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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case 1:10-cv-06005-RWS

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ADRIAN SCHOOLCRAFT,
Plaintiff,

-against-

THE CITY OF NEW YORK, DEPUTY CHIEF
MICHAEL MARINO, Tax Id. 873220,
Individually and in his Official
Capacity, ASSISTANT CHIEF Patrol
Borough Brooklyn NORTH GERALD NELSON,
Tax Id. 912370, Individually and in his
official Capacity, DEPUTY INSPECTOR
STEVEN MAURIELLO, Tax Id. 895117,
individually and in his Official
Capacity, CAPTAIN THEODORE LAUTERBORN,
Tax Id. 897840, Individually and in his
Official Capacity, LIEUTENANT WILLIAM
GOUGH, Tax Id. 919124, Individually and
in his Official Capacity, SGT.
FREDERICK SAWYER, Shield No. 2576,
Individually and in his Official
Capacity, SERGEANT KURT DUNCAN, Shield
No. 2483, Individually and in his
Official Capacity, LIEUTENANT
CHRISTOPHER BROSCART, Tax Id. 915354,
Individually and in his Official
Capacity, LIEUTENANT TIMOTHY CAUGHEY,
Tax Id. 885374, Individually and in his
Official Capacity, SERGEANT SHANTEL
JAMES, Shield No. 3004, Individually
and in her Official Capacity,
LIEUTENANT THOMAS HANLEY, Tax Id.
879761, Individually and in his
Official Capacity, CAPTAIN TIMOTHY
TRAINER, Tax Id. 899922, Individually
and in his Official Capacity,
(Caption continued on following page.)

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CAPTION: (continued)
SERGEANT SONDRA WILSON, Shield No. 5172, Individually and in her Official Capacity, SERGEANT ROBERT W. O'HARE, Tax Id. 916960, Individually and in his Official Capacity, SERGEANT RICHARD WALE, Shield No. 3099 and P.O.'s "JOE DOE" # 1-50, Individually and in their Official Capacity (the name John Doe being fictitious, as the true names are presently unknown), (collectively referred to as "NYPD defendants"), FDNY LIEUTENANT ELISE HANLON, individually and in her Official Capacity as a lieutenant with the New York City Fire Department, JAMAICA HOSPITAL MEDICAL CENTER, DR. ISAK ISAKOV, Individually and in his Official Capacity, DR. LILIAN ALDANA-BERNIER, Individually and in her Official Capacity and JAMAICA HOSPITAL MEDICAL CENTER EMPLOYEE'S "JOHN DOE" # 1-50, Individually and in their Official Capacity (the name John Doe being fictitious, as the true names are presently unknown),

Defendants.

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111 Broadway
New York, New York
October 8, 2013
10:17 a.m.

DEPOSITION of MICHAEL MARINO, held at the above time and place, taken before Al-Furquan Baker, a Shorthand Reporter and Notary Public of the State of New York, pursuant to the Federal Rules of Civil Procedure, Order and stipulations between Counsel.

1 M. Marino

2 MR. SMITH: And now we're
3 going back on the record, and it's
4 3:06 still.

5 BY MR. SMITH:

6 Q. What was your tour of duty on
7 October 31, 2009?

8 A. Some type of 3:00 to 11:00.
9 3:00 in the afternoon to 11:00 at
10 night.

11 Q. And what was your first
12 involvement in this event or incident?

13 MS. PUBLICKER METHAM:
14 Objection.

15 You can answer.

16 A. I was driving into the
17 parking lot of the 81st Precinct.

18 Q. I'm sorry?

19 A. I was driving into the
20 parking lot --

21 Q. When was this?

22 A. -- of the 81st.

23 Sometime around 5:00 or so
24 because it was dusk.

25 Q. Were you driving with

1 M. Marino

2 anybody?

3 A. No.

4 Q. And why were you going to the
5 81st?

6 A. Just making my rounds of all
7 the precincts.

8 Q. You were the XO of Borough
9 North at that time?

10 A. Patrol Borough Brooklyn
11 North, yes, sir.

12 Q. And geographically what does
13 that area entail?

14 A. It has ten precincts.

15 Q. What are those ten precincts?

16 A. 73rd, 75th. 73rd is
17 Brownsville. 75th is East New York.
18 77 is Bedford Stuyvesant -- I'm sorry,
19 Crown Heights is the 77th. 79th is
20 Bedford Stuyvesant. 81st is also
21 Bedford Stuyvesant. 83rd is Bushwick.
22 84th is Downtown Brooklyn. 88th is
23 Fort Greene. The 90th is Williamsburg.
24 And the 94th is Greenpoint.

25 Q. What about the 78th?

1 M. Marino

2 A. The 78th is Brooklyn South,
3 sir.

4 Q. And is it your habit to tour
5 or stop off at all the precincts on a
6 regular basis?

7 A. No.

8 MS. PUBLICKER METHAM:

9 Objection.

10 You can answer.

11 A. No.

12 Q. You said that your first
13 involvement in this incident was
14 driving into the parking lot of the
15 81st as part of your regular rounds.

16 What did you mean by regular
17 rounds?

18 A. I did not say regular rounds.
19 It was Halloween night. I had asked
20 that there be executive coverage in
21 each of the precincts late. And so I
22 worked at the same hours.

23 Q. But did you have a habit of
24 driving around to the various precincts
25 at all?

1 M. Marino

2 MS. PUBLICKER METTHAM:

3 Objection.

4 You can answer.

5 A. Not on a daily basis, no.

6 Q. So why were you driving to
7 the 81st that day?

8 A. Because I was checking all
9 the commands because it was Halloween
10 night. Checking to make sure that the
11 executives were in, checking the posts,
12 checking that there aren't any illegal
13 activities going on.

14 Q. So when you drove to the
15 81st, it was your intent to drive to
16 all of the commands within your
17 jurisdiction; is that right?

18 MS. PUBLICKER METTHAM:

19 Objection.

20 You can answer.

21 A. I don't know if I would have
22 hit them all. I can't say that.

23 Q. Well, was it your intention
24 to hit as many of them as possible?

25 MS. PUBLICKER METTHAM:

1 M. Marino

2 Objection.

3 You can answer.

4 A. Yes.

5 Q. And you were going to as many
6 precinct commands as possible because
7 you wanted to make sure that the
8 commanding officers were at the
9 precinct; is that right?

10 A. I was just checking on the
11 executive coverage, checking on the
12 posts and checking on illegal activity.

13 Q. And do you mean by that you
14 wanted to make sure that the commanding
15 officer was at the precinct that night;
16 is that what you were checking on?

17 MS. PUBLICKER METTHAM:

18 Objection.

19 You can answer.

20 A. I had instructed that the XO
21 and the commanding officer should close
22 as a general rule.

23 Q. And what does that mean for
24 the XO to open and the CO to close?

25 A. He works the early one, the

1 M. Marino

2 CO works the late one.

3 Q. And what was the early one?

4 A. Whatever it was. 10:00 to
5 6:00 at night. 11:00 to 7:00. 9:00 to
6 5:00. Whatever they deemed it to be.

7 Q. And this was an order that
8 you issued for your jurisdiction
9 because it was Halloween night?

10 MS. PUBLICKER METHAM:

11 Objection.

12 You can answer.

13 A. Correct.

14 Q. And how was that order
15 transmitted?

16 A. Usually on a phone call.

17 Q. And what happened as you were
18 going to the driving lot or the parking
19 lot of the 81st?

20 A. As I pulled in, I saw Captain
21 Lauterborn in the lot standing in the
22 lot speaking with some members of the
23 Brooklyn North investigations unit.

24 Q. Captain Lauterborn, he was
25 the XO at the time, right?

1 M. Marino

2 A. Yes.

3 Q. The XO of the 81st?

4 A. Yes, he was.

5 Q. And at the time Mauriello was
6 the CO; is that right?

7 A. Correct.

8 Q. Was Mauriello at the CO at
9 that time?

10 MS. PUBLICKER METHAM:

11 Objection.

12 You can answer.

13 A. I did not believe that he
14 was, no.

15 Q. Where was Mauriello?

16 MS. PUBLICKER METHAM:

17 Objection.

18 You can answer.

19 A. I assume he was home.

20 Q. When you entered the parking
21 lot at the 81st and you saw Captain
22 Lauterborn, did you recognize that
23 individual to be Captain Lauterborn or
24 did you later confirm that that was
25 Captain Lauterborn?

1 M. Marino

2 MS. PUBLICKER METHAM:

3 Objection.

4 You can answer.

5 A. I knew it was him.

6 Q. And who were the other
7 individuals that he was speaking with?

8 A. Members from the Patrol
9 Borough Brooklyn North investigations
10 unit.

11 Q. Who were they?

12 A. I don't remember exactly.
13 Lieutenant William Gough, Sergeant Ray
14 Hawkins. I think Sergeant Duncan was
15 there, but I don't remember. And it
16 may have been another person. I don't
17 recall.

18 Q. And you also recognized the
19 individuals from the Brooklyn
20 investigation unit, Hawkins and Duncan?

21 A. Brooklyn North, yes.

22 Q. Brooklyn North
23 Investigations?

24 A. Yes.

25 Q. I mean, and you knew them

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M. Marino

on-site as being those individuals --

A. Yes.

Q. What is the function of the Brooklyn North Investigations Unit?

A. They worked directly for the commanding officer of the borough. They handled any internal investigation that the commanding officer deems fit. As well as being assigned the cases from IAB that IAB deems can be handled by them rather than IAB.

Q. And who was the commanding officer of the borough at that time?

A. Assistant Chief Gerald Nelson.

Q. So when you saw Gough, Hawkins and Duncan there, you understood that they were there at the direction of either IAB or Nelson?

MS. PUBLICKER METTHAM:

Objection.

You can answer.

A. No.

Q. What's your understanding of

1 M. Marino

2 why they were there?

3 A. I didn't know why they were
4 there.

5 Q. Was this fourth person that
6 was there with them also from patrol
7 borough investigations?

8 MS. PUBLICKER METTHAM:

9 Objection.

10 You can answer.

11 A. I believe there was a fourth
12 person. And if there was, yes, he
13 would have been from investigations.

14 Q. And as you entered the
15 parking lot of the 81st, what happened?

16 A. Just talking to him in the
17 lot.

18 Q. Who did you start talking
19 with?

20 A. All of them.

21 Q. And what did they say?

22 A. They said they had a caper
23 going on.

24 Q. What is a caper, to your
25 understanding?

1 M. Marino

2 A. A situation.

3 Q. They used the term "caper"?

4 A. No.

5 Q. What, to the best of your
6 recollection, did they say?

7 A. A bag of shit.

8 Q. And what's that a reference
9 to?

10 MS. PUBLICKER METHAM:

11 Objection.

12 You can answer.

13 A. Just what it sounds like. A
14 situation, an unpleasant situation.

15 Q. Did they tell you anything
16 else about their situation?

17 A. Oh, yes.

18 Q. Would you mind sharing that
19 with us?

20 A. Sure.

21 They told me that a police
22 officer left at around 14:00, which
23 would be 2:00 p.m. He was ordered not
24 to go, and he left. They told me that
25 the officer was acting irrationally,

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M. Marino

that he had had psychiatric evaluations in the past and that he had been answering his cellphone and that he stopped. And they believed that the officer was, already had or was going to hurt himself.

Q. Do you remember who told you this?

A. I can't say. I believe it was Captain Lauterborn, but I really can't say.

Q. Did they say anything else to you?

A. Yes.

Q. What else did they say?

A. They told me that their plan was to go to his house and get the key from the landlord and let themselves in and see if he was in the apartment.

Q. Did they tell you anything else?

A. No.

Q. Did you say anything in response?

1 M. Marino

2 A. Yes.

3 Q. What did you say?

4 A. I asked him who they notified
5 so far because it had been a couple of
6 hours since this disappearance of the
7 officer.

8 And then I instructed them
9 that they were to notify operations and
10 get his plate number out and notify the
11 Emergency Service unit.

12 And that under no
13 circumstances were they to let
14 themselves into that house alone like
15 that, and that they could respond to
16 his house with emergency service
17 following the proper procedures.

18 And if he answered the door,
19 see if he needs medical help. If he
20 doesn't answer the door, under no
21 circumstances were they to go in until
22 my arrival.

23 Q. Why did you tell them that
24 they were not to go into his house?

25 A. You have a police officer who

1 M. Marino
2 pertinent to that, yes.

3 Q. Okay.

4 Are there any other patrol
5 guide procedures that would be
6 pertinent to the creation of the
7 performance evaluation that is set
8 forth as Plaintiff's Exhibit Number 12?

9 A. Not that I can think of at
10 this time.

11 Q. Okay.

12 We were talking about your
13 discussion with Captain Lauterborn and
14 the Brooklyn North investigators in the
15 parking lot, and I'm not sure where we
16 left off.

17 So after that conversation
18 was finished, you said that you went on
19 with your tours at the borough.

20 Do you know what the other
21 individuals who were members of that
22 meeting did?

23 A. Yes.

24 Q. What did they do?

25 A. They went to Adrian

1 M. Marino
2 Schoolcraft's residence.

3 Q. All of them together drove to
4 the Schoolcraft's residence; is that
5 right?

6 MS. PUBLICKER METTHAM:
7 Objection.

8 You can answer.

9 A. I think so.

10 Q. And the reason why you think
11 so is because you told them to do so?

12 MS. PUBLICKER METTHAM:
13 Objection.

14 You can answer.

15 A. I told them to go there. How
16 they got there and who went with who, I
17 don't know. I'm assuming they went
18 together, but I couldn't say.

19 Q. What was the next
20 communication or event that occurred in
21 relation to Adrian Schoolcraft that
22 day?

23 MS. PUBLICKER METTHAM:
24 Objection.

25 You can answer.

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M. Marino

A. As I previously stated, I got a call on the phone that they got no response, that they were all set up, the Emergency Service was set up there and they believed he was inside the apartment.

Q. Okay.

And that was a call that you mentioned that you got from Captain Lauterborn?

A. I said I believed it was. I'm not sure.

Q. I know.

So you got a phone call for sure telling you that they were at the residence and they believed he was there and you believe that that came from Captain Lauterborn; is that correct?

MS. PUBLICKER METTHAM:

Objection.

You can answer.

A. Yes.

Q. All right.

1 M. Marino

2 And that call came to you on
3 your work cellphone; is that right?

4 A. To the best of my
5 recollection, yes.

6 Q. And Emergency Services was
7 also at the premises at the time?

8 MS. PUBLICKER METTHAM:
9 Objection.

10 You can answer.

11 A. Yes.

12 Q. Anybody else?

13 A. At that time I didn't know
14 who else was there.

15 Q. And what did you say during
16 this conversation?

17 A. Something to the effect of
18 okay, I'm coming, don't do anything
19 till I get there.

20 Q. Did you say anything else?

21 A. That's to the best of my
22 recollection.

23 Q. How long did it take you to
24 get from where you were at until you
25 got to the residence?

1 M. Marino

2 A. I would say no longer than
3 20 minutes.

4 Q. What time of the day did you
5 get to the residence of Adrian
6 Schoolcraft?

7 A. I couldn't say.

8 Q. Was it dark outside?

9 A. I believe it was.

10 Q. Was it raining outside?

11 A. I believe it was.

12 Q. When you got to Adrian
13 Schoolcraft's residence or the street,
14 what did you see?

15 A. It was a lot of police
16 vehicles there. There were ambulances
17 there. An Emergency Service truck was
18 there. There was a lieutenant in front
19 soaked to the skin.

20 Q. What was the lieutenant's
21 name?

22 A. I don't know.

23 Q. Was it Broschart?

24 A. I don't know.

25 Q. Who else was at the scene?

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M. Marino

Q. Did they have shields?

A. I don't recall.

Q. Did they have helmets?

A. I don't recall.

Q. How long was this discussion
on the landing on the 2nd floor?

A. Not long.

Q. Minutes?

A. Yes.

Q. Did you say anything to them?

A. Yes.

Q. What did you say to them?

A. When it was relayed to me --
the landlord's statement was that he
had given us a key. I now became very
concerned for Schoolcraft's safety.

And I told the Emergency
Service they were not going to enter,
but they were just going to use the key
and open the door. Just pop it open
and I wanted it to be stated in a loud
voice that I can hear:

Adrian, this is the police.

We're here to help you. Please

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M. Marino

come to the door. If you don't
come to the door, we're going to
come in, but we're not going to
hurt you.

Q. Is that what you told them
you wanted to have happen?

A. Yes.

Q. Was this planned course of
action something that was authorized by
anything in the patrol guide?

MS. PUBLICKER METTHAM:

Objection.

You can answer.

A. It was nothing in the patrol
guide that says you can open the door
and state in a loud voice:

Adrian, we're coming in.

This is the police. Come to the
door. We're not looking to hurt
you.

Q. So the answer to my question
is there is nothing in the patrol guide
that you're familiar with that
authorizes that course of action; is

1 M. Marino

2 Q. Did Captain Lauterborn enter
3 the residence?

4 A. I believe he did, yes.

5 Q. At around the same time that
6 you entered?

7 A. I believe so, yes.

8 Q. Did Captain Lauterborn tell
9 Officer Schoolcraft that he had to come
10 back to the 81st Precinct?

11 A. I believe he may have, yes.

12 Q. And did Mauriello tell
13 Schoolcraft that he had to come back to
14 the precinct?

15 A. I don't remember that.

16 Q. Was it proper for Lauterborn
17 to tell Schoolcraft to come back to the
18 81st Precinct?

19 MS. PUBLICKER METHAM:

20 Objection.

21 You can answer.

22 A. Yes.

23 Q. Why would it be proper for
24 Lauterborn to tell Schoolcraft to
25 return to the 81st Precinct?

1 M. Marino

2 MS. PUBLICKER METTHAM:

3 Objection.

4 You can answer.

5 A. It's quite a common and
6 accepted practice that when a police
7 officer is involved in some kind of
8 incident, that they're all ordered back
9 to the police stationhouse where we can
10 figure out exactly what happened.

11 Q. Is that a practice that is
12 set forth in the patrol guide?

13 MS. PUBLICKER METTHAM:

14 Objection.

15 You can answer.

16 A. I don't believe so.

17 Q. Is that practice set forth in
18 any other orders or rules or
19 regulations of the New York City Police
20 Department?

21 MS. PUBLICKER METTHAM:

22 Objection.

23 You can answer.

24 A. I think where it says obey
25 any lawful order of a ranking

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M. Marino

supervisor, I think it's covered under that, yes.

Q. Under that very general concept that in a paramilitary organization subordinate officers are expected to comply with the lawful orders of a superior, right?

A. Yes.

MS. PUBLICKER METHAM:

Objection.

Q. But there's no specific patrol guide or rule or regulation that you are aware of that authorizes requiring a police officer to return to the precinct; is that right?

MS. PUBLICKER METHAM:

Objection.

You can answer.

A. There is nothing that says that Officer Adrian Schoolcraft can be ordered back from his apartment by Captain Lauterborn, no.

Q. Well, that's more narrow.

What I want to know is

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M. Marino

officers who were on the landing and
with you at the entry point?

A. I believe they were, yes.

Q. Did you say anything to them
or did they say anything to you?

A. I spoke to them.

Q. What did you say to them?

A. I thanked them for coming and
that it was a stressful situation and,
you know, they helped their fellow
officer and that was it.

Q. Did they say anything to you?

A. I don't know. Thank you.

Q. What did you do next?

A. I saw Adrian Schoolcraft
walking to the ambulance as I was
talking to them.

Q. Where was the ambulance?

A. Behind me on the right side
of the street (indicating).

Q. Behind you on the right side
of the street as you are facing the
house?

A. No, facing up the street.

1 M. Marino

2 Q. Does the name Hanlon refresh
3 your recollection?

4 A. Not one bit.

5 Q. Did you at any time ever know
6 her name?

7 A. No.

8 Q. All right.

9 So the female paramedic
10 lieutenant came up to you when you were
11 talking with the group of ESU guys,
12 right?

13 A. Correct.

14 Q. And did you say anything in
15 response to her?

16 A. Yes.

17 Q. What did you say?

18 A. I told her I would go to the
19 bus and speak to him, the ambulance,
20 and speak to him.

21 Q. And did she say? Anything in
22 response to that?

23 A. Yes.

24 Q. What did she say?

25 A. She told me it was, it's too

1 M. Marino

2 late that he went back in his
3 apartment.

4 Q. She said what?

5 A. It's too late, he went back
6 to his apartment. Something to that
7 effect. That's not verbatim.

8 Q. What did you say?

9 A. Oh shit.

10 Q. Anything else?

11 A. He went back to his
12 apartment.

13 Q. No, but did you say anything
14 else --

15 A. To her --

16 Q. Let me just finish my whole
17 question, so we have a clear record.

18 Did you say anything else
19 other than oh, shit?

20 A. No.

21 Q. All right.

22 What did you do next?

23 A. I went into his apartment.

24 Q. Was the door to the home on
25 the first floor open?