E-FILED
Friday, 20 September, 2019 05:38:28 PM
Clerk, U.S. District Court, ILCD

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

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| Benjamin Mann,<br><br>Plaintiff,<br><br>v.<br><br>City of Urbana Police Officers Jennifer Difanis, Colby G. Wright, Sara M. Links, Seth R. King, Jay Loschen, Chad Burnett, Don C. McClellan, Adam Marcotte, John Franquemont, Sgt. Zach Makalik, and as yet Unknown Officers, the City of Urbana, a municipal corporation, and University of Illinois Police Officer Chris Elston,<br><br>Defendants. | ) | Case No. 17-cv-2300<br><br>Magistrate Judge Eric I. Long |

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff Benjamin Mann ("Plaintiff" or "Mann"), by and through his undersigned attorneys, pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56-1(b), submits this response in opposition to Defendants' Motion for Summary Judgment, and states as follows:

## INTRODUCTION

This lawsuit arises out of two incidents within a four-month span in which Urbana police officers unnecessarily harassed and arrested Benjamin Mann. These incidents would not be the first time Mann's experienced the violation of his constitutional rights at the hands of the police in the Champaign-Urbana community. In 2014, Mann brought a successful lawsuit against former Champaign police officer Matt Rush after he was pepper-sprayed and beaten by Matt Rush. Mann's lawsuit gained great local attention appearing in various media forms, including newspaper and television. If the beating he endured was not enough, now he faces the constant

inconvenience of having officers from any of Champaign's sister agencies randomly showing up at his door.

On the evening of March 19, 2017, Mann was arriving hat 810 Oakland Avenue from a wedding announncement with Samantha Wade ("Wade") and her son when a vehicle driven by Koraysia Pierce ("Pierce") nearly hit Mann's vehicle. Pierce backed her car out of a parking space suddenly without any regard for passing vehicles. Rather than apologize, Pierce rolled down her window and started shouting profanities at Mann. After words were exchanged between Pierce and Mann, he drove away and parked in the assigned parking spot for apartment 201. Pierce then reversed her car and blocked Mann into his parking space. Her car obstructed Mann's ability to back out of his parking space. Pierce then shouted at Mann not to leave because people were coming to hurt him. Mann, feeling threatened and trying to protect himself, reversed his vehicle in an attempt to make space for him to turn out if Pierce's threat came to fruition. Pierce then got out of her car and screamed at Mann, continuing to make threatening remarks at him.

Mann took it upon himself to call the police. While Mann was on the phone with the dispatcher, Pierce continued to scream and holler in his face, while running towards him. To protect himself, Mann pushed Pierce away from him. Then Mann and Wade were attacked by three masked individuals. Mann was hit on the back of the head and his glasses were knocked off while Wade sustained two blows to the head.

The Urbana Police Department received a complaint of a domestic between a man and a woman at Town and Country Apartments located at 810 Oakland Avenue in Urbana. METCAD told the dispatched officers that a black female was trying to attack Mann and that he felt threatened. When Defendant Sergeant Jennifer Difanis ("Difanis") and Defendant Officer Seth

King ("King") arrived at the apartment complex, the masked individuals had already run away and Pierce had driven away in her car to a parking space further down in the apartment complex.

Visibly shaken and distraught from the attack he just endured, Mann yelled at Difanis and King that they were letting the actual attackers get away. Rather than investigate this claim, Difanis and King assumed Mann and Wade were the offenders. They ordered that Mann and Wade put their hands up, and Mann and Wade complied. Defendant Officer Jay Loschen ("Loschen") then arrived and questioned Mann about what happened. Because Mann was unable to describe the gun man with the amount of detail Loschen found sufficient, he patted Mann down and then released him to go up to the apartment. Neither Difanis, King, nor Loschen made any attempts to locate a gunman aside from patting Mann and Wade down for firearms.

Officer Sarah Links ("Links") interviewed one of the 911 callers, Timothy Seaton ("Seaton"), for more information. Seaton also lived at 810 Oakland Ave and was home during the March 19th incident. He witnessed Pierce cuss at Ben and he overheard Pierce call someone to come and attack Mann and Wade. Seaton saw three male individuals arrive, attack Mann and Wade, and then flee on foot. He also saw Pierce get in her car and drive south in the parking lot.

Despite both Mann and Wade telling Difanis, King and Loschen that they were hit by two different men, the officers intentionally disregarded Mann and Wade. Despite Seaton corroborating Mann and Wade's version of events, the officers were purposefully indifferent to their cries for assistance. Difanis, King and Loschen acted this way because they knew Mann had exercised his First Amendment rights against police in the past.

Difanis then went to speak with Pierce. Mann and Wade were already allowed to return to their apartment. Because Pierce supposedly walked with a limp, Difanis assumed Pierce to be the victim and negated to pat her down for weapons. Without giving any credence to Mann and Wade's

story, solely believing Pierce's account of what happened, Difanis corralled King and Loschen, and together they decided to arrest Benjamin Mann.

Mann went into the apartment and began looking for his spare set of eyeglasses. His eyeglasses were knocked off of his face when he was attacked by the masked men. After Difanis gave the orders to arrest Mann, King, Colby Wright ("Wright"), Loschen and Jared Hurley proceeded to Mann's apartment to arrest him. When King knocked on the apartment door, Wade opened the door and King told her he wanted to talk to Mann. Mann overheard this discussion, and told the officers to give him a second to find his glasses. Mann was checking the shelf in the hallway for his glasses. Mann did not walk toward a bedroom in the back of the apartment.

Without warning, King and Wright then immediately grabbed Mann's arms – King had the left arm and Wright had the right arm. King then pushed Mann with his shoulder, tripped Mann with his foot, slammed him to the ground, and then put a knee in Mann's back. Mann did not resist the officers at any point during this incident. King and Wright handcuffed man and led him down to King's squad car. As a result of this excessive force committed by King, Mann sustained a twisted ankle. The officers did not request an ambulance for Mann despite his cries that his ankle was twisted. The officers did not recover a single weapon on Mann's person that evening.

Mann was taken to Champaign County Satellite Jail where he was charged with aggravated battery, resisting a police officer, and reckless driving. All charges but the resisting charge were dropped by trial. Mann was acquitted at trial on November 29, 2017 of the resisting charge despite King's trial testimony.

A little over four months later, on July 30, 2017, Mann was asleep in the apartment when he suddenly awoke to some sounds. At approximately 3:03 a.m., police were dispatched to Town and Country Apartments at 810 Oakland Avenue in Urbana for a domestic dispute reported by

Tim Seaton, Mann's neighbor. Seaton believed the loud noises he heard were coming from the apartment directly above his – the apartment where Mann and Wade resided. Defendant Officers Don McClellan ("McClellan"), Adam Marcotte ("Marcotte"), and John Franquemont ("Franquemont") arrived at Mann's apartment shortly after. Franquemont knocked on Mann's door and told him they were there to perform a wellness check. Mann assured the officers that everything was fine and nothing was going on in his home.

Mann and Wade had not been yelling or fighting at all that day. The officers then asked for Mann's consent to enter the apartment. Mann told the officers they did not have permission to enter the apartment and were not allowed in his residence. Mann then attempted to shut his door, but Franquemont and McClellan tried to shove their way in by putting their feet between the door and the door frame. At this point, the officers did not have a warrant to enter Mann's home. Mann was eventually able to shut his door.

Afraid that the police would burst into the apartment and hurt him, Mann called the police. He spoke to Defendant Sergeant Zach Mikalik ("Mikalik") who insisted that the officers wanted to enter his residence to merely perform a wellness check. Mikalik offered no other reason for the officers' presence at Mann's home and desire to enter the apartment. The officers stood outside Mann's door for approximately 45 minutes to an hour, desperate to gain entry despite any lawful reason to enter Mann's home. Difanis and Mikalik eventually arrived on scene.

Once the officers realized that they were not going to gain entry to Mann's home through consent, coupled with the fact that there were no exigent circumstances justifying an immediate bust down of Mann's door, Difanis went digging. She returned to her squad car and ran Mann's information through LEADS. A contempt of court warrant stemming from a 2002 child support case popped for Benjamin Mann. The warrant had the address 807 S. Urbana Avenue. Difanis

knew the address on the warrant was not for the apartment Franquemont, McClellan, and Marcotte had already tried to force their way into. Rather than taking the steps to obtain a warrant with the correct address, Difanis and Mikalik requested a battering ram be brought immediately to the scene. University of Illinois Police Officer Chris Elston ("Elston") was called because Defendant Officers wanted an officer present who had a taser.

Without any mention of a warrant for Mann's arrest or concern that they might be busting into a third party's home, the officers bust down the door and forced their way into the apartment. Mann did not want another incident like the last where an Urbana police officer twisted his ankle, so he immediately got down on the ground and put his hands behind his back. Mann did not resist in any way. Mann was once again arrested and charged with resisting a police officer. The State later dismissed the resisting charge against Mann.

The Defendants deny any liability, and further claim that they are protected by qualified immunity. Defendants required 60 pages to cast doubt on Plaintiff's version of events, when Defendants own factual presentation is self-serving, incomplete and ultimately misleading. Any 60-page document purporting to show that there are no genuine issues of material fact is effectively proof in and of itself that numerous factual issues are in dispute. Here, Defendants cannot meet their burden. The Defendants have failed to show that they are entitled to judgment as a matter of law or that there are no genuine issues of material fact. Numerous genuine issues of material facts exist. The Defendants' Motion for Summary Judgment must, therefore, be denied.[1]

[1] At this time, Mann dismisses Officers Chad Burnett, Chris Elston, Sarah Links, and all other unknown officers. However, the remaining Defendants are liable for Mann's injuries and this response addresses those Defendants.

## RESPONSE TO UNDISPUTED MATERIAL FACTS

### *Undisputed Material Facts*

1. Plaintiff Benjamin Mann is an African-American male, who on March 19 and July 30, 2017, was living in Town & Country apartment no. 201 at 810 Oakland Avenue in Urbana, Illinois. (Ex. 1, Dep. of B. Mann, 33–34, 43:16–21); *(id.* at 9) (still lived in 810 Oakland Ave. on May 25, 2018, which was after the subject incidents).

2. Defendant City of Urbana was at all relevant times an Illinois Municipal Corporation, and located entirely within this judicial district. (ECF #44, ¶ 8).

3. The following Defendants were all employed by the City of Urbana as police officers – and were acting within the scope of their employment – at all times material to this lawsuit: (ECF #44, ¶¶ 5–6).

a. Jennifer Difanis (both subject incidents);
b. Chad Burnett (both subject incidents);
c. Colby G. Wright (March 19, 2017 incident);
d. Sara M. Links (March 19, 2017 incident);
e. Seth R. King (March 19, 2017 incident);
f. Jay Loschen (March 19, 2017 incident);
g. Don C. McClellan (July 30, 2017 incident);
h. Adam Marcotte (July 30, 2017 incident);
i. John Franquemont (July 30, 2017 incident); and
j. Sergeant Zach Mikalik (July 30, 2017 incident).

4. The following Defendant was employed by the University of Illinois as a police officer at all times material to this lawsuit:

a. Chris Elston (July 30, 2017 incident). (ECF #44, ¶ 6).

5. For defendant-officers responding to the March 19, 2017 incident, the following Defendants did not know who Plaintiff was beforehand:

a. Seth King. (Ex. 2, Dep. of S. King, 28:19–21).
b. Jennifer Difanis. (Ex. 3, J. Difanis Interrogatory no. 16).
c. Jay Loschen. (Ex. 4, Dep. of J. Loschen, 38:14–16).
d. Colby Wright. (Ex. 5, Dep. of C. Wright, 34:25–36:11, 41:4–13).
e. Chad Burnett. (Ex. 6, Dep. of C. Burnett 42:16–18).
f. Sara Links. (Ex. 7, S. Links Interrogatory no. 16).

6. For defendant-officers responding to the March 19, 2017 incident, the following Defendants did know who Plaintiff was beforehand:

a. None. Defendant Wright had responded to a previous domestic incident involving Plaintiff, but did not recall it during his deposition and said it did not come to mind during the March 19, 2017 incident. (Ex. 5, Dep. of C. Wright, 34:25–36:11).

7. For defendant-officers responding to the July 30, 2017 incident, the following Defendants did not know who Plaintiff was beforehand:

a. Adam Marcotte. (Ex. 8, Dep. of A. Marcotte, 8:20–25).
b. Zach Mikalik. (Ex. 9, Dep. of Z. Mikalik, 31:16–18).
c. Don McClellan. (Ex. 10, Interrog. of D. McClellan, no. 16).
d. Chris Elston. (Ex. 11, Dep. of C. Elston, 64:18–22).

8. For officers responding to the July 30, 2017 incident, the following Defendants did know who Plaintiff was beforehand:

e. Jennifer Difanis, on account of her involvement in the March 19, 2017 subject incident. (Ex. 3, J. Difanis Interrogatory no. 16).
f. John Franquemont, on account of being involved in Plaintiff's arrest in January of 2017 and the associated trial. (Ex. 12, Dep. of J. Franquemont, 27–28, 32, 33:5–10).

9. On August 25, 2014, Plaintiff filed a lawsuit arising from an interaction between Plaintiff and a Champaign Police Officer named Matt Rush. See Mann v. City of Champaign et al., case no. 2:14-cv-2200, at ECF #1 (C.D. Ill.).

10. Plaintiff's lawsuit against Officer Rush settled on January 4, 2016. See Mann v. City of Champaign et al., case no. 2:14-cv-2200, at ECF #35–36 (C.D. Ill.).

11. This lawsuit did not concern any of the defendants in this litigation. *See Mann v. Champaign et al.*, case no. 2:14-cv-2200, at ECF #35–36 (C.D. Ill.).

12. For Count I of Plaintiff's instant Amended Complaint, Plaintiff's previous lawsuit against a Champaign Police Officer named Matt Rush is the sole "protected speech" Plaintiff claims motivated any alleged retaliatory arrest by the defendants. (Ex. 1, Dep. of B. Mann, 173–175, 199:22–200:11); (Ex. 13, B. Mann interrogatory response no. 4).

13. Plaintiff's was one of multiple individuals who filed suit against Champaign Police Officer Matt Rush from 2014 to 2016. See Brown v. City of Champaign et al., case no. 2:2014-cv- 2324, at ECF #1 (C.D. Ill.); Seets v. Rush et al., case no. 2:2015-cv-2154, ECF #1 (C.D. Ill.); Jackson v. Rush et al., 2:2016-cv-2046, at ECF #1 (C.D. Ill.)

15. Before the subject incidents, the following Defendants did not know who Matt Rush was in any capacity, let alone that there were any lawsuits against him by Plaintiff:

a. Seth King. (Ex. 2, Dep. of S. King, 26:5–10, 28:15–18).

*March 19, 2017 Incident*

19. Before Difanis or King arrived, dispatch advised that there may be an individual with a gun at the scene, and that black car may be involved. (Ex. 14, Dep. of J. Difanis, 85:7–8, 91:19); (Ex. 2, Dep. of S. King, 31–32); (Ex. 5, Dep. of C. Wright, 41:14–24); (Ex. 4, Dep. of J. Loschen, 40:6–10); (Ex. 6, Dep. of C. Burnett, 44:14–20).

20. Defendants Wright, Loschen, and Burnett also responded to the dispatch. (Ex. 5, Dep. of C. Wright, 41:14–42:4); (Ex. 4, Dep. of J. Loschen, 40–41); (Ex. 6, Dep. of C. Burnett, 44:21– 22).

21. Given the potential for an armed individual at the scene, Defendant Difanis parked near the scene but out of eyesight, and waited for back up. (Ex. 14, Dep. of J. Difanis, 85:25; 86–87).

22. During this time, Difanis provided information about the scene over radio – including that she heard yelling from the direction of Town & Country Apartments. (Ex. 14, Dep. of J. Difanis, 86:9–20). Difanis could not see what has happening, however. (Id. at 87:20–21).

23. When Defendant King arrived, Difanis and King both started approaching the location of the yelling on foot. (Ex. 14, Dep. of J. Difanis, 87:25–88:2); (Ex. 2, Dep. of S. King, 32:17– 21).

24. As King and Difanis approached, Difanis spotted a black car leaving the scene. (Ex. 14, Dep. of J. Difanis, 88:1-10).

25. Difanis recalled dispatch had previously mentioned that a black vehicle might be involved in the subject incident. (Ex. 14, Dep. of J. Difanis, 88:2–4).

26. Difanis was unsure whether the black vehicle now leaving the scene was relevant, so she reported the vehicle over the radio just in case the black vehicle was involved. (Ex. 14, Dep. of J. Difanis, 88:14–21).

27. After reporting the black vehicle, Difanis and King continued to approach the scene of the yelling. (Ex. 14, Dep. of J. Difanis, 89:4).

29. The male and the female – who would ultimately be identified as Plaintiff Benjamin Mann and Samantha Wade, respectively – were standing next to a black vehicle. (Ex. 14, Dep. of J. Difanis, 90:1, 91:15); (Ex. 2, Dep. of S. King, 32:23–33:4, 35:17–20).

30. A few minutes after receiving the initial dispatch, Defendant Wright arrived at the scene in his squad car. (Ex. 5, Dep. of C. Wright, 41:14–24).

32. Wright then saw a tan Buick leaving the scene at a high rate of speed. (Ex. 5, Dep. of C. Wright, 42:16–22).

33. Because the car was apparently fleeing the scene of the reported gun-involved incident, Wright decided to pursue the Buick and conduct a felony-stop. (Ex. 5, Dep. of C. Wright, 43–44).

34. After stopping the Buick a short distance from the scene, Wright waited for backup before approaching the Buick due to the reported potential of a gun being involved in the subject incident. (Ex. 5, Dep. of C. Wright, 44).

35. At some point, Defendants Links and Burnett joined Wright as back up for the felony stop of the Buick. (Ex. 5, Dep. of C. Wright, 45:14–46:8). Another UPD officer who is not a party to this litigation also arrived. (Ex. 5, Dep. of C. Wright, 79:10–25, 86:1–21).

37. Given the report of a potential firearm, and Difanis' unfamiliarity with the scene, she shouted at Plaintiff and Ms. Wade to put their hands up. (Ex. 14, Dep. of J. Difanis, 90:13–16, 91:23–92:1).

38. Difanis did this because she was not yet sure if the Plaintiff and Ms. Wade were a threat, or where the reported firearm was. (Ex. 14, Dep. of J. Difanis, 90:13–16, 91:21, 92:16–20).

**RESPONSE:** Undisputed that the citation accurately cites Difanis's testimony regarding her subjective intent.

39. After a continued period of yelling (during which, among other things, Plaintiff shouted at Difanis that he was attacked, that Difanis was "letting them [the attackers] go", and Ms. Wade tried to enter the black car), more officers, including Defendant Jay Loschen, arrived on the scene to join Difanis and King. (Ex. 14, Dep. of J. Difanis, 90–96); (Ex. 2, Dep. of S. King, 34:8–35:16); (Ex. 4, Dep. of J. Loschen, 40:20–41:1); (Dep. of B. Mann, 61:7–12, 78).

40. Wright asked the two males in the Buick he had previously stopped what they knew about the incident at 801 Oakland Avenue. (Ex. 5, Dep. of C. Wright, 47).

41. Burnett was not involved in questioning the individuals in the Buick. (Ex. 6, Dep. of C. Burnett, 48).

42. The two men did not know what Wright was talking about. (Ex. 5, Dep. of C. Wright, 47).

43. Wright confirmed through dispatch that the tan Buick he felony-stopped was not involved in the subject incident. (Ex. 5, Dep. of C. Wright, 47).

44. No weapons were found on the two individuals or in their Buick. (Ex. 5, Dep. of C. Wright, 47-48).

45. After clearing the felony stop, Wright and his fellow officers traveled to the scene (810 Oakland Ave.) to see if they could be of further assistance. (Ex. 5, Dep. of C. Wright, 48); (Ex. 6, Dep. of C. Burnett, 49:1–6).

46. For his part, when Burnett returned to the scene, he received permission from Defendant Difanis to clear out and leave the scene. (Ex. 6, Dep. of C. Burnett, 49:1–6, 54:15–18).

47. Now that other officers had arrived, Difanis investigated the area surrounding the parking lot to see if she could identify additional witnesses or evidence. (Ex. 14, Dep. of J. Difanis, 96:13-16).

48. Almost immediately, Difanis was flagged down by an individual she would later learn was named Koryasia Pierce. (Ex. 14, Dep. of J. Difanis, 96:16–97:4, 98:4).

49. Ms. Pierce was by some dumpsters for the apartment complex a few parking spots down from where Plaintiff and Ms. Wade were located, and out of sight from Plaintiff and Ms. Wade. (Ex. 14, Dep. of J. Difanis, 97:6–20).

50. As Difanis approached Ms. Pierce, Difanis noticed that Ms. Pierce was crying. (Ex. 14, Dep. of J. Difanis, 98:7).

52. After speaking with Ms. Pierce, Difanis examined Ms. Pierce's car and face for damage, and took photographs of the same. (Ex. 14, Dep. of J. Difanis, 106–111); (Ex. 15, Urbana 86–91).

56. After Difanis photographed Ms. Pierce's face and car, Ms. Pierce's family arrived to check on her, and Difanis left to go speak with the other officers on scene (King and Loschen). (Ex. 14, Dep. of J. Difanis, 112:9–19).

57. As Defendant Loschen approached the scene, he saw (originally) Difanis and King speaking with Ms. Wade on the passenger side of a black car, while Plaintiff was standing alone on the driver side, speaking with a raised voice. (Ex. 4, Dep. of J. Loschen, 41:13–22).

58. Loschen approached Plaintiff and spoke with him. (Ex. 4, Dep. of J. Loschen, 41–43).

59. Plaintiff told Loschen that:

a. Plaintiff and Ms. Wade had been attacked by an individual with dark hair and who had a gun (Ex. 4, Dep. of J. Loschen, 42:9–11).
b. That Plaintiff could not recall many details about the assailants, and Plaintiff had "tunnel vision on the gun". (Ex. 4, Dep. of J. Loschen, 42:9–11).
c. That there was damage on Plaintiff's black car, but Plaintiff said this damage was "old". (Ex. 4, Dep. of J. Loschen, 43:7–8).
d. At some point around this time, Loschen had an opportunity to look at Plaintiff's black vehicle. (Ex. 4, Dep. of J. Loschen, 67:6–15). Loschen took photographs of the vehicle on the scene, including the rear bumper. (Id. at 67–68); see also (Ex. 1, Dep. of B. Mann, 52–55) (confirming car photographed was the car Plaintiff was driving on May 19, 2017).

61. Plaintiff testified in his deposition that he did not dispute Sgt. Loschen's version of his conversation with Plaintiff on March 17, 2017. (Ex. 1, Dep. of B. Mann, 104–105); (Ex. 16).

62. While speaking with Plaintiff on March 17, 2019, Loschen confirmed that Plaintiff did not have a gun on his person. (Ex. 4, Dep. of J. Loschen, 43:1–5).

63. Loschen also did not observe any injuries on Plaintiff. (Ex. 4, Dep. of J. Loschen,

70:23–71:7).

**RESPONSE:** Undisputed; however, vague as to time frame.

64. After speaking with Plaintiff, Loschen permitted Plaintiff to return to his apartment. (Ex. 4, Dep. of J. Loschen, 43–44).

66. Ms. Wade also told King that she was struck in the face a couple of times by an individual in a mask. (Ex. 2, Dep. of S. King, 38:21–39:3).

67. King checked Ms. Wade for injuries, and did not see any. (Ex. 2, Dep. of S. King, 38:24–39:5).

68. After King spoke with Ms. Wade, King heard Plaintiff continue yelling something to the effect of "you got the wrong guys". (Ex. 2, Dep. of S. King, 39:13–19).

69. Before Difanis returned to join Loschen and King, the Plaintiff and Ms. Wade were permitted to return to their apartment. (Ex. 2, Dep. of S. King, 40:25–41:10).

70. Difanis, Loschen, and King shared what they had learned during their respective investigations. (Ex. 14, Dep. of J. Difanis, 112–113); (Ex. 2, Dep. of S. King, 41–43); (Ex. 4, Dep. of J. Loschen, 44–45).

73. Sgt. Difanis had no more involvement with any issue relating to Plaintiff Mann for the rest of March 17, 2017. (Ex. 14, Dep. of J. Difanis, 122:10–23, 129:23–130:11); (Ex. 2, Dep. of S. King, 45:21); (Ex. 4, Dep. of J. Loschen, 46:6–7).

74. Wright, King, Loschen, and the non-party officer walked into the complex and approached Plaintiff's apartment. (Ex. 5, Dep. of C. Wright, 51); (Ex. 2, Dep. of S. King, 45:6–8); (Ex. 4, Dep. of J. Loschen, 46).

75. One of the officers knocked on the apartment's door, and Ms. Wade answered. (Ex. 2, Dep. of S. King, 45:6–9).

76. Ms. Wade consented to the officers entering the apartment by opening the apartment door all the way so they could enter (but only after securing the dogs that were in the apartment first). (Ex. 2, Dep. of S. King, 45:22–25).

77. As Ms. Wade opened the apartment door, the officers saw Plaintiff near a hallway towards the back of the apartment. (Ex. 5, Dep. of C. Wright, 53–54); (Ex. 2, Dep. of S. King, 45:45– 46:2); (Ex. 1, Dep. of B. Mann, 115:6–12, 121:13–21).

78. Plaintiff's back would have been to the officers at this time. (Id.); (Ex. 1, Dep. of B. Mann, 121:21–23).

79. King and the other officers entered the apartment, and grabbed Plaintiff's arms

from behind. (Ex. 2, Dep. of S. King, 46:20–47:6).

87. Wright did not push Plaintiff to the ground, and did not land on Plaintiff. (Ex. 5, Dep. of C. Wright, 57:13–19, 59:19–60:4); (Ex. 2, Dep. of S. King, 49:11–13, 50:15–17).

88. Plaintiff was placed in handcuffs while still on the ground. (Ex. 2, Dep. of S. King, 52:25–53:7); (Ex. 5, Dep. of C. Wright, 59–60).

89. King believes about 30 to 60 seconds passed between him entering Plaintiff's apartment until he was handcuffing Plaintiff. (Ex. 2, Dep. of S. King, 52:25–53:7).

90. Plaintiff was then escorted out of his apartment, and placed in Defendant King's squad car. (Ex. 5, Dep. of C. Wright, 60–61); (Ex. 2, Dep. of S. King, 53:19–54:2).

91. Defendant Wright had no more involvement in the subject incident after Plaintiff was placed in Defendant King's squad car. (Ex. 5, Dep. of C. Wright, 66:25–67:14).

92. At some point after Plaintiff's arrest, Tim Seaton was interviewed by Defendant Sara Links. (Ex. 20, Dep. of T. Seaton, 33:10–34:21); (Ex. 21).

93. King drove Plaintiff to the Champaign County Jail. (Ex. 2, Dep. of S. King, 54:11–14).

94. On the way to the Jail, Plaintiff told King that during his arrest, Plaintiff was trying to put his fake tooth in his pocket, and was "not resisting". (Ex. 18, Decl. of S. King, ¶ 12); (Ex. 24, 20:09:58–20:10:59); (Ex. 2, Dep. of S. King, 81:23–84:2, 86:7–88:12); (Ex. 24, squad car video); (id. at 85:15–86:6).

*July 30, 2017 Incident*

96. On the night of July 30, 2017, Defendant-Officer John Franquemont heard over dispatch that there was a reported potential domestic incident at 810 Oakland Avenue in Urbana, Illinois. (Ex. 12, Dep. of J. Franquemont, 33–34).

98. Franquemont, Defendant Don McClellan, and McClellan's training officer, Defendant Adam Marcotte, were dispatched to the 810 Oakland Avenue address in response to the report. (Ex. 12, Dep. of J. Franquemont, 33:16–18); (Ex. 8, Dep. of A. Marcotte, pg. 28 lns. 8–15; pgs. 29–30).

99. Defendant Franquemont was the first to arrive on scene, and waited outside the complex for other officers to arrive. (Ex. 12, Dep. of J. Franquemont, 34:25–35:4).

100. While waiting, Franquemont noticed that the only apartment with a light on was on the second floor, and to the right of the complex's front door (if one is facing the door). (Ex. 12, Dep. of J. Franquemont, 35–36).

101. After a few minutes, Marcotte and McClellan showed up. (Ex. 12, Dep. of Franquemont, 35–36).

102. The three officers then made their way into the building to investigate the reported domestic incident, and went to the apartment that was above the reporting person's. (Ex. 12, Dep. of J. Franquemont, 36:16–37:9).

103. Defendant Franquemont approached the apartment's door, and knocked. (Ex. 12, Dep. of J. Franquemont, 37:10–13).

104. Plaintiff opened the apartment door from the inside by a few inches, and asked why the officers were there. (Ex. 12, Dep. of J. Franquemont, 37:18–38:10).

105. Franquemont easily recognized Plaintiff as Benjamin Mann from testifying in a criminal prosecution against Plaintiff as a responding officer. (Ex. 12, Dep. of J. Franquemont, 33:5– 10, 41:3–5); (Ex. 1, Dep. of B. Mann, 128:9–18).

106. Franquemont explained the officers had heard a report of a domestic incident at that apartment, and needed to check on everybody to make sure they were okay. (Ex. 12, Dep. of J. Franquemont, 38–39); (Ex. 1, Dep. of B. Mann, 128:19–21).

109. Franquemont also could hear two dogs barking in the apartment. (Ex. 12, Dep. of J. Franquemont, 39:15-16).

110. Franquemont began to explain again why the officers needed to enter the apartment when Plaintiff began to close the door. (Ex. 12, Dep. of J. Franquemont, 39:5–11).

112. After Plaintiff closed the apartment door, Franquemont explained what had happened over the radio. (Ex. 12, Dep. of J. Franquemont, 43:17–20).

114. Sergeant Mikalik believed he was responding to a possible domestic incident, and entered the apartment complex and spoke with Franquemont, who gave Mikalik a run-down of what had happened thus far at the apartment door. (Ex. 12, Dep. of J. Franquemont, 44–45); (Ex. 9, Dep. of Z. Mikalik, pg. 34 ln. 12–14; pgs. 35–36).

116. Sgt. Difanis also recalled that Plaintiff, Ms. Wade, and that Plaintiff lived in the apartment at issue due to her involvement in the March 19, 2017 incident with Plaintiff. (Ex. 14, Dep. of J. Difanis, 137–138, 153, 165–166).

117. Sgt. Difanis went to the apartment of the person who first reported hearing noises in Plaintiff's apartment – an individual named Tim Seaton. (Ex. 14, Dep. of J. Difanis, 140:10–14, 141:5–11).

119. Mr. Seaton also told Difanis that these noises concerned him enough to call 911. (Ex. 14, Dep. of J. Difanis, 142:4–8); (Ex. 20, Dep. of T. Seaton, 41–43); (Ex. 22).

120. After speaking with Mr. Seaton, Difanis exited the apartment complex and returned to her squad car. (Ex. 14, Dep. of J. Difanis, 142:19–22).

122. During this, Franquemont tried to canvas the neighboring apartments for any information relating to the reported domestic incident, but none of the neighbors answered their door. (Ex. 12, Dep. of J. Franquemont, 46:22–47:2). Franquemont then returned to the apartment door and awaited further instructions. (Id. at 47:11–16).

123. After a few minutes of trying to communicate with Plaintiff, Sergeant Mikalik went downstairs to speak with Sergeant Difanis about the information learned thus far, and what to do next. (Ex. 9, Dep. of Z. Mikalik, 41:6—42:4).

124. Using the terminal in her squad car, Sgt. Difanis ran Plaintiff's information through the Law Enforcement Database System ("LEADS"). (Ex. 14, Dep. of J. Difanis, 143–144); see also (Ex. 6, Dep. of C. Burnett, 68:23–69:15) (generally describing what LEADS and its uses).

126. In his deposition, Plaintiff agreed there was a warrant for his arrest, and that the identifying descriptions of him on the warrant were accurate. (Ex. 1, Dep. of B. Mann, 32:12–17, 33:5–16, 142:16–19).

127. Difanis then asked dispatch ("METCAD") to confirm that the warrant was active and to discover the address listed on it. (Ex. 14, Dep. of J. Difanis, 147:14–19).

130. The other defendant-officers learned through the sergeants and dispatch that Plaintiff had a warrant out of DeKalb County. (Ex. 12, Dep. of J. Franquemont, 50–53); (Ex. 8, Dep. of A. Marcotte, 32:3–10, 20–24); (Ex. 9, Dep. of Z. Mikalik, 49:18–50:4) (saying learned of warrant's existence before his phone call with Plaintiff, infra).

131. Plaintiff Mann called 911 to report the officers outside his door. (Ex. 1, Dep. of B. Mann, 151:23–152:5); see also (Ex. 24, cellphone video), and (Ex. 1, Dep. of B. Mann, 152:15–22, 153:3–155:14) (establishing foundation for Ex. 24, cellphone video).

132. Plaintiff's phone call was eventually transferred to Sgt. Mikalik's squad car phone. (Ex. 9, Dep. of Z. Mikalik, 46:18–47:2); (Ex. 1, Dep. of B. Mann, 158:11–16).

133. Over the phone, Mikalik again tried to explain that the officers were trying to make sure everybody in the apartment was okay, with Plaintiff Mann talking over him. (Ex. 9, Dep. of Z. Mikalik, 47:16–22).

136. Once the decision to forcibly enter the apartment was made, Mikalik and Difanis began assembling resources so entry could be made in the safest and most efficient manner. (Ex. 9, Dep. of Z. Mikalik, 46:7–10).

137. Sgt. Mikalik called for UPD Officer Chad Burnett to respond to the scene to provide further assistance. (Ex. 9, Dep. of Z. Mikalik, 48:5–11); (Ex. 6, Dep. of C. Burnett, 55:2–

5).

138. When Burnett arrived on the scene, he learned from Sgt. Mikalik that forcible entry was going to made on an apartment unit to check on a potential domestic, and to carry out an arrest warrant for Plaintiff. (Ex. 6, Dep. of C. Burnett, 57:23–58:5).

139. Burnett was advised that once entry was made, he was to assist in making sure the apartment was secure. (Ex. 6, Dep. of C. Burnett, 58:12–18).

140. Because none of the Urbana officers had a taser, an officer from the University of Illinois Police Department that had a taser was requested. (Ex. 9, Dep. of Z. Mikalik, 48:11–15); see also (id. at 48:16–25) ("I knew that U of I officers were possibly equipped with tasers.").

141. Defendant (and U of I officer) Chris Elston responded to Urbana's call, and arrived with his taser. (Ex. 11, Dep. of C. Elston, 40–41, 43).

142. Officer Elston learned from Sgts. Difanis and Mikalik that an apartment was going to be forcibly entered into; that there was a potential domestic situation the apartment, and a warrant for one of the individuals in the subject apartment; that there was a dog inside the apartment that may or may not have be vicious; and that the officers requested a taser as a precaution. (Ex. 11, Dep. of C. Elston, 43:9–22). See also (id. at 47:21–22) ("I was there with the Taser; I was not there to investigate the incident at hand.")

143. It was ultimately decided to use a small battering ram to enter the apartment, because the officers believed they saw a chain-lock on the apartment door, which could impede their ability to fully enter the apartment quickly if only a key was only used to unlock the door and enter, and thus present an opportunity for Plaintiff to counter attack the officers if he was inclined to do so. (Ex. 8, Dep. of A. Marcotte, 37:12–23, 38:10–15, 52:16–53:8); (Ex. 14, Dep. of J. Difanis, 154:1–10) (testifying the ram was "small").

144. Defendant McClellan announced that the officers were going to force entry, and advised that individuals behind the door needed to move. (Ex. 12, Dep. of J. Franquemont, 54:13–17).

145. Defendant McClellan used a battering ram to breach the apartment door. (Ex. 12, Dep. of J. Franquemont, 54:8–9,13–22).

146. When the officer's entered, Samantha Wade was leaning against the armrest of a couch and Plaintiff was in the unit's back hallway. (Ex. 12, Dep. of J. Franquemont, 54:22–55:1).

147. Two dogs (which Officer Burnett perceived as pit bulls) were also in the living room, barking. (Ex. 6, Dep. of C. Burnett, 59:16–21).

148. Defendant Burnett asked Ms. Wade to secure the two dogs. (Ex. 6, Dep. of C. Burnett, 59:21–60:4, 63:4–13).

149. Sgt. Mikalik spoke with Samantha Wade. (Ex. 9, Dep. of Z. Mikalik, 57:16–58:9).

150. Defendant Franquemont placed handcuffs on Plaintiff (with assistance from Defendant Marcotte) without incident, and removed Mann from the apartment. (Ex. 12, Dep. of J. Franquemont, 58:6–25); (Ex. 8, Dep. of A. Marcotte, 47:7–25).

151. Defendant Elston had his taser out, holstered it after Plaintiff was handcuffed and never fired it. (Ex. 11, Dep. of C. Elston, 45:16–20, 63:9–64:16); (Ex. 1, Dep. of B. Mann, 143:25–144:1) (agreeing he [Plaintiff] was not tased on July 30, 2017).

152. Defendant Elston then did a protective sweep of the apartment. (Ex. 11, Dep. of C. Elston, 45:21–46:12); (Ex. 6, Dep. of C. Burnett, 59:17–20).

153. Plaintiff was placed in Defendant McClellan's squad car, and McClellan drove Plaintiff to the County Jail. (Ex. 12, Dep. of J. Franquemont, 59:18–60:2).

***Disputed Material Facts***

14. Before the March 19, 2017 and/or July 30, 2017, the following Defendants were generally aware that a Champaign officer named Matt Rush had been sued, but did not know the specifics of the lawsuit(s) or that Benjamin Mann was one of the plaintiffs in that action:

a. Jennifer Difanis (Ex. 3, J. Difanis Interrogatory no. 16).
b. Colby Wright (Ex. 5, Dep. of C. Wright, 36–37:6).
c. Jay Loschen (Ex. 4, Dep. of J. Loschen, 37–38).
d. Chad Burnett, although it is not clear if he knew of the Rush lawsuits at the time of the subject incidents, or rather learned about them afterwards. (Ex. 6, Dep. of C. Burnett, 41–42).
e. Adam Marcotte (Ex. 8, Dep. of A. Marcotte, 27:19–23, 51:11–17).
f. Zach Mikalik. (Ex. 9, Dep. of Z. Mikalik, 31:5–18).
g. Chris Elston. (Ex. 11, Dep. of C. Elston, 24:12–25:9, 65:1–14).
h. Sarah Links. (Ex. 7, Interrogs. of S. Links, no. 16).
i. Don McClellan. (Ex. 10, Interrogs. of D. McClellan, no 16).

**RESPONSE:** Undisputed in part, disputed in part. Defendants fail to cite Burnett, Marcotte, Mikalik, and Elston's full testimony regarding their knowledge of the lawsuits against former Champaign police officer Matt Rush. Specifically, when asked if he was aware of a lawsuit involving Matt Rush from the Champaign Police Department and Benjamin, Burnett stated that he's aware of Matt Rush but that he was not aware of a lawsuit involving Rush "against Benjamin Mann." (Ex. 6, Dep. of C. Burnett, 41:10-14). Further, when asked if he had read any newspaper articles about Mann's lawsuit against Rush, Marcotte replied that he didn't remember if he did or not. (Ex. 8, Dep. of A. Marcotte, 25:8-11). However, Marcotte did state that as far as he knew, everyone who worked in the Champaign and Urbana Police Departments was aware of Matt Rush and that everyone knew Rush was getting sued for his actions while with the Champaign Police Department. (Ex. 8, Dep. of A. Marcotte, 25:12-27:3). In fact, Marcotte himself knew that the City of Champaign had paid out over six figures to settle lawsuits related to Matt Rush. (Ex. 8, Dep. of A. Marcotte, 27:8-14). In addition, Mikalik was not only aware of Rush's termination and career

path, but he had also met Rush early on in his career. (Ex. 9, Dep. of Z. Mikalik, 29:18-30:2). Mikalik was aware of that one of the lawsuits against Matt Rush involved Precious Dorris. (Ex. 9, Dep. of Z. Mikalik, 31:13-15). Moreover, Elston testified at his deposition that he was aware of the allegations of excessive force by Matt Rush. (Ex. 11, Dep. of C. Elston, 24:22-25:5).

16. Before the subject incidents, only Defendant John Franquemont knew that Plaintiff had sued Champaign officer Matt Rush – Franquemont learned this from Plaintiff himself in a January 2017 domestic-battery arrest which is not part of this lawsuit, and Franquemont denies that this played any role in his actions on July 30, 2017. (Ex. 12, Dep. of J. Franquemont, 26:14–19); (Ex. 25, Decl. of Franquemont, ¶ 8).

**RESPONSE:** Undisputed at to the citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Franquemont knew Matt Rush was sued by several people, including Benjamin Mann and Precious Jackson, for excessive use of force. (Ex. 12, Dep. of J. Franquemont, 25:22-26:13). Franquemont stated that Ms. Jackson's lawsuit against Rush "was just big talk around the police department." (Ex. 12, Dep. of J. Franquemont, 26:20-27:4).

17. On March 19, 2017, Defendants Difanis and King were on duty when they received a dispatch alerting of, initially, a "vague but urgent" incident at 810 Oakland Avenue in Urbana, Illinois. (Ex. 14, Dep. of J. Difanis, 83:16–24); (Ex. 2, Dep. of S. King, 31–32).

**RESPONSE:** Undisputed as to citation to Difanis's deposition testimony, disputed because this statement is neither a full nor accurate recitation of facts most favorable to the nonmoving party. King testified that the dispatcher said, "possible gun involved, that there were – there was a black vehicle involved, a couple individuals, one with dreads." (Ex. 2, Dep. of S. King, 31:5-13). Furthermore, King detailed in his police report that "METCAD provided the following information: A black female, with weaves in her hair, was trying to attach the reporting person, Benjamin Mann, while blocking Mann's car with her black car. Mann did not know the female who was blocking his car. Mann advised he felt threatened and it sounded physical in the background." (Ex. 17, S. King's Report of Incident Dated March 19, 2017, at 3). In addition, the METCAD dispatch ticket shows that the event was created at 19:30:04 and by 19:31:31, less than a minute and a half later, the following details were provided: "FB WEAVES IN HAIR, UNK CLOTHING, TRYING TO ATTACK THE RP, BLOCKING THE RP IN HIS CAR, BLK STRATUS. RP SAYS HE DOESN'T WHO SHE IS[.]" (Ex. 30, METCAD Dispatch Ticket for incident on March 19, 2017, at 1).

18. Dispatch amended its report to a potential domestic incident, and Defendants Difanis and King both separately responded to the call. (Ex. 14, Dep. of J. Difanis, 83:16–24; 84:2– 5, 25); (Ex. 2, Dep. of S. King, 31–32).

**RESPONSE:** Undisputed as to citation to Difanis's deposition testimony, disputed because these statements are neither a full nor accurate recitation of facts most favorable to the nonmoving party. The citation to King's deposition testimony as provided makes no mention of an amended dispatch report or responding separately to the call. Furthermore, the METCAD Transcript shows that the

police event was created as a domestic. (Ex. 30, METCAD Dispatch Ticket for incident on March 19, 2017, at 1).

28. Once they arrived, Difanis and King saw a black male and white female standing in the parking lot, yelling. (Ex. 14, Dep. of J. Difanis, 89:8–19); (Ex. 2, Dep. of S. King, 32:22–33:4); (Ex. 1, Dep. of B. Mann, 78).

**RESPONSE:** Undisputed as to the citation, disputed because this statement is not a full recitation of facts most favorable to the nonmoving party. Mann was yelling to the officers: "They just attacked my girl. They got a gun." (Ex. 1, Dep. of B. Mann, 68:24-69:2).

31. Wright had heard Difanis describe over the radio that at least one vehicle was leaving the scene, but was not positive about the details Difanis reported because "there was a lot going on". (Ex. 5, Dep. of C. Wright, 44:11–15, 45:4–13, 69:5–19, 75:3–15)).

**RESPONSE:** Disputed. This statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Wright stated that through the radio, he heard that there were multiple vehicles leaving the scene. (Ex. 5, Dep. of C. Wright, 44:13-15; 45:4-13).

36. As Difanis approached the male and female (hereinafter, "Plaintiff and Ms. Wade") in the parking lot, she could not understand what they were yelling, and did not see any other individuals. (Ex. 14, Dep. of J. Difanis, 89:22; 90:8–10).

**RESPONSE:** Undisputed as to citation, disputed because this statement is neither a full nor accurate recitation of facts most favorable to the nonmoving party. Difanis testified that "they were both screaming 'we've been attacked, you're letting them go[.]'" (Ex. 14, Dep. of J. Difanis, 90:24-25).

51. Ms. Pierce told Difanis the following about the night's events:

a. That Ms. Pierce had been trying to back out of a parking spot in the complex when another car drove behind her at a high rate of speed, and almost hit Ms. Pierce's car. (Ex. 14, Dep. of J. Difanis, 98:19–99:1).
b. The car then parked near Ms. Pierce, who then exited her vehicle to yell at the driver for almost hitting her. (Ex. 14, Dep. of J. Difanis, 99:1–13).
c. The other car's driver (a male) yelled back at Ms. Pierce, and then entered the apartment complex with a female and a child. (Ex. 14, Dep. of J. Difanis, 99:18–20).
d. That Ms. Pierce then drove her car behind and perpendicular to the other driver's now-parked car, so that Ms. Pierce's passenger door was facing the other driver's car license plate. Ms. Pierce did this so she could write down the license plate and inform the police of the driver's behavior. (Ex. 14, Dep. of J. Difanis, 99:20–22, 102:10–17).
e. At this time, the male comes back out of the apartment building, and enters another verbal confrontation with Ms. Pierce. (Ex. 14, Dep. of J. Difanis, 99:22–24).
f. At some point, the male got back into his car and backed up, ramming into the side of Ms. Pierce's car. (Ex. 14, Dep. of J. Difanis, 99:22–24, 103:23–104:1).

g. At some point while Ms. Pierce and the male were both outside their vehicles, the male punched Ms. Pierce twice in the face. (Ex. 14, Dep. of J. Difanis, 106:1–16).
h. Ms. Pierce also described her past medical history, including that she was recently confined to a wheelchair after being in a car accident, had suffered injuries to her legs, and could not lunge or move quickly. (Ex. 14, Dep. of J. Difanis, 116:15–25).

**RESPONSE:** Undisputed as to citation, disputed because these statements are neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Pierce backed her car out suddenly without looking back. (Ex. 1, Dep. of B. Mann, 45:14-46:5). Pierce rolled down her window and starting cursing at Mann. *Id*. Pierce reversed her car and blocked Mann's car in. (Ex. 1, Dep. of B. Mann, 47:3-10; 47:17-19; 49:5-8). Pierce shouted out the window to Mann to not go anywhere because some people were coming to hurt him. (Ex. 1, Dep. of B. Mann, 47:20-24). Mann began backing his car out so that he would not be trapped in by Pierce's car. (Ex. 1, Dep. of B. Mann, 47:45-48:5; 49:12-20; 52:5-9). Pierce got out of her car and screamed and yelled at Mann. (Ex. 1, Dep. of B. Mann, 59:17-60:15). Mann called the police. (Ex. 1, Dep. of B. Mann, 58:1-5). While Mann was on the phone with police, Pierce ran up in his face screaming and yelling. (Mann, 59:17-60:15). Mann pushed her away from him. (Ex. 1, Dep. of B. Mann, 59:17-60:15; 62:12-14; 62:15-20). Mann did not punch Pierce. (Ex. 1, Dep. of B. Mann, 62:12-14).

53. Difanis noticed slight swelling on Ms. Pierce's left cheekbone and left ear, and a spot where it appeared Ms. Pierce's earing had punctured the side of her neck. (Ex. 14, Dep. of J. Difanis, 108:21–109:7).

**RESPONSE:** Undisputed as to the citation, disputed because there is a question of material fact as to the credibility of Pierce's claims that Mann punched her in the face or head.

54. Difanis also observed that Ms. Pierce walked with a "twisting motion" around her pelvis and hips, (Ex. 14, Dep. of J. Difanis, 116:18–19, 117:19–22).

**RESPONSE:** Undisputed as to the citation, disputed because there is a question of material fact as to whether Pierce had a physical disability.

55. For Ms. Pierce's vehicle, she noticed that there was a wide indentation in the vehicle's side panel that was consistent with being swiped by a car. (Ex. 14, Dep. of J. Difanis, 110– 111).

**RESPONSE:** Undisputed as to the citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Mann did not swipe Pierce's car. After Pierce blocked Mann's car in with her vehicle, Mann pushed Pierce's car out of the way so that he was not trapped in and so that he could escape if need be. (Ex. 1, Dep. of B. Mann, 47:17-19; 49:12-20; 52:5-9).

65. Ms. Wade told King that, before the police arrived on the scene, there was a female and two males who were on the scene, but she could not offer many details about these individuals. (Ex. 2, Dep. of S. King, 40:10–21).

**RESPONSE:** Undisputed as to citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. In King's police report, regarding the conversation he had with Wade, King wrote that Wade described seeing a black male with a mask and another black male with dreads with Pierce. (Ex. 17, S. King's Report of Incident Dated March 19, 2017, at 5).

71. The officers concluded that Ms. Pierce's story contradicted Plaintiff's, and that the information available to them suggested Plaintiff was the aggressor (Ex. 14, Dep. of J. Difanis,121:10–14); (Ex. 2, Dep. of S. King, 42–43):

a. Contact appeared to have been made between Ms. Pierce's and Plaintiff's vehicles, contrary to Plaintiff's denial and consistent with Ms. Pierce's version of events. (Ex. 14, Dep. of J. Difanis, 116:12–15); (Ex. 4, Dep. of J. Loschen, 68–69); (Ex. 2, Dep. of S. King, 60–61, 70–71, and dep. ex. 13).
    i. Plaintiff testified in his deposition that it was "obvious" the damage on his car looked like it came from impacting Ms. Pierce's car. (Ex. 1, Dep. of B. Mann, 53–56).
b. Ms. Pierce had injuries on her face, suggesting Ms. Pierce was struck by Plaintiff (instead of the other way around). (Ex. 2, Dep. of S. King, 59:1–5, 70–71); (Ex. 17).
c. Ms. Pierce's physical condition seemed to impair her balance and ability to lunge at Plaintiff as Plaintiff had claimed, making it unlikely Ms. Pierce was able to launch a physical attack on Plaintiff. (Ex. 14, Dep. of J. Difanis, 116:15–117:1).
d. A vehicle that had been seen leaving the scene was stopped, and determined not to be involved in the subject incident. (Ex. 2, Dep. of S. King, 44–45).

**RESPONSE:** Undisputed as to citation, disputed because these statements are neither a full nor accurate recitation of facts most favorable to the nonmoving party. Pierce backed her car out suddenly without looking back. (Ex. 1, Dep. of B. Mann, 45:14-46:5). Pierce rolled down her window and starting cursing at Mann. *Id*. Pierce reversed her car and blocked Mann's car in. (Ex. 1, Dep. of B. Mann, 47:3-10; 47:17-19; 49:5-8). Pierce shouted out the window to Mann to not go anywhere because some people were coming to hurt him. (Ex. 1, Dep. of B. Mann, 47:20-24). Mann began backing his car out so that he would not be trapped in by Pierce's car. (Ex. 1, Dep. of B. Mann, 47:45-48:5; 49:12-20; 52:5-9). Pierce got out of her car and screamed and yelled at Mann. (Ex. 1, Dep. of B. Mann n, 59:17-60:15). Mann called the police. (Ex. 1, Dep. of B. Mann 58:1-5). While Mann was on the phone with police, Pierce ran up in his face screaming and yelling. (Ex. 1, Dep. of B. Mann, 59:17-60:15). Mann pushed her away from him. (Ex. 1, Dep. of B. Mann, 59:17-60:15; 62:12-14; 62:15-20). Mann did not punch Pierce (Ex. 1, Dep. of B. Mann, 62:12-14), and therefore was not the cause to any injuries to her face.

72. Based on the information that they had collected, it was decided that Plaintiff was to be placed under arrest for battery and reckless driving. (Ex. 14, Dep. of J. Difanis, 121:10–14, 121:21–122:9); (Ex. 2, Dep. of S. King, 42–43); (Ex. 4, Dep. of J. Loschen, 69:18–25).

**RESPONSE:** Disputed. This statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. After Difanis told Loschen what Pierce said, Difanis told Loschen that Mann needed to be arrested. (Ex. 4, Dep. of J. Loschen, 44:16-45:7). Then Loschen

sent officers upstairs to arrest Mann. *Id*. King also wrote in his report that speaking with Difanis, he determined that Mann would be arrested for aggravated battery and reckless driving. (Ex. 17, S. King's Report of Incident Dated March 19, 2017, at 6).

80. Plaintiff reached for the pocket of his pants, which Plaintiff later admitted to Officer King. (Ex. 18, Decl. of S. King, ¶ 12); (Exhibit 24, 20:09:58–20:10:59) (video of Plaintiff telling King he [Plaintiff] was reaching for his pants pocket to either deposit or retrieve a fake tooth); (Ex. 2, Dep. of S. King, 81:23–84:2, 86:7–88:12); (Exhibit 24, squad car video); (id. at 85:15–86:6).

**RESPONSE:** Undisputed as to citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Once in King's squad car, Mann told King that after one of the men punched him in the mouth, his fake tooth fell out. Mann had the tooth in his hand when the officers grabbed him, and all he did was drop the tooth in his pocket. (Ex. 24, S. King's Squad Car Dash Cam Video, 20:09:17-20:10:48).

81. King believed Plaintiff was possibly reaching for a weapon in his waistband/pocket. (Ex. 2, Dep. of S. King, 55–56, 84:12–85:2).

**RESPONSE:** Disputed. Mann did not reach for a weapon while he was being arrested. (Ex. 1, Dep. of B. Mann, 212:13-17).

82. Before Plaintiff's left hand entered his pocket/waistband, King grabbed a hold of Plaintiff's arm with both of his hands, and pushed Plaintiff forward with the right side of his (King's) body. (Ex. 2, Dep. of S. King, 48:24–49:16). King described this technique as a "straight-arm takedown". (Id. at 52:17–19).

**RESPONSE:** Disputed. These statements are neither a full nor accurate recitation of the facts most favorable to the nonmoving party. First, in King's squad car, Mann told King that he had the tooth in his hand when the officers grabbed him, and all he did was drop the tooth in his pocket. (Ex. 24, S. King's Squad Car Dash Cam Video, 20:09:17-20:10:48). King also tripped Mann and slammed him to the ground. (Ex. 1, Dep. of B. Mann, 121:13-122:2).

83. A straight-arm takedown is a method of gaining compliance with someone actively resisting arrest — such as an evasive arm movement — that is consistent with industry best practices. (Ex. 19, Decl. of J. Blum, Ex. A, pg. 7, ¶3, and pg. 9, ¶7).

**RESPONSE:** Undisputed as to the citation, disputed because there is a question of material fact as to whether King performed an actual straight-arm takedown when arresting Mann.

84. Plaintiff then fell to the ground onto his chest/stomach. (Ex. 2, Dep. of S. King, 49:11–13).

**RESPONSE:** Disputed. Plaintiff did not fall to the ground. He was slammed to the ground by King after he tripped Mann and pushed Mann with the right side of his body. (Ex. 1, Dep. of B. Mann, 121:13-122:2).

85. King's knee landed on Plaintiff's buttock or back when they both fell to the ground. (Ex. 2, Dep. of S. King, 49:21–50:10).

**RESPONSE:** Undisputed as to citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. After slamming Mann to the ground, King put his knee in Mann's back. (Ex. 1, Dep. of B. Mann, 79:9-19).

86. As Plaintiff fell, Wright continued holding Plaintiff's right arm, but fell himself into a kneeling position. (Ex. 5, Dep. of C. Wright, 57:2–12, 59:19–60:4).

**RESPONSE:** Undisputed as to the citation, disputed because Wright did not merely "fall." King slammed Mann to the ground and that is how Mann, King, and Wright ended up on the floor. (Ex. 1, Dep. of B. Mann, 96:8-13).

95. As some point during the March 19, 2017, Sgt. Loschen learned through dispatch that Plaintiff's vehicle had suspended license plates due to a mandatory insurance violation. (Ex. 4, Dep. of J. Loschen, 60:16–61:5).

**RESPONSE:** Undisputed as to the citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Mann's vehicle had car insurance. (Ex. 1, Dep. of B. Mann, 214:13-18).

*July 30, 2017 Incident*

97. The reporting person gave his address as being on the first floor of the apartment complex, and reported hearing sounds from the apartment above his that sounded like someone hitting the floor and yelling or crying. (Ex. 12, Dep. of J. Franquemont, 34, 37:2–9).

**RESPONSE:** Undisputed as to the citation, but disputed because it is neither a full nor accurate recitation of the facts. The yelling sounds did not come from Mann and Wade's apartment because neither of them had been yelling or fighting that day. (Ex. 1, Dep. of B. Mann, 126:23-127:13).

107. Franquemont asked if he could enter the apartment to make sure everybody was okay; Plaintiff said no. (Ex. 12, Dep. of J. Franquemont, 38:11–17); (Ex. 1, Dep. of B. Mann, 128:25– 129:2).

**RESPONSE:** Undisputed as to the citations, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. After King told Mann he wanted to come into the apartment to perform a wellness check, Mann told him everything was cool and fine and that nothing was going on there. Then King asked to come in, and Mann told him that he could not enter his residence. (Ex. 1, Dep. of B. Mann, 128:16-129:2).

108. Franquemont could see through the apartment's partially-opened door that there was a female wearing an orange shirt in the apartment's living room. (Ex. 12, Dep. of J. Franquemont, 39:1219). Franquemont could not see the female's face, and could not tell if she was

okay or not. (Ex. 12, Dep. of J. Franquemont, 39:19–22, 64:25–65:5).

**RESPONSE:** Undisputed as to the citation, disputed because this is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Mikalik testified that Franquemont told him that Wade did not appear to be in distress. (Ex. 9, Dep. of Z. Mikalik, 37:4-5).

111. Plaintiff closed the apartment door on Franquemont's and McCellan's foot. (Ex. 12, Dep. of J. Franquemont, 43:9–16); (Ex. 8, Dep. of A. Marcotte, 45:17–24).

**RESPONSE:** Disputed. This statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. After Mann told Franquemont that he did not have permission to enter his home, Mann tried to close the door. However, Franquemont then stuck his foot in the door to block Mann from closing the door and to physically force his way into Mann's apartment. (Ex. 1, Dep. of B. Mann, 129:2-6); (Ex. 12, Dep. of J. Franquemont, 41:19-42:15). Franquemont and McClellan put their feet in the door and McClellan grabbed the doorknob, all the while Wade was telling the officers that she was fine. (Ex. 12, Dep. of J. Franquemont, 40:21-41:2; 42:16-43:8).

113. Less than ten minutes after Defendant Franquemont arrived on scene, Sergeants Jennifer Difanis and Zach Mikalik arrived on scene. (Ex. 12, Dep. of J. Franquemont, 43:20–10); (Ex. 9, Dep. of Z. Mikalik, 33:7–34:3); (Ex. 14, Dep. of J. Difanis, 135:5–16).

**RESPONSE:** Disputed. This statement is not an accurate recitation of the facts most favorable to the nonmoving party. Furthermore, none of the citations provided state the time it took Difanis and Mikalik to arrive on scene after Franquemont's arrival. In addition, the METCAD Transcripts first lists Difanis at 3:23:39 and Mikalik at 3:23:54. (Ex. 30, METCAD Dispatch Ticket for incident on March 19, 2017, at 1).

115. Franquemont informed both Mikalik and Difanis that, among other things, Franquemont recognized the individual who had opened the door as Benjamin Mann due to responding to a previous call involving Mr. Mann. (Ex. 9, Dep. of Z. Mikalik, 36:12–37:9); (Ex. 14, Dep. of J. Difanis, 136–137); see also (Ex. 12, Dep. of J. Franquemont, 52:18–53:1); (Ex. 8, Dep. of A. Marcotte, 33:6–34:5).

**RESPONSE:** Disputed. This statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Neither Mikalik nor Marcotte stated how Franquemont knew Mann. Further, Franquemont testified that he recognized Mann because he just testified against him in court just a few days before. (Ex. 12, Dep. of J. Franquemont, 52:18-53:13).

118. Mr. Seaton told Sgt. Difanis that:

a. He was woken up by the sound of a male and female yelling in the apartment above his. (Ex. 14, Dep. of J. Difanis, 141:13–14); (Ex. 20, Dep. of T. Seaton, 41–43); (Ex. 22).
b. This yelling was accompanied by loud booms and banging sounds. (Ex. 14, Dep. of J. Difanis, 141:14–17); (Ex. 20, Dep. of T. Seaton, 41–43); (Ex. 22).
c. At one point, he also heard what sounded like a moaning, crying, or whimpering

from a female. (Ex. 14, Dep. of J. Difanis, 141:17–19); (Ex. 20, Dep. of T. Seaton, 41– 43); (Ex. 22).

**RESPONSE:** Undisputed as to the citations, disputed because these statements are neither a full nor accurate recitation of the facts most favorable to the nonmoving party. Seaton said it was possible that the crying and whimpering did not come from Wade because he couldn't see anything. (Ex. 20, Dep. of T. Seaton, 37:10-14). When he spoke with his roommate, Ryan Henry, who was in the apartment when Seaton called the police, his roommate said he did not hear anything. (Ex. 20, Dep. of T. Seaton, 38:19-22).

121. Sergeant Mikalik attempted to speak with Plaintiff through the apartment door; Plaintiff yelled through the door at the officers, and did not appear to be listening to them. (Ex. 12, Dep. of J. Franquemont, 45:22–46:14); (Ex. 9, Dep. of Z. Mikalik, 38:18–21, 39:8–23).

**RESPONSE:** Disputed. This statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. There is no evidence that Mann was not listening to Mikalik. When Mikalik spoke to Mann through the apartment door, Mikalik said it was a one-sided conversation and Mann was unresponsive to his questions. (Ex. 9, Dep. of Z. Mikalik, 8-16).

125. Difanis' LEADS inquiry showed that there was a warrant for Plaintiff's arrest out of DeKalb County, and listed identifying information for Plaintiff (such as date of birth, name, height, weight). (Ex. 14, Dep. of J. Difanis, 146–147); (Ex. 23, Warrant).

**RESPONSE:** Undisputed as to the citations, dispute because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. The address on the warrant was not for 810 Oakland Ave, but for 807 S. Urbana Ave, Urbana, IL 61820. (Ex. 31, Unredacted DeKalb County Arrest Warrant).

128. METCAD confirmed the warrant's existence with DeKalb, and that the address listed on the warrant was "810 Oakland Avenue" in Urbana, IL. (Ex. 14, Dep. of J. Difanis, 148:5–9).

**RESPONSE:** Undisputed as to the citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. The address on the warrant was not for 810 Oakland Ave, but for 807 S. Urbana Ave, Urbana, IL 61820. (Ex. 31, Unredacted DeKalb County Arrest Warrant).

129. Sgt. Difanis also confirmed with Lt. Sanders of the Urbana Police Department that the address on the warrant was sufficient to force entry. (Ex. 14, Dep. of J. Difanis, 148:20–149:7).

**RESPONSE:** Undisputed as to the citation, disputed because this statement is neither a full nor accurate recitation of the facts most favorable to the nonmoving party. The address on the warrant was not for 810 Oakland Ave, but for 807 S. Urbana Ave, Urbana, IL 61820. (Ex. 31, Unredacted DeKalb County Arrest Warrant).

134. The call ended after a few seconds. (Ex. 9, Dep. of Z. Mikalik, 44:23–25).

**RESPONSE:** Disputed. The citation provided does not reflect this fact.

135. Difanis and Mikalik decided that, based on the information available to them, forcible entry was warranted into the Plaintiff's apartment. (Ex. 9, Dep. of Z. Mikalik, 44:3–24).

a. A witness provided a statement to Difanis indicating that a possibly violent altercation had occurred in the Plaintiff's apartment. (Ex. 9, Dep. of Z. Mikalik, 51:5– 15); (Ex. 14, Dep. of J. Difanis, 141-142).
b. Officers responding to the seen had not been able to confirm that no one was injured or being held against their will in the apartment. (Ex. 9, Dep. of Z. Mikalik, 51:5–15).
c. A warrant for Plaintiff's arrest had been identified and confirmed. (Ex. 14, Dep. of J. Difanis, 146-148).
d. Plaintiff's presence in the apartment was confirmed by Officer Franquemont, who recognized Plaintiff from a trial Franquemont had recently testified in. (Ex. 9, Dep. of Z. Mikalik, 36:12–37:9); (Ex. 14, Dep. of J. Difanis, 136–137); see also (Ex. 12, Dep. of J. Franquemont, 52:18–53:1); (Ex. 8, Dep. of A. Marcotte, 33:6–34:5).
e. The officers had also heard Plaintiff communicate aggressive statements through the apartment door. (Ex. 12, Dep. of J. Franquemont, 47:17–24); (Ex. 1, Dep. of B. Mann, 160:25–161:14) (agreeing he told the officers through the door that "you better not put your hands on me. I'll fuck you up."); (Ex. 24, cell phone video).

**RESPONSE:** Undisputed as to the citations, disputed because these statements are neither a full nor accurate recitation of the facts most favorable to the nonmoving party. The address on the warrant was not for 810 Oakland Ave, but for 807 S. Urbana Ave, Urbana, IL 61820. (Ex. 31, Unredacted DeKalb County Arrest Warrant). Further, Marcotte stated that he did not hear or see anything while standing outside the apartment door that led him to believe that any sort of fight, domestic incident, or emergency was occurring inside of the apartment. (Ex. 8, Dep. of A. Marcotte, 35:15-36:12).

***Additional Material Facts***

154. Difanis, King, Franquemont consider some of the named Defendant Officers as friends. (Ex. 14, Dep. of J. Difanis, 8:14-16); (Ex. 2, Dep. of S. King, 8:12-14); (Ex. 12, Dep. of J. Franquemont, 8:8-10).

155. Difanis knew other Champaign officers back in 2017, including a Champaign patrol sergeant who is one of her best friends. (Ex. 14, Dep. of J. Difanis, 79:12-23).

156. There are times when Urbana police officers, Champaign police officers, and/or University of Illinois police officers are present at a scene. (Ex. 2, Dep. of S. King, 26:11-28:1); (Ex. 5, Dep. of C. Wright, 13:19-14:4).

157. Difanis, Franquemont, and Marcotte have heard about the lawsuits involving Matt Rush through news reports on the television, in the newspaper, Facebook ads, and/or generally online. (Ex. 14, Dep. of J. Difanis, 78:18-79:5); (Ex. 12, Dep. of J. Franquemont, 25:16-21); (Ex.

8, Dep. of A. Marcotte, 25:16-18). "[I]t went on for quite awhile. There was a lot of articles or news." (Ex. 14, Dep. of J. Difanis, 79:10-11).

158. Franquemont knew that Mann had a lawsuit against Matt Rush as early as January 2017, before the July 30, 2017 incident. (Ex. 12, Dep. of J. Franquemont, 26:14-19).

159. Franquemont remembers one of the lawsuits against Matt Rush involving Precious Jackson was "big talk around the police department." (Ex. 12, Dep. of J. Franquemont, 26:23-25).

160. It was well-known in the Urbana-Champaign area that Matt Rush was getting in trouble with the police department. (Ex. 8, Dep. of A. Marcotte, 25:12-15).

161. Everyone was aware who worked in the Champaign and Urbana Police Departments about Matt Rush. (Ex. 8, Dep. of A. Marcotte, 26:12-27:3). Marcotte knew that Rush was sued and the City of Champaign had to pay out over six figures to settle lawsuits related to Rush. (Ex. 8, Dep. of A. Marcotte, 27:8-14).

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162. Mann and Wade had left a wedding announcement that evening and were heading to the apartment located at 810 Oakland Ave in Urbana. (Ex. 1, Dep. of B. Mann, 45:15-20).

163. When they pulled into the parking lot, a woman later identified as Koraysia Pierce suddenly backed her car out without looking back. (Ex. 1, Dep. of B. Mann, 45:14-46:1).

164. Mann quickly stopped his car before any contact was made between the cars. (Ex. 1, Dep. of B. Mann, 46:2).

165. Pierce then rolled down her window and started cursing at Mann and Wade. (Ex. 1, Dep. of B. Mann, 46:2-4).

166. After some words were exchanged, Mann left and pulled into the parking space assigned to apartment 201. (Ex. 1, Dep. of B. Mann, 46:4-15).

167. Wade was making her way into the apartment building when Pierce suddenly reversed her car, pulled up right behind Mann's car, and blocked his car in. (Ex. 1, Dep. of B. Mann, 47:3-10).

168. Mann was sitting in his car with the driver's side door open when Pierce blocked his car in. (Ex. 1, Dep. of B. Mann, 47:11-16).

169. Pierce then hollered out the window and told Mann not to go anywhere because some people were coming to hurt him. (Ex. 1, Dep. of B. Mann, 47:20-24).

170. Mann then fully got into his car, shut the door, and reversed his car maybe four inches, pushing her car out of the way so that he was not trapped in. (Ex. 1, Dep. of B. Mann,

47:25-48:5). Mann was trying to make sure he could escape if need be so that he could turn out if he needed to. (Ex. 1, Dep. of B. Mann, 49:12-20; 52:5-9).

171. Mann got out of his car and Pierce got out of her car. Pierce was screaming at him that some guys were coming to hurt him. (Ex. 1, Dep. of B. Mann, 48:7-10).

172. At this point, Mann threatened and was trying to protect himself. (Ex. 1, Dep. of B. Mann, 56:2-9).

173. Wade said some people are here and one of them has a gun. (Ex. 1, Dep. of B. Mann, 48:13-14; 60:7-9).

174. Mann called the police immediately, reporting that some men were there with a gun. (Ex. 1, Dep. of B. Mann, 48:14-18; 58:1-5). Seaton also called the police because he witnessed three men approach Mann and Wade and started attacking them. (Ex. 20, Dep. of T. Seaton, 21:18-20).

175. While he was on the phone with the police, Pierce ran up in Mann's face and was screaming and hollering at him. Pierce was behaving erratically. (Ex. 1, Dep. of B. Mann, 59:10-15). Pierce was screaming in Mannn's face ready to attack him. (Mann, 65:20-24). Pierce was going berserk and was threatening and hollering at people the entire time. (Mann, 70:3-12).

176. Seaton heard a girl cussing loudly. Then he saw a girl aimed and facing someone, cursing and swearing. He then heard this girl calling friends on her phone to come and attack Mann and Wade. (Ex. 20, Dep. of T. Seaton, 22:10-25:15).

177. Mann pushed Pierce back away from him because he felt threatened. (Mann, 59:10-15; 62:15-20; 73:7-13). Mann did not hit Pierce. (Ex. 1, Dep. of B. Mann, 62:12-14, 214:5-12).

178. One attacked had dreadlocks, with a handkerchief around his face, and a long-sleeved coat on with what appeared to be barrel hanging out the front. (Ex. 1, Dep. of B. Mann, 58:17-23).

179. There were three men total who showed up, and one of the men hit Mann from behind. (Ex. 1, Dep. of B. Mann, 59:8-16).

180. Seaton saw three men arrive from both the north and south sides of the building, surround Mann and Wade, and started punching them and "laying into them with fists, knuckles[.]" (Ex. 20, Dep. of T. Seaton, 26:24-27:7). Seaton told Links the same account. (S. Links's Supplemental Report of Incident Dated March 19, 2017, at 2).

181. Another one of the men, hit Wade in the side of her head with the gun. Wade fell to the ground. Wade got up again and started yelling, and the man hit her again. (Ex. 1, Dep. of B. Mann, 60:16-25).

182. During the fight, Mann heard sirens. He saw two of the attackers run off. (Ex. 1, Dep. of B. Mann, 61:3-6). Seaton saw Pierce take off in her vehicle and all three attackers flee on foot, so that when the police came, only Mann and Wade were standing there. (Ex. 20, Dep. of T. Seaton, 27:11-17, 27:22-23).

183. Mann and Wade stayed right where they were. Once the sirens got closer, Mann and Wade tried to wave the police down. (Ex. 1, Dep. of B. Mann, 61:6-9).

184. King was dispatched to 810 Oakland Ave #201 for a domestic. METCAD dispatched the following information: "A black female, with weaves in her hair, was trying to attack the reporting person, Benjamin Mann, while blocking Mann's car with her black car. Mann did not know the female who was blocking his car. Mann advised he felt threatened and it sounded physical in the background." (Ex. 17, S. King's Report of Incident Dated March 19, 2017, at 3).

185. Once the police arrived, Mann was trying to get their attention to let them know he and Wade had just been attacked. (Ex. 1, Dep. of B. Mann, 78:10-17).

186. Both Mann and Wade were screaming at Difanis that they had been attacked and that she was letting the attackers go. (Ex. 14, Dep. of J. Difanis, 90:24-25). Mann told the officers, "They just attacked my girl. They got a gun." (Ex. 1, Dep. of B. Mann, 68:24-69:2).

187. The officers were not listening to them. (Ex. 1, Dep. of B. Mann, 78:19-21). The officers' attention went from the three attackers to him once they found out he was Benjamin Mann. (Ex. 1, Dep. of B. Mann, 85:9-16).

188. When the officers told Mann and Wade to put their hands up, Mann and Wade put their hands up right away. (Ex. 1, Dep. of B. Mann, 99:4-16); (Ex. 20, Dep. of T. Seaton, 78:24-79:5, 213:22-214:1).

189. Difanis handcuffed Wade. After Mann talked to King, King agreed to take the handcuffs off of Wade and let them both return to the apartment. (Ex. 1, Dep. of B. Mann, 78:22-79:8; 82:5-7); (Ex. 2, Dep. of S. King, 40:25-41:2).

190. When Difanis encountered Pierce in the parking lot, she did not pat Pierce down for weapons. (Ex. 14, Dep. of J. Difanis, 96:15-112:18).

191. Pierce told Difanis that she does not live in the apartment complex Town and Country. (Ex. 14, Dep. of J. Difanis, 98:18-21).

192. Mann did not know Pierce prior to March 19, 2017. (Ex. 1, Dep. of B. Mann, 45:4-7).

193. Pierce told Difanis that there were not any other subjects involved. (Ex. 26, J. Difanis's Supplemental Report of Incident Dated March 19, 2017, at 3).

194. Difanis claims Pierce did not tell her that she hit Mann. (Difanis, 106:12-13). However, Difanis reported that Pierce told her "she used both hands to push Benjamin backward and away from her." (Ex. 26, J. Difanis's Supplemental Report of Incident Dated March 19, 2017, at 3).

195. Difanis never had Pierce write down her statement. (Ex. 14, Dep. of J. Difanis, 115:2-3)

196. Difanis and King did not see Mann and Pierce's cars make contact. (Ex. 14, Dep. of J. Difanis, 91:3-9); (Ex. 2, Dep. of S. King, 34:5-7, 61:11-13).

197. Difanis did not witness the physical confrontation between Mann, Wade, Pierce, and the three unknown individuals. (Ex. 14, Dep. of J. Difanis, 105:15-25).

198. Difanis believed that because Pierce could not move quickly, lunge, or lean to one side, "the idea that she was able to launch a physical attack on Mr. Mann was unlikely." (Ex. 14, Dep. of J. Difanis, 116:21-117:1). Difanis never saw if Pierce had the ability to run or lunge. (Ex. 14, Dep. of J. Difanis, 117:23-118:2). Difanis has no medical training beyond CPR. (Ex. 13, Dep. of J. Difanis, 117:2-6).

199. After speaking with Pierce, Difanis went to speak with King and Loschen. (Ex. 14, Dep. of J. Difanis, 112-18-113:1); (Ex. 4, Dep. of J. Loschen, 43:22-44:6).

200. Difanis, King and Loschen had a conversation where they all "sort of reached the same conclusion." (Ex. 14, Dep. of J. Difanis, 122:8-9).

201. Difanis, King and Loschen "collectively" decided that based on "the statements and the physical evidence on the scene, that Koraysia's statement was more credible than statements gathered from Mr. Mann or Samantha and that Mr. Mann would be placed under arrest." (Ex. 14, Dep. of J. Difanis, 121:10-14); (Ex. 2, Dep. of S. King, 43:5-8); (Ex. 4, Dep. of J. Loschen, 44:16-21).

202. While in the apartment, Mann was looking for his spare set of eyeglasses. His glasses were knocked off his face during the altercation with the unknown men in the parking lot. (Ex. 1, Dep. of B. Mann, 79:9-12). Mann's vision was blurry. (Ex. 1, Dep. of B. Mann, 121:23-24).

203. The police then knocked on Mann's door and Wade answered it. The police told Wade that they wanted to talk to Ben. (Ex. 1, Dep. of B. Mann 79:13-15). At this point, King did not tell Mann that he was under arrest. (Ex. 2, Dep. of S. King, 46:11-14).

204. Mann told them to give him a second to find his glasses. (Ex. 1, Dep. of B. Mann, 79:15-17); (Ex. 2, Dep. of S. King, 46:15-19). Mann was never walking away from the officers or walking toward a back bedroom. (Ex. 1, Dep. of B. Mann, 115:11-12).

205. The officers quickly rushed up behind him, grabbed him, tripped him, slammed him to the ground, and put a knee on his back. (Ex. 1, Dep. of B. Mann, 79:9-19, 96:8-13, 121:13-122:2).

206. King was not concerned if Mann could breathe while he was on his stomach. (Ex. 2, Dep. of S. King, 51:3-6).

207. King did not see Mann's hand enter his pocket or waistband. (Ex. 2, Dep. of S. King, 48:24-49:4). Wright did not see Mann reach towards his waistband. (Ex. 5, Dep. of C. Wright, 75:17-20). Loschen said he saw Mann reach both hands toward his waistband before King and Wright grabbed his arms. (Ex. 4, Dep. of J. Loschen, 47:22-48:5).

208. Mann's body was used to strike a glass shelf. (Ex. 1, Dep. of B. Mann, 101:17-23).

209. Mann's ankle was twisted pretty badly. The officers had to help lift and walk Mann out of the apartment. (Ex. 1, Dep. of B. Mann, 122:7-10).

210. Mann told the officers about his ankle, but the officers did not call an ambulance for him. (Ex. 2, Dep. of S. King, 53:11-18, 54:3-10); (Ex. 5, Dep. of C. Wright, 62:6-11, 65:6-11).

211. Mann never resisted in any way. (Ex. 1, Dep. of B. Mann, 101:9-16). Mann was not kicking, punching, or flailing his arms. (Ex. 2, Dep. of S. King, 51:7-17); (Ex. 5, Dep. of C. Wright, 64:8-17). Mann was not verbally threatening the officers during the arrest. (Ex. 2, Dep. of S. King, 52:11-13; Ex. 5, Dep. of C. Wright, 65:20-21).

212. King and Wright were not at all afraid that Mann was going to hit him during the arrest. (Ex. 2, Dep. of S. King, 52:14-16); (Ex. 5, Dep. of C. Wright, 65:24-66:1).

213. Mann never reached for a weapon at any point while the officers were on scene. (Ex. 1, Dep. of B. Mann, 213:6-10).

214. The officers did not recover any weapons on Mann. (Ex. 1, Dep. of B. Mann,115:11-12); (Ex. 2, Dep. of S. King, 72:22-25, 84:9-11).

215. For a few weeks, Mann's ankle swelled up to the size of a golf ball or tennis ball. Mann was not able to comfortably walk around on his ankle. He was limping around. (Ex. 1, Dep. of B. Mann, 216:17-217:13).

216. King charged Mann with aggravated battery, resisting a police officer, and reckless driving. (Ex. 2, Dep. of S. King, 58:25-61:3); (Ex. 29, Champaign County State's Attorney's Office Charging Document for Incident Dated March 19, 2017); (Ex. 28, Notice of Arrest Without Warrant for Incident Dated March 19, 2017).

217. Mann's vehicle had car insurance. (Ex. 1, Dep. of B. Mann, 214:13-18).

218. King testified at Mann's trial. (Ex. 2, Dep. of s. King, 77:25-78:1).

219. The aggravated battery charges and reckless driving charges were dropped at trial. (Ex. 38, 2017 CM 237 Docket Sheet, at 3).

220. Mann was found not guilty of resisting or obstructing a police officer. (Ex. 38, 2017 CM 237 Docket Sheet, at 5).

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221. Mann and Wade were not fighting that day. Mann did not yell at Wade at all that day. (Ex. 1, Dep. of B. Mann, 126:23-25). Man was sleeping when he awoke to some sounds, but those sounds did not come from him or Wade. (Ex. 1, Dep. of B. Mann, 127:7-13).

222. Seaton could hear crying and whimpering, but because he could not see anything, it is possible that they crying did not come from Wade. (Ex. 20, Dep. of T. Seaton, 37:5-14).

223. Ryan Henry, Seaton's roommate, was home that night and he did not hear anything. (Ex. 20, Dep. of T. Seaton, 12-22).

224. Franquemont was first to arrive at 810 Oakland Ave in Urbana in response to the call of a domestic. (Ex. 12, Dep. of J. Franquemont, 34:16-19). Rather than immediately head inside the apartment building to check on anyone's welfare, Franquemont stayed outside of the building "just to kind of listen." (Ex. 12, Dep. of J. Franquemont, 34:25-35:5).

225. When Marcotte and McClellan arrived on scene, Franquemont explained to them that he did not see anything and could not hear anything. (Ex. 12, Dep. of J. Franquemont, 35:22-36:4).

226. When Franquemont, Marcotte and McClellan made their way into the building, they were not aware of an arrest warrant for Mann. (Ex. 12, Dep. of J. Franquemont, 36:19-22).

227. Before anyone opened the door, Franquemont did not know who the occupants were inside. (Ex. 12, Dep. of J. Franquemont, 37:13-17).

228. Once Mann opened the door, Franquemont asked if the officers could step in and make sure everyone was okay. (Ex. 12, Dep. of J. Franquemont, 38:6-15). The officers did not mention an arrest warrant for Mann at this point. (Ex. 1, Dep. of B. Mann, 130:9-13, 218:25-219:5).

229. Franquemont could partially see Wade. (Ex. 12, Dep. of J. Franquemont, 39:15-19). She did not appear to be unconscious and he did not see any blood on her shirt. In fact, Wade was speaking calmly. (Ex. 33, J. Franquemont's Supplemental Report of Incident Dated July 30, 2017, at 2). It did not appear to him that any emergency was taking place. (Ex. 12, Dep. of J. Franquemont, 13-24).

230. Mann told Franquemont that everything was fine, everything was cool, and nothing was going on there. (Ex. 1, Dep. of B. Mann, 128:16-24).

231. Mann told Franquemont he could not enter his residence and started to shut the door. Then, Franquemont put his foot in the door. (Ex. 1, Dep. of B. Mann, 128:25-129:6); (Ex. 12, Dep. of J. Franquemont, 38:16-39:11).

232. Once Franquemont put his foot in the door, McClellan grabbed the doorknob, and Wade started to say that she was fine and that she was okay. (Ex. 12, Dep. of J. Franquemont, 40:21-41:2).

233. Not only did Franquemont stick his foot in the door, but he also used his body weight and his arm to push against the door. (Ex. 12, Dep. of J. Franquemont, 42:2-15).

234. McClellan also stuck his foot in the doorway and applied his body weight to the door. (Ex. 12, Dep. of J. Franquemont, 42:24-43:8).

235. Franquemont would normally not force entry into a home if he did not hear any yelling, screaming, or loud noise at the home, despite someone reporting that there was yelling, screaming or loud noises coming from that home. (Ex. 12, Dep. of J. Franquemont, 22:5-11).

236. Franquemont believed the officers did not have probable cause to enter the apartment to check on anyone's welfare because there were no exigent circumstances present. (Ex. 12, Dep. of J. Franquemont, 56:8-57:5).

237. Franquemont had just previously testified against Mann at trial for a separate incident in which Mann was found not guilty. (Ex. 12, Dep. of J. Franquemont, 32:15-33:1).

238. Sergeant Mikalik and Difanis also arrived at the scene. (Ex. 12, Dep. of J. Franquemont, 43:20-22).

239. Mann started a cell phone video then called 911. (Ex. 1, Dep. of B. Mann, 153:8-11). The 911 operator did not mention that the officers were acting pursuant to an arrest warrant for Mann. (Ex. 1, Dep. of B. Mann, 219:6-9). He spoke to Mikalik on the phone who said the officers were just there to do a wellness check. (Ex. 1, Dep. of B. Mann, 131:15-25).

240. Mikalik also talked to Mann through the door. (Ex. 12, Dep. of J. Franquemont, 45:23-24). At one point during their conversation, Mann called out, "Is anyone in here hurt?" Wade replied, "No." (Ex. 12, Dep. of J. Franquemont, 46:18-21).

241. Wade said she was fine and she told the officers to go away. (Ex. 14, Dep. of J. Difanis, 138:8-9). Wade said on the cell phone video, "I'm right here. I'm not injured." (Ex. 24, Cell Phone Video Dated July 30, 2017, 13:50-14:07); (Ex. 1, Dep. of B. Mann, 160:6-9).

242. Difanis left the Franquemont, Marcotte, and McClellan at the door to continue to try to make attempts to speak with Mann and Wade. (Ex. 14, Dep. of J. Difanis, 140:17-19).

Franquemont just stood by the door and waited for further instructions. (Ex. 12, Dep. of J. Franquemont t, 47:14-16).

243. Franquemont and Marcotte did not hear anything that indicated to him that there was an emergency or that anyone was in imminent danger inside the apartment. (Ex. 12, Dep. of J. Franquemont, 48:2-8); (Ex. 9, Dep. of A. Marcotte, 35:15-36:12).

244. The officers were there in total for at least an hour if not more. (Ex. 12, Dep. of J. Franquemont, 48:22-23).

245. Difanis returned to her squad car to see if she could locate contact information for Wade. Difanis found two numbers, neither of which worked. Then Difanis ran Mann's name through ARMs to retrieve his date of birth. (Ex. 14, Dep. of J. Difanis, 142:19-143:19).

246. One she had Mann's date of birth, Difanis ran his name and birthdate through LEADS, and an arrest warrant out of DeKalb County came up. (Ex. 14, Dep. of J. Difanis, 143:20-145:4).

247. Difanis asked METCAD for the specific address on the warrant. (Ex. 14, Dep. of J. Difanis, 147:19-20).

248. Difanis needed to know "not just whether it was Urbana, Illinois, I needed to know the address on the warrant, because if the address is where we were and where he was, then it would give us the right to force entry to make the arrest. If it's another address in the City of Urbana, you know, that's—that changes that." (Ex. 14, Dep. of J. Difanis, 147:23-148:4).

249. Difanis knew it was Wade's apartment and that Wade's name was on the lease for the apartment where the officers were located. (Ex. 14, Dep. of J. Difanis, 138:2-3; 153:4-5). Franquemont did not know that Benjamin lived at the apartment, and did not recall any other officers or sergeants mentioning that they knew Mann lived at the apartment. (Ex. 12, Dep. of J. Franquemont, 49:19-50:4). Seaton learned from the apartment manager that Mann was not on the lease for the apartment. (Ex. 20, Dep. of T. Seaton, 50:11-3, 51:4-17).

250. The warrant out of DeKalb County listed an address of 807 S. Urbana Ave in Urbana, IL 61820. (Ex. 31, Unredacted DeKalb County Arrest Warrant).

251. Officers were at the apartment for approximately 45 minutes before a warrant for Mann was discovered. (Ex. 37, METCAD Dispatch Ticket for Incident on July 30, 2017, at 2).

252. While officers were stationed outside of the apartment, the officers could see Wade walking freely through the apartment. (Ex. 14, Dep. of J. Difanis, 149:16-19).

253. Mann called 911 himself to complain that officers were harassing him and that he was being bothered by police. (Ex. 14, Dep. of J. Difanis, 149:23-25).

254. Difanis believed that by law, she and the other officers were not required to have the exact unit number in order to force entry into the apartment. (Ex. 14, Dep. of J. Difanis, 151:16-17).

255. University of Illinois police officer Chris Elston was called to the scene because he had a taser. (Franquemont, 54:11-13).

256. Once McClellan burst through Mann's door with a battering ram, Mann was arrested. (Ex. 14, Dep. of J. Difanis, 155:6-8). Mann did not resist arrest. (Ex. 14, Dep. of J. Difanis, 155:9-10); (Ex. 12, Dep. of J. Franquemont, 58:24-59:2); (Ex. 32, A. Marcotte's Supplemental Report Dated July 30, 2017, at 2).

257. Franquemont charged Mann with aggravated battery and resisting a police officer. (Ex. 34, D. McClellan's Report for Incident Dated July 30, 2017, at 1); (Ex. 36, Champaign County State's Attorney's Office Charging Document for Incident Dated July 30, 2017); (Ex. 35, Notice of Arrest Without Warrant for Incident Dated July 30, 2017).

258. The State dismissed all charges against Mann. (Ex. 39, 2017 CM 650 Docket Sheet).

## STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(a) provides that summary judgment is appropriate if the moving party can demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 47 U.S. 317, 322 (1986). The moving party bears the initial burden of demonstrating the lack of any genuine issue of material fact. *Celotex*, 477 U.S. at 323. Defendants bear a heavy burden on summary judgment as it is a drastic and extraordinary remedy that must only be granted where the "movant's right to judgment as a matter of law is absolutely clear and free from doubt." *Stender v. Provident Life and Acc. Ins. Co.*, No. 98-C-1056, 2001 WL 289866 at *3 (N.D. Ill. Mar. 15, 2001) (Guzman, J.).

The facts presented are to be construed in a light most favorable to the nonmoving party. *Smith v. City of Chicago*, 242 F.3d 737, 742 (7th Cir. 2001). On a motion for summary judgment, the court must draw "all reasonable inferences from undisputed facts in favor of the nonmoving

party and [views] the disputed evidence in the light most favorable to the nonmoving party." *Harney v. Speedway SuperAmerica, LLC*, 526 F.3d 1099, 1104 (7th Cir. 2008).

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex*, 477 U.S. at 322. When a material fact is contested, the court is precluded from granting summary judgment. *Casey v. Uddeholm Corp.*, 32 F.3d 1094, 1098 (7th Cir. 1994) (summary judgment reversed where district court impermissibly resolved contested issue of material fact on motion for summary judgment).

As detailed below, Defendants raise a number of material questions of fact that preclude granting summary judgment in their favor.

## ARGUMENT

### I. DEFENDANT OFFICER KING'S ACTIONS ON MARCH 19, 2017 CONSTITUTED EXCESSIVE FORCE

Use of a leg sweep on a non-resisting person is unreasonable when there is no justifiable reason to believe that the person is attempting to evade arrest. Therefore, the present record would permit a jury to find that King used excessive force when arresting Mann.

The force employed by a police officer is deemed excessive if it was greater than reasonably necessary to effectuate the arrest. *Payne v. Pauley*, 337. F.3d 767, 778 (7th Cir. 2003) (quoting *Lester v. City of Chicago*, 830 F.2d 706, 713 (7th Cir.1987)). To determine whether the amount of force used during an arrest is excessive, a court must examine the totality of the circumstances. *Lanigan v. Village of East Hazel Crest*, 110 F.3d 467, 475 (7th Cir. 1997). Whether the force used constitutes excessive force is evaluated under the "objective reasonableness" standard, whereby a court determines whether the officer's actions were objectively reasonable "in

light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Chapman v. Keltner*, 241 F.3d 842, 847 (7th. Cir. 2001) (citing *Graham v. Connor*, 490 U.S. 386, 397 (1989)). Relevant factors to this evaluation include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. "[A]n inquiry as to reasonableness under the Fourth Amendment almost always requires a fact-finder to resolve factual disputes." *Jones-Huff v. Hill*, 208 F. Supp. 35 912, 921 (N.D. Ill. 2016).

Mann did not resist King or Wright. (Additional Material Facts "AMF" ¶ 211). At no point from when the officers had arrived on scene until Mann was in handcuffs did Mann attempt to evade arrest. (AMF ¶ 211). King's testimony does not dispositively prove that Mann was violently resisting handcuffing. Mann was checking the shelf in the hallway for his eyeglasses when King and Wright moved rather quickly behind him. (AMF ¶¶ 202, 204-205). Mann's vision was blurry and he could barely see what was happening before he was grabbed, there was a foot in front of him tripping him, and he was being slammed to the ground. (AMF ¶¶ 202, 204-205). Therefore, Defendants cannot assert with any certainty that Mann was resisting King.

King's contrary argument relies on the disputed contention that his conduct amounted to merely King going "forward with [Mann] onto the ground[,]"catching his knee on Mann's buttocks, and that King's actions were simply a way to control Mann to arrest him. As detailed by Mann, King did far more than that. Prior to being handcuffed, Mann was not a threat to the police or the community. When the officers stated that they wanted to talk to him, Mann did not express any unwillingness to talk to them, but rather stated that he wanted to grab his glasses first. Within seconds of both officers grabbing his arms, King performed a leg sweep, whereby he tripped Mann

and slammed him to the ground. (AMF ¶ 205). It is undisputed that King slammed Mann to the ground when attempting to effect his arrest.

In *Jackson v. City of Bloomington*, No. 17-cv-1046-JES-JEH, 2019 WL 570729, at *1 (C.D. Ill. Feb. 12, 2019), three officers pulled over a male and a female for allegedly failing to come to a complete stop at a stop sign. The male passenger loudly protested the stop, asserting that the traffic stop was racially motivated. *Id*. at 1. When asked to exit the vehicle, the male passenger asserts that he told the officers hold on. *Id*. The officers contend that he made no attempts to exit the vehicle. *Id*. at 2. The officers then pulled him out of the car and pulled him to the ground. *Id*. at 1. The male passenger claimed that he was not doing anything when the officers pulled him out of the car, kicked his legs out from under, and pulled him to the ground. *Id*. at 5. The officers argued that he was trying to get away from them as they pulled him out of the car. *Id*. at 2. The officers moved for summary judgment on multiple grounds, including that the officers did not use excessive force and that they are entitled to qualified immunity. *Id*. at 4. The court found that multiple issues of material fact existed regarding the officers' use of force on the male passenger. *Id*. at 6. Because the plaintiff argued that the male passenger committed no crime, posed no safety risk, and that he was not resisting arrest, taking the facts in the light most favorable to the nonmoving party, the court denied the defendants' summary judgment motion for the excessive force claim. *Id*.

Similarly, in *Chelios v. Heavener*, the plaintiff brought a § 1983 lawsuit suit against an officer, the police chief, and the City of Joliet after he was arrested and charged with resisting arrest, battery and assault on an officer. 520 F.3d at 682. The plaintiff, an owner of a sports bar, was told to close his business after officers heard gunshots believed to have come from the bar's parking lot. *Id*. The plaintiff and the officer argued about whether the shots came from the parking

lot. *Id*. According to the plaintiff, the officer then told plaintiff he was under arrest, immediately grabbed him, put his arms around the plaintiff's neck, grabbed his shoulders, and with the assistance of two other officers, tackled the plaintiff to the ground. *Id*. at 689. The officer claimed that the plaintiff poked his finger in his face, and tried to reenter the bar to evade arrest, and that was when the officer took the plaintiff to the ground to arrest him. *Id*. at 683. Considering the nonmoving party's version of what transpired, the court held that the district court should not have granted summary judgment for the defendants because a jury could believe the plaintiff's version of events that he was tackled by officers despite having done nothing wrong. *Id*. at 689-690.

Just as in *Jackson* and *Chelios*, the question of whether the force used by King was excessive is an inquiry that requires the resolution of material factual questions (whether Mann resisted arrest in the first place), and therefore must be determined by a trier of fact.

Naturally, King relies on cases that are quite dissimilar to this one to support the amount of force he used. *See Dawson v. Brown*, 803 F.3d 829, 831 (7th Cir. 2015) (involving a fleeing vehicle, a suspect who officers believed to have an outstanding arrest warrant for drugs who ran from officers and jumped a fence into a backyard, and the suspect's father who tried to stop officers from deploying a taser on a resisting subject); *Findlay v. Lendermon*, 722 F.3d 895, 897-898 (7th Cir. 2013) (where the plaintiff refused to turn over evidence, and then threw that evidence out of the officer's reach); *see also Fitzgerald v. Santoro*, 707 F.3d725, 733-34 (7th Cir. 2013)(concerning a suicidal and intoxicated individual who pulled away and tried to free herself from officers who were trying to take her to the hospital to prevent any harm to herself). In each of these cases cited by Defendants, the court granted summary judgment for the arresting officers because the plaintiffs freely admitted to resisting arrest and/or interfering with official police business. In this case, Mann did not resist arrest and the Defendants do not assert that Mann

obstructed justice. (AMF ¶ 211). Therefore, Defendants' reliance on these cases to support King's actions is meritless.

Defendants Further argue that King's use of force against Mann was reasonable because of his belief that Mann was reaching for a weapon, thereby posing a threat of serious injury to an officer. Even considering Mann's alleged resistance of reaching for his eyeglasses and putting his tooth in his pocket, King used greater force than would have been reasonably necessary to effectuate a lawful seizure. Tripping Mann and landing on top of him was not reasonably necessary to prevent any perceived harm or threat of harm. While a reasonable jury might be able to conclude that Mann reaching for his pocket posed a threat to King's safety, a reasonable jury could also easily infer from the facts that no reasonable officer would believe that tripping and then slamming Mann to the ground was necessary.

With respect to Mann's conduct, the *Graham* factors – including the severity of the crime at issue, whether Mann posed an immediate threat to King's safety, and whether Mann resisted – also cut against Defendants' motion for summary judgment. For starters, Mann was arrested for pushing Pierce's car out of the way after she blocked him in and for pushing Pierce away from him after she ran up to him screaming and threatened to have people attack him. (AMF ¶ 216). The crimes Mann allegedly committed were so minor, that King allowed Mann to return to the apartment after speaking with officers on scene. (AMF ¶ 189). It is highly unlikely that Mann would be allowed to return to the apartment if Defendant Officers thought he was dangerous or committed a crime that put the lives of others at risk.

Next, Mann did not pose as a threat to King's safety because Mann did not hit, punch, slap, strike or even verbally threaten any officer, and nothing occurred to indicate officer safety was at issue. (AMF ¶ 211). Defendants' attempt to put forth a false narrative that Mann was "reaching"

is unfounded, as Mann took no action to harm or attack either King or Wright during his arrest. (AMF ¶ 213). In fact, King could not describe any behavior by Mann that could have harmed him, and Mann was later determined to be unarmed. Both King and Wright admitted that they were not afraid that Mann would hit them at all during the encounter. (AMF ¶ 212). Thus, the evidence strongly suggests that Mann posed no risk whatsoever.

As described by Mann, King's conduct was plainly in excess of the force necessary under the circumstances, and thus excessive under the Fourth Amendment. Furthermore, there are clear questions of fact as to whether King's belief was reasonable, as well as whether Mann walked away from the officers, reached in his pocket, pulled his arms away from the officers, and whether King performed a leg sweep or a straight arm takedown. Therefore, Defendants have failed to provide any evidence that supports a judgment for Defendants as a matter of law.

## II. DEFENDANT OFFICERS COMMITTED AN ILLEGAL ENTRY ON JULY 30, 2017

On July 30, 2017, Defendant Officers first tried to force their way into Mann's home for a wellness check. (AMF ¶¶ 228, 233-234). Then when that did not work, Defendant Officers busted down Mann's door to execute an arrest warrant for a different address. (Undisputed Material Facts "UMF" ¶ 145); (AMF ¶ 250). Despite Defendants' protestations, neither exigent circumstances nor the arrest warrant gave Defendant Officers legal justification to enter the apartment.

First, Defendants argue that there was a valid warrant for Mann's arrest out of DeKalb County permitting Defendant Officers to enter the apartment and arrest Mann. Defendants appear to be missing the forest for the trees. Plaintiff is not asserting that the DeKalb County warrant is not facially valid. Rather, Defendants appear to be hiding from the Court the fact that the warrant they acted on to arrest Mann was for a different address. (Disputed Material Facts "DMF" ¶ 128);

(AMF ¶ 250). Difanis discovered a warrant that listed Mann's address as 807 S. Urbana Ave, Urbana, IL 61820. (DMF ¶ 125); (AMF ¶ 250). The night of this incident, Defendant Officers battered down the door of apartment 201 at 810 Oakland Ave in Urbana. (UMF ¶¶ 96, 145).

"Officers must take steps to reasonably ensure they are not entering the wrong home when they execute an arrest warrant." *United States v. Williams*, 79 F. Supp. 3d 888, 898 (S.D. Ill. 2015)(citing *U.S. v. Shaw*, 707 F.3d 666, 668 (6th Cir. 2013)). "Where officers discover information that makes a warrant's description of a particular residence ambiguous, that warrant is no longer valid, and cannot be executed by officers knowing about that ambiguity." *Jones v. Wilhelm*, 425 F.3d 455, 463 (7th Cir. 2005).

Difanis knew Defendant Officers were at a different address then what was listed on the warrant. Difanis admitted, "I needed to know not just whether it was Urbana, Illinois, I needed to know the address on the warrant, because if the address is where we were and where he was, then it would give us the right to force entry to make the arrest." (AMF ¶¶ 247-248). Difanis falsely claimed that the address on the warrant was for 810 Oakland Avenue, without an apartment number. (DMF ¶¶ 128, 129). However, the warrant clearly states an address for 807 S. Urbana Ave. (AMF ¶ 250). Knowing there was a risk of being at the wrong location, Difanis should have stopped her plan to arrest Mann and sought a warrant with the correct address. *See Jones v. Wilhelm*, 425 F.3d at 464 (holding that if an officer "obtains information while executing a warrant that puts him on notice of a risk that he could be targeting the wrong location, the officer must terminate the search.").

Defendants Officers' plan to batter down the door should have been terminated particularly because, at the time, Difanis knew it was Wade's name on the lease, and she might be illegally entering a third party's home. (AMF ¶ 249). However, she and Mikalik was hellbent on arresting

Mann, and so they directed McClellan to bust down any door they thought Mann was behind. (DMF ¶ 135); (AMF ¶¶ 143, 145). Defendant Officers' disregard of the incorrect address on the warrant, coupled with their insistence on remaining outside Mann's door for 45 minutes to an hour (AMF ¶ 244), on top of the fact that Franquemont just testified against Mann at trial three days prior (UMF ¶ 105), Defendant Officers were not acting to protect the well-being of anyone inside apartment 201. Once Defendant Officers arrived at 810 Oakland Ave and word spread that Benjamin Mann was behind that door, the officers only concern was arresting the man they knew had spoken out against the police before. At a minimum, Defendant Officers' entry of Wade's apartment with a warrant listing a different address shows the officers' malice.

Next, Defendants falsely assert that there were exigent circumstances, specifically a 911 call of a domestic dispute, that justified Defendant Officers' entry into the apartment. This is simply untrue. Franquemont himself admitted that they did not have probable cause to force entry into the residence for the initial reason they were at the apartment – a wellness check. (AMF ¶ 236).

It is a basic principal of Fourth Amendment law that "searches and seizures inside the home without a warrant are presumptively unreasonable[.]" *Groh v. Ramirez*, 540 u.s. 551, 559 (2004). "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980) (quoting *United States v. U.S. District Court*, 407 U.S. 297, 313 (1972)). At the "very core" of the Fourth Amendment "stands 'the right of a man to retreat to his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 133 S.Ct. 1409, 1414 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

Defendants contend that Franquemont's attempt to push his way through Mann's door by sticking his foot in the doorframe was appropriate to ensure Wade's safety. The problem with this assertion is the fact that both Mann and Wade conveyed to Franquemont that they were fine and did not need his or any other officer's assistance. (AMF ¶¶ 229-230, 241, 243). Franquemont had not heard or saw anything that would give him reason to believe that there was an emergency taking place inside Mann's home. (AMF ¶¶ 229-230, 241, 243). Marcotte also conceded that he did not hear or see anything while standing outside the apartment door that led him to believe that any sort of fight, domestic incident, or emergency was occurring inside of the apartment. (Marcotte, 35:15-36:12). Once it was clear to the officers that no emergency was happening in the apartment, the officers should have left. *See United v. Brown*, 64 F.3d 1083, 1086 (7th Cir. 1995)("We do not think that the police must stand outside an apartment, despite letigimate concerns about the welfare of the occupant, unless they can hear screams. Doubtless outcries would justify entry, *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408, 57 l.ed.2d 290 (1978), but they are not essential.").

Instead, Franquemont, McClellan, and Marcotte stood outside of Mann's door for approximately 45 minutes to an hour. (AMF ¶ 244). There is no evidence in the record that there was any kind of emergency situation taking place to justify Franquemont's attempt to push his way through Mann's door. If there was an exigent circumstance that required the officer's to immediately enter the home, none of the officers believed that circumstance existed while they stood around and waited outside of Mann's apartment. Fact is, there was simply no emergency justifying Franquemont's desperation to get inside Mann's apartment. A factfinder could easily conclude that there was no justification for Franquemont's attempt to enter Mann's home without a warrant.

Even if the Dekalb County warrant permitted the officers' entry, Franquemont attempted to enter Mann's home well before he was even aware of this warrant. The officers' later discovery of a warrant does not negate Franquemont's and McClellan's unlawful actions of sticking their feet in the door frame of the apartment and shoving the door in so they could enter. As such, Defendant Officers illegally entered Mann's apartment.

## III. DEFENDANT OFFICERS HAD NO PROBABLE CAUSE TO ARREST PLAINTIFF ON MARCH 19, 2017 OR JULY 30, 2017

The Defendants attempt to show that there are no genuine issues of fact on the merits by asserting, first, that Defendant Officers had probable cause to arrest Mann on both March 19, 2017 and July 30, 2017, precluding any recovery for claims of First Amendment retaliation, false arrest, illegal search, conspiracy, and malicious prosecution. The Defendants are mistaken. The evidence refutes any claim that Defendant Officers Difanis, King, Wright, and Loschen ("Defendant Officer Group 1") had probable cause to arrest Mann on March 19, 2017. In addition, Defendant Officers Difanis, Franquemont, McClellan, Marcotte, and Mikalik ("Defendant Officer Group 2") lacked probable cause to arrest Mann on July 30, 2017 on the charges of aggravated battery and resisting a police officer.

A police officer has probable cause to arrest a person when the facts and circumstances that are known to him reasonably support a belief that the individual has committed, is committing, or is about to commit a crime. *Wagner v. Washington County*, 493 F.3d 833, 836 (7th Cir. 2007); *United States v. Parra*, 402 F.3d 752, 763-64 (7th Cir. 2005). Probable cause requires more than a bare suspicion of criminal activity, but it does not require evidence sufficient to support a conviction. *Woods v. City of Chicago*, 234 F.3d 979, 996 (7th Cir. 2000) (quoting *United States v. Burrell*, 963 F.2d 976, 986. Probable cause is assessed objectively: a court looks at the conclusions

that the arresting officer reasonably might have drawn from the information known to him rather than his subjective reasons for making the arrest. *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004); *Whren v. United States*, 517 U.S. 806, 812-13 (1996).

"It is reasonable to demand that each charge that a police officer elects to lodge against the accused be supported by probable cause. Otherwise, police officers would be free to tack a variety of baseless charges on to one valid charge with no risk of being held accountable for their excesses." *Holmes v. Village of Hoffman Estate*, 511 F.3d 673, 683 (7th Cir. 2007) (citing *Posr v. Doherty*, 944 F.2d 91, 100 (2d Cir. 1991); *Johnson v. Knorr*, 477 F.3d 75, 83-85 (3d Cir. 2007)). The probable cause determination must be made by a jury "if there is room for a difference of opinion concerning the facts or the reasonable inferences to be drawn from them." *Maxwell v. City of Indianapolis*, 998 F.2d 431, 434 (7th Cir. 1993).

Defendants devote many pages to misguided factual assertions and erroneous legal arguments in order to assert that Defendants Officers had probable cause to arrest Mann, foreclosing his false arrest claim. However, Defendant Officer Group 1 did not have probable cause to arrest Mann on March 19, 2017. There was no reason for Defendant Officers to believe that Mann had broken the law by committing aggravated battery or resisting a police officer.

*A. Aggravated Battery (March 19, 2017)*

Difanis, King and Loschen had no reasonable belief that Mann had committed aggravated battery. Illinois law states that an individual commits aggravated battery when "in committing a battery, other than by discharge of a firearm, he or she knows the individual battered to be…(2) A person who is pregnant or has a physical disability. 720 ILCS 5/12-3.05(d)(2). A person commits the offense of battery when he "intentionally or knowingly without legal justification and by any

means…makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/31-1(a).

First, Mann had no reason to believe Pierce had a physical disability. Mann stated that he did not know Pierce and had not seen her before. (AMF ¶ 192). Pierce told Difanis that she did not live at Town and County Apartments. (AMF ¶ 191). There is no evidence that Mann knew Pierce, let alone knew that she had a physical disability. Pierce may have represented to Difanis that she had a physical disability, but that alleged disability did not stop her from blocking in someone's car, screaming at them, verbally threatening them, and pushing that person. (AMF ¶¶168-169, 194). Without Mann's knowledge that Pierce had a physical disability, a charge of aggravated battery is unfounded. *See, e.g., People v. Jasoni*, 974 N.E.2d 902, 907-908 (Ill. App. Ct. 2d Dist. 2012) (finding that statute as written required defendant have knowledge of victim's age to be 60 years or older).

Second, there is no evidence other than Pierce's own unreliable account that Mann punched her in the head or face. None of Defendant Officers actually saw or heard any of the actions they claim Mann took that resulted in his arrest for aggravated battery. (AMF ¶ 197). Although an officer who does not witness a crime may rely on information provided to him or her by a victim or witness, that victim or witness must be reasonably credible. *Pasiewicz v. Lake County Forest Preserve Dist.*, 270 F.3d 520, 524 (7th Cir. 2001); *Jenkins v. Keating*, 147 F.3d 577, 585 (7th Cir. 1998). From the statements of Mann, Wade, Seaton, and Pierce herself, it should have been clear to Defendant Officers that Pierce was not a credible witness and her version of events should have been discounted.

Pierce blocked Mann's car in after he parked his vehicle. (AMF ¶¶ 168-169). She then proceeded to verbally threaten him, telling him to not go anywhere because people were coming

to hurt him. At no point did she make any effort to move her car from behind Mann's car. Her clear intent was to block him in, prevent him from escaping, so she could have her friends come to the parking lot and jump him – and that is exactly what happened. Mann and Wade were not able to get in the car to drive away to get away from Pierce and her friends. Pierce then continued to scream in Mann's face until three individuals ran up on Mann and Wade and started attacking them. (AMF ¶¶ 171-181). One of those individuals had a gun. (AMF ¶¶ 173, 178). Mann was hit in the head, and Wade was struck twice in the face. (AMF ¶¶ 179, 181). The masked men fled on foot because they saw police lights. (AMF ¶ 182). If it were not for Mann's original 911 call, much worse may have happened to him and Wade at the hands of Pierce and her henchmen. Mann and Wade told Difanis, King and Loschen about this attack, and yet the officers chose to completely disregard this information because they harbored retaliatory animus for Mann's prior lawsuit against the police.

While talking to Pierce, Difanis did not even pat Pierce down to see if she was armed (AMF ¶ 190), and she took Pierce's word for it when she said she had "no idea" what Difanis was talking about when she mentioned a subject with a gun or if any other subjects were involved in the incident. (AMF ¶ 193). Further, Pierce admitted to Difanis that she pushed Mann. (AMF ¶ 194). Not only did this amount to sloppy police work on Difanis's part, but it also demonstrates that Difanis did not talk to Pierce with the intention of learning all the facts to make an informed opinion on who to arrest. She already knew who she wanted to arrest, and it was a matter of gleaning only the facts from Pierce that supported Mann's arrest.

Difanis wants the Court to believe that because Pierce was "limping" she could not have possibly gotten into Mann's face, screamed at him and pushed him (AMF ¶¶ 171, 194), automatically rendering her the victim in this case. (AMF ¶ 198). That is quite a reach for an officer

to make. First, Difanis is not a licensed or trained medical professional with any ability to deduce what significance, if any, Pierce's supposed limp had to do with this case. Second, Difanis wrote in her own report that Pierce "screamed at Benjamin[,]" and "used both of her hands to push Benjamin backward and away from her." (AMF ¶ 194). It sounds like Pierce's "limp" did not affect her ability to assault and batter Mann at all. Pierce's "limp" had nothing to do with the attack Mann and Wade endured, nor did it prevent her from attacking Mann herself. The natural and reasonable inference is that Pierce verbally and physically attacked Mann, and had three other individuals continue this attack. Nonetheless, Pierce was not arrested. Difanis and Loschen intentionally dismissed Mann and Wade's account of what transpired that evening in favor of the individual perpetrator's story.

To make matters worse, Difanis knew of an eyewitness who completely contradicted Pierce's story. Seaton told Officer Sarah Links that he witnessed the altercation between Mann, Wade, Pierce, and three unknown men. (AMF ¶ 180). Seaton told Links that he saw Pierce cussing loudly and running up into Mann's face. (AMF ¶ 180). He also heard Pierce call someone to come and beat up Mann and Wade. (AMF ¶ 176). Seaton then described three men who attacked Mann and Wade and then fled on foot. (AMF ¶ 176). Links relayed the information she learned from Seaton to Difanis. These facts gave Difanis reason to doubt the veracity of Pierce's statement. If anything, Seaton, a neutral third party who had a front row seat to the incident, was to be believed more than anyone else involved. Difanis should have therefore known Pierce was lying about what happened and was as a result untrustworthy.

Once Difanis and Loschen learned that Mann and Wade were attacked, not from the self-serving and untrustworthy account of one person but from three different people, two of whom were actually attacked, these sergeants should have rendered the conclusion that (1) Pierce was the

initial aggressor; (2) she committed multiple crimes by blocking Mann in, threatening and screaming him, and then having him jumped; and (3) that she therefore needed to be arrested. Yet, somehow Mann and Wade were the only people arrested that evening in connection with this incident.

Therefore, Defendant Officers had no reason to believe Mann committed aggravated battery. Because the question of probable cause for this offense turns on disputed facts, Defendants are not entitled to summary judgment. *See* Jones-Huff v. Hill, 208 F. Supp. 3d 912, 923 (N.D. Ill. 2016) (holding that the plaintiff's dispute of material facts regarding the arrest for aggravated assault was inappropriate to resolve at summary judgment).

*B. Resisting a Police Officer (March 19, 2017)*

Under Illinois law, "[a] person who knowingly resists or obstructs the performance by one known to the person to be a peace officer…of any authorized act within his or her official capacity commits a class A misdemeanor." 720 ILCS 5/31-1(a). Illinois courts require "some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest or physically aiding a third party to avoid arrest." *People v. Raby*, 240 N.E.2d 595, 599 (Ill. 1968); *see also Payne v. Pauley*, 337 F.3d 767, 776 (7th Cir. 2003) (noting that resistance must be physical in nature).

Mann was not resisting Officer King or Wright when he was arrested. (AMF ¶ 211). Mann was looking for his spare eyeglasses on a shelf in the hallway when Officers King and Wright grabbed both of his arms, and King shoved his body into Mann's shoulder, tripped him, and slammed him to the ground. (AMF ¶¶ 202-205). Officer King and Wright both stated that Mann did not threaten them or hit them. (AMF ¶ 211). Considering Mann did not pull away from King

and Wright in an attempt to evade his arrest, King lacked any reasonable basis to believe that Mann was resisting arrest.

Defendants contend that Mann was resisting because he admitted while riding in King's squad car that he dropped his prosthetic tooth in his pocket. Even if Mann was reaching toward his pocket to safely store his prosthetic tooth, that action does not constitute physical resistance to an arrest. Mann was not trying to interrupt, impede, or hinder the officers' arrest. Because Mann and the officers' accounts clearly conflict, the question of whether there was probable cause to arrest Mann for resisting is not a question that should be answered at the summary judgment stage. *See Chelios v. Heavener*, 520 F.3d 678, 688 (7th Cir. 2008) (finding that a dispute as to whether or not the plaintiff resisting the officer's arrest should have precluded the district court from granting summary judgment in favor of the defendants for the plaintiff's false arrest claim). Ultimately, Defendant Officer did not have probable cause to arrest Mann for resisting a police officer.

*C. Aggravated Battery (July 30, 2017)*

McClellan did not have probable cause to arrest Mann for aggravated battery on July 30, 2017. Under Illinois law, "[a] person commits aggravated battery when, in committing a battery…he or she knows the individual to be battered to be…a peace officer---performing his or her official duties." 720 ILCS 5/12-3.05(d)(4)(i). Battery requires that the person "knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3.

There is no evidence in the record that Mann intentionally caused McClellan or Franquemont any harm. Mann tried to close the door after informing the officers that he and Wade were fine, that they did not need the officers' assistance, and that the officers were not allowed in his home. (AMF ¶¶ 228-230). Then Franquemont and McClellan took it upon themselves to force

their way into Mann's home by forcing their feet in the door frame and placing their body weight on the door to push it open. (AMF ¶¶ 231-234). There is no testimony from any officer that evening that Mann intentionally hit, pushed, punched, kicked, or made physical contact with any officer. (AMF ¶ 256). Any insistence by Defendant Officers that Mann did intentionally make physical contact with Franquemont or McClellan constitutes a genuine dispute of material fact best decided by a finder of fact.

Moreover, the case Defendants cite to support that closing the door on a person's foot constitutes a battery is not applicable in this case. In *People v. Pickens*, 354 Ill. App. 3d 904 (1st Dist. 2004), the husband *intended* to close the door on his wife's foot. Here, there is no evidence that Mann had any intent to harm Franquemont or McClellan. Therefore, the officers did not have probable cause to arrest Mann for aggravated battery.

*D. Resisting a Police Officer (July 30, 2017)*

Illinois law prohibits "knowingly resist[ing] or obstruct[ing] the performance by one known to the person to be a peace officer…of any authorized act within his or her official capacity." 720 ILCS 5/31-1. The statute prohibits "a physical act that impedes, hinders, interrupts, prevents, or delays the performance of the officer's duties, such as going limp, forcefully resisting arrest, or physically helping another party to avoid arrest." *People v. McCoy*, 881 N.E.2d 621, 630 (2008). "Merely arguing with a police officer – even using abusive language – does not constitute resisting a peace officer." *People v. Long*, 738 N.E.2d 216, 222 (2000).

Mann did not commit any physical act that would support McClellan charging Mann with resisting a police officer. Simply put, Mann did not resist arrest. (AMF ¶ 256). Mann never laid his hands on Franquemont, McClellan, or any other officer present. (AMF ¶ 256). When Franquemont asked to enter Mann's home, Mann was not under arrest at that point. (AMF ¶ 228).

Franquemont informed Mann that his sole purpose was to perform a well-being check. (AMF ¶ 228). Mann and Wade told the officers they were fine and Mann declined to allow the officers in the apartment. (AMF ¶¶ 230-231). As he was closing his door, Franquemont and McClellan physically tried to pry open Mann's door. (AMF ¶¶ 231-234). At this point, Franquemont still had not communicated to Mann that he was under arrest. Therefore, Mann trying to shut his door to prevent officers from unlawfully entering his home without a warrant did not constitute resisting arrest.

Furthermore, there is no evidence that Mann went limp or helped another party resist arrest. When the officers battered down his door, Mann completely complied with the officers by lying down on the ground. (AMF ¶ 236). Thus, Mann did not physically resist any officers' arrest on July 30, 2017.

## IV. DEFENDANT OFFICERS' UNLAWFUL ACTIONS AGAINST MANN WERE TAKEN IN RETALIATION FOR MANN SUING THE CHAMPAIGN POLICE DEPARTMENT

Defendant King slammed Mann to the ground, twisting his ankle. (AMF ¶ 265). Difanis, Franquemont, Marcotte, McClellan and Mikalik forced their way into Mann's home on a warrant for a different address without any exigent circumstances. (AMF ¶¶ 245, 250). Defendant Officers' unlawful actions were retaliation for Mann engaging in his right to petition the government for a redress of grievances, specifically his grievance with Urbana Police Department's sister agency: the Champaign Police Department.

To state a claim for First Amendment retaliation, a plaintiff must prove: (1) he "engaged in activity protected by the First Amendment; (2) he "suffered a deprivation that would likely deter First Amendment activity in the future; and (3) "the First Amendment activity was at least a 'motivating factor' in the Defendants' decision to take the retaliatory action." *Woodruff v. Mason*,

542 F.3d 545, 551 (7th Cir. 2008) (quoting *Massey v. Johnson*, 457 F.3d 711, 716 (7th Cir. 2006)). If a plaintiff can establish these elements, "the burden then shifts to the defendants to produce evidence that [the defendants] would have" committed the retaliatory action regardless of the plaintiff's protected speech. *Massey*, 457 F.3d at 717. If the defendants meet that burden, then the plaintiff must "persuade a fact-finder that the defendants' proffered reasons were pretextual and that retaliatory animus was the real reason" for their actions. *Id*.

As for the first element regarding a protected activity, Defendants concede in their statement of material facts that Mann filed and won a civil rights lawsuit against the City of Champaign and Matt Rush in 2015, which was later settled. (UMF ¶¶ 9-10). A lawsuit against a municipality to address grievances is a right secured by the First Amendment. U.S. Const. amend. I; *see Guth v. Tazewell County*, 698 F.3d 580, 587 (7th Cir. 2012)(citing *Borough of Duryea v. Guarnieri*, 131 S. Ct. 2488, 2498 (2011)). Therefore, Mann clearly engaged in a form of protected speech when he sued Matt Rush.

It is also clear Mann suffered a deprivation of his constitutional rights that would chill any person's speech. In about a fourth month period, Mann was arrested by the Urbana Police Department for aggravated battery and resisting arrest twice. (AMF ¶¶ 216, 257). For the first incident, Mann called the police to report he was attacked, yet he was arrested for aggravated battery and resisting. (AMF ¶¶ 174, 216). At no point did he resist any officer's arrest. (AMF ¶ 211). For the second incident, officers had no reason to be at his door, yet an officer tried to force his way in to no avail. (AMF ¶¶ 229-234). After 45 minutes to an hour standing around in the apartment hallway, the officers bust through Mann's door on an arrest warrant for a different address and charge him with aggravated battery and resisting arrest. (AMF ¶¶ 244, 250, 257). Once again, Mann made no attempts to resist the officers' arrest. (AMF ¶ 256). This kind of police

conduct would deter any normal person from making a complaint or filing a lawsuit against any officer in the Champaign-Urbana community.

Because Defendant Officers did not have probable cause to arrest Mann on either occasion, they lacked any justifiable reason to arrest Mann. The true reason why Mann endured these unnecessary arrests is because of his prior lawsuit against an officer of the Champaign Police Department. Defendants concede that Franquemont stated he was aware of Mann's prior lawsuit. (DMF ¶ 16). Many of the Defendant Officers testified that they were friends. (AMF ¶ 154) Although the officers have every reason not to admit the truth, it is clear they each had prior knowledge of Mann's suit against Rush and Champaign. Mann's lawsuit was prevalent in the local news, both on television and in the newspaper. (AMF ¶ 157). One of Difanis's best friends was a patrol sergeant at the Champaign Police Department in 2017 when Mann was arrested twice. (AMF ¶ 155). Furthermore, police officers from both the Urbana Police Department and the Champaign Police Department are often called out to and are present at the same scenes. (AMF ¶ 156). Defendants Officers had two opportunities to harass Mann after taking down one of their sister agency's police officers, and they seized those opportunities. Defendant Officers on July 30th were even willing to act on a warrant with a substantial error to take Mann down. The anger and hostility Defendant Officers' harbored for Mann is evident.

Defendants cite *Nieves v. Bartlett* for the proposition that because Defendant Officers had probable cause to arrest Mann on both occasions, Mann's retaliatory arrest claim fails as a matter of law. While *Nieves* categorically held that a plaintiff must prove the absence of probable cause to support a retaliatory arrest claim, the Court did provide an exception to this requirement: "the no-probable-cause requirement should not apply when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of

protected speech had not been." *Nieves v. Bartlett*, 139 S.Ct. 1715, 1727 (2019)(citing *United States v. Armstrong*, 517 U.S. 456, 465 (1996)). That exception applies here.

On March 19th, Pierce used her car to block Mann's car in and impede his ability to leave the incident in his vehicle. (AMF ¶ 168). Pierce screamed at Mann and pushed him. (AMF ¶¶ 171, 176, 194). Pierce called three men to come and attack Mann and Wade. (AMF ¶¶ 175-176). Pierce then lied to Difanis stating that she did not know other subjects were involved. (AMF ¶ 193). At a minimum, Pierce should have been charged and arrested for reckless driving, assault, and battery. Yet, Pierce was never arrested. The similarity in Pierce's and Mann's alleged acts, yet the difference in consequences they received, illustrates that the officers were acting to arrest Mann with animus. If it were not for Mann's prior lawsuit against the City of Champaign, Defendant Officers would not have chosen to arrest him and not arrest Pierce. It is clear Mann was the only person there who Defendant Officers had any interest in arresting.

Furthermore, Defendants' reliance on *Nieves v. Bartlett* to dismiss Plaintiff's First Amendment retaliation claim in its entirety is deceptive, as that Supreme Court case speaks only to retaliatory *arrest* claims. *Nieves v. Bartlett* is silent regarding excessive force and illegal entry committed by officers in retaliation for a person exercising their First Amendment rights. In this case, King tripped and slammed Mann to the ground in retaliation for suing the Champaign Police Department. Difanis, Mikalik, Franquemont, Marcotte, and McClellan purposefully entered an apartment on a warrant knowing it listed a different address. There is material disputed evidence that the excessive force committed by King and the illegal entry performed by Defendant Officers was in retaliation for Mann's prior lawsuit against the Champaign Police Department, and therefore Mann's First Amendment retaliation claim should proceed.

**V. CONSPIRACY**

Plaintiff's federal and state law claims for civil conspiracy also survive summary judgment. There is direct evidence that Defendant Officers conspired to falsely arrest Mann on March 19, 2017 and July 30, 2017.

"To establish conspiracy liability in a § 1983 claim, the plaintiff must show that (1) the individuals reached an agreement to deprive him of his constitutional rights, and (2) overt acts in furtherance actually deprived him of those rights." *Beaman v. Freesmeyer*, 776 F.3d 500, 510 (7th Cir. 2015).

Defendants argue in a rather conclusory fashion that there is no evidence in the record that there was an agreement between Defendant Officers to violate Mann's rights. According to Defendants, the lack of an agreement between the officers coupled with the lack of any underlying wrongful act means Mann's federal and state claims of conspiracy must be dismissed. Defendant's argument entirely ignores the relevant evidence, which often comes in the form of their own statements.

Starting with the March 19th incident, Difanis, Loschen, and King each testified that after Mann was allowed to return to the apartment, they gathered to talk about what information they learned and decided to go upstairs and arrest Mann, despite not having probable cause to arrest Mann, detailed supra. (AMF ¶¶ 199-201). Similarly, on July 30, 2017, after not having any reason to enter Mann's home, Difanis found an old warrant for Mann's arrest, gathered the officers to discuss, and they all decided to once again go upstairs and arrest Mann, knowing the warrant was for a different address. (DMF ¶ 135); (AMF ¶ 250). Defendant Officers' efforts to force their way into Mann's home on July 30, 2017 without probable cause or any other legally justifiable excuse confirm the existence of their conspiratorial relationship. Mann was clearly deprived of his rights

on both occasions seeing as he was charged with aggravated battery and resisting a police officer on March 19th and July 30th.

Despite Defendants' unsupported assertions to the contrary, the record is replete with evidence establishing Defendants' liability for Plaintiff's conspiracy claim. At a minimum, it creates a genuine issue that impedes Defendants' attempt to end this case on summary judgment.

## VI. DEFENDANTS KING AND MCCLELLAN TOOK ACTIONS RESULTING IN MANN'S MALICIOUS PROSECUTION

Mann was brought to trial on multiple charges stemming from the March 2017 incident, but the State ultimately dropped all of those charges except for resisting a police officer. (AMF ¶¶ 219-220). Mann was also prosecuted for resisting a police officer after the July 2017 incident. (AMF ¶¶ 257-258). Because probable cause was lacking as to the resisting charges in both March and July 2017, and King and McClellan acted with malice by bringing these charges despite this truth, the Defendants are liable for Mann's prosecution on these charges.

To support a claim for malicious prosecution, Illinois law requires a plaintiff to prove: "(1) that defendants began or continued the original criminal proceeding; (2) plaintiff received a favorable termination; (3) probable cause did not exist; (4) malice was present; and (5) plaintiff suffered damages." *Aguirre v. City of Chicago*, 382 Ill.App.3d 89, 96 (Ill. 2008) (citing *Swick v. Liautaud*, 169 Ill.2d 504, 512 (Ill. 1996)). "[A] plaintiff can maintain a malicious prosecution action with respect to any charge for which there was no probable cause, even if there was probable cause as to a different charge." *Kozel v. Village of Dolton*, 804 F. Supp. 2d 740, 746 (N.D. Ill. 2011).

The record supplies sufficient evidence proving that Defendant Officers maliciously prosecuted Mann for resisting arrest on both occasions. For the March 19th incident, King was the

arresting officer and charged Mann with resisting. (AMF ¶ 219). He also signed the notice of arrest without a warrant and testified at Mann's trial. (AMF ¶ 219). The "commence[ment] or continu[ation of] a criminal proceeding" is attributed to a defendant if he either "initiated the criminal proceeding or 'his participation in it must have been of so active and positive a character as to amount to advice and cooperation.'" *Logan v. Caterpillar, Inc.*, 246 F.3d 912, 922 (7th Cir. 2001) (quoting *Denton v. Allstate Ins. Co.*, 504 N.E.2d 756, 760 (1987)).

Here, not only did King commence the criminal proceeding against Mann by arresting him and charging him with resisting, but King also actively participated in Mann's prosecution by testifying at his trial. (DMF ¶ 115). Likewise, for the July 30th arrest, McClellan was the arresting officer, falsely charged Mann with resisting arrest, and signed the notice of arrest without warrant. (AMF ¶ 257). King's and McClellan's clear involvement in initiating the criminal proceedings against Mann satisfy the first element of a malicious prosecution claim.

Next, there is no question, and Defendants have not disputed as such, that both criminal actions against Mann terminated in his favor. Mann was acquitted by a jury for the March 19th arrest and his criminal case was dismissed by the State, after Mann filed a motion to dismiss, for the July 30th arrest. (AMF ¶¶ 220, 258).

Defendants argue that probable cause as to Mann's arrests in March and July 2017 bars his malicious prosecution claim entirely. This is incorrect. There was no probable cause to arrest Mann for resisting for either incident, as stated supra. Mann did not resist King or Wright on March 19th, but merely asked could he grab his glasses. Mann also did not resist Franquemont or McClellan on July 30th because he immediately lied down on the ground and put his hands behind his back when officers informed him he was arrested.

Furthermore, even if there was probable cause to arrest Mann based on the contempt of court warrant on July 30, 2019, that was a separate issue that did not affect Mann's prosecution for the unsupported charge of resisting arrest. Probable cause as to one charge will not bar a malicious prosecution claim based on a different charge unsupported by probable cause. *See Trusty v. McCall*, No. 99 C 3992, 1999 WL 787628, at *2 (N.D. Ill. Sept. 24, 1999).

Just as a jury could find there was no probable cause to arrest Mann for resisting a police officer on either March 19 or July 30, 2017, a jury could find that Defendants initiated baseless criminal charges against him with malicious intent. *See Fabiano v. City of Palos Hills*, 784 N.E.2d 258, 270 (2002) (holding that where a fact-finder concludes there was no probable cause, that fact-finder "may infer malice…if there is no credible evidence which refutes that inference."). King acted maliciously in his arrest and charging of Mann because he rushed to make an arrest without a proper investigation into who was the actual perpetrator of the crimes reported to the dispatcher. In addition, McClellan acted with malice because he proceeded with charging man with resisting when there was significant doubt that he committed a crime: McClellan himself stated that once Mann was told he was under arrest, he did not resist.

The false charges for resisting wielded against Mann caused him to be unnecessarily detained and prosecuted for months until his case was dismissed or he was acquitted. Defendants King and McClellan are therefore not entitled to summary judgment on Mann's malicious prosecution claim.

## VII. DEFENDANT OFFICERS ARE LIABLE FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

To state a claim of intentional infliction of emotional distress, a plaintiff must prove (1) the defendant's conduct was extreme and outrageous, (2) the defendant either intended that the

conduct would cause severe emotional distress or knew that there was a high probability that severe emotional distress would result, and (3) the defendant's conduct did in fact cause severe emotional distress. *McGrath v. Fahey*, 533 N.E.2d 806 (1988) (citing *Public Finance Corp. v. Davis*, 360 N.E.2d 765 (1976). Whether conduct is extreme and outrageous is determined using an objective standard based upon all of the facts and circumstances in a particular case. *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 981 N.E.2d 1069. The nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency and to be regarded as intolerable in a civilized community. *Kolegas v. Heftel Broadcasting Corp.*, 607 N.E.2d 201 (1992).

On March 19th, Mann was simply searching for his extra pair of eyeglasses, after an attack just outside his home forced him to lose his other pair, when King snatched him up, forced his arm behind his back, shoved his upper body into Mann's shoulder, tripped Mann, slammed him to the ground, landed on top of him, forced his knee into his back, and broke the nearby glass shelf as a result. (AMF ¶¶ 202, 204-205, 208). King's conduct was extreme and uncalled for. Mann did nothing to provoke such an attack. Mann was not armed, had not threatened the officers, and was not physically resisting. King tripped Mann and slammed him to the ground simply because he wanted to. Any reasonable officer could reach the conclusion that such actions would cause severe emotional distress. Mann was returning home from a wedding announcement, was attacked in his parking lot, and then attacked by an officer. Of course, King's action caused Mann severe emotional distress. This incident only added to Mann's aversion to law enforcement.

No reasonable person could be expected to endure having their ankle twisted (AMF ¶¶ 209, 215) and their body slammed to the ground merely because they reached for their glasses and put away their prosthetic tooth. King stated at his deposition that Mann pulled his arm away from him and reached towards his pocket or his waistband area. King's statement contradicts Mann's

characterization as well as Loschen's and Wright's characterization of Mann's actions. Wright stated that he did not see Mann reaching toward his waistband. (AMF ¶ 207). Loschen stated that he saw both of Mann's hands moving toward his waistband before King or Wright even touched Mann. (AMF ¶ 207). These three officers decided to use the "reaching defense" to substantiate King's decision to use excessive force on Mann. Neither officer can give a clear account of what Mann was doing, and it sounds like each officer saw Mann doing something different, which is not physically possible. Furthermore, Mann was unarmed and therefore was not reaching for anything. It does not follow logic that Mann would be reaching for his waistband. Furthermore, Mann himself stated he had not been resisting the officers.

## VIII. RESPONNDEAT SUPERIOR

The City of Urbana is liable under the theory of *respondeat superior* for Plaintiff's state law claims of conspiracy, malicious prosecution, and intentional infliction of emotional distress based on Defendants Officers' tortious conduct. For Illinois state law tort claims, "[t]here is no dispute that under the doctrine of *[r]espondeat superior*…a municipality may be held liable for the tortious acts of police officers acting in the scope of their employment." *Brown v. King*, 767 N.E.2d 357, 360 (Ill. App. Ct. 2001). A local public entity whould be directed to pay a tort judgment or settlement of a liable employee acting in the scope of his duty. *See, e.g., Wilson v. City of Chicago*, 120 F.3d 681, 685 (7th Cir. 1997).

There is evidence to support, or at the very least evidence that creates a genuine issue of material fact regarding Mann's claims for conspiracy, malicious prosecution, and intentional infliction of emotion distress, as addressed above. Therefore, the City of Urbana is not entitled to summary judgment for Mann's *respondeat superior* claim.

## IX. DEFENDANT OFFICERS ARE NOT ENTITLED TO QUALIFIED IMMUNITY

The Defendants again reprise their flawed argument that Defendant Officers had probable cause to arrest Mann and are therefore entitled to qualified immunity. And once again, that assertion lacks merit.

When evaluating an assertion of qualified immunity at the summary judgment stage, the court must consider: "(1) whether the facts, taken in the light most favorable to the plaintiff, show that the defendants violated a constitutional right; (2) whether that constitutional right was clearly established at the time of the alleged violation." *Chelios*, 520 F.3d at 691 (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). "Where the parties dispute facts key to the determination of whether the officer acted reasonably, the Court cannot determine whether the officer enjoys immunity on a summary judgment motion." *Jones-Huff*, 208 F. Supp. 3d at 922.

At the time of the March 19th incident, it was well established a police officer may not use excessive force in arresting an individual. *Clash v. Beatty*, 77 F.3d 1045, 1048 (7th Cir. 1996). Defendants claim that the type of force used on Mann was permissible, and therefore King was not aware that such force could result in a constitutional violation. However, King could not have reasonably believed that tripping and slamming down an unarmed and non-resisting person who was merely looking for his glasses and trying to put his prosthetic tooth away was justified. No reasonable officer could have thought that it was also permissible to continue to place their knee on an unresisting arrestee's back after tripping them and slamming them to the ground. Moreover, because the parties dispute whether King's actions were reasonable, King cannot seek shelter in the doctrine of qualified immunity. So too it would not be reasonable for an officer to think that there's some exception allowing him to commit excessive force in retaliation of a person's free speech.

Furthermore, a police officer at the time should have known that an individual has a right to be free from an arrest that is unsupported by probable case. *Pourghoraishi v. Flying J., Inc.*, 449 F.3d 751, 762 (7th Cir. 2006); *Payne*, 337 F.3d at 775-78; *Morfin v. City of E. Chicago*, 349 F.3d 989, 997-1000 (7th Cir. 2003). Defendant Officers did not have probable cause to arrest Mann for aggravated battery or resisting a police officer for either incident as detailed above. Furthermore, Defendant Officers did not have probable cause to enter the apartment on July 30th. Defendant Officers knew the warrant contained a different address and that there were no exigent circumstances that allowed them to force their way inside. (AMF ¶¶ 236, 248, 250). Therefore, none of the officers can rely on qualified immunity to defeat their constitutional violations against Mann.

## CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court enter an order denying Defendants' Motion for Summary Judgment, and providing such other relief as is just and to which he may be entitled under the circumstances.

Dated: September 20, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Natalie Adeeyo, an attorney, hereby certify that on this day, the 20th day of September 2019, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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Pursuant to Fed. R. Civ. P. 5, the undersigned certifies that, to her best information and belief, there are no other non-CM/ECF participants in this matter.

By: */s/ Natalie Y. Adeeyo*
Natalie Y. Adeeyo