look at the Complaint
23 before preparing for this deposition?

24 A. Yes.



1 Q. And there's an image in Paragraph 22 of
2 the Complaint which shows two officers.

3 Are you one of those officers?

4 A. (No audible response.)

5 MR. DAFFADA: We don't have the Complaint in
6 front of us, Ken.

7 MR. FLAXMAN: Well, do you have it in front
8 of you or should I put it on the screen?

9 MR. DAFFADA: If you can put it on the
10 screen, it would be easier.

11 Sorry to do that to you, but we didn't
12 have that out.

13 MR. FLAXMAN: I had...

14 (Short pause.)

15 MR. FLAXMAN: That's not working. Let me...

16 (Short pause.)

17 BY MR. FLAXMAN:

18 Q. All right. I'm now showing you the
19 Complaint in this case, and there's an image at
20 the top of the Complaint.

21 Have you seen that before?

22 A. Yes.

23 Q. And there's -- are you in that image?

24 MR. DAFFADA: Can you blow it up a little



1 bit, Ken?

2 MR. FLAXMAN: Sure.

3 MR. DAFFADA: Thank you.

4 THE WITNESS: Yes. I believe so.

5 BY MR. FLAXMAN:

6 Q. And which of those -- there are two
7 officers who are -- neither of them are standing
8 straight up.

9 which one are you?

10 A. I believe to the left.

11 Q. Is that the officer wearing a hat?

12 A. Correct.

13 Q. And are you able to identify the other
14 officer shown in the picture?

15 A. Yes.

16 Q. And who is that?

17 A. Officer Kane.

18 Q. Were you working alone or with other
19 officers on March 31 of 2021?

20 A. I don't recall.

21 Q. Did you customarily work alone or with
22 other officers?

23 A. It would depend on the day.

24 Q. Do you remember what brought you to the



1 scene that's depicted in the image as part of
2 Paragraph 22 of the Complaint?

3 A. A call for service.

4 Q. Do you remember what that call for
5 service was?

6 A. It was a call for a man with a gun
7 along the lakefront beach area.

8 Q. Did the call identify the man as black
9 or white?

10 A. I don't recall.

11 Q. Did the call identify the height of the
12 man with the gun?

13 A. I don't recall.

14 MR. FLAXMAN: Okay. Let me show you what's
15 previously been marked as Exhibit 2.

16 (Whereupon, Exhibit No. 2 was
17 previously marked for
18 identification.)

19 BY MR. FLAXMAN:

20 Q. Are you the officer at the bottom left
21 of Exhibit 2?

22 A. Yes.

23 Q. And I'll use the cursor to your left.
24 Would that be Officer Kane?



1 A. Yes.

2 Q. Can you tell us what you two appear to
3 be doing?

4 A. At this point, it looks like detaining
5 the subject on the ground.

6 Q. Okay. Had you seen the suspect commit
7 an offense before he was on the ground?

8 A. I --

9 Q. Let me rephrase that.

10 At the time depicted in Exhibit 2, had
11 you seen the suspect commit an offense?

12 A. I don't recall.

13 Q. When you were -- how close were you to
14 the suspect at the time when Exhibit 2 was
15 created?

16 MR. DAFFADA: Objection. Form.

17 You can answer.

18 MR. FLAXMAN: Let me rephrase that question.

19 BY MR. FLAXMAN:

20 Q. At the time of the incident depicted in
21 Exhibit 2, how close was your face from the head
22 of the suspect?

23 MR. DAFFADA: Objection. Form.

24 You can answer.



1 THE WITNESS: I don't know.

2 BY MR. FLAXMAN:

3 Q. And were you able to tell whether or
4 not the suspect was a black male or a white
5 male?

6 A. I don't recall.

7 Q. Okay. There's an officer standing up
8 with a mask on. My cursor is above her, behind
9 Officer Kane.

10 Do you know who that is?

11 A. I can't tell from this picture.

12 Q. Okay. Do you know how it was that the
13 suspect came to be on the ground?

14 A. I don't recall.

15 Q. Had you ordered him to the ground?

16 A. No.

17 Q. Did you hear anyone order him to the
18 ground?

19 A. I don't recall.

20 MR. FLAXMAN: Let's look at Exhibit 4.

21 (whereupon, Exhibit No. 4 was
22 previously marked for
23 identification.)



1 BY MR. FLAXMAN:

2 Q. Are you familiar with the area that is
3 depicted in Exhibit 4?

4 A. Yes.

5 Q. And could you tell us what that area
6 is?

7 A. It's like a park along the lakefront of
8 the beach area.

9 Q. And is that in the City of Evanston?

10 A. Yes.

11 MR. FLAXMAN: Okay. Let's look at Exhibit 5.

12 (whereupon, Exhibit No. 5 was
13 previously marked for
14 identification.)

15 BY MR. FLAXMAN:

16 Q. Are you able to make out yourself in
17 Exhibit 5?

18 A. Only based on the previous images.

19 MR. FLAXMAN: All right. Let's look at
20 Exhibit 7.

21 (whereupon, Exhibit No. 7 was
22 previously marked for
23 identification.)



1 BY MR. FLAXMAN:

2 Q. Can you see yourself in Exhibit 7?

3 A. Yes.

4 Q. And are you the officer who is sitting
5 to the right -- the suspect's right or crouching
6 down to the suspect's right?

7 A. Yes.

8 MR. FLAXMAN: Let me ask you to look at
9 Exhibit 12.

10 (Whereupon, Exhibit No. 12 was
11 previously marked for
12 identification.)

13 BY MR. FLAXMAN:

14 Q. Is this another picture of you kneeling
15 down and Officer Kane standing up?

16 A. Yes.

17 Q. Were you wearing a mask on March 31 of
18 2021?

19 A. It appears in this picture I am.

20 Q. All right. And do you recall the
21 suspect being handcuffed on March 31, 2021?

22 A. Yes.

23 MR. FLAXMAN: And let me ask you to look at
24 Exhibit 13.



(Whereupon, Exhibit No. 13 was previously marked for identification.)

BY MR. FLAXMAN:

Q. Is that when handcuffs are being placed on the suspect?

A. Yes.

Q. Were you involved in handcuffing the suspect?

A. Yes.

Q. Why did you handcuff the suspect?

A. He was being detained as the subject of a man with a gun call.

Q. Was that the standard procedure of the Evanston Police Department to handcuff suspects who are being detained on a man with a gun call?

MR. DAFFADA: Objection. Form.

You can answer if you can.

THE WITNESS: I don't recall.

BY MR. FLAXMAN:

Q. Well, at the time you were involved in handcuffing the suspect, had you seen the suspect with a gun?

A. No.



1 Q. Had anyone told you that they had seen
2 the suspect with a gun?

3 A. Yes.

4 Q. And who told you that they had seen the
5 suspect with a gun?

6 A. It was our dispatch through the radio
7 call.

8 Q. Do you recall as best you can what it
9 was the dispatch message consisted of? what
10 words it consisted of?

11 A. The best that I can recall was a man
12 with a gun along like the trail area by the
13 beach with a gun in his hand.

14 Q. And this image, Exhibit 13, was taken
15 on the trail area by the beach; is that right?

16 A. Correct.

17 Q. And when you were handcuffing the
18 suspect, did he have a gun in his hand?

19 A. No.

20 Q. Did he tell you he had a gun in his
21 hand?

22 A. I don't recall.

23 Q. Did anybody tell you that this
24 particular person, this suspect, was the person



1 who had been seen with the gun in their hand?

2 MR. DAFFADA: Objection. Form.

3 THE WITNESS: I don't recall.

4 BY MR. FLAXMAN:

5 Q. Did the dispatcher tell you that the
6 report of a man with a gun was by an anonymous
7 complainant?

8 A. I don't recall.

9 MR. FLAXMAN: Exhibit 14 is called Policy 312
10 of the Evanston Police Department.

11 (whereupon, Exhibit No. 14
12 was previously marked for
13 identification.)

14 BY MR. FLAXMAN:

15 Q. Have you ever seen Policy 312 of the
16 Evanston Police Department?

17 MR. DAFFADA: Objection. Form and
18 foundation.

19 You can answer.

20 THE WITNESS: I don't recall.

21 BY MR. FLAXMAN:

22 Q. Do you know whether or not the Evanston
23 Police Department had a written policy directed
24 to search and seizure?



1 MR. DAFFADA: Objection. Foundation.

2 You can answer.

3 THE WITNESS: I don't recall.

4 BY MR. FLAXMAN:

5 Q. Well, were you ever trained in any of
6 the policies, written policies of the Evanston
7 Police Department?

8 MR. DAFFADA: Objection. Foundation.

9 You can answer.

10 THE WITNESS: I don't recall.

11 BY MR. FLAXMAN:

12 Q. Did you go to a police academy before
13 working on the street in the City of Evanston as
14 a police officer?

15 A. Yes.

16 Q. Which academy did you go to?

17 A. Cook County Sheriff's Police Academy.

18 Q. Okay. Now, when you were with the
19 suspect on March 31 of 2021 and handcuffing him,
20 did you hear the suspect consent to being
21 handcuffed?

22 MR. DAFFADA: Objection. Form.

23 THE WITNESS: I don't recall.



1 BY MR. FLAXMAN:

2 Q. Was the suspect being placed under
3 arrest at the time he was being handcuffed?

4 A. I don't recall.

5 Q. Are you familiar with the phrase
6 community caretaking interests?

7 A. No. Not particularly.

8 Q. Are you familiar with the phrase
9 exigent circumstances?

10 A. Yes.

11 Q. Were there any exigent circumstances
12 present on March 31, 2021 when the suspect was
13 handcuffed?

14 A. That he was believed to be armed with a
15 handgun. Yes.

16 Q. And did anybody pat down the suspect on
17 March 31 of 2021?

18 A. Yes.

19 Q. And could you explain to us what you
20 mean by a pat-down?

21 A. Physically patting down like somebody's
22 person.

23 Q. Is that -- does a pat-down go
24 underneath the outer clothing of the suspect?



1 A. It depends on the -- you know, it
2 depends.

3 Q. And did you pat down the suspect?

4 A. I don't recall.

5 Q. Do you recall who, if anyone, patted
6 down the suspect on March 31, 2021?

7 A. I don't recall.

8 Q. When you came upon the suspect, was he
9 on the ground?

10 A. I don't recall.

11 Q. What was he doing when you came upon
12 the suspect?

13 A. I'm sorry. I don't understand -- can you
14 repeat the question?

15 Q. Well, was he walking when you came upon
16 the suspect?

17 A. I don't recall.

18 Q. Was he running when you came upon the
19 suspect?

20 A. I don't recall.

21 Q. Was he laying on the ground with his
22 hands outstretched in a Superman position when
23 you came upon the suspect on March 31 of 2021?

24 A. I don't recall.



1 Q. Is there a policy of the Evanston
2 Police Department that you are aware of when you
3 worked there about treating civilians with
4 dignity?

5 A. I don't recall.

6 Q. Do you know the phrase low ready with
7 respect to a handgun?

8 A. Yes.

9 Q. Could you tell us what that phrase
10 means?

11 A. Yes.

12 Q. Would you tell us what that phrase
13 means?

14 A. Yes. It means you have your firearm
15 unholstered up in front of you pointed down
16 towards the ground.

17 Q. Did you have a firearm on March 31 of
18 2021?

19 A. I had a firearm. Yes.

20 Q. Did you unholster it at any time in
21 connection with the search of the suspect we've
22 been talking about?

23 A. I don't recall.

24 Q. Did you see any officers with



1 unholstered firearms?

2 A. I don't recall.

3 Q. Do you know a police officer named
4 Rosenbaum?

5 A. Yes.

6 Q. Do you recall what kind of weapon, if
7 any, he had during this incident we've been
8 talking about?

9 A. No.

10 Q. In your interrogatory answers, you said
11 you had no present recollection of all of the
12 facts of the incident.

13 Do you remember that or should I show
14 it to you or do you have those in front of you?

15 A. I have that in front of me.

16 Q. Okay. I think it's Interrogatory
17 No. 15.

18 when you said no present recollection
19 of all of the facts, could you tell us what
20 facts you do have a present recollection of?

21 A. Yes. That I responded to a call for
22 service for a man with a gun in the public way
23 at the beach park area along the lakefront.

24 Q. And am I correct that you did not know



1 whether that call for service came from someone
2 who did not leave his or her name?

3 MR. DAFFADA: You can answer.

4 THE WITNESS: You are correct.

5 BY MR. FLAXMAN:

6 Q. Am I correct that you didn't have any
7 physical description of the suspect other than
8 that he was a white male between 5 feet and
9 6 feet of height?

10 A. No. We did not -- I don't recall the
11 specific description given. Just a male subject
12 with a gun in his hand.

13 MR. FLAXMAN: Okay. Let me ask you to look
14 at Exhibit 10.

15 (whereupon, Exhibit No. 10 was
16 previously marked for
17 identification.)

18 BY MR. FLAXMAN:

19 Q. That's an Incident Investigation
20 Report; is that right?

21 A. Sorry.

22 Q. It's on the screen. Can you see it or
23 do you have it in front of you?

24 A. Yes. It's a little blurry on the



1 screen, some of the writing and stuff.

2 Q. Does that help you? I made it bigger.

3 A. Yes. That's better.

4 Q. Okay. Can you tell us what an **Incident**
5 **Investigation Report** is at the City of Evanston
6 **Police Department**?

7 A. It is a report that is documented after
8 an incident takes place.

9 Q. And did you ever write any of those
10 reports when you worked at the City of Evanston?

11 A. Yes.

12 Q. Did you try to be truthful when you
13 prepared a report?

14 A. Yes.

15 Q. Did you try to be accurate when you
16 prepared a report?

17 A. Yes.

18 Q. Did you try to be complete when you
19 prepared a report?

20 A. Yes.

21 Q. And am I correct that this report was
22 prepared by Officer S. Brown?

23 A. Yes.

24 Q. Do you know Officer S. Brown?



1 A. Yes.

2 Q. Do you know him to be a hard-working
3 honest police officer?

4 MR. DAFFADA: Objection. Form.

5 You can answer.

6 THE WITNESS: Yes.

7 BY MR. FLAXMAN:

8 Q. And when he wrote in the narrative on
9 Page 2, the second paragraph: while en route,
10 dispatch advised that an unknown citizen later
11 identified as redacted reported seeing a white
12 male approximately 5 feet tall to 6 feet tall in
13 a dark coat and jeans situated just north of the
14 beach on the trail with a gun in his right hand.

15 Now does that refresh your recollection
16 about whether the information you had when you
17 responded to the scene was you were looking for
18 a white male approximately 5 feet tall to 6 feet
19 tall in a dark coat and jeans situated just
20 north of the beach?

21 A. Yes. If that's what was documented in
22 the call.

23 Q. I'm not sure what you meant by that
24 qualification. What did you mean by if that's



1 what's documented in the call?

2 A. As in, if that was what was provided by
3 dispatch for like the description.

4 Q. Do you have any reason to believe that
5 Mr. Brown was inaccurate in recording what the
6 dispatch message was?

7 A. No.

8 Q. Okay. The policy, which we just looked
9 at as Exhibit 14, in Section 312.5 about
10 documentation of any search.

11 Were you familiar with a provision of
12 that nature when you worked for Evanston as a
13 police officer?

14 MR. DAFFADA: Objection. Asked and answered.

15 You can answer.

16 THE WITNESS: I don't recall specifically for
17 a search.

18 BY MR. FLAXMAN:

19 Q. Do you recall searching the suspect on
20 March 31, 2021?

21 A. I don't recall searching.

22 Q. Do you recall any officer searching?

23 A. No.

24 Q. In your Interrogatory Answers, Answer



1 No. 16, you said that -- let me get it if I can.

2 A. I have it in front of me, too.

3 Q. I want to read something to what you
4 said. I don't want to get it wrong.

5 And 16 was: Do you contend that a
6 reasonable police officer could have believed
7 that it was lawful to detain Plaintiff on
8 March 31 at the time and place specified in the
9 Amended Complaint in this case?

10 And your answer was yes.

11 Did I read that correctly?

12 A. Yes.

13 Q. And then in Answer No. 17 you started
14 by saying: Subject believed to be armed with a
15 handgun in public near a beach on the walking
16 path and park.

17 Did you believe the suspect was armed
18 with a handgun?

19 A. Yes.

20 Q. And why did you believe that?

21 A. First arriving officers on scene had
22 the subject already detained. I believed him to
23 be the subject with the handgun.

24 Q. Any other reason why you believed the



1 suspect to be the subject -- that was the person
2 described as person with a handgun?

3 A. I'm sorry. Can you repeat the
4 question?

5 Q. All right. Any other reason aside from
6 what you just told us for why you believed the
7 suspect to have been armed with a handgun in
8 public near a beach on the walking path and
9 park?

10 A. The dispatch call saying a subject was
11 on the beach with a gun.

12 Q. Anything else?

13 A. No.

14 Q. Did you consider the fact that the
15 dispatch call referred to a white male and the
16 suspect was an African-American male?

17 MR. DAFFADA: Objection. Form.

18 THE WITNESS: I don't recall.

19 BY MR. FLAXMAN:

20 Q. Do you recall whether or not the
21 suspect was an African-American male?

22 A. I don't recall.

23 MR. FLAXMAN: All right. We have some
24 videos, I think.



I'm going to play an excerpt from the Kane body camera. It's about a minute, and I'll turn the audio down so it doesn't interfere with us.

Do you see an image, the video on your screen?

MR. DAFFADA: No.

THE WITNESS: No.

MR. FLAXMAN: Oh, that's -- how about now?

THE WITNESS: Yes.

MR. FLAXMAN: It's going to be a minute video, without sound.

(whereupon, a video was shown without audio.)

MR. DAFFADA: Excuse me, Ken. Do you know whose video this is?

MR. FLAXMAN: It's been marked as Exhibit 17. It's the camera -- body camera of Officer Kane starting at 3 minutes, 20 seconds and 16 frames to 4 minutes 35 seconds and 22 frames.

(whereupon, Exhibit No. 17 was previously marked for identification.)

MR. FLAXMAN: We just stopped now.



1 BY MR. FLAXMAN:

2 Q. Are you able to identify the officer
3 who is now depicted in the image?

4 A. No.

5 MR. FLAXMAN: Okay. Let's play the rest of
6 it.

7 (whereupon, a video was shown
8 without audio.)

9 MR. DAFFADA: Objection for lack of sound.

10 But okay.

11 MR. FLAXMAN: Well, we'll note your
12 objection.

13 (whereupon, a video was shown
14 without audio.)

15 BY MR. FLAXMAN:

16 Q. Now we're stopping. There's an
17 officer -- did you see an officer holding a
18 handgun?

19 A. Yes.

20 Q. Was that at the -- how would you
21 describe that position that the handgun was in?
22 Was that in that down position we talked about
23 before or something else?

24 A. For the officer's body cam?



Q. **Correct.**

A. His at the time was pointed down in the
line when the gun was pictured on the screen.

(Whereupon, a video was shown without audio.)

BY MR. FLAXMAN:

Q. Okay. Am I correct that that video ended with the suspect on the ground on his stomach with his hands spread apart?

A. Yes.

Q. Were you present on the scene at the time the suspect got to the ground?

A. I don't recall.

(Interruption.)

MR. FLAXMAN: Okay. Let me show you No. 18, which is also from officer Kane's body camera starting at 6 minutes, 26 seconds and 13 frames going to 6 minutes, 45 seconds and 92 frames.

(whereupon, Exhibit No. 18 was previously marked for identification.)

(whereupon, a video was shown without audio.)

1 BY MR. FLAXMAN:

2 Q. Are you depicted in this video, in this
3 image that I stopped at?

4 A. No.

5 Q. Do you know who that is, the officer
6 who has his hands on the suspect?

7 A. Yes.

8 Q. Who is it?

9 A. Officer Burgers.

10 Q. Were you present when Officer Burgers
11 put his hands on the suspect?

12 A. I don't recall.

13 Q. Okay.

14 (Whereupon, a video was shown
15 without audio.)

16 (Whereupon, Exhibit No. 19 was
17 previously marked for
18 identification.)

19 MR. FLAXMAN: And 19, which is Officer
20 Kubiak, K-U-B-I-A-K, body camera starting at
21 4 minutes, 27 seconds and 4 frames to 5 minutes
22 and 9 seconds.

23 (Whereupon, a video was shown
24 without audio.)



1 MR. DAFFADA: Objection. This is Ken's --

2 MR. FLAXMAN: It's the same one. It's 18.

3 I'm sorry.

4 19 -- I think we did 19. It looks like
5 a -- let's look at 20.

6 (whereupon, Exhibit No. 20 was
7 previously marked for
8 identification.)

9 (whereupon, a video was shown
10 without audio.)

11 BY MR. FLAXMAN:

12 Q. And we stopped at -- is that you with
13 your right hand on the suspect's right hand?

14 A. Yes.

15 Q. Okay. And the other officer is
16 officer -- well, is that Officer Kane -- is
17 Officer Kane searching the suspect?

18 A. I don't know.

19 Q. Let's see if we can watch some more.

20 And we see an officer handing officer
21 Kane handcuffs.

22 Did you see Officer Kane search the
23 suspect before he got the handcuffs?

24 A. I don't recall.



Q. All right. Now, is the suspect being handcuffed with two sets of handcuffs?

A. Yes. It appears so.

Q. And do you know why that was done?

A. Generally more for comfort.

MR. FLAXMAN: Okay. Let's hit play.

(whereupon, a video was shown without audio.)

9 MR. FLAXMAN: Okay. I think that concludes
10 the video portion.

11 BY MR. FLAXMAN:

Q. Did you ever come across an Evanston resident named Alexander Gray?

A. I don't recall.

Q. Were you wearing a body camera that day? March 31 of 2021?

A. I believe so.

Q. Have you ever seen your body camera video of the events that we've just been talking about?

A. No.

Q. Do you know what happened to your body camera video of the events of March 31, 2021?

A. No.



Q. Did you do anything to preserve that video?

A. No.

Q. Did you do anything to destroy that video?

A. No.

Q. And what happens to your video camera at the conclusion of your shift?

9 A. We place the body cameras in their
10 charging stations.

11 Q. Do you know what if anything is done
12 when there's a desire to preserve the body
13 camera video?

14 A. I know there are different time lengths
15 that each video is stored for, depending on if
16 it's an arrest or not or whatever circumstances
17 there may be.

18 Q. Do you know what those time frames are?

19 A. No. I don't.

20 MR. FLAXMAN: I think we're almost done.

21 Let's take a five-minute break, and
22 I'll reflect. Is that okay?

23 (whereupon, a short break was
24 taken.)



MR. FLAXMAN: This is a new exhibit which I haven't yet shared. It's from Burgers' body camera starting at 1 minute, 7 seconds and 4 frames to 2 minutes, 27 seconds and 22 frames.

What I want to do is play it and then ask you if it refreshes your recollection about some aspects of the event. Is that okay? Do you understand that?

THE WITNESS: Yes.

MR. FLAXMAN: Okay. And I'll try to keep the audio off; and if I didn't get that, I'll stop it and fix it.

(whereupon, a video was shown with audio.)

MR. FLAXMAN: I didn't get that. Now, it's no audio.

(Whereupon, a video was shown without audio.)

BY MR. FLAXMAN:

Q. After having seen that video, has your recollection been refreshed as to whether or not the suspect was searched during the incident on March 31 of 2021?

A. Yes.

1 Q. And what is your present recollection
2 about whether or not he was searched?

3 A. Based on my observations from the
4 video, it appears that Officer Kane had
5 searched.

6 Q. Okay. Do you know why Officer Kane was
7 searching?

8 A. Because the subject was believed to be
9 armed with a handgun.

10 MR. FLAXMAN: Okay. I have nothing further.

11 MR. DAFFADA: All right, Ken.

12 I guess I'll talk to you in a couple of
13 hours.

14 MR. FLAXMAN: Okay. Signature is waived or
15 reserved? Reserved or what's your pleasure?

16 MR. DAFFADA: We'll waive it.

17 MR. FLAXMAN: All right. And I'm ordering
18 it.

19 And I'll see you later this afternoon.

20 MR. DAFFADA: Can I get a copy, Miss Taylor?

21 MR. FLAXMAN: I'll send you that last
22 exhibit, sir.

23 See you later.

24 MR. DAFFADA: All right.



1 FURTHER DEONENT SAITH NOT.

2 (Deposition concluded at 11:56 a.m.)

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, Johnetta Stafford Taylor, a Certified
5 Shorthand Reporter within and for the County of
6 Cook County and State of Illinois, do hereby
7 certify that heretofore, to-wit, on
8 October 31, 2023, remotely appeared before me
9 via Zoom videoconferencing, OFFICER KYLE POPP,
10 in a cause now pending and undetermined in the
11 U.S. District Court for the Northern District of
12 Illinois, Eastern Division, wherein ALEXANDER
13 GRAY is the Plaintiff, and CITY OF EVANSTON, et
14 al. are the Defendants.

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



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

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

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

12 IN TESTIMONY WHEREOF: I have hereunto
13 set my verified digital signature this 6th day
14 of November 2023.

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20 COOK COUNTY, ILLINOIS

21 LIC. NO. 084-001583



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