

<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ILLINOIS</p> <p>3 EASTERN DIVISION</p> <p>4 Alexander Gray,)</p> <p>5 Plaintiff,)</p> <p>6 vs.) No. 23 CV 1931</p> <p>7 City of Evanston, et al.,)</p> <p>8 Defendants.)</p> <p>9 The deposition of DANIEL ROSENBAUM, called</p> <p>10 for examination pursuant to the Rules of Civil</p> <p>11 Procedure for the United States District Courts</p> <p>12 pertaining to the taking of depositions, taken</p> <p>13 before Melissa C. Guandique, Certified Shorthand</p> <p>14 Reporter of the State of Illinois, via Zoom</p> <p>15 Videoconference, on the 30th day of October, 2023,</p> <p>16 at the hour of 2:38 p.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Reported by: Melissa C. Guandique, CSR</p> <p>21 License No.: 084-004335</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">1</p>	<p>1 I N D E X</p> <p>2 WITNESS EXAMINATION</p> <p>3 DANIEL ROSENBAUM</p> <p>4 By Mr. Flaxman 04</p> <p>5 By Mr. Daffada 55</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12 NUMBER MARKED FOR ID</p> <p>13 Deposition Exhibit</p> <p>14 Nos. 1 - 13</p> <p>15 (All exhibits previously marked by and</p> <p>16 retained by Mr. Flaxman.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">3</p>
<p>1 APPEARANCES: (ALL PARTIES APPEARING VIA ZOOM.)</p> <p>2 KENNETH FLAXMAN LAW OFFICES</p> <p>3 BY: MR. KENNETH N. FLAXMAN</p> <p>4 200 South Michigan Avenue, Suite 201</p> <p>5 Chicago, Illinois 60604</p> <p>6 (312) 427-3200</p> <p>7 knf@kenlaw.com</p> <p>8 Representing the Plaintiff;</p> <p>9 LEINENWEBER, BARONI & DAFFADA</p> <p>10 BY: MR. JAMES DAFFADA</p> <p>11 120 North LaSalle Street, Suite 2000</p> <p>12 Chicago, Illinois 60602</p> <p>13 (866) 786-3705</p> <p>14 jim@ilesq.com</p> <p>15 Representing the Defendants.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">2</p>	<p>1 (Witness sworn.)</p> <p>2 DANIEL ROSENBAUM,</p> <p>3 called as a witness herein, having been first duly</p> <p>4 sworn, was examined and testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. FLAXMAN:</p> <p>7 Q. Good afternoon, sir.</p> <p>8 Could state your name and spell your last</p> <p>9 name for us, please?</p> <p>10 A. My name is Daniel Rosenbaum. Last name is</p> <p>11 spelled R-o-s-e-n-b-a-u-m.</p> <p>12 Q. And how old are you?</p> <p>13 A. I am 33 years old.</p> <p>14 Q. And are you presently employed by the city</p> <p>15 of Evanston?</p> <p>16 A. Yes.</p> <p>17 Q. How long have you worked for Evanston?</p> <p>18 A. Approximately nine years.</p> <p>19 Q. And what is your present position?</p> <p>20 A. I am a detective assigned to the special</p> <p>21 operations group.</p> <p>22 Q. When did you become a detective?</p> <p>23 A. January 2018.</p> <p>24 Q. Was -- what was your former position?</p> <p style="text-align: right;">4</p>



<p>1 A. I was a police officer.</p> <p>2 Q. Was it a promotion to become a detective?</p> <p>3 A. No.</p> <p>4 Q. Did you get a pay increase as a detective?</p> <p>5 A. No.</p> <p>6 Q. Do you get different working hours as a</p> <p>7 detective?</p> <p>8 A. I don't understand the question.</p> <p>9 Q. Well, did you just work the same shift</p> <p>10 every day and not rotate shifts as a detective?</p> <p>11 MR. DAFFADA: Objection. Form. You can</p> <p>12 answer.</p> <p>13 MR. FLAXMAN: Let me rephrase the question.</p> <p>14 BY MR. FLAXMAN:</p> <p>15 Q. Before you became a detective, did you</p> <p>16 work rotating shifts?</p> <p>17 A. Yes.</p> <p>18 Q. After becoming a detective do you still</p> <p>19 work rotating shifts?</p> <p>20 A. Yes.</p> <p>21 Q. Do you get more opportunities to work</p> <p>22 overtime as a detective?</p> <p>23 MR. DAFFADA: Object to form.</p> <p>24 THE WITNESS: No.</p> <p style="text-align: right;">5</p>	<p>1 Q. My understanding is that one case you were</p> <p>2 involved in was called Lark versus City of Evanston</p> <p>3 and involved the death of a dog, is that generally</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. After you were sued in that case was</p> <p>7 there, to your knowledge, an investigation by the</p> <p>8 City of Evanston into the facts and circumstances</p> <p>9 that gave rise to that case?</p> <p>10 A. I don't know.</p> <p>11 Q. Did you have to give a statement to the</p> <p>12 City of Evanston to explain your recollection of</p> <p>13 your involvement in the -- what led to that -- the</p> <p>14 incident that gave rise to that case?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you recall being involved in another</p> <p>17 case called Hall versus Rosenbaum?</p> <p>18 A. Yes, I believe it was Hall versus City of</p> <p>19 Evanston, et al.</p> <p>20 Q. Did you have to give a statement to the</p> <p>21 City of Evanston about your alleged involvement in</p> <p>22 the incident giving rise to that case?</p> <p>23 A. I don't recall.</p> <p>24 Q. Okay. And did you give a statement to the</p> <p style="text-align: right;">7</p>
<p>1 BY MR. FLAXMAN:</p> <p>2 Q. What is the special operations group?</p> <p>3 A. It is a unit assigned to investigate gang</p> <p>4 and narcotic crime.</p> <p>5 Q. And according to your interrogatory</p> <p>6 answers you went to the University of Chicago; is</p> <p>7 that correct?</p> <p>8 A. Yes.</p> <p>9 Q. What did you major in?</p> <p>10 A. Psychology.</p> <p>11 Q. Are you continuing your education?</p> <p>12 A. No.</p> <p>13 Q. Do you have plans to continue your</p> <p>14 education?</p> <p>15 A. Not presently, no.</p> <p>16 Q. Well, do you have plans at some time in</p> <p>17 the future to continue your education?</p> <p>18 A. Not presently, no.</p> <p>19 Q. What do you mean by not presently?</p> <p>20 A. At this point in time I have no concrete</p> <p>21 plans to continue my education.</p> <p>22 Q. Is this the third federal civil rights</p> <p>23 lawsuit in which you've been a party?</p> <p>24 A. To the best of my knowledge, yes.</p> <p style="text-align: right;">6</p>	<p>1 City of Evanston about your alleged involvement in</p> <p>2 the present lawsuit that we're here today about?</p> <p>3 A. No.</p> <p>4 Q. Could you tell us what, if anything, you</p> <p>5 looked at in connection with coming to this</p> <p>6 deposition today?</p> <p>7 A. Yes.</p> <p>8 Q. What did you look at?</p> <p>9 A. I reviewed video and reports.</p> <p>10 Q. Did you look at something called a CAD</p> <p>11 report?</p> <p>12 A. Yes.</p> <p>13 Q. Did you -- had you ever seen a CAD report</p> <p>14 before?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know how the CAD reports are</p> <p>17 created?</p> <p>18 A. I do not.</p> <p>19 Q. Do you know who creates them?</p> <p>20 A. I don't know.</p> <p>21 Q. When you looked at the CAD report did you</p> <p>22 notice anything that appeared incorrect about your</p> <p>23 involvement in the incident that is described in</p> <p>24 that CAD report?</p> <p style="text-align: right;">8</p>



<p>1 A. No.</p> <p>2 MR. FLAXMAN: Let me put it up on the screen.</p> <p>3 MR. DAFFADA: Do you have a copy of --</p> <p>4 THE WITNESS: No.</p> <p>5 MR. FLAXMAN: Do you have a copy?</p> <p>6 MR. DAFFADA: I can get it. You can keep</p> <p>7 going.</p> <p>8 BY MR. FLAXMAN:</p> <p>9 Q. What we have on the screen now is the CAD</p> <p>10 report that you looked at before the deposition; is</p> <p>11 that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And at the bottom it's labeled Exhibit 11</p> <p>14 Page 1 of 2.</p> <p>15 A. Yes.</p> <p>16 Q. Let me ask you to look at the</p> <p>17 second -- what I'm scrolling down to is</p> <p>18 Exhibit 2 -- Page 2.</p> <p>19 Do you see where employee I.D. 1689,</p> <p>20 that's the third line, do you see it?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Was -- is that your employee I.D.</p> <p>23 number?</p> <p>24 A. Yes.</p> <p style="text-align: right;">9</p>	<p>1 14:48:38; is that correct?</p> <p>2 A. I'm sorry, are you asking if I see that?</p> <p>3 Q. Right.</p> <p>4 A. Yes, I see that.</p> <p>5 Q. And then the next line says arrived</p> <p>6 3/31/21 at 14:48:38; is that correct?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. And were you dispatched -- when you were</p> <p>9 dispatched to that call were you already at the</p> <p>10 scene of the call?</p> <p>11 A. I don't recall.</p> <p>12 Q. When you got to the call what is the first</p> <p>13 thing you did?</p> <p>14 MR. DAFFADA: Objection. Foundation. You can</p> <p>15 answer.</p> <p>16 THE WITNESS: I don't recall.</p> <p>17 BY MR. FLAXMAN:</p> <p>18 Q. Okay. Before you got to the scene of the</p> <p>19 call what -- do you recall what you heard from the</p> <p>20 dispatcher?</p> <p>21 A. I recall being told via police radio that</p> <p>22 there was an individual armed with a handgun.</p> <p>23 Q. Do you recall whether there was a</p> <p>24 description of the race of the person armed with</p> <p style="text-align: right;">11</p>
<p>1 Q. And it says unit 803.</p> <p>2 was that your unit on March 31, 2021?</p> <p>3 A. Yes.</p> <p>4 Q. Were you working alone or with a partner</p> <p>5 that day?</p> <p>6 A. I was working with partners.</p> <p>7 Q. Who were your partners that day?</p> <p>8 A. My partners were Detective Pogorzelski and</p> <p>9 Detective Popp.</p> <p>10 Q. And I think I'd like you to spell that for</p> <p>11 the court reporter, please.</p> <p>12 A. Pogorzelski, P-o-g-o-r-z-e-l-s-k-i, and</p> <p>13 Popp is spelled P-o-p-p.</p> <p>14 Q. Were you in a vehicle that day?</p> <p>15 A. Yes.</p> <p>16 Q. And who was driving that vehicle when you</p> <p>17 arrived at the scene?</p> <p>18 A. I don't recall.</p> <p>19 Q. If we look at the first row that has your</p> <p>20 employee I.D. number it says, dispatched 3/31/21</p> <p>21 14:48:38.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And then the next line shows en route at</p> <p style="text-align: right;">10</p>	<p>1 the handgun?</p> <p>2 A. No.</p> <p>3 Q. Do you recall if you were told what the</p> <p>4 height was of the person armed with a handgun?</p> <p>5 A. I don't recall, no.</p> <p>6 Q. Do you recall if you were told the sex of</p> <p>7 the person armed with a handgun?</p> <p>8 A. I recall it being a male.</p> <p>9 Q. Let me show you what has previously been</p> <p>10 marked as Exhibit 10.</p> <p>11 Do you see that on your screen or do you</p> <p>12 have a copy in front of you?</p> <p>13 A. I have a copy.</p> <p>14 Q. Do you have Exhibit 10 in front of you?</p> <p>15 A. I do.</p> <p>16 Q. Could you tell us what this is?</p> <p>17 A. This is an exhibit -- Exhibit 10 is an</p> <p>18 Evanston Police Department incident report.</p> <p>19 Q. Is this an official form of the Evanston</p> <p>20 Police Department?</p> <p>21 A. Yes.</p> <p>22 Q. And have you ever filled out a form like</p> <p>23 this?</p> <p>24 A. Yes.</p> <p style="text-align: right;">12</p>



<p>1 Q. When you filled out the form did you try</p> <p>2 to be accurate?</p> <p>3 A. Yes.</p> <p>4 Q. Did you try to be complete?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know who wrote this report?</p> <p>7 A. I don't know.</p> <p>8 Q. Well, do you see at the bottom, like, the</p> <p>9 third row from the bottom it says Brown, coma, S</p> <p>10 Patrol 1719.</p> <p>11 A. Yes, I see that.</p> <p>12 Q. Do you know who Officer Brown is?</p> <p>13 A. Yes.</p> <p>14 Q. And who is Officer Brown?</p> <p>15 A. He is a police officer in Evanston.</p> <p>16 Q. When is the last time you saw him at work?</p> <p>17 A. I don't know.</p> <p>18 Q. Have you ever seen him at work?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if he is deployed in the</p> <p>21 military at the present time?</p> <p>22 A. That is my understanding, yes.</p> <p>23 Q. Okay. Did Officer Brown have a reputation</p> <p>24 for writing accurate police reports?</p> <p style="text-align: right;">13</p>	<p>1 Q. And that shows that he was dispatched; is</p> <p>2 that right?</p> <p>3 A. Where are you -- are we looking at the</p> <p>4 same thing, sir?</p> <p>5 Q. Exhibit 11 for the entry for Unit 275</p> <p>6 3/31/21 at 14:39:24, does that show officer 1695</p> <p>7 dispatched?</p> <p>8 A. Yes.</p> <p>9 Q. Does it show when 1695 arrived at the</p> <p>10 scene?</p> <p>11 A. I don't see an entry for 1695 arriving on</p> <p>12 scene.</p> <p>13 Q. Do you see an entry for 1682 on</p> <p>14 Exhibit 11?</p> <p>15 A. I do not, no.</p> <p>16 Q. Okay. Is there -- do you know an officer</p> <p>17 named Basner, B-a-s-n-e-r?</p> <p>18 A. Yes.</p> <p>19 Q. Do you see an entry for employee I.D.</p> <p>20 Number 1525 on Exhibit 11?</p> <p>21 A. Yes.</p> <p>22 Q. Could you -- and is that for 3/31/21 at</p> <p>23 14:40 p.m. dispatched?</p> <p>24 A. Yes.</p> <p style="text-align: right;">15</p>
<p>1 A. I don't know.</p> <p>2 Q. Well, let's look at Page 2 of this report.</p> <p>3 Do you know Officer Kane, K-a-n-e?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know -- do you know Officer Popp,</p> <p>6 P-o-p-p?</p> <p>7 A. Yes.</p> <p>8 Q. If we look at Exhibit 11, which I think</p> <p>9 you have -- I think you have it in front of you?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see Officer Kane's I.D. number on</p> <p>12 that report Exhibit 11?</p> <p>13 A. I don't know.</p> <p>14 Q. What do you mean by you don't know?</p> <p>15 A. I don't know Officer Kane's I.D. number.</p> <p>16 Q. Let's go back to Exhibit 10.</p> <p>17 Do you see where it says Kane M.</p> <p>18 parenthesis, 1695?</p> <p>19 A. Yes.</p> <p>20 Q. And where it says Rosenbaum D. 1689, is</p> <p>21 that your I.D. number; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Can you see 1695 on Exhibit 11?</p> <p>24 A. Yes.</p> <p style="text-align: right;">14</p>	<p>1 Q. Does it show when 1525 arrived, if at all,</p> <p>2 at the scene?</p> <p>3 A. I don't see an entry, no.</p> <p>4 Q. Okay. Officer Pogorzelski, he was riding</p> <p>5 with you that day, is that what you said before?</p> <p>6 A. Yes, to my -- to the best of my</p> <p>7 recollection.</p> <p>8 Q. Okay. And according to Exhibit 10 his</p> <p>9 employee I.D. number is 1697, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see 1697 on Exhibit 11?</p> <p>12 A. I do not, no.</p> <p>13 Q. All right. Let me show you another</p> <p>14 exhibit.</p> <p>15 Do you see in front of the screen</p> <p>16 Exhibit 1?</p> <p>17 A. Yes.</p> <p>18 Q. Is that a picture of you?</p> <p>19 A. Yes.</p> <p>20 Q. Does that show the equipment you were</p> <p>21 wearing on March 31, '21?</p> <p>22 A. I don't know.</p> <p>23 Q. Okay. Were you wearing a star on</p> <p>24 March 31, 2021?</p> <p style="text-align: right;">16</p>



<p>1 A. I believe so, yes.</p> <p>2 Q. If you look at Exhibit 1, do you see the</p> <p>3 number 1, which is the highest number, it's on your</p> <p>4 left shoulder, close to your left shoulder?</p> <p>5 A. Yes.</p> <p>6 Q. Is that a star?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And tell us what number 2 is?</p> <p>9 A. Number 2 appears to be the microphone</p> <p>10 piece of a radio.</p> <p>11 Q. Is number 3 part of a vest?</p> <p>12 A. Number 3 is centered on the velcro portion</p> <p>13 of the ballistic vest.</p> <p>14 Q. And is ballistic vest also known as a</p> <p>15 bulletproof vest?</p> <p>16 A. Yes.</p> <p>17 Q. What is number 4?</p> <p>18 A. The number 4 is superimposed on the</p> <p>19 buttstock of the carbine.</p> <p>20 Q. Tell us what a carbine is?</p> <p>21 A. A carbine is an adjustable stock or short</p> <p>22 end rifle.</p> <p>23 Q. Do you recall if you had a rifle on</p> <p>24 March 31, 2021, during the incident giving rise to</p> <p style="text-align: right;">17</p>	<p>1 Objection.</p> <p>2 BY MR. FLAXMAN:</p> <p>3 Q. In March of 2021, what did you usually do</p> <p>4 with your body-worn camera at the end of your</p> <p>5 shift?</p> <p>6 A. I would dock the camera in our body-worn</p> <p>7 camera docks.</p> <p>8 Q. And would anybody download the video and</p> <p>9 audio off of the body worn cameras, if you know,</p> <p>10 back in March of 2021?</p> <p>11 A. I don't know.</p> <p>12 Q. Have you made any efforts to find the</p> <p>13 video from the body-worn camera you were wearing,</p> <p>14 if any, on March 31, 2021?</p> <p>15 A. No.</p> <p>16 Q. Could you tell us what number 6 -- what</p> <p>17 the item on which the number 6 is superimposed in</p> <p>18 Exhibit 1?</p> <p>19 A. That appears to be an ammunition magazine</p> <p>20 for a handgun.</p> <p>21 Q. Did you have a handgun that day?</p> <p>22 A. Yes.</p> <p>23 Q. And is your handgun at the bottom left of</p> <p>24 the picture where the number 10 superimposed?</p> <p style="text-align: right;">19</p>
<p>1 this lawsuit?</p> <p>2 A. Yes.</p> <p>3 Q. Did you do special training in connection</p> <p>4 with carrying a rifle?</p> <p>5 A. Yes.</p> <p>6 Q. What is number 5?</p> <p>7 A. Number 5 is superimposed on a body-worn</p> <p>8 camera.</p> <p>9 Q. Was your body-worn camera working on</p> <p>10 March 31, 2021?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you know, what, if anything, happened</p> <p>13 to the video of the incident on March 31, 2021,</p> <p>14 that gives rise to this case?</p> <p>15 A. I don't know.</p> <p>16 Q. Did you -- what did you do at the end of</p> <p>17 your tour of duty on March 31, 2021, with your</p> <p>18 body-worn camera?</p> <p>19 MR. DAFFADA: Objection. Form.</p> <p>20 THE WITNESS: I don't recall.</p> <p>21 BY MR. FLAXMAN:</p> <p>22 Q. What do you usually do with your body-worn</p> <p>23 camera at the end of your shift?</p> <p>24 MR. DAFFADA: What period of time, Ken?</p> <p style="text-align: right;">18</p>	<p>1 A. Yes.</p> <p>2 Q. What kind of handgun did you have?</p> <p>3 A. I had a semi-automatic Glock handgun.</p> <p>4 Q. Is number 7 more ammunition for that</p> <p>5 Glock?</p> <p>6 A. Yes.</p> <p>7 Q. And could you tell us what the object is</p> <p>8 on which the number 8 is superimposed?</p> <p>9 A. That appears to be a flashlight.</p> <p>10 Q. Is there something to the right of the</p> <p>11 flashlight that you're wearing in this picture?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Do you see the number 9 on the</p> <p>14 picture?</p> <p>15 A. Yes.</p> <p>16 Q. When you wear -- is this your full</p> <p>17 equipment that you wear when you work as an</p> <p>18 Evanston police officer?</p> <p>19 MR. DAFFADA: Objection. Form. You can</p> <p>20 answer.</p> <p>21 THE WITNESS: No. There is also items on my</p> <p>22 duty belt that are not visible in this picture.</p> <p>23 BY MR. FLAXMAN:</p> <p>24 Q. Is there anything that you wear on</p> <p style="text-align: right;">20</p>



<p>1 your -- to the right of the number 8 that you</p> <p>2 generally wear in your tour of duty as an Evanston</p> <p>3 police officer?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you see the number 9?</p> <p>6 A. Yes.</p> <p>7 Q. And could you tell us what that is</p> <p>8 superimposed on?</p> <p>9 A. That is a tourniquet.</p> <p>10 Q. And why do you carry a tourniquet?</p> <p>11 A. A tourniquet is an effective medical</p> <p>12 intervention for arterial hemorrhage from an</p> <p>13 extremity, like an arm or a leg.</p> <p>14 Q. In the years that you have worked for</p> <p>15 Evanston, have you ever had an occasion to use a</p> <p>16 tourniquet?</p> <p>17 A. Yes.</p> <p>18 Q. How many times?</p> <p>19 A. Once.</p> <p>20 MR. DAFFADA: Could we take a break for a</p> <p>21 second. I need to tell someone to quiet down.</p> <p>22 MR. FLAXMAN: Fine.</p> <p>23 (Recess taken.)</p> <p>24 MR. DAFFADA: Sorry about that. We're good.</p> <p style="text-align: right;">21</p>	<p>1 Q. When you got out of your car -- when you</p> <p>2 arrived at the scene on March 31st, 2021, did you</p> <p>3 make a decision to take your rifle with you?</p> <p>4 MR. DAFFADA: Objection. Form. You can</p> <p>5 answer, if you know.</p> <p>6 THE WITNESS: I do not recall.</p> <p>7 BY MR. FLAXMAN:</p> <p>8 Q. When you -- when you're driving in a</p> <p>9 police vehicle back in March of 2021, are you</p> <p>10 wearing all this equipment when sitting down or is</p> <p>11 it sitting next to you or stored somewhere or</p> <p>12 something else?</p> <p>13 MR. DAFFADA: Objection. Form. You can</p> <p>14 answer.</p> <p>15 THE WITNESS: I don't remember -- no, I don't</p> <p>16 recall.</p> <p>17 BY MR. FLAXMAN:</p> <p>18 Q. Is it possible to sit in a vehicle and</p> <p>19 wear the carbine in the way it's shown in</p> <p>20 Exhibit 1?</p> <p>21 A. Yes, it's possible.</p> <p>22 Q. Is that because -- is it your practice to</p> <p>23 wear the carbine as it's shown in Exhibit 1 while</p> <p>24 you're in a police vehicle?</p> <p style="text-align: right;">23</p>
<p>1 BY MR. FLAXMAN:</p> <p>2 Q. Go back to Exhibit 1, do you see the</p> <p>3 number 11 on the bottom right?</p> <p>4 A. Yes.</p> <p>5 Q. Is that superimposed on top of a glove?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall why you were wearing gloves</p> <p>8 back in March 31, 2021?</p> <p>9 A. I do not recall.</p> <p>10 Q. Number 12, could you tell us what that is</p> <p>11 superimposed on?</p> <p>12 A. Yes, that's a keychain.</p> <p>13 Q. And are those your personal keys on the</p> <p>14 keychain?</p> <p>15 A. No.</p> <p>16 Q. What are those keys to?</p> <p>17 A. Those are various keys to the police</p> <p>18 department, police vehicle, office door, et cetera.</p> <p>19 Q. Do you recall what type of vehicle you</p> <p>20 were in on March 31, 2021?</p> <p>21 A. No.</p> <p>22 Q. What other police equipment did you have</p> <p>23 that day, March 31, 2021?</p> <p>24 A. I had handcuffs and a Taser.</p> <p style="text-align: right;">22</p>	<p>1 A. No.</p> <p>2 Q. Is it your custom when you're on duty back</p> <p>3 in March of 2021 to always take your carbine with</p> <p>4 you when you get out of the police vehicle?</p> <p>5 A. No.</p> <p>6 Q. And could you tell us, generally, when it</p> <p>7 is that you take your rifle with you?</p> <p>8 A. Yes.</p> <p>9 Q. Would you tell us, please?</p> <p>10 A. I would retrieve my patrol rifle in</p> <p>11 circumstances where I anticipated a potential to</p> <p>12 encounter an armed individual, specifically armed</p> <p>13 with a firearm.</p> <p>14 Q. Do you recall what, if anything -- what,</p> <p>15 if any, information you received on March 31, 2021,</p> <p>16 about a person suspected to be having -- carrying a</p> <p>17 firearm at around 2:48 p.m. that day?</p> <p>18 A. I recall responding to a dispatched call</p> <p>19 of a man with a gun.</p> <p>20 Q. Is that why you took the rifle with you</p> <p>21 when you got out of the car?</p> <p>22 A. Yes.</p> <p>23 Q. On -- do you recall whether or not you</p> <p>24 pointed your rifle at any person on March 31, 2021,</p> <p style="text-align: right;">24</p>



<p>1 when you arrived at the scene of the incident</p> <p>2 giving rise to this lawsuit?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you recall whether or not you fired</p> <p>5 your rifle at any time on March 31, 2021?</p> <p>6 A. I did not fire my rifle.</p> <p>7 Could I go back to the question about the</p> <p>8 pointing a rifle?</p> <p>9 Q. Sure.</p> <p>10 A. The more I think about it, my recollection</p> <p>11 is that I did not point my rifle at any individual</p> <p>12 that day.</p> <p>13 Q. Did you ever disconnect your rifle from</p> <p>14 your vest?</p> <p>15 MR. DAFFADA: Objection. Form.</p> <p>16 MR. FLAXMAN: Let me rephrase the question.</p> <p>17 BY MR. FLAXMAN:</p> <p>18 Q. To get that rifle that is shown in</p> <p>19 Exhibit 1 into your arm so that you can use it,</p> <p>20 what would you have to do?</p> <p>21 A. I would have had to remove it from a</p> <p>22 secured rifle rack inside the police vehicle.</p> <p>23 Q. When you're wearing it as shown in</p> <p>24 Exhibit 1, what holds the rifle onto your vest?</p> <p>25</p>	<p>1 answer.</p> <p>2 THE WITNESS: I don't recall.</p> <p>3 BY MR. FLAXMAN:</p> <p>4 Q. Okay. As you sit here today, is it your</p> <p>5 understanding that pointing a firearm at a suspect</p> <p>6 is the use of deadly force?</p> <p>7 A. No.</p> <p>8 Q. And could you tell us how you came to that</p> <p>9 conclusion?</p> <p>10 A. I'm sorry, I don't understand the</p> <p>11 question.</p> <p>12 Q. Well, okay. I think you told us that your</p> <p>13 understanding is that pointing a firearm at a</p> <p>14 suspect is not the use of deadly force; is that</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And did you learn that at the University</p> <p>18 of Chicago?</p> <p>19 MR. DAFFADA: Objection. Argumentative. You</p> <p>20 can answer.</p> <p>21 THE WITNESS: No. I did not learn that at the</p> <p>22 University of Chicago.</p> <p>23 BY MR. FLAXMAN:</p> <p>24 Q. Did you attend a police academy?</p> <p>27</p>
<p>1 A. There is a sling holder that is worn over</p> <p>2 the shoulder.</p> <p>3 Q. Did you ever remove the sling from your</p> <p>4 shoulder on March 31st, 2021?</p> <p>5 A. I don't recall.</p> <p>6 Q. Now, are you familiar with the use of</p> <p>7 force policy of the City of Evanston?</p> <p>8 A. Yes.</p> <p>9 Q. How did you learn about that policy?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you receive formal training in that</p> <p>12 policy?</p> <p>13 A. Yes.</p> <p>14 Q. When is the last time you looked at that</p> <p>15 policy?</p> <p>16 A. On today's date.</p> <p>17 Q. And is that the same policy that I'm about</p> <p>18 to show you, which is marked Exhibit 8, the eight</p> <p>19 page policy?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. Were you trained at the City of</p> <p>22 Evanston about whether or not pointing a firearm at</p> <p>23 a suspect is the use of deadly force?</p> <p>24 MR. DAFFADA: Objection. Form. You can</p> <p>26</p>	<p>1 A. Yes.</p> <p>2 Q. Which police academy did you attend?</p> <p>3 A. The Cook County Sheriff's Police Academy.</p> <p>4 Q. And were you instructed at the Cook County</p> <p>5 Sheriff's Police Academy about the use of force?</p> <p>6 A. Yes.</p> <p>7 Q. Were you instructed at the Cook County</p> <p>8 Sheriff's Police Academy about the use of deadly</p> <p>9 force?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall any instruction about</p> <p>12 whether or not pointing a firearm at a suspect is</p> <p>13 the use of deadly force?</p> <p>14 A. I don't recall specifically.</p> <p>15 Q. Did you receive any in-service training at</p> <p>16 the Evanston Police Department about the use of</p> <p>17 force?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall any in-service training at</p> <p>20 the Evanston Police Department about the use of</p> <p>21 deadly force?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall any in-service training at</p> <p>24 the City of Evanston about whether or not pointing</p> <p>28</p>



<p>1 a firearm at a suspect is the use of deadly force?</p> <p>2 A. I don't recall specifically, no.</p> <p>3 Q. In addition to the Cook County Sheriff's</p> <p>4 Police Academy and in-service training at the</p> <p>5 Evanston Police Department, have you received any</p> <p>6 other training in police procedure while you've</p> <p>7 worked as an Evanston Police Officer?</p> <p>8 A. Yes.</p> <p>9 Q. Could you tell us what that training</p> <p>10 consisted of?</p> <p>11 A. I don't recall every -- the entirety of</p> <p>12 the training classes I've attended as a police</p> <p>13 officer.</p> <p>14 Q. Well, have those training classes been at</p> <p>15 the FBI school?</p> <p>16 A. Yes, I have attended an FBI class.</p> <p>17 Q. And did that FBI class cover the use of</p> <p>18 deadly force?</p> <p>19 A. Yes.</p> <p>20 Q. Is there anything at that FBI class about</p> <p>21 whether or not pointing a firearm at a suspect is</p> <p>22 the use of deadly force?</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you recall any other schools, other</p> <p style="text-align: right;">29</p>	<p>1 suspects?</p> <p>2 A. No.</p> <p>3 Q. Okay. Could you tell us what you learned</p> <p>4 at the patrol stops class?</p> <p>5 A. To the best of my recollection the class</p> <p>6 centered on higher risk traffic stops.</p> <p>7 Q. If we go back to the use of force policy,</p> <p>8 300.2, there is a reference to the reasonableness</p> <p>9 of the use of force must be judged from the</p> <p>10 perspective of a reasonable officer on the scene.</p> <p>11 Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. What was your perspective on the scene on</p> <p>14 March 31st, 2021, when you responded to the police</p> <p>15 call that underlies this case?</p> <p>16 A. I don't recall specifically.</p> <p>17 Q. Is there anything you could look at that</p> <p>18 would refresh your recollection?</p> <p>19 A. Yes.</p> <p>20 Q. And what's that?</p> <p>21 A. That would be the body-worn camera video</p> <p>22 of the incident.</p> <p>23 Q. Did you look -- when is the last time you</p> <p>24 looked at those body worn cameras?</p> <p style="text-align: right;">31</p>
<p>1 than the FBI school, that you have attended while</p> <p>2 working as an Evanston police officer?</p> <p>3 A. Yes.</p> <p>4 Q. And could you tell us what those were?</p> <p>5 A. I have attended a 40-hour basic narcotics</p> <p>6 investigator class.</p> <p>7 Q. Anything else?</p> <p>8 A. I've attended a 40-hour lead homicide</p> <p>9 investigator class.</p> <p>10 Q. Anything else?</p> <p>11 A. I've attended an eight-hour patrol stops</p> <p>12 class.</p> <p>13 Q. When was the patrol stops class?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did the -- who provided that patrol stops</p> <p>16 class?</p> <p>17 A. I don't recall.</p> <p>18 Q. Was it -- did you leave the City of</p> <p>19 Evanston to attend that class?</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember where you were?</p> <p>22 A. I don't recall.</p> <p>23 Q. Okay. At that patrol stops class was</p> <p>24 there any instruction about conducting searches of</p> <p style="text-align: right;">30</p>	<p>1 MR. DAFFADA: Objection. Form. You can</p> <p>2 answer.</p> <p>3 THE WITNESS: I don't recall exactly.</p> <p>4 BY MR. FLAXMAN:</p> <p>5 Q. Did you look at any body-worn camera</p> <p>6 videos today?</p> <p>7 A. Yes.</p> <p>8 Q. How many did you look at?</p> <p>9 A. Just one.</p> <p>10 Q. And when -- how many hours before this</p> <p>11 deposition did you look at that body-worn camera</p> <p>12 video?</p> <p>13 A. Approximately an hour and a half.</p> <p>14 Q. After looking at that body-worn camera</p> <p>15 video -- well, do you recall whose body-worn camera</p> <p>16 it was that recorded that video?</p> <p>17 A. Yes.</p> <p>18 Q. And whose was it?</p> <p>19 A. Officer Kubiak.</p> <p>20 Q. Does that show Officer Kubiak with a</p> <p>21 handgun being pointed at a suspect?</p> <p>22 A. The portion of the video that I reviewed</p> <p>23 did not show that, no.</p> <p>24 Q. After looking at Officer Kubiak's video</p> <p style="text-align: right;">32</p>



<p>1 did you recall what your perspective of the scene 2 was on March 31st, 2021? 3 A. Yes, that video refreshed my recollection. 4 Q. And after viewing that video what was your 5 recollection of what your perspective of the scene 6 was on March 31st, 2021, and the incident giving 7 rise to this lawsuit? 8 A. I believe there were several police 9 officers speaking with an individual in the 500 10 block of Sheridan Square. 11 Q. Did that -- that individual -- did you see 12 him -- was that a male? 13 A. I don't know. 14 Q. Did you see that person commit any 15 criminal offenses? 16 MR. DAFFADA: Objection. Form. You can 17 answer. 18 THE WITNESS: No, I did not. 19 BY MR. FLAXMAN: 20 Q. Have spoken to Officer Kubiak about the 21 incident giving rise to this lawsuit? 22 A. No. 23 Q. Have you spoken to any police officer 24 about the incident giving rise to this lawsuit?</p> <p style="text-align: right;">33</p>	<p>1 A. Yes. 2 Q. Do you know who that is? 3 A. Yes. 4 Q. Could you tell us his name? 5 A. That is Officer Kane. 6 Q. There is an officer at the bottom left of 7 that picture. 8 Do you know who that is? 9 A. Yes. 10 Q. Who is that? 11 A. That is Detective Popp. 12 Q. And if we look at Exhibit 13 we see Popp, 13 Kane, and on the right we see another officer. 14 Can you identify who that is? 15 A. Yes. 16 Q. Who is that? 17 A. That is Detective Pogorzelski. 18 Q. Does she still work for the City of 19 Evanston? 20 A. No. 21 Q. Do you know where she is employed? 22 A. Yes. 23 Q. Where is she employed? 24 A. She is employed by the Federal Bureau of</p> <p style="text-align: right;">35</p>
<p>1 A. I don't recall. 2 Q. In -- the use of force policy, 3 Section 300.2.1 is entitled Duty to Intercede, do 4 you see that? 5 A. Yes. 6 Q. Is it your understanding that if you see a 7 police officer using unreasonable force, you should 8 intercede to prevent the use of that unreasonable 9 force? 10 A. Yes. 11 Q. Is there a similar duty when you see an 12 officer conducting what appears to be an 13 unreasonable search that you should intercede to 14 prevent that unreasonable search? 15 MR. DAFFADA: Objection. Form. 16 THE WITNESS: I don't know. 17 BY MR. FLAXMAN: 18 Q. Well, did you see police officers search a 19 suspect on March 31st, 2021, at about -- shortly 20 before 3:00 p.m.? 21 A. I don't recall. 22 Q. Let me ask you to look at Exhibit 12. 23 There is an officer standing up, do you 24 see that?</p> <p style="text-align: right;">34</p>	<p>1 Investigations. 2 Q. Could you tell us what -- well, could you 3 tell us what's happening to the suspect in this 4 image? 5 MR. DAFFADA: Objection. Foundation. 6 MR. FLAXMAN: You can answer the question. 7 THE WITNESS: I don't know. 8 BY MR. FLAXMAN: 9 Q. Did you see what is depicted in this area 10 when you were at the scene on March 31, 2021? 11 A. I don't recall. 12 Q. Is there anything you can look at that 13 would refresh your recollection about whether or 14 not you saw what is depicted in this image on 15 March 31st, 2021? 16 A. Yes. 17 Q. What is it that would refresh your 18 recollection or might refresh your recollection? 19 A. A body-worn camera video depicting this. 20 Q. Okay. 21 THE WITNESS: Could I take a break? 22 MR. FLAXMAN: Sure. At any time you can take a 23 break. How much time do you want? 24 THE WITNESS: Five minutes is fine.</p> <p style="text-align: right;">36</p>



<p>1 MR. FLAXMAN: That's fine. See you in five</p> <p>2 minutes.</p> <p>3 (Recess taken.)</p> <p>4 BY MR. FLAXMAN:</p> <p>5 Q. Let's me ask you to look at your screen.</p> <p>6 Do you see an image that is labeled as</p> <p>7 Exhibit 2?</p> <p>8 A. I do, yes.</p> <p>9 Q. Does that show your back, among other</p> <p>10 things?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Could you tell us what is on the back of</p> <p>13 your belt?</p> <p>14 A. Could you point to it with the cursor,</p> <p>15 please?</p> <p>16 Q. There is one here and one there.</p> <p>17 A. So where you have the cursor right now is</p> <p>18 like a pocket for a notepad or pens and stuff.</p> <p>19 Q. On the left part of your body as shown in</p> <p>20 this picture?</p> <p>21 A. Yes.</p> <p>22 Q. And what is on -- more towards the middle</p> <p>23 right of your body, what is that?</p> <p>24 A. That is medical equipment.</p> <p style="text-align: right;">37</p>	<p>1 A. I don't know.</p> <p>2 Q. Were you ten feet away?</p> <p>3 A. I don't know.</p> <p>4 Q. Were you close enough to hear what, if</p> <p>5 anything, he was saying?</p> <p>6 A. I don't know.</p> <p>7 Q. Were you -- did you have your finger on</p> <p>8 the trigger of your rifle?</p> <p>9 A. No.</p> <p>10 Q. Did you have -- is there a safety on that</p> <p>11 rifle?</p> <p>12 A. Yes.</p> <p>13 Q. Was the safety on or off at that point in</p> <p>14 time that is shown in Exhibit 2?</p> <p>15 A. The safety was engaged.</p> <p>16 Q. What does engaged mean?</p> <p>17 A. The weapon was safe.</p> <p>18 Q. What would you have had to do to make the</p> <p>19 weapon usable to fire a bullet at that point in</p> <p>20 time?</p> <p>21 A. I would have had to flip the safety</p> <p>22 selector to the fire position.</p> <p>23 Q. And how long would that have taken you to</p> <p>24 do?</p> <p style="text-align: right;">39</p>
<p>1 Q. Does this image depict you holding your</p> <p>2 rifle?</p> <p>3 A. Yes.</p> <p>4 Q. And about -- do you see the suspect on the</p> <p>5 ground?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall ever seeing that suspect</p> <p>8 engaged in any criminal act on the day that this</p> <p>9 image was taken?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall the race of that suspect?</p> <p>12 A. No.</p> <p>13 Q. Why did you have your carbine in your</p> <p>14 hands?</p> <p>15 A. I was responding to an emergency call of</p> <p>16 an armed individual.</p> <p>17 Q. Let me ask a better question, perhaps.</p> <p>18 At the instant depicted in this image</p> <p>19 that's been marked Exhibit 2, why did you have your</p> <p>20 carbine in your hands?</p> <p>21 A. I was providing security for the officers</p> <p>22 placing that individual into detention.</p> <p>23 Q. And how far away from the suspect were you</p> <p>24 in this image?</p> <p style="text-align: right;">38</p>	<p>1 A. I don't know.</p> <p>2 Q. Well, would it have taken ten minutes?</p> <p>3 A. No.</p> <p>4 Q. Would it have taken a second or two?</p> <p>5 A. I don't know, depends on the</p> <p>6 circumstances.</p> <p>7 Q. Could you tell us, if you can, why you</p> <p>8 were using your rifle at this point in time that is</p> <p>9 shown in Exhibit 2 rather than your handgun?</p> <p>10 A. Based upon the nature of the call I was</p> <p>11 responding to I anticipated encountering an armed</p> <p>12 individual.</p> <p>13 Q. Well, there is an officer to your right</p> <p>14 where the cursor is now, do you know who that is?</p> <p>15 A. Yes.</p> <p>16 Q. Who is that?</p> <p>17 A. I believe that's Officer Kubiak.</p> <p>18 Q. And was he pointing a handgun at the</p> <p>19 suspect at the point in time shown in Exhibit 2?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. After looking at this image do you</p> <p>22 have a recollection about whether or not the</p> <p>23 suspect was being searched?</p> <p>24 A. Based on this image, no.</p> <p style="text-align: right;">40</p>



<p>1 Q. Let me ask you to look at Exhibit 3.</p> <p>2 Are you depicted in this image?</p> <p>3 A. Yes.</p> <p>4 Q. Is that you with part of the word Police</p> <p>5 in the back of your jacket?</p> <p>6 A. Yes.</p> <p>7 Q. Are you depicted in Exhibit 4?</p> <p>8 A. Yes.</p> <p>9 Q. And is that you in the middle holding a</p> <p>10 rifle that's pointed almost straight down?</p> <p>11 MR. DAFFADA: Could you blow it up, Ken? It's</p> <p>12 hard to see on the screen.</p> <p>13 MR. FLAXMAN: Let's look at Exhibit 5. It's</p> <p>14 the same thing. I've enlarged it.</p> <p>15 BY MR. FLAXMAN:</p> <p>16 Q. Is that you in about the middle of the</p> <p>17 screen wearing a hat holding a rifle that is</p> <p>18 pointed almost straight down?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. And Exhibit 5 is the same image, but it's</p> <p>21 cropped somewhat.</p> <p>22 MR. DAFFADA: Objection. Form. You can answer</p> <p>23 if there is a question.</p> <p>24</p> <p style="text-align: right;">41</p>	<p>1 A. Yes, it appears to be.</p> <p>2 Q. Let me go back to -- I'm going to ask you</p> <p>3 to look at Exhibit 5 and then again at Exhibit 7.</p> <p>4 Is the angle of the rifle the same in</p> <p>5 Exhibit 5 and Exhibit 7?</p> <p>6 A. Yes, it appears to be.</p> <p>7 Q. Okay. Is it your recollection that you</p> <p>8 never pointed your rifle at the suspect?</p> <p>9 A. Yes.</p> <p>10 Q. At any time did you see anything that</p> <p>11 caused you to believe that the suspect was a threat</p> <p>12 to anyone?</p> <p>13 A. I don't recall.</p> <p>14 Q. Is there anything that you could look at</p> <p>15 that would refresh your recollection as to whether</p> <p>16 or not you perceived the suspect as a threat to</p> <p>17 anyone?</p> <p>18 A. Yes.</p> <p>19 Q. And what is that?</p> <p>20 A. Either a report of the incident or</p> <p>21 body-worn camera video of the incident.</p> <p>22 Q. What would you be looking for in the</p> <p>23 body-worn camera video of the incident as to</p> <p>24 whether or not the suspect presented a threat to</p> <p style="text-align: right;">43</p>
<p>1 BY MR. FLAXMAN:</p> <p>2 Q. Does Exhibit 5 show you again holding your</p> <p>3 rifle pointing almost straight down?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. Exhibit 6 is that you wearing the hat</p> <p>6 holding the rifle?</p> <p>7 A. Yes, that appears to be me.</p> <p>8 Q. All the way in the left there is an</p> <p>9 officer, do you know who that is?</p> <p>10 A. Yes.</p> <p>11 Q. Who is that?</p> <p>12 A. That appears to be Officer Wozniak.</p> <p>13 Q. And to the right of Officer Wozniak there</p> <p>14 is another officer.</p> <p>15 Do you know who that appears to be?</p> <p>16 A. Yes.</p> <p>17 Q. Who is that?</p> <p>18 A. Officer Bergers (phonetic).</p> <p>19 Q. Look at Exhibit 7, is that you holding the</p> <p>20 rifle?</p> <p>21 A. Yes, that appears to be me.</p> <p>22 Q. I will make it bigger for you.</p> <p>23 Is the rifle pointed straight down as it</p> <p>24 was in the previous exhibits?</p> <p style="text-align: right;">42</p>	<p>1 anyone?</p> <p>2 MR. DAFFADA: Objection. Form. Calls for</p> <p>3 speculation. Go ahead.</p> <p>4 THE WITNESS: I don't know.</p> <p>5 BY MR. FLAXMAN:</p> <p>6 Q. Do you recall what it was you saw the</p> <p>7 suspect do, if anything, on March 31st of 2021?</p> <p>8 A. No, I don't recall.</p> <p>9 Q. Did the suspect appear to be under the</p> <p>10 influence of drugs?</p> <p>11 A. I don't recall.</p> <p>12 Q. Is there anything you could look at that</p> <p>13 would refresh your recollection about whether or</p> <p>14 not he appeared to be under the influence of drugs?</p> <p>15 A. I don't know.</p> <p>16 Q. Before you said looking at a report might</p> <p>17 refresh your recollection.</p> <p>18 Is that the report that I -- I showed you</p> <p>19 a report before, which I'm looking for, which</p> <p>20 doesn't seem to be here anymore.</p> <p>21 This is Exhibit 10, the incident</p> <p>22 investigation report, which we looked at before; is</p> <p>23 that correct?</p> <p>24 A. Yes.</p> <p style="text-align: right;">44</p>



<p>1 Q. Is there any report, other than this one, 2 that could refresh your -- that might refresh your 3 recollection as to whether or not you perceived the 4 suspect to be a threat?</p> <p>5 A. I don't know.</p> <p>6 Q. Have you ever seen a report other than 7 this one about the incident of March 31, 2021 8 shortly before 3:00 p.m.?</p> <p>9 A. No, not to my knowledge.</p> <p>10 Q. I think you have a copy of this report in 11 front of you; is that right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Would you read it through and see if 14 anything in there refreshes your recollection about 15 anything you saw that could have caused you to 16 believe that the suspect was a threat?</p> <p>17 A. Okay. I've reviewed the report.</p> <p>18 Q. After having reviewed the report is your 19 recollection refreshed as to whether or not you saw 20 anything that caused you to believe that the 21 suspect was a threat?</p> <p>22 A. Yes.</p> <p>23 Q. And what is that?</p> <p>24 A. The suspect matched the description of a</p> <p style="text-align: right;">45</p>	<p>1 the description that appears in Exhibit 10, the 2 report.</p> <p>3 What was it that made it -- that caused 4 you to believe that the suspect was a white male?</p> <p>5 A. I don't know.</p> <p>6 Q. Now, when you -- in Exhibit 5 when you're 7 holding the rifle, is that deploying the rifle?</p> <p>8 MR. DAFFADA: Objection. Form. You can 9 answer, if you understand.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. FLAXMAN:</p> <p>12 Q. At the time you deployed the rifle on 13 March 31st, 2021, did you anticipate an armed 14 encounter with the suspect that we see in the 15 picture laying on the ground with his arms 16 stretched out?</p> <p>17 A. Yes.</p> <p>18 Q. Why is that?</p> <p>19 A. We were responding to an emergency call of 20 a man armed with handgun.</p> <p>21 Q. And did you ever see the suspect with a 22 handgun?</p> <p>23 A. Not to my recollection, no.</p> <p>24 Q. When you were deploying the rifle as shown</p> <p style="text-align: right;">47</p>
<p>1 911 call of a person with a gun.</p> <p>2 Q. And could you tell us what your 3 recollection is of what that description was?</p> <p>4 MR. DAFFADA: Objection. Form. He indicated 5 it came from this report.</p> <p>6 THE WITNESS: The description was a white male, 7 approximately five feet tall to six feet tall in a 8 dark coat and jeans, situated just north of the 9 beach on the trail.</p> <p>10 BY MR. FLAXMAN:</p> <p>11 Q. Now, do you understand that 80 percent of 12 the male adult population is between five feet tall 13 and six feet tall?</p> <p>14 MR. DAFFADA: Objection. Argumentative. You 15 can answer.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. FLAXMAN:</p> <p>18 Q. And what was it that caused you to believe 19 that the suspect was a white male?</p> <p>20 MR. DAFFADA: Objection. There is no 21 foundation for that.</p> <p>22 THE WITNESS: Could you repeat the question?</p> <p>23 BY MR. FLAXMAN:</p> <p>24 Q. Well, you told us that the suspect matched</p> <p style="text-align: right;">46</p>	<p>1 in Exhibit 5, did you expect the need for accurate 2 and effective fire at long range?</p> <p>3 MR. DAFFADA: Objection. Calls for 4 speculation. You can answer.</p> <p>5 THE WITNESS: I don't know.</p> <p>6 BY MR. FLAXMAN:</p> <p>7 Q. Do you understand that the rules of the 8 Evanston Police Department require that you expect 9 the need for accurate and effective fire at long 10 range before you deploy a patrol rifle?</p> <p>11 A. That is not my understanding, no.</p> <p>12 Q. Now, that -- the weapon, the rifle, the 13 carbine, that was a patrol rifle; is that right?</p> <p>14 MR. DAFFADA: Objection. Form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. FLAXMAN:</p> <p>17 Q. And back in March 31, 2021, at the time 18 you deployed your patrol rifle, did you expect the 19 need to meet or exceed the suspect's fire power?</p> <p>20 A. I don't know.</p> <p>21 Q. Well, don't you have to know or believe 22 that there is a need to meet or exceed a suspect's 23 fire power before you deploy a patrol rifle?</p> <p>24 A. That is a consideration.</p> <p style="text-align: right;">48</p>

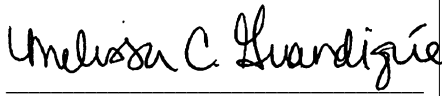


<p>1 Q. Is another consideration whether there is</p> <p>2 a need to fire on a barricaded person?</p> <p>3 MR. DAFFADA: Objection. Form. Relevance.</p> <p>4 THE WITNESS: That is my understanding, yes.</p> <p>5 BY MR. FLAXMAN:</p> <p>6 Q. At the time you deployed your firearm, the</p> <p>7 rifle, on March 31st, 2021, did you perceive a need</p> <p>8 to fire on a barricaded person?</p> <p>9 A. I don't know.</p> <p>10 Q. Was there a hostage present on</p> <p>11 March 31st, 2021, when you deployed your rifle?</p> <p>12 A. Not to my recollection, no.</p> <p>13 Q. Did you see the suspect wearing body</p> <p>14 armor?</p> <p>15 A. Not to my recollection, no.</p> <p>16 Q. Were there any supervisors on the scene on</p> <p>17 March 31st, 2021?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall anyone instructing you to</p> <p>20 deploy the rifle?</p> <p>21 A. I don't recall.</p> <p>22 Q. And in your interrogatory answers you</p> <p>23 refer to low ready.</p> <p>24 Could you tell us what low ready means?</p> <p style="text-align: right;">49</p>	<p>1 at the City of Evanston about sensitivity to racial</p> <p>2 issues as a police officer?</p> <p>3 A. Yes.</p> <p>4 Q. How many?</p> <p>5 A. I don't recall.</p> <p>6 Q. Why did you decide to become a police</p> <p>7 officer?</p> <p>8 A. I wanted to help people.</p> <p>9 Q. When did you first want to become a police</p> <p>10 officer?</p> <p>11 A. I became interested in the career in</p> <p>12 college.</p> <p>13 Q. What did you do at the University of</p> <p>14 Chicago Crime Lab?</p> <p>15 A. I -- you're asking what I did at the</p> <p>16 University of Chicago Crime Lab?</p> <p>17 I was -- when I was employed there I was a</p> <p>18 research specialist --</p> <p>19 MR. FLAXMAN: The video is frozen.</p> <p>20 (Whereupon there was an internet</p> <p>21 disruption.)</p> <p>22 THE WITNESS: I said that I was employed as a</p> <p>23 research specialist and afterwards --</p> <p>24</p> <p style="text-align: right;">51</p>
<p>1 A. Low ready is a -- the positioning of the</p> <p>2 rifle with the barrel pointed down.</p> <p>3 Q. And what does index down position mean?</p> <p>4 A. That's a similar position in which the</p> <p>5 rifle is pointed down, finger off the trigger,</p> <p>6 weapon safe.</p> <p>7 Q. Did you have to write a To From memo after</p> <p>8 you received -- after you learned you were being</p> <p>9 sued in this case?</p> <p>10 MR. DAFFADA: Objection. Form.</p> <p>11 THE WITNESS: No, not to my recollection.</p> <p>12 BY MR. FLAXMAN:</p> <p>13 Q. As you sit here today is it your belief</p> <p>14 that your use of the rifle on March 31st, 2021, at</p> <p>15 the incident giving rise to this case was</p> <p>16 consistent with the written policies of the City of</p> <p>17 Evanston?</p> <p>18 A. Yes.</p> <p>19 Q. I showed you Exhibit 10, the incident</p> <p>20 investigation report. It has some redactions.</p> <p>21 Have you ever seen that report without</p> <p>22 redactions?</p> <p>23 A. I don't recall.</p> <p>24 Q. Have you attended any in-service training</p> <p style="text-align: right;">50</p>	<p>1 (Whereupon there was an internet</p> <p>2 disruption.)</p> <p>3 THE WITNESS: I was asked what I did at the</p> <p>4 University of Chicago Crime Lab when I was employed</p> <p>5 there, I was employed as a research specialist, and</p> <p>6 then I did some consulting work afterwards.</p> <p>7 BY MR. FLAXMAN:</p> <p>8 Q. Going back to the incident with the</p> <p>9 suspect, did he appear to be under the influence of</p> <p>10 drugs?</p> <p>11 A. I don't know.</p> <p>12 Q. Did you notice anything unusual about his</p> <p>13 mental state?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you see him do anything that was</p> <p>16 non-compliant with any of the police instructions?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you see the suspect resist any police</p> <p>19 officer?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you see any officers conduct a</p> <p>22 protective pat down search of the suspect?</p> <p>23 A. I don't recall.</p> <p>24 Q. Is there anything you could look at that</p> <p style="text-align: right;">52</p>



<p>1 would refresh your recollection?</p> <p>2 A. Yes, perhaps some of the body camera from</p> <p>3 the scene.</p> <p>4 Q. Did you ever think on March 31st of 2021,</p> <p>5 that the suspect at the incident giving rise to</p> <p>6 this lawsuit was attempting to flee?</p> <p>7 A. I don't know.</p> <p>8 Q. Did you ever believe that the suspect had</p> <p>9 committed a felony involving serious bodily injury</p> <p>10 or death?</p> <p>11 A. I don't know.</p> <p>12 Q. Well, what do you mean by I don't know?</p> <p>13 You either believe it or you don't believe</p> <p>14 it?</p> <p>15 A. I don't recall.</p> <p>16 Q. Did you ever believe that the suspect was</p> <p>17 attempting to flee?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did you ever believe that the suspect had</p> <p>20 a weapon?</p> <p>21 A. Yes.</p> <p>22 Q. Why?</p> <p>23 A. Per the information given via police</p> <p>24 dispatch on the call that I responded to.</p> <p style="text-align: right;">53</p>	<p>1 armed with a handgun.</p> <p>2 Q. Why did you believe that the suspect was</p> <p>3 that man?</p> <p>4 A. He matched the description as given by</p> <p>5 police dispatch.</p> <p>6 Q. Any other reason that you believe that the</p> <p>7 suspect had committed a crime other than what</p> <p>8 you've told us?</p> <p>9 A. Not to my recollection.</p> <p>10 MR. FLAXMAN: I have nothing further.</p> <p>11 MR. DAFFADA: All right.</p> <p>12 MR. FLAXMAN: Do you have any questions?</p> <p>13 MR. DAFFADA: I have a couple questions.</p> <p>14 EXAMINATION</p> <p>15 BY MR. DAFFADA:</p> <p>16 Q. Your recollection of the events on</p> <p>17 March 31st, 2021, do you have an independent</p> <p>18 recollection of any independent recollection of</p> <p>19 what happened that day without being refreshed?</p> <p>20 A. No.</p> <p>21 Q. What we've talked about today, what you've</p> <p>22 testified about, was that based on having reviewed</p> <p>23 the videos and these reports and reading the</p> <p>24 complaint?</p> <p style="text-align: right;">55</p>
<p>1 Q. Possessing a weapon in a public place was</p> <p>2 a crime back in March 31st, 2021; is that correct?</p> <p>3 A. It can be, yes.</p> <p>4 Q. And did you believe that the suspect who</p> <p>5 was laying on the ground while you held your rifle</p> <p>6 had committed a crime?</p> <p>7 A. Yes.</p> <p>8 Q. Did you believe you had a reasonable basis</p> <p>9 to believe that the suspect who was laying on the</p> <p>10 ground when you held your rifle had committed a</p> <p>11 crime?</p> <p>12 MR. DAFFADA: Objection. Asked and answered.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: I'm sorry, could you repeat that?</p> <p>15 That was -- I don't understand the question.</p> <p>16 BY MR. FLAXMAN:</p> <p>17 Q. You told us that you believe that the</p> <p>18 suspect had committed a crime.</p> <p>19 My next question is did you believe you</p> <p>20 had a reasonable basis to believe that the suspect</p> <p>21 had committed a crime?</p> <p>22 A. Yes.</p> <p>23 Q. And why is that?</p> <p>24 A. I responded to an emergency call of a man</p> <p style="text-align: right;">54</p>	<p>1 A. Yes.</p> <p>2 MR. DAFFADA: No further questions.</p> <p>3 MR. FLAXMAN: Signature?</p> <p>4 MR. DAFFADA: Waived.</p> <p>5 (Deposition concluded at</p> <p>6 4:09 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">56</p>



<p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF COOK) 4 I, MELISSA C. GUANDIQUE, an Officer of the 5 Court, do hereby certify that heretofore, to-wit, 6 on the 30th day of October, 2023, appeared via Zoom 7 Videoconference, DANIEL ROSENBAUM, in a cause now 8 pending and undetermined in the Circuit Court of 9 Cook County, Illinois, wherein Alexander Gray is 10 the Plaintiff, and City of Evanston, et al., are 11 the Defendants. 12 I further certify that the said witness 13 was first duly sworn to testify the truth, the 14 whole truth and nothing but the truth in the cause 15 aforesaid; that the testimony then given by said 16 witness was reported stenographically by me in the 17 presence of the said witness, and afterwards 18 reduced to typewriting by Computer-Aided 19 Transcription, and the foregoing is a true and 20 correct transcript of the testimony so given by 21 said witness as aforesaid. 22 I further certify that the signature to 23 the foregoing deposition was waived by counsel for 24 the respective parties.</p> <p style="text-align: right;">57</p>	
<p>1 I further certify that the taking of this 2 deposition was pursuant to Notice, and that there 3 were present at the deposition the attorneys 4 hereinbefore mentioned. 5 I further certify that I am not counsel 6 for nor in any way related to the parties to this 7 suit, nor am I in any way interested in the outcome 8 thereof. 9 IN TESTIMONY WHEREOF: I have hereunto set 10 my digital signature this 8th day of November, 11 2023. 12 13 14  15 16 ILLINOIS CERTIFIED SHORTHAND REPORTER 17 18 19 20 21 22 23 24</p> <p style="text-align: right;">58</p>	



<p>1</p> <p>1 9:14 16:16 17:2,3 19:18 22:2 23:20,23 25:19,24</p> <p>10 12:10,14,17 14:16 16:8 19:24 44:21 47:1 50:19</p> <p>11 9:13 14:8,12,23 15:5,14,20 16:11 22:3</p> <p>12 22:10 34:22</p> <p>13 35:12</p> <p>14:39:24 15:6</p> <p>14:40 15:23</p> <p>14:48:38 10:21 11:1,6</p> <p>1525 15:20 16:1</p> <p>1682 15:13</p> <p>1689 9:19 14:20</p> <p>1695 14:18,23 15:6,9,11</p> <p>1697 16:9,11</p> <p>1719 13:10</p> <p>2</p> <p>2 9:14,18 14:2 17:8,9 37:7 38:19 39:14 40:9,19</p> <p>2018 4:23</p> <p>2021 10:2 16:24 17:24 18:10,13,17 19:3,10, 14 22:8,20,23 23:2,9 24:3,15,24 25:5 26:4 31:14 33:2,6 34:19 36:10,15 44:7 45:7 47:13 48:17 49:7,11, 17 50:14 53:4 54:2 55:17</p> <p>21 16:21</p> <p>275 15:5</p> <p>2:48 24:17</p> <p>3</p> <p>3 17:11,12 41:1</p> <p>3/31/21 10:20 11:6 15:6,22</p> <p>300.2 31:8</p> <p>300.2.1 34:3</p> <p>31 10:2 16:21,24 17:24 18:10,13,17 19:14 22:8,20,23 24:15,24 25:5 36:10 45:7 48:17</p>	<p>31st 23:2 26:4 31:14 33:2,6 34:19 36:15 44:7 47:13 49:7,11, 17 50:14 53:4 54:2 55:17</p> 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