

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

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

ANSWER

NOW COMES the Defendant, POLICE OFFICER MATT R. RUSH, 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 Rush admits the allegations contained in paragraph 1 of Plaintiff's complaint.
 2. Defendant Rush admits the allegations contained in paragraph 2 of the complaint.
- PARTIES**
3. Defendant Rush admits the allegations contained in paragraph 3.
 4. Defendant MATT R. RUSH admits the allegations contained in paragraph 4 as they relate to him.
 5. Defendant Rush admits the allegations contained in paragraph 5.

FACTS COMMON TO ALL COUNTS

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

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

13. Defendant Rush denies that Plaintiff's behavior was innocent and non-threatening. Defendant Rush denies that their response was overly aggressive. Defendant Rush 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 the policy of the Champaign Police Department to withhold meaningful discipline in appropriate circumstances.

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

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

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

19. Defendant Rush admits that he and Officer Henry repeatedly told Plaintiff to stop resisting. Defendant Rush denies that Plaintiff ever stopped resisting. Defendant Rush 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 Rush 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 Rush denies that Officer Henry repeatedly punched Plaintiff in the face. Defendant admits that throughout his vigorous struggle he was screaming.

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

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

24. Defendant Rush admits that the other officers alleged in paragraph 24 joined in the scene of attempting to subdue Plaintiff. Defendant Rush 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 Rush admits that he at one point used his expandable baton on Plaintiff's thigh in order to attempt to subdue Plaintiff. Defendant Rush admits that the use of the ASP was justified as Plaintiff continued to vigorously struggle and resist.

26. Defendant Rush 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 Rush admits that one of the officers told Plaintiff's girlfriend to get back in the house and shut the door.

27. Defendant Rush denies the allegations of paragraph 27.

28. Defendant Rush denies the allegations of paragraph 28.

29. Defendant Rush denies the allegations of paragraph 29.

30. Defendant Rush 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 Rush denies the allegations of paragraph 31.

32. Defendant Rush 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 Rush denies the allegations of paragraph 33.

34. Defendant Rush 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 Rush 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 Rush 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 Rush 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 Rush 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 Rush 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 Rush denies the allegations of paragraph 40.

41. Defendant Rush 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 Rush denies all remaining allegation of paragraph 41.

42. Defendant Rush denies the allegations of paragraph 42.

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

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

46. Defendant Rush denies the allegations of paragraph 46.

47. WHEREFORE, Defendant MATT R. RUSH prays that Count I of Plaintiff's complaint be dismissed with costs awarded.

COUNT II – FALSE ARREST

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

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

50. Defendant Rush denies the allegations of paragraph 50.

51. Defendant Rush denies the allegations of paragraph 51.

52. WHEREFORE, Defendant MATT R. RUSH 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 Rush 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 Rush and, hence, no response is provided.

COUNT IX – STATUTORY INDEMNIFICATION

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

Respectfully submitted,

POLICE OFFICER MATT R. RUSH

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AFFIRMATIVE DEFENSES

Defendant, POLICE OFFICER CHRISTOPHER RUSH, 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 MATT R. RUSH

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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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