

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

BENJAMIN MANN,)	
)	
Plaintiff,)	
)	
v.)	No. 14-2200
)	
CITY OF CHAMPAIGN, ILLINOIS,)	
et al.,)	
)	
Defendants.)	

ANSWER

NOW COMES the Defendant, POLICE OFFICER MARSHALL HENRY, in his individual capacity only, by his attorney, David E. Krchak of Thomas, Mamer & Haughey, LLP and in answer to the complaint in this matter, states as follows:

JURISDICTION AND VENUE

1. Defendant Henry admits the allegations contained in paragraph 1 of Plaintiff's complaint.
2. Defendant Henry admits the allegations contained in paragraph 2 of the complaint.

PARTIES

3. Defendant Henry admits the allegations contained in paragraph 3.
4. Defendant MARSHALL HENRY admits the allegations contained in paragraph 4 as they relate to him.
5. Defendant Henry admits the allegations contained in paragraph 5.

FACTS COMMON TO ALL COUNTS

6. Defendant Henry neither admits nor denies the allegations contained in paragraph 6 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegation.

7. Defendant Henry neither admits nor denies the allegations contained in paragraph 7 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegation.

8. Defendant Henry neither admits nor denies the allegations contained in paragraph 8 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegation.

9. Defendant Henry neither admits nor denies the allegations contained in paragraph 9 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegation.

10. Defendant Henry neither admits nor denies the allegations contained in paragraph 10 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegation.

11. Defendant Henry admits that he and Officer Rush were the first to arrive at the scene. Defendant Henry denies that Plaintiff waived his arms in order to direct officers to his residence.

12. Defendant Henry admits that he and Officer Rush were first to arrive on the scene. Defendant Henry denies that they moved toward Plaintiff in an aggressive manner or that they had their hands on their guns.

13. Defendant Henry denies that Plaintiff's behavior was innocent and non-threatening. Defendant Henry denies that their response was overly aggressive. Defendant Henry denies that it was the de facto policy of the Champaign Police Department to allow its officers to use excessive force and further denies that it is a policy of the Champaign Police Department to withhold meaningful discipline in appropriate circumstances.

14. Defendant Henry denies that they aggressively approached Plaintiff. Defendant Henry denies that his decision to not activate the squad car camera to avoid videotaping the use of excessive force.

15. Defendant Henry admits that when Plaintiff refused to remove his hand from his right hand pocket, he was told to turn around and put his hands behind his back. Defendant Henry denies that Plaintiff complied with orders. Defendant Henry denies that any of their commands were unjustified. Defendant further denies that Plaintiff did not ask what was going on or whether he was being arrested.

16. Defendant Henry denies that he failed to respond to any questions. Defendant Henry denies that when Officer Rush grabbed a hold of Plaintiff's wrists they were already behind his back. Defendant Henry admits that Officer Rush placed handcuffs on Plaintiff's left wrist. Defendant Henry denies that any actions taken by him or Officer Rush were unprovoked.

17. Defendant Henry denies that they began senselessly beating Plaintiff. Defendant Henry further denies that their police department would not take meaningful action against him. Defendant denies that they intentionally left one of Plaintiff's hands uncuffed.

18. Defendant Henry denies that Plaintiff complied in any way with officers' commands. Defendant Henry denies that either he or Officer Rush struck Plaintiff in the back of the head.

19. Defendant Henry admits that he and Officer Rush repeatedly told Plaintiff to stop resisting. Defendant Henry denies that Plaintiff ever stopped resisting. Defendant Henry denies that any of their actions were part of a conspiracy or that such a conspiracy would be consistent with the City of Champaign's de facto policy of failing to provide meaningful discipline and credible oversight of its officers.

20. Defendant Henry admits that at one point during the struggle, he placed his knee on the back of Plaintiff, but denies that he ever placed his knee on Plaintiff's head or neck. Defendant Henry denies that Officer Rush repeatedly punched Plaintiff in the face. Defendant admits that throughout his vigorous struggle he was screaming.

21. Defendant Henry admits that he sprayed Plaintiff in the face with OC spray but denies that the spray lasted five or six seconds. Defendant neither admits nor denies that Plaintiff was instantly blinded and unable to breath, but asserts that Plaintiff continued to struggle.

22. Defendant Henry admits that he administered several knee strikes to Plaintiff's thigh while yelling at him to stop resisting. Defendant Henry denies that these commands were either nonsensical or a part of a single cover up.

23. Defendant Henry denies that either he or Officer Rush turned Plaintiff around and kned him in the groin. Defendant Henry denies that any of his actions caused tremendous pain and discomfort in his groin area.

24. Defendant Henry admits that the other officers alleged in paragraph 24 joined in the scene of attempting to subdue Plaintiff. Defendant Henry denies that any officers continued to beat Plaintiff without justification. Defendant neither admits nor denies that Officer Schweska kned Plaintiff repeatedly as he lacks knowledge or information sufficient to form a belief about the truth of this allegation.

25. Defendant Henry admits that Officer Rush at one point used his expandable baton on Plaintiff's thigh in order to attempt to subdue Plaintiff. Defendant Henry admits that he thought the use of the ASP was justified as Plaintiff continued to vigorously struggle and resist.

26. Defendant Henry denies that any beating of Plaintiff was unprovoked and further denies that Plaintiff's girlfriend yelled at the officers to let Plaintiff into the house. Defendant Henry admits that one of the officers told Plaintiff's girlfriend to get back in the house and shut the door.

27. Defendant Henry denies the allegations of paragraph 27.

28. Defendant Henry denies the allegations of paragraph 28.

29. Defendant Henry denies the allegations of paragraph 29.

30. Defendant Henry denies that any officers intentionally omitted any pertinent information from any reports and neither admits nor denies any remaining allegations contained in paragraph 30 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

31. Defendant Henry denies the allegations of paragraph 31.

32. Defendant Henry neither admits nor denies the allegations contained in paragraph 32 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

33. Defendant Henry denies the allegations of paragraph 33.

34. Defendant Henry admits that one video shows Plaintiff being assisted by other officers to the police car and denies any remaining allegations of paragraph 34.

35. Defendant Henry neither admits nor denies the allegations contained in paragraph 35 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

36. Defendant Henry admits that Officer Epling transported Plaintiff to Carle Hospital emergency room prior to taking him to jail and denies any remaining allegations of paragraph 36.

37. Defendant Henry neither admits nor denies the allegations contained in paragraph 37 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

38. Defendant Henry neither admits nor denies the allegations contained in paragraph 38 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

39. Defendant Henry neither admits nor denies the allegations contained in paragraph 39 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

40. Defendant Henry denies the allegations of paragraph 40.

41. Defendant Henry neither admits nor denies the allegations about Plaintiff's stay in jail, his arraignment or bail as he lacks knowledge or information sufficient to form a belief about the truth of the allegations. Defendant Henry denies all remaining allegation of paragraph 41.

42. Defendant Henry denies the allegations of paragraph 42.

43. Defendant Henry admits the case was dismissed by the state's attorney's office, and neither admits nor denies the remainder of the allegations contained in paragraph 43 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

COUNT I – 42 U.S.C. §1983: EXCESSIVE FORCE

44. Defendant Henry provides the same responses to the above paragraphs re-alleged in Paragraph 44.

45. Defendant Henry admits Plaintiff was seized during the early morning hours of March 16, 2014.

46. Defendant Henry denies the allegations of paragraph 46.

47. WHEREFORE, Defendant MARSHALL HENRY prays that Count I of Plaintiff's complaint be dismissed with costs awarded.

COUNT II – FALSE ARREST

48. Defendant Henry provides the same responses to the above paragraphs now realleged in paragraph 48.

49. Defendant Henry denies each and every allegation contained in paragraph 49.

50. Defendant Henry denies the allegations of paragraph 50.

51. Defendant Henry denies the allegations of paragraph 51.

52. WHEREFORE, Defendant MARSHALL HENRY prays that Count II of the complaint be dismissed with costs.

COUNT III – FAILURE TO INTERVENE

Count III is subject to Defendants' Motion to Dismiss.

COUNT IV – 42 U.S.C. §1983: MUNICIPAL POLICY CLAIM

Count IV of Plaintiff's complaint does not make any allegations against Defendant Henry and, hence, no response is provided.

COUNT V – MALICIOUS PROSECUTION
State Law Claim

Count V is subject to Defendants' Motion to Dismiss.

COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
State Law Claim

Count VI is subject to Defendants' Motion to Dismiss.

COUNT VII – CONSPIRACY
State Law Claim

Count VII is subject to Defendants' Motion to Dismiss.

COUNT VIII – RESPONDEAT SUPERIOR

Count VIII of Plaintiff's complaint does not make any allegations against Defendant Henry and, hence, no response is provided.

COUNT IX – STATUTORY INDEMNIFICATION

Count IX of Plaintiff's complaint does not make any allegations against Defendant Henry and, hence, no response is provided.

Respectfully submitted,

POLICE OFFICER MARSHALL HENRY

BY: THOMAS, MAMER & HAUGHEY, LLP

BY: _____

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AFFIRMATIVE DEFENSES

Defendant, POLICE OFFICER CHRISTOPHER HENRY, hereby asserts the following Affirmative Defenses to the allegations contained in the complaint:

1. This Defendant is entitled to qualified immunity and any action taken by him during the process of arresting Plaintiff as alleged in the complaint was objectively reasonable in light of the facts in front of him and, therefore, this Defendant is not liable.

2. In the exercise of his duties, the Defendant has immunity from prosecution under Section 2-202 of the Tort Immunity Act. 45 ILCS 10/2-202. These immunities protect him from the common law actions alleged in Plaintiff's complaint.

Respectfully submitted,

POLICE OFFICER MARSHALL HENRY

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s/ David E. Krchak

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Shneur Nathan.

s/ David E. Krchak

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