

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

Alexander Gray,)	
)	
<i>Plaintiff,</i>)	
)	
-vs-)	No. 23-cv-1931
)	
City of Evanston, Evanston Police)	
Officers Kubiak, Kane, Popp, Ros-)	
enbaum, and Pogorzelski,)	(Judge Seeger)
)	
<i>Defendants.</i>)	

**PLAINTIFF'S LOCAL RULE 56.1(b)(3) STATEMENT OF
ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT (ECF No. 38)**

Plaintiff submits the following additional facts in response to defendants' cross-motion for summary judgment:

1. The dispatcher informed the responding officers about a complaint about a man "just north of the beach on the trail." (ECF No. 40-3 at 2)
2. The dispatcher provided the "location of incident" as 501 Sheridan Road (Incident Report, ECF No. 40-3) or "just north of the beach on the trail" each of Sheridan Square. (CAP Report, ECF No. 40-4.)
3. The beach is at the south end of the park, as shown in the frame grab from Officer Brown's body worn camera video:



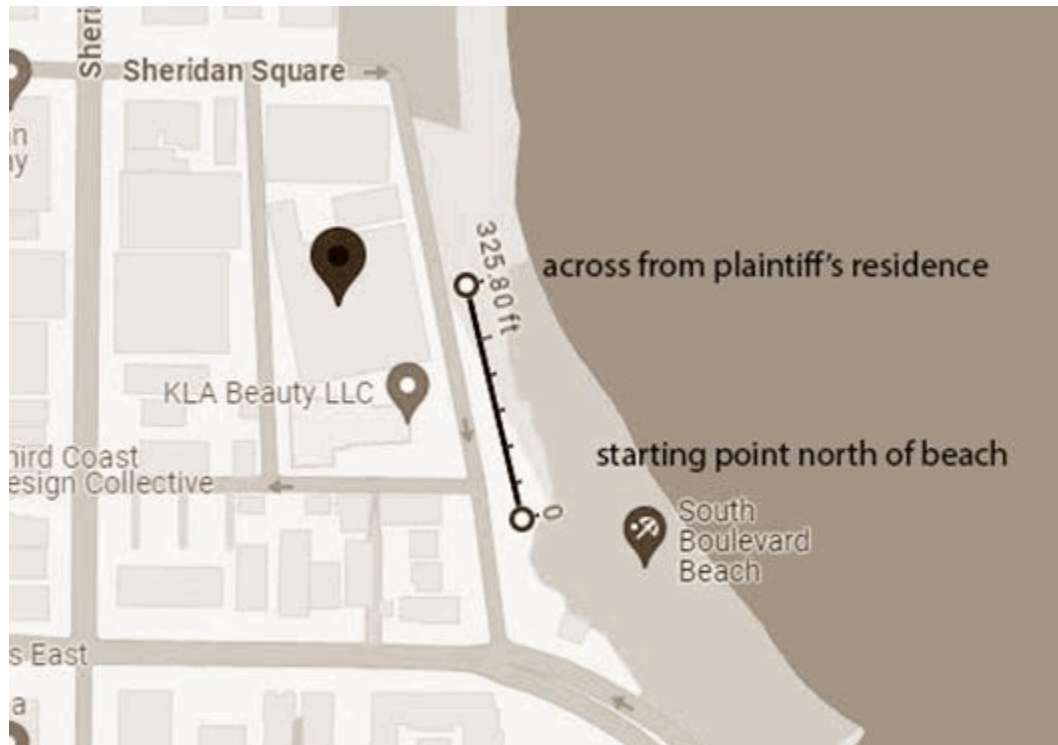
**Brown Body Worn Camera, 14:44:48
Plaintiff's Video Exhibit V4**

4. Kubiak asked the dispatcher to repeat the description of the person described by the anonymous complainant at 14:40:07, as shown on his body worn camera, Plaintiff's Exhibit V1 at 14:40:07.

5. Kubiak received the retransmitted description starting at 14:40:10 and parked his car at 14:41:10, Plaintiff's Exhibit V1. He then walked slowly past about nine diagonal parking spaces before reaching plaintiff at 14:42:17. (Plaintiff's Exhibit V1 at 14:40:10-14:41:10.) Although neither party has measured this distance, plaintiff estimates it to be 45 feet.

6. Google Maps, which are the proper subject of judicial notice for estimates of distance, *United States v. Julius*, 14 F.4th 752, 756 (7th Cir. 2021), show a distance of 325 feet from "just north of the beach" to where

plaintiff was detained (across the street from his residence, as recorded on Kubiak Body Worn Camera, Plaintiff's Exhibit V1 at 14:41:4):



7. Officer Kubiak could not describe the black object he saw in plaintiff's hand. (ECF 31-1 at 178, Kubiak Dep. 14:7-21) According to Kubiak, plaintiff was "just standing here" with the non-specific black object. (ECF 31-1 at 178, Kubiak Dep. 14:19-15:18.)

8. Plaintiff was on the ground, arms outstretched, with his headphones in front, under his head before he was searched. (Plaintiff Exhibit 3 at 30, ECF No. 31-1 at 42; Plaintiff's Exhibit V1, Kubiak's Body Worn Camera, 14:41:10-14:42:17; Plaintiff's Exhibit 5, previously filed as ECF No. 31-1 at 45.)

9. The officers determined that plaintiff did not have a weapon when they conducted the initial pat-down search, which concluded at 14:42:36. (Kane's Body Worn Camera, Plaintiff's Video Exhibit V2.)

10. After the pat down search did not reveal any weapon, Defendant Pogorzelski gave handcuffs to Defendant Popp, who placed them on plaintiff. (Brown's Body Worn Camera, Plaintiff's Video Exhibit V4 at 14:42:36-39.)

11. Defendant Rosenbaum held his rifle while defendant Kane and Popp handcuffed plaintiff. (Plaintiff's Video Exhibit V4 at 14:42:36.)

12. The two frame grabs below show defendant Rosenbaum (third officer from the left, wearing jeans and a hat) raising his right hand from a "low ready" position.



**Conley's Body Worn Camera
Plaintiff's Video Exhibit V5 14:42:20**



**Conley's Body Worn Camera
Plaintiff's Video Exhibit V5 14:42:28
(the white circle is around Rosenbaum's upraised right arm)**

13. Defendant Kane admitted at his deposition that the video shows that he searched plaintiff's jacket. (Kane Dep. 35:14-17, ECF No. 31-1 at 153.) The body worn camera videos show that the officers searched inside the pockets of plaintiff's pants and jacket:



**Kane Body Worn Camera
Plaintiff's Video Exhibit V2 14:42:35
Popp's Hand Going into Pants Pocket**



**Kane Body Worn Camera
Plaintiff's Video Exhibit V2 14:43:38
Items Removed from Plaintiff's Pockets**



**Burger's Body Worn Camera,
Plaintiff's Video Exhibit V3 14:44:15
Pogorzelski's Hand Going into Inside Pocket of Jacket**

14. At 14:43:56-48 of Kubiak's Body Worn Camera, Officer Pogorzelski can be heard asking: "Do you mind if we open your jacket?"

15. The complainant never identified plaintiff as the white male about whom she had complained to the police.

16. 80% of the adult male population is between five feet and six feet tall. Cumulative Percent Distribution of Population by Height and Sex , available at <https://www2.census.gov/library/publications/2010/compendia/statab/130ed/tables/11s0205.pdf>

17. After the officers finished searching plaintiff, Officer Conley (who is not a defendant) walked south to the beach area, where he encountered two people who, like plaintiff, were wearing dark coats:



18. The area between the beach and the location of plaintiff when he was searched is shown in the video from Officer Conley's body worn camera as he inspected the area south of the where other officers had searched plaintiff. (Plaintiff's Video Exhibit VI at 14:44:08-14:45:43.)

19. The video of the interview with the complainant (Defendants' Exhibit 16) shows that she did not make any identification of plaintiff as the person she claims to have seen with a gun.

20. At 14:43:56-48 of the video of Kubiak's Body Worn Camera, Plaintiff's Video Exhibit V1, Officer Pogorzelski can be heard asking plaintiff: "Do you mind if we open your jacket?" The subsequent search of the contents of plaintiff's pockets exceeded the scope of any consent.

Respectfully submitted,

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