

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 CULLY T. SCHWESKA, 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 Schweska admits the allegations contained in paragraph 1 of Plaintiff's complaint.
2. Defendant Schweska admits the allegations contained in paragraph 2 of the complaint.

**PARTIES**

3. Defendant Schweska admits the allegations contained in paragraph 3.
4. Defendant Cully T. Schweska admits the allegations contained in paragraph 4 as they relate to him.
5. Defendant Schweska admits the allegations contained in paragraph 5.

**FACTS COMMON TO ALL COUNTS**

6. Defendant Schweska 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 Schweska 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 Schweska 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 Schweska 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 Schweska 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 Schweska neither admits nor denies the allegations contained in paragraph 11 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegation.

12. Defendant Schweska admits that Officer Henry and Officer Rush were first to arrive at the scene, and neither admits nor denies the remainder of the allegations contained in paragraph 12 as he lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations.

13. Defendant Schweska denies the allegations of paragraph 13.

14. Defendant Schweska neither admits nor denies the allegations contained in paragraph 14 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

15. Defendant Schweska neither admits nor denies the allegations contained in paragraph 15 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

16. Defendant Schweska neither admits nor denies the allegations contained in paragraph 16 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

17. Defendant Schweska neither admits nor denies the allegations contained in paragraph 17 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

18. Defendant Schweska neither admits nor denies the allegations contained in paragraph 18 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

19. Defendant Schweska denies that Plaintiff was never resisting, and denies that there is now or ever has been a conspiracy to cover up misconduct and further denies that the City of Champaign had any policy regarding failure to provide meaningful discipline or credible oversight of its officers. Defendant Schweska neither admits nor denies any remaining allegations contained in paragraph 19 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

20. Defendant Schweska neither admits nor denies the allegations contained in paragraph 20 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

21. Defendant Schweska admits that OC spray was administered to assist in subduing the aggressive Plaintiff. Defendant Schweska neither admits nor denies the remainder of the allegations contained in paragraph 21 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

22. Defendant Schweska denies that there is or ever has been an attempt to cover-up any alleged misconduct as a result of this incident and neither admits nor denies the remainder of the allegations contained in paragraph 22 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

23. Defendant Schweska neither admits nor denies the allegations contained in paragraph 23 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

24. Defendant Schweska admits he arrived on scene and participated in arrest, denies any actions were without justification, denies he administered knee strikes to Plaintiff.

25. Defendant Schweska admits that Officer Rush struck Plaintiff's right leg with his collapsible ASP, admits that he did not voice any objection and further states that the collapsible ASP strikes appeared to be effective as Plaintiff was secured in handcuffs shortly thereafter. Defendant denies any remaining allegations of paragraph 25.

26. Defendant Schweska admits that a female subject was on scene and upset, but neither admits nor denies the allegations contained in paragraph 26 of the complaint as he lacks knowledge or information sufficient to form a belief about the truth of the allegations.

27. Defendant Schweska denies the allegations of paragraph 27.

28. Defendant Schweska denies the allegations of paragraph 28.

29. Defendant Schweska denies the allegations of paragraph 29.

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

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

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

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

42. Defendant Schweska denies the allegations of paragraph 42.

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

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

46. Defendant Schweska denies the allegations of paragraph 46.

47. WHEREFORE, Defendant CULLY T. SCHWESKA prays that Count I of Plaintiff's complaint be dismissed with costs awarded.

**COUNT II – FALSE ARREST**

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

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

50. Defendant Schweska denies the allegations of paragraph 50.

51. Defendant Schweska denies the allegations of paragraph 51.

52. WHEREFORE, Defendant CULLY T. SCHWESKA 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 Schweska 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 Schweska and, hence, no response is provided.

**COUNT IX – STATUTORY INDEMNIFICATION**

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

Respectfully submitted,

POLICE OFFICER CULLY T. SCHWESKA

BY: THOMAS, MAMER & HAUGHEY, LLP

BY:

\_\_\_\_\_  
David E. Krchak, Bar No. 3127316  
THOMAS, MAMER & HAUGHEY, LLP  
30 Main St., Suite 500  
P.O. Box 560  
Champaign, IL 61824-0560  
Phone: (217) 351-1500  
Fax: (217) 351-2169

**AFFIRMATIVE DEFENSES**

Defendant, POLICE OFFICER CULLY T. SCHWESKA, 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 CULLY T. SCHWESKA

BY: THOMAS, MAMER & HAUGHEY, LLP  
s/ David E. Krchak

BY: \_\_\_\_\_  
David E. Krchak, Bar No. 3127316  
THOMAS, MAMER & HAUGHEY, LLP  
30 Main St., Suite 500  
P.O. Box 560  
Champaign, IL 61824-0560  
Phone: (217) 351-1500  
Fax: (217) 351-2169  
krchak@tmh-law.com

**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

\_\_\_\_\_  
David E. Krchak, Bar No. 3127316  
THOMAS, MAMER & HAUGHEY, LLP  
30 Main St., Suite 500  
P.O. Box 560  
Champaign, IL 61824-0560  
Phone: (217) 351-1500  
Fax: (217) 351-2169  
krchak@tmh-law.com