

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 OF CITY OF CHAMPAIGN, ILLINOIS TO COUNTS IV, V, VI AND VII

NOW COMES the Defendant, CITY OF CHAMPAIGN, ILLINOIS, by its attorney, David E. Krchak of Thomas, Mamer & Haughey, LLP, and in answer to Counts IV, V, VI and VII of the Complaint, states as follows:

JURISDICTION AND VENUE

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

PARTIES

3. Defendant City admits the allegations contained in paragraph 3.
4. Defendant City admits that in the original complaint, the individual Defendants were sued in their individual and official capacities but that the official capacity claims against the individual police officers are dismissed. Defendant City admits the remaining allegations in paragraph 4.
5. Defendant City admits the allegations contained in paragraph 5.

FACTS COMMON TO ALL COUNTS

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

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

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

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

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

11. Defendant City admits that Defendant Officers Henry and Rush arrived at about the time alleged in paragraph 11. Defendant City denies that Plaintiff waived his arms in order to direct officers to his residence.

12. Defendant City admits that Officer Henry and Officer Rush were first to arrive on the scene. Defendant City denies the remaining allegations contained in paragraph 12.

13. Defendant City denies that Plaintiff's behavior was innocent and non-threatening. Defendant City denies that the officers' response was overly aggressive. Defendant City denies

that it had a de facto policy to allow officers to use excessive force. Defendant further denies that it has a policy to withhold meaningful discipline in appropriate circumstances.

14. Defendant City denies that officers aggressively approached Plaintiff. Defendant City denies that Officers' decisions to not activate squad car cameras were to avoid videotaping the use of excessive force.

15. Defendant City 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 City denies that Plaintiff complied with orders. Defendant City denies that the commands of the officers were unjustified. Defendant City denies that Plaintiff asked about what was going on or whether he was under arrest.

16. Defendant City denies that officers failed to respond to any questions. Defendant City denies that Plaintiff placed his wrists behind his back prior to Officer Rush placing handcuffs on Plaintiff's left wrist. Defendant City denies that any actions taken by Officer Henry or Officer Rush were unprovoked.

17. Defendant City denies that officers began senselessly beating Plaintiff. Defendant further denies that Officers had knowledge that they would not be disciplined for excessive use of force. Defendant City denies that officers intentionally left one of Plaintiff's uncuffed.

18. Defendant City denies that that Plaintiff ever voluntarily complied in any way with officers' commands. Defendant City denies that any officers struck Plaintiff in the back of the head.

19. Defendant City admits that officers repeatedly told Plaintiff to stop resisting. Defendant City denies that Plaintiff ever voluntarily stopped resisting. Defendant City denies that any of their actions were part of a conspiracy. Defendant denies that any such conspiracy

would be consistent with the City's de facto policy of failing to provide meaningful discipline and credible oversight of its officers.

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

21. Defendant City admits that Officer Henry sprayed Plaintiff in the face with OC spray but denies that the spray lasted five or six seconds. Defendant City neither admits nor denies that Plaintiff was instantly blinded and unable to breathe because it lacks sufficient knowledge to form a belief about the truth of the allegation.

22. Defendant City admits that Officer Henry administered several knee strikes to Plaintiff's thigh while yelling at him to "stop resisting." Defendant City admits that Officer Rush administered several knee strikes to Plaintiff's thigh while yelling at him to stop resisting. Defendant City denies that any commands by any officers were either nonsensical or a part of cynical cover up.

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

24. Defendant City admits that other officers joined in attempting to subdue Plaintiff. Defendant City denies that any officers continued to beat Plaintiff without justification. Defendant City denies that Officer Schweska administered knee strikes to Plaintiff.

25. Defendant City admits that Officer Rush at one point used his expandable baton on Plaintiff's thigh in order to attempt to subdue Plaintiff. Defendant City admits that the use of

the ASP was justified as Plaintiff continued to vigorously struggle and resist. Defendant City admits that no officers in the immediate vicinity of Officer Rush voiced objections. Defendant City denies that Officer Haugen was in the immediate vicinity of Officer Rush at the time alleged in paragraph 25.

26. Defendant City admits that one of the officers told Plaintiff's girlfriend to get back in the house and shut the door. Defendant City denies the remainder of the allegations of paragraph 26.

27. Defendant City denies the allegations of paragraph 27.

28. Defendant City denies the allegations of paragraph 28.

29. Defendant City denies the allegations of paragraph 29.

30. Defendant City of Champaign 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 concerning eyewitnesses as it lacks knowledge or information sufficient to form a belief about the truth of the allegations.

31. Defendant City denies the allegations of paragraph 31.

32. Defendant City denies the allegations contained in paragraph 32.

33. Defendant City denies the allegations of paragraph 33.

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

35. Defendant City admits that Plaintiff was leaned on the deck of a vehicle to conduct a search of his person, but denies the remaining allegations in paragraph 35.

36. Defendant City 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 City denies the allegations contained in paragraph 37.

38. Defendant City admits Plaintiff screamed, but neither admits nor denies the allegations contained in paragraph 38 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegations.

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

40. Defendant City admits officers requested resisting/obstructing charges be filed and denies the remainder of the allegations of paragraph 40.

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

42. Defendant City denies the allegations of paragraph 42.

43. Defendant City admits the case was dismissed by the state's attorney's office, denies that witnesses or evidence were unavailable to proceed, but neither admits nor denies the remainder of the allegations contained in paragraph 43 of the complaint as it lacks knowledge or information sufficient to form a belief about the truth of the allegations.

Count IV – 42 U.S.C. §1983: Municipal Policy Claim
(Against the City of Champaign)

57. Defendant City provides the same responses to all paragraphs realleged in paragraph 57.

58. Defendant City admits it is responsible for the creation and adoption of rules and regulations for the governments of the City.

59. Defendant City admits that it retains policy makers that train and supervise its police officers about the use of force.

60. Defendant City denies that any of the actions by any of the officers were unconstitutional. Defendant City denies failing to adequately or meaningfully train, supervise or discipline its police officers. Defendant denies any allegation regarding deliberate indifference.

61. Defendant admits that all Defendant officers were acting under color of law and pursuant to the policy set forth by Defendant City.

62. Defendant City denies all the allegations contained in paragraph 62.

63. WHEREFORE, Defendant City requests that this court enter judgment in its favor and against Plaintiff.

Count V – Malicious Prosecution
State Law Claim

64. Defendant provides the same responses to preceding paragraphs as above and realleged in paragraph 64.

65. Defendant City denies that any of its officers individually and jointly, and in conspiracy, instituted and continued a malicious criminal prosecution against Plaintiff without cause.

66. Defendant City denies any of their officers committed any actions in a malicious manner.

67. Defendant admits that the criminal proceeding was terminated on July 28, 2014.

68. Its officers' actions were the direct and proximate cause of any injuries to Plaintiff.

69. WHEREFORE, Defendant City respectfully requests that this Court enter judgment in its favor and against the Plaintiff on Count V.

**Count VI – Intentional Infliction of Emotional Distress
State Law Claim**

70. Defendant City provides the same responses to all the realleged preceding paragraphs contained in paragraph 70.

71. Defendant City denies that Officers Aikman, Butler, Henry, Rush and Schweska intentionally engaged in conduct that was extreme and outrageous. Defendant City denies that any of these named officers intended to inflict severe emotional distress on Plaintiff and further denies that they intentionally took actions which they knew there was a high probability that the conduct would result in severe emotional distress.

72. The Defendant City denies each and every allegation contained in paragraph 72.

73. WHEREFORE, Defendant City respectfully requests that this court enter judgment in its favor and against Plaintiff.

**Count VII – Conspiracy
State Law Claim**

74. Defendant City provides the same responses to the realleged, above paragraphs contained in paragraph 74 of Plaintiff's complaint.

75. Defendant City denies that any of its officers acted jointly in falsely imprisoning, maliciously prosecuting and/or intentionally inflicting emotional distress on Plaintiff.

76. Defendant City denies that any of its officers took any actions in furtherance of any conspiracy.

77. WHEREFORE, Defendant City respectfully requests that this Court enter judgment in favor of the City and against the Plaintiff.

AFFIRMATIVE DEFENSES

Defendant City of Champaign hereby asserts the following Affirmative Defenses to the allegations contained in the complaint:

1. The City of Champaign has no policy or practice which shows a deliberate indifference to the constitutional rights of individuals.

2. Under the Illinois Tort Immunity Act, 45 ILCS 10/1-101, et seq., the Defendant City of Champaign cannot be liable for any tortious acts unless an employee of the City of Champaign is found to be liable.

3. On April 15, 2014, the court found probable cause that the Plaintiff committed one or more acts which constitute felonies. These findings negate the claims for wrongful arrest and malicious prosecution.

Respectfully submitted,

CITY OF CHAMPAIGN, ILLINOIS and Police Officers, CHRISTOPHER C. AIKMAN, DAVID BUTLER, NATHANIEL M. EPLING, KRISTINA HAUGEN, MARSHALL HENRY, MATT R. RUSH and 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 April 21, 2015, 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