

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ODELL EDWARDS, Individually and as the	§	
Father of JORDAN EDWARDS, and on	§	
BEHALF OF MINORS, V.A. and K.E.,	§	
And as Representative of the Estate of	§	
JORDAN EDWARDS, Deceased,	§	
Plaintiff,	§	
	§	
v.	§	
	§	CAUSE NO. 3:17-CV-01208-M
	§	
SHAUNKEYIS KEYON STEPHENS, and	§	CHIEF JUDGE
RHONDA WASHINGTON,	§	BARBARA M. G. LYNN
Intervenor Plaintiffs,	§	
v.	§	JURY DEMANDED
	§	
ROY D. OLIVER AND THE CITY	§	
OF BALCH SPRINGS, TEXAS,	§	
Defendants,	§	
	§	
v.	§	
	§	
CHARMAINE EDWARDS,	§	
Intervenor Defendant.	§	

**DEFENDANT’S, OFFICER ROY D. OLIVER, ORIGINAL ANSWER,  
AFFIRMATIVE DEFENSES, FRCP 7(a) REQUEST, AND JURY DEMAND**

TO THE HONORABLE CHIEF JUDGE BARBARA M. G. LYNN:

COME NOW, Defendant Officer, Roy D. Oliver (“Officer Oliver,” “Defendant Oliver,” or “Oliver”), and files this his *Original Answer, Affirmative Defenses, FRCP 7(a) Request and Jury Demand* to Plaintiff’s Third Amended Complaint. (Doc. 31). In support thereof, Officer Oliver would respectfully show this Honorable Court the following:

**I. ADMISSIONS & DENIALS<sup>1</sup>**

1.00 Regarding the Complaint's first unnumbered opening Paragraph on page one, Officer Oliver admits that the Plaintiff asserts the claims stated therein; but, Officer Oliver denies the claims and denies that the true facts and governing law entitle the Plaintiff to such claims.

1.01 Regarding the Complaint's Paragraph 1, Officer Oliver admits Plaintiff asserts the claims stated therein; but, Officer Oliver denies the claims and denies that the true facts and governing law entitle the Plaintiff to such claims.

1.02 Officer Oliver denies the allegations contained in the Complaint Paragraph 2 and specifically denies that he consciously disregarded the rights of JE, VA and KE and further denies that he violated anyone's civil rights.

1.03 Officer Oliver admits the allegation in the Complaint Paragraph 3.

1.04 Officer Oliver admits the allegations in the Complaint Paragraph 4.

1.05 Officer Oliver admits the allegations in the Complaint Paragraph 5 save and except that BSPD is responsible for preventive, investigative, and enforcement services. The BSPD provides those services pursuant to the Charter and City Council management.

1.06 With respect to the allegations in the Complaint Paragraph 6, Officer Oliver admits that this Court has subject matter jurisdiction and denies the remaining allegations.

1.07 With respect to venue and the allegations in the Complaint Paragraph 7, Officer Oliver contemplates a Motion to Transfer Venue.

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<sup>1</sup> Unless Officer Oliver herein specifically admits to an averment made in the Complaint, he hereby expressly denies all averments made or implicitly made in the Complaint (including subheadings and subtitles).

1.08 Officer Oliver is without sufficient information to admit or deny the allegations, and therefore denies the allegations in the Complaint Paragraph 8.

1.09 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 9, except the two officers (Gross and Oliver) were instructed to investigate a report of intoxicated juveniles on Baron Drive (there had been a confrontation with the son of next door owner/Dora Daniels and one of the intoxicated juveniles). The dispatcher indicated that there were underage intoxicated persons in the street. After clearing an alarm call at about 10:20 pm, the two Officers drove their patrol vehicles to Baron Drive. As the Officers approached the house located at 12304 Baron Drive where the party was going on, the Balch Springs Officers turned on their overhead lights and Officer Gross turned his siren on and off to alert the homes and party-goers of the Officers' presence. Since this area was in Officer Gross's beat, he was the Primary Officer, and Officer Oliver was the "Cover" or Supporting Officer. This was a very large party with approximately 100 minor participants, cover charges, and cars parked on both sides of Baron Drive. Officer Gross and Officer Oliver parked their vehicles in the street and to the west of the home in question. The Emergency lights remained on and the Officers were in uniform. Both wore body cameras and they carried flashlights (only Police Officers had/used flashlights during the contact). The two responding Officers positioned themselves in front of the home in question and amicably directed the party-goers to disperse. After dozens of young people milling around and/or leaving the house/party, Officer Gross entered the house followed by Officer Oliver. While in the residence, Officer Gross pleasantly contacted the inhabitants while Officer Oliver inspected the easily accessible and adjoining rooms to confirm the security/safety of the Officers and avoid sequestration of evidence. The homeowner's son ("TR") was located and a conversation was begun. When multiple and rapid

gunshots were fired (approximately 6-10) outside the home, everyone, including the Officers and persons in the home, could plainly hear the gunshots. The Officers exited towards the perceived threat with guns drawn. Gross proceeded east (away from dozens of fleeing juveniles running towards the Police Vehicles) and Oliver retrieved his service/patrol rifle for his vehicle and advised radio dispatch of the situation.

1.10 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 10, except he admits Officer Gross quickly moved east down Baron. He used his flashlight to scan the pavement for shell casings and to direct/view/stop vehicle occupants attempting a 3-point turn around in front of the home. The front passenger-side window was down, of this first vehicle. The occupants could plainly hear the Officers command to stop ("stop right there"); but, the driver initially did not obey Gross' order to stop. Through the open front passenger-side window, Gross illuminated the driver/passenger compartment with his flashlight. After several commands to stop, the first vehicle stopped. Officer Gross continued east on Baron Drive. At approximately the same time, Officer Oliver ran to his patrol vehicle (west of Officer Gross' vehicle) and retrieved his patrol rifle. Officer Oliver saw Officer Gross alone directing moving vehicles to stop, scanning the area, and moving east towards the perceived gunshot danger. In response, Oliver sprinted to cover Officer Gross from the perceived danger. Rifle at the ready/down. Officer Gross saw a black sedan Impala backing away from the home and Officers. Gross in uniform, flashlight trained at the backing vehicle (only the Officers had flashlights), and weapon at the ready/down, yelled "Stop!" The Impala did not stop. Officer Gross radioed the license plate to dispatch, and he scanned the area/roadway quickly with his flashlight. He then trained the flashlight on the

backing/unresponsive car and yelled again “Stop the car!”<sup>2</sup> Again, the operator of the vehicle failed to stop. The operator continued backward without slowing/hesitating through a stop sign at the end of Baron Drive and onto Shepherd Lane. The car narrowly avoided a northbound suburban traveling on Shepherd Lane. Officer Gross raised his service weapon at the vehicle and started to pursue the vehicle in earnest. With his weapon ready/pointed and his flashlight trained on the backing vehicle, Officer Gross shouted: “HEY! STOP THE F\_\_\_\_\_ CAR!”. Officer Oliver heard the command and the alarm in Officer Gross’ voice. Oliver sprinted towards the threatening/fleeing vehicle and Gross. The vehicle did not respond. It stopped only momentarily to shift gears forward; and then, it accelerated in the direction of the closing Officers. Officer Gross raised and pointed his service weapon at the vehicle, he continued to command the vehicle to stop. He closed and shouted: “STOP THE F\_\_\_\_\_ CAR RIGHT NOW!” The suspect car is initially facing/traveling in a southwest direction and straddling the dividing line on Shepherd Lane. The Impala accelerates towards (and eventually passed) the Officers. As the vehicle encounters the closing Officer Gross his weapon is pointed at the car. The vehicle is within inches of Officer Gross. Officer Oliver is approximately 10’ to 15’ southwest of the car and Gross. Oliver’s weapon is pointed at the car. Officer Oliver saw movement in the car (windows maybe tinted to avoid observation/identification). From his peripheral vision, Oliver sees Gross move his weapon towards the rear passenger-side window. Oliver hears violence/breaking glass at Gross’ location; and in fear for himself and others, Oliver fires his weapon into the car (3-5 shots) from approximately 10’ to 15’ feet and into the closed glass windows (too far to put gunshot residue on the occupants). The car was right beside the Officers when the shots were

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<sup>2</sup> From the Edwards Plaintiffs’ Complaints, the car occupants had separated, with some jumping fences to return to their car. The Complaints do not identify the activities the separated occupant joined into prior to returning to their car. (Doc. 1, 12, and 31)

fired. JE was fatally wounded. The suspect car continued towards, by, and away from the Balch Springs Officers. The encounter gunshots to gunshots covered approximately 55 seconds.

1.11 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 11, except he admits that as the car fled passed, Oliver first/immediately asks for the safety of Officer Gross; and then, Oliver expresses his concerns for Gross' safety. The suspect car traveled south on Shepherd Lane for approximately two blocks. It turned west/right onto Bishop Drive. The car turned around and stopped (facing east/Shepherd Lane). The occupants admit that JE was injured and he needed medical attention. Still, the car stopped and the operator called his father and the twins called their mother.

1.12 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 12, except he admits that Balch Springs Police did eventually find/stop/surround the Edwards car (admittedly after a BSPD Patrol vehicle passed the cars location with lights and sirens operating—as stated in the Complaint).

1.13 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 13, except he admits that Balch Springs Police Officers surrounded the car, preformed a “high-risk” traffic stop, requested emergency medical services, and detained and questioned the occupants of the Edwards car.

1.14 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 14, except he admits that Balch Springs Police Officers surrounded the car, preformed a “high-risk” traffic stop, requested emergency medical services, and detained and questioned the occupants of the Edwards car.

1.15 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 15 except he admits that Balch Springs Police Officers surrounded the

car, preformed a “high-risk” traffic stop, requested emergency medical services, and detained and questioned the occupants of the Edwards car.

1.16 In answer to the Complaint Paragraph 16, Officer Oliver denies the allegations.

1.17 In answer to the Complaint Paragraph 17, Officer Oliver denies the allegations except he admits that Chief Haber made statements to the press.

1.18 In answer to the Complaint Paragraph 18, Officer Oliver denies the allegations, as stated, he specifically denies that he unjustifiably assaulted/killed JE/anyone; and further, Officer Oliver denies that he violated anyone’s constitutional rights.

1.19 In answer to the Complaint Paragraph 19, Officer Oliver denies the allegations on his reputation as false. He admits to a BSPD suspension for his vocal objections to the Assistant District Attorney subjecting he and his partner to two, night shifts and a trial (in between) without proper time to sleep in between.<sup>3</sup>

1.20 In answer to the Complaint Paragraph 20, Officer Oliver denies the allegations, as stated in Paragraph 1.19.

1.21 In answer to the Complaint Paragraph 21, Officer Oliver denies the allegations, as stated, but admits that he was counseled for responding to an apartment that smelled strongly of marijuana on January 27, 2017. The suspect objected to Officer Oliver’s description of her. On April 16, 2017, Officer Oliver and his family were rear-ended by a car driven by Monique Arredondo at the intersection of 3100 S. Cockrell Hill Blvd. The Dallas Police Department investigated the incident without charges/warrant (until after the April 29, 2017 shooting and the

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<sup>3</sup> Officer Oliver has been maligned on several levels. He has unfairly been identified: 1) as receiving a 16-day suspension; 2) as assaulting the operator of a rear end collision; 3) as verbally abusing an Assistant District Attorney in an unrelated criminal proceeding, and, 4) as guilty of assault and murder. Before investigation, Faith Johnson has promised her tireless prosecution until conviction; while, Community Activists and/or Clergy threaten riots if charges and/or conviction are not sought/obtained. Even the post-marital invitro fertilization/conception (his divorced wife wanted his child), the coinciding birth of his children, and Officer Oliver’s agreement and support of his children have been unfairly represented to damage/discredit him. This all occurred before anyone substantively investigated the circumstances and/or learned Officer Oliver’s position on the claims.

Dallas County District Attorney/Faith Johnson's promise to tirelessly pursue/convict Officer Oliver).

1.22 Officer Oliver denies the allegations, as stated, in the Complaint Paragraph 22.

1.23 Officer Oliver denies the allegations in the Complaint Paragraph 23.

1.24 Officer Oliver denies the allegations in the Complaint Paragraph 24.

1.25 Officer Oliver denies the allegations in the Complaint Paragraph 25, and specifically denies that he committed a deadly and unlawful attack upon anyone.

1.26 Officer Oliver denies the allegations in the Complaint Paragraph 26, and specifically denies that his behavior was erratic and that he lacked training as a police officer.

1.27 Officer Oliver denies the allegations in the Complaint Paragraph 27.

1.28 Officer Oliver denies the allegations in the Complaint Paragraph 28.

1.29 Officer Oliver denies the allegations in the Complaint Paragraph 29.

1.30 Officer Oliver denies the allegations in the Complaint Paragraph 30.

1.31 Officer Oliver denies the allegations in the Complaint Paragraph 31.

1.32 Officer Oliver denies the allegations in the Complaint Paragraph 32.

1.33 Officer Oliver denies the allegations in the Complaint Paragraph 33.

1.34 Officer Oliver denies the allegations in the Complaint Paragraph 34.

1.35 Officer Oliver admits that he acted in a Constitutionally protected capacity and under color of law; Oliver denies the remaining allegations in the Complaint Paragraph 35.

1.36 Officer Oliver denies the allegations in the Complaint Paragraph 36.

1.37 Officer Oliver denies the allegations in the Complaint Paragraph 37.

1.38 Officer Oliver denies the allegations in the Complaint Paragraph 38.

1.39 Officer Oliver denies the allegations in the Complaint Paragraph 39.



1.40 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 40, except that the Officer understands that gunshot residue was forensically discovered on the back, left-hand of JE.

1.41 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 41.

1.42 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 42.

1.43 Officer Oliver denies the allegations in the Complaint Paragraph 43.

**EXCESSIVE FORCE BY DEFENDANTS--COUNT I, 42 USC § 1983**

1.44 In connection with the Complaint Paragraph 44, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraphs Nos. 1 – 43, and denies the remaining allegations.

1.45 Officer Oliver admits, within the Constitutional/Immunity laws, the allegations in the Complaint Paragraph 45, but denies the implied allegation that he inflicted unjustified bodily injury to JE, VA, KE and/or anyone, and further denies that he violated any Constitutional Rights.

1.46 Officer Oliver denies the allegations in the Complaint Paragraph 46.

1.47 Officer Oliver denies the allegations in the Complaint Paragraph 47.

1.48 Officer Oliver denies the allegations in the Complaint Paragraph 48.

1.49 Officer Oliver denies the allegations in the Complaint Paragraph 49.

1.50 Officer Oliver denies the allegations in the Complaint Paragraph 50.

1.51 Officer Oliver denies the allegations in the Complaint Paragraphs 51, and specifically denies any liability/responsibility to the Edwards Plaintiffs.

**FAILUE TO TRAIN BY THE CITY--COUNT II, 42 USC § 1983**

1.52 Regarding the Complaint Paragraph 52, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraphs Nos. 1 – 51, and specifically denies that Officer Oliver exhibited a pattern of escalating encounters with the Public.

1.53 Officer Oliver denies the allegations in the Complaint Paragraph 53, except that he admits he acted within the Constitutional Parameters, under color of law, and pursuant to the policies of the City of Balch Springs Police Department.

1.54 Officer Oliver denies the allegations in the Complaint Paragraph 54.

1.55 Officer Oliver denies the allegations in the Complaint Paragraph 55.

1.56 Officer Oliver denies the allegations in the Complaint Paragraph 56.

1.57 Officer Oliver denies the allegations in the Complaint Paragraph 57.

1.58 Officer Oliver denies the allegations in the Complaint Paragraph 58.

1.59 Officer Oliver denies the allegations in the Complaint Paragraph 59.

1.60 Officer Oliver denies the allegations in the Complaint Paragraph 60.

1.61 Officer Oliver denies the allegations in the Complaint Paragraph 61.

**UNLAWFUL SEIZURE OF A PERSON—COUNT III**

1.62 Regarding the Complaint Paragraph 62, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraphs Nos. 1 – 61.

1.63 Officer Oliver denies the allegations in the Complaint Paragraph 63.

1.64 Officer Oliver denies the allegations in the Complaint Paragraph 64.

1.65 Officer Oliver denies the allegations in the Complaint Paragraph 65.

1.66 Officer Oliver denies the allegations in the Complaint Paragraph 66.

1.67 Officer Oliver denies the allegations in the Complaint Paragraph 67.

1.68 Officer Oliver denies the allegations in the Complaint Paragraph 68.

1.69 Officer Oliver denies the allegations in the Complaint Paragraph 69.

**BYSTANDER INJURY ALL DEFENDANTS—COUNT 4**

1.70 Regarding the Complaint Paragraph 70, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraphs Nos. 1 – 69.

1.71 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 71, except that he admits that JE sustained a fatal gunshot wound to the head.

1.72 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 72, except that he denies that VA and KE are entitled to any damages.

**FAILURE TO ADEQUATELY SUPERVISE, DISCIPLINE  
AND/OR RATIFICATION—COUNT IV**

1.73 Regarding the Complaint Paragraph 73, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraphs Nos. 1 – 72.

1.74 Officer Oliver denies the allegations in the Complaint Paragraph 74.

1.75 Officer Oliver denies the allegations in the Complaint Paragraph 75.

**PUNITIVE/EXEMPLARY DAMAGES**

1.76 Regarding the Complaint Paragraph 76, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraphs Nos. 1 – 75 and denies the remaining allegations in the Complaint Paragraph 76.

**SURVIVAL ACTION**

1.77 Regarding the Complaint Paragraph 77, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraphs Nos. 1 – 76.

1.78 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 78.

1.79 Officer Oliver denies the allegations in the Complaint Paragraph 79.

1.80 Officer Oliver denies the allegations in the Complaint Paragraph 80.

1.81 Officer Oliver denies the allegations in the Complaint Paragraph 81.

1.82 Officer Oliver denies the allegations in the Complaint Paragraph 82.

**WRONGFUL DEATH**

1.83 Regarding the Complaint Paragraph 83, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraph Nos. 1 – 82.

1.84 Officer Oliver denies the allegations in the Complaint Paragraph 84.

1.85 Officer Oliver denies the allegations in the Complaint Paragraph 85.

1.86 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 86, except that he denies Plaintiff is entitled to any damages.

**DAMAGES ALL DEFENDANTS**

1.87 Regarding the Complaint Paragraph 87, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraph Nos. 1 – 86 and denies the remaining allegations.

1.88 Officer Oliver denies the allegations in the Complaint Paragraph 88.

**COST AND ATTORNEYS' FEES**

1.89 In connection with the Complaint Paragraph 89, Officer Oliver repeats the previous admissions and denials made in connection with the Complaint Paragraph Nos. 1 – 88 and denies the remaining allegations.

### **CONDITION PRECEDENT**

1.90 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 90.

### **TRIAL BY JURY**

1.91 Officer Oliver is without sufficient information to admit or deny the allegations in the Complaint Paragraph 91. Officer Oliver also requests a trial by jury.

1.92 In connection with the Prayer of the Complaint, Officer Oliver denies that Plaintiff, VA, and KE, are entitled to any damages, interest, costs of court, and any other relief at law or in equity.

## **II. ADDITIONAL DENIALS OR AFFIRMATIVE DEFENSES**

2.01 Officer Oliver contends and asserts any and all of his sovereign, governmental, official, qualified, and/or derivative Federal/State Immunities. To the extent applicable, Officer Oliver asserts all available immunities derivatively through the City of Balch Springs. Officer Oliver's federal Qualified Immunity provides immunity from both suit and liability. Officer Oliver contends the immunities from suit provided to him require adjudication at the earliest stage and bar all unrelated obligations on his part until such immunities are adjudicated. Plaintiff bears the burden to overcome said immunities.

2.02 Officer Oliver would show that all acts or omissions of Officer Oliver that are subject to this lawsuit were made in good faith and were objectively reasonable, such that Officer

Oliver's immunities bar Plaintiff's claims in their entirety.

2.03 Answering further, if necessary, Officer Oliver would show that at all relevant times, he was engaged in discretionary functions and actions that did not violate clearly established statutory or constitutional rights of which a reasonable official would have known.

2.04 Answering further, if necessary, Officer Oliver denies that any of his actions or omissions were committed with malice, recklessness, deliberate indifference and/or conscious indifference to anyone's legal and/or constitutional rights.

2.05 Answering further, if necessary, Officer Oliver pleads that his actions were lawful and proper, and any alleged use of force was pursuant to reasonable suspicion and probable cause and was objectively reasonableness.

2.06 Answering further, if necessary, Officer Oliver pleads that during the incident giving rise to this suit, the occupants of the black car posed a threat of serious harm to Officer Gross, himself, and to others; any use of force by Officer Oliver was a reasonable response to a reasonable perception that the actions of the occupants of the black car under a totality of the circumstances created an immediate risk to another person of death or serious bodily injury, and such force by Oliver was not clearly excessive to the need presented.

2.07 Answering further, if necessary, none of Plaintiff's VA's or KE's Constitutional or statutory rights were violated by Officer Oliver.

2.08 Answering further, if necessary, Officer Oliver affirmatively asserts the protection, entitlements, limitations and exemptions from suit/liability/damage found in the Texas Tort Claims Act §§ 101.021, 101.0211, 101.022, 101.023, 101.024, 101.026, 101.056, 101.057, 101.060, 101.101, and 101.106 of the Texas Civil Practice and Remedies Code.

2.09 Answering further, if necessary, Officer Oliver affirmatively invokes the limitations on damages provided by Chapter 108.001, et seq. of the Texas Civil Practice & Remedies Code and Officer Oliver hereby expressly pleads those caps and limitations.

2.10 Answering further, if necessary, Officer Oliver asserts the comparative responsibility, joint & several liability, and contribution provisions of Chapter 33 of the Texas Civil Practice and Remedies Code, the contribution provisions of Chapter 32 of the Texas Civil Practice and Remedies Code, and the common law doctrine of comparative fault, as affirmative defenses to Plaintiff's claims against Wylie.

**I. FACTUALLY SPECIFIC ASSERTIONS OF IMMUNITY  
PURSUANT TO SCHULTEA AND MOTION FOR RULE 7(a) REPLY**

3.01 Pursuant to the procedure set forth in *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995) and *Backe v. LeBlanc*, 691 F.3d 645, 648-649 (5th Cir. 2012), citing *Lion Boulos v. Wilson*, 834 F.2d 504, 507-508 (5th Cir. 1987). *Zapata v. Melson*, 750 F.3d 481, 485 (5th Cir. 2014). Officer Oliver hereby sets forth some factually specific assertions in connection with his Official Immunity and/or Qualified Immunity Defenses. This procedure is also a procedure approved by the United States Supreme Court. *Crawford-EL v. Britton*, 523 U.S. 574, 597-598 (1998). In connection with this, Officer Oliver files a Motion seeking that the Court require Plaintiff to file a Reply pursuant to Federal Rule of Civil Procedure 7(a).

3.02 At all times relevant to the Plaintiff's claims, Officer Oliver was a public official, a Texas Commission on Law Enforcement Officer Standards and Education certified peace officer employed by the Balch Springs Police Department and wearing his official uniform.

3.03 At approximately 10:00 pm on Saturday, April 29, 2017, Balch Springs Police uniformed Officers, Tyler Gross ("Officer Gross") and Officer Oliver, were radio dispatched to investigate a building alarm in the 5400-5500 block of Peachtree Street, Balch Springs, Texas.

While investigating the alarm, the two officers were instructed to investigate a report of intoxicated juveniles on Baron Drive (there had been a confrontation with the son of an owner and one of the intoxicated juveniles). The dispatcher indicated that there were underage intoxicated persons in the street. After clearing the alarm call at about 10:20 pm, the two Officers drove their patrol cars to Baron Drive.

3.04 As the Officers approached the house located at 12304 Baron Drive where the party was going on, the Balch Springs Officers turned on their overhead lights and Officer Gross turned his siren on and off to alert the homes and party-goers of the Officers' presence. Since this area was in Officer Gross's beat, he was the Primary Officer, and Officer Oliver was the "Cover" or Supporting Officer.

3.05 This was a very large party with approximately 100 minor participants, cover charges, and cars parked on both sides of Baron Drive. Officer Gross and Officer Oliver parked their cars in the street and to the west of the home in question. The lights remained on and the Officers were in uniform. Both wore body cameras and they carried flashlights (only Police Officers had/used flashlights during the contact). The two responding Officers positioned themselves in front of the home in question and amicably directed the party-goers to disperse. After dozens of young people milling around and/or leaving the house/party, Officer Gross entered the house followed by Officer Oliver.

3.06 While in the residence, Officer Gross pleasantly contacted the inhabitants while Officer Oliver inspected the easily accessible and adjoining rooms to confirm the security/safety of the Officers and avoid secretion of evidence. The homeowner's son ("TR") was located and a conversation was begun. When multiple and rapid gunshots were fired (approximately 6-10)



outside the home, everyone, including the Officers and persons in the home, could plainly hear the gunshots.

3.07 Both Officers immediately exited the residence with weapons drawn (Gross then Oliver). Dozens of juveniles were running west towards the parked Patrol Cars. Officer Gross quickly maneuvered east with his weapon drawn and his flashlight on (scanning/searching the scene). Officer Oliver advised radio dispatch that multiple gunshots were fired. The shots appeared to have come from east of the home (maybe the intersection with Shepherd Lane and/or the Nursing Home on Shepherd Lane). According to a filing in this case, VA and KE separated from others in their car, and jumped a fence in order to reach their car more quickly.

3.08 Officer Gross quickly moved east down Baron. He used his flashlight to scan the pavement for shell casings and to direct/view/stop car occupants attempting a 3-point turn around in front of the home. The front passenger-side window was down, of this first car. The occupants could plainly hear the Officers command to stop (“stop right there”); but, the driver initially did not obey Gross’ order to stop. Through the open front passenger-side window, Gross illuminated the driver/passenger compartment with his flashlight.

3.09 After the several commands to stop, the first car stopped. Officer Gross continued east on Baron Drive. At approximately the same time, Officer Oliver ran to his patrol car (west of Officer Gross’ car) and retrieved his patrol rifle. Officer Oliver saw Officer Gross alone directing moving cars to stop, scanning the area, and moving east towards the perceived gunshot danger. In response, Oliver sprinted to cover Officer Gross from the perceived danger. Rifle at the ready/down.

3.10 Officer Gross saw a black sedan Impala backing away from the home and Officers. Gross in uniform, flashlight trained at the backing car (only the Officers had

flashlights), and weapon at the ready/down, yelled “Stop!” The Impala did not stop. Officer Gross radioed the license plate to dispatch, and he scanned the area/roadway quickly with his flashlight. He then trained the flashlight on the backing/unresponsive car and yelled again “Stop the car!”

3.11 Again, the operator of the car failed to stop. The operator continued backward without slowing/hesitating through a stop sign at the end of Baron Drive and onto Shepherd Lane. The car narrowly avoided a northbound suburban traveling on Shepherd Lane. Officer Gross raised his service weapon at the car and started to pursue the car in earnest. With his weapon drawn/ready and his flashlight trained on the backing car, Officer Gross shouted: “HEY! STOP THE F\_\_\_\_\_ CAR!”

3.12 Officer Oliver heard the command and the alarm in Officer Gross’ voice. Oliver sprinted towards the threatening/fleeing car and Gross. The car did not respond. It stopped only momentarily to shift gears forward; and then, it accelerated in the direction of the closing Officers. Officer Gross, raised and pointed his service weapon at the car, he continued to command the car to stop. He closed and shouted: “STOP THE F\_\_\_\_\_ CAR RIGHT NOW!” The suspect car is initially facing/traveling in a southwest direction and straddling the dividing line on Shepherd Lane. The Impala accelerates towards (and eventually passed) the Officers.

3.13 As the car encounters the closing Officer Gross, his weapon is pointed at the car. The car is within inches of Officer Gross. Officer Oliver is approximately 10’ to 15’ southwest of the car. Oliver is to the right/behind and southwest of Officer Gross. Oliver’s weapon is pointed at the car. Officer Oliver saw movement in the car (windows maybe tinted to avoid observation/identification). From his peripheral vision, Oliver sees Gross move his weapon towards the rear passenger-side window. Oliver hears violence/breaking glass at Gross’

location; and in fear for himself and others, Oliver fires his weapon into the car (3-5 shots) from approximately 10' to 15' feet and into the closed glass windows (too far to put gunshot residue on the occupants). The car was right beside the Officers when the shots were fired. JE was fatally wounded. The suspect car continued towards, by, and away from the Balch Springs Officers. The time from the first gunshots to Oliver's shots was less than a minute.

3.14 As the car fled passed, Oliver first/immediately asks for the safety of Officer Gross; and then, Oliver expresses his concerns for Gross' safety. The suspect car traveled south on Shepherd Lane for approximately two blocks. It turned west/right onto Bishop Drive. The car turned around and stopped (facing east/Shepherd Lane). The occupants admit that JE was injured and he needed medical attention. Still, the car stopped and the operator called his father and the twins ("ME/ME") called their mother. At this time, Oliver and his Counsel are not privy to the conversations as well as most of the Balch Springs Police Department Reports/Investigation/Internal Affairs, the Dallas County Sheriff's Investigation, and the Dallas County District Attorney's investigation (another Intervening Party in this Civil Proceeding). Balch Springs Officers have been instructed not to talk about the case with Officer Oliver and/or his Counsel. Thankfully, the Balch Springs body camera recordings were provided to Oliver Counsel in this proceeding.

3.15 Nevertheless, Officer Oliver understands that one or more of the car occupants has associated with, affiliated with, participated with, and/or been a member of a gang. Oliver understands that one or more of the car occupants handled a firearm on the evening in question. Oliver understands that one or more of the occupants fired a weapon on the day in question. Oliver understands that one or more of the occupants had gunshot residue on their person. Oliver understands that the back-seat occupants plead with the operator to obey Officer Gross'

commands and stop the car before the fatal shots were fired. Oliver understands that one or more of the occupants has indicated their car should have stopped before Gross/Oliver used force (as does VA).

3.16 Additionally, Oliver and his Counsel note the Edwards Plaintiffs' Original/Amended Complaints indicate that neither "Edwards nor anyone in the car had a gun in their hand...". (Docs. 1, 12, and 31). The documents do not explain away: 1) the potential gang involvement within the suspect car; 2) the presence of a gun in the suspect car; 3) the presence of gunshot residue on one or more of the occupants; 4) the need to disobey the back-seat occupants and Officer Gross; 5) the need to flee the gunshot scene; and, 6) the need to call parents instead of seeking immediate treatment for JE.

3.17 Based upon the failure of the driver to comply with Officer Gross's commands, the car gaining speed and moving towards Officer Gross, the front passenger making fast movements, and the sound of the original gunshots coming from that area, Officer Oliver perceived that Officer Gross was in imminent danger of serious bodily injury and/or death and that his (Oliver's) response was immediately necessary. Officer Oliver discharged his rifle multiple times. The car left the scene south on Shepherd Lane and then proceeded west to Bishop Drive.

3.18 Officer Oliver denies that he conspired with anyone to violate any person's rights. Oliver further contends that he did not subject Jordan Edwards or anyone else to an unconstitutional seizure or use of force on the evening of April 29, 2017, and asserts his entitlement to qualified and official immunity. Finally, there is no confirmation that Balch Springs Police Officers, and Officer Roy Oliver in particular, made/used any racially derogatory

statements/epithets during their various encounters with the Edwards Plaintiffs and others present that night.

3.19 In summary, and based upon the information described above in Paragraphs 3.03-3.17, Oliver's actions were objectively reasonable, and did not violate anyone's constitutional right to be free from the use of excessive force. Alternatively, a reasonable Police Officer could have believed that Officer Oliver's actions were lawful. Therefore, Officer Oliver was not plainly incompetent and did not knowingly violate the law, and is entitled to Qualified Immunity as to the Plaintiff's Constitutional claims.

3.20 The facts described above in Paragraphs 3.03 through 3.17 also establish that Officer Oliver acted in "good faith," as that term is used in Texas jurisprudence relating to the defense of Official Immunity, and that Officer Oliver is entitled to Official Immunity as to the Plaintiff's State Law Claims, if any.

#### IV. JURY DEMAND

4.01 Officer Oliver hereby demands trial by jury as to all matters asserted in the Complaint, or any amendments or supplements thereto, and all matters asserted in this Third Amended Answer, or any amendments or supplements thereto.

WHEREFORE, PREMISES CONSIDERED, Officer Oliver respectfully prays that Plaintiff take nothing by his claims and that Plaintiff's claims against Officer Oliver, in their entirety, be dismissed with prejudice, that this Honorable Court enter Judgment on behalf of Officer Oliver, and that Officer Oliver be awarded his costs of court, expenses, attorney's fees, and any and all relief to which he may show himself justly entitled.

Respectfully submitted,

**MCKAMIE KRUEGER, L.L.P.**



**WILLIAM W. KRUEGER, III**

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**ATTORNEYS FOR DEFENDANT**

**OFFICER ROY OLIVER**

**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2017, the foregoing pleading was filed with the clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of documents by electronic means.



**WILLIAM W. KRUEGER, III**