IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES *Plaintiffs* v. **SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN** *Defendants*	§ § § § § § § § § § § § § §	CIVIL ACTION NO. 1:19-CV-00389

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE COURT

Plaintiffs Ida Renae Nobles, Individually and as Heir to the ESTATE OF LANDON NOBLES, and Michelle Dashaun Smith as guardian of L.N., a Minor, and Kadeidra Bell as guardian of K.N., a Minor, file this lawsuit against Defendants Sergeant Richard Egal and Corporal Maxwell Johnson, In Their Individual Capacity and THE CITY OF AUSTIN and would show the Court and Jury the following in support thereof:

I. PARTIES

1. Plaintiff Ida Renae Nobles is a citizen of Texas and resides in Austin, Travis County, Texas and was the mother of Landon Nobles. She brings this claim in her individual capacity as a statutory wrongful death beneficiary and as an heir to the Estate of Landon Nobles pursuant to Texas Civil Practices and Remedies Code §§ 71. 002 *et. Seq.* and § 71.021.

2. Plaintiff K.N. is the minor child of Landon Nobles and is an heir at law to his Estate, and is a wrongful death beneficiary under Texas law. K.N. is a citizen of Texas and resides in Austin, Texas and bring this wrongful-death action pursuant to Texas Civil Practices and Remedies Code §§ 71. 002 *et. Seq.* and § 71.021, by and through his Guardian, Kadeidra Bell.

3. Plaintiff L.N. is the minor child of Landon Nobles and is an heir at law to his Estate, and is a wrongful death beneficiary under Texas law. L.N. is a citizen of Texas and resides in Austin, Texas and bring this wrongful-death action pursuant to Texas Civil Practices and Remedies Code §§ 71. 002 *et. Seq.* and § 71.021, by and through his Guardian, Michelle Dashaun Smith.

4. Defendant Sergeant Richard Egal is and was at all times relevant to this cause of action a duly appointed and acting officer of the Austin Police Department. He is being sued in his individual capacity and in his official capacity as an Austin Police Department Officer. Defendant Sergeant Richard Egal can be served at his place of business, Austin Police Department Headquarters, 715 E. 8th Street, Austin, Texas 78701. *Service is hereby requested at this time.*

5. Defendant Corporal Maxwell Johnson is and was at all times relevant to this cause of action a duly appointed and acting officer of the Austin Police Department. He is being sued in his individual capacity and in his official capacity as an Austin Police Department Officer. Defendant Corporal Maxwell Johnson can be served at his place of business, Austin Police Department Headquarters, 715 E. 8th Street, Austin, Texas 78701. *Service is hereby requested at this time.*

6. Defendant, the City of Austin is a municipal corporation located within the boundaries of the Austin Division of the Western District of Texas. Defendant City of Austin can be served through the City Manager, Spencer Cronk, at 301 West 2nd Street, 3rd Floor, Austin, Texas 78701.

II. JURISDICTION AND VENUE

7. As this case is brought pursuant to 42 U.S.C. §1983, this Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §1331.

8. This Court has general personal jurisdiction over Defendants Sergeant Richard Egal and Corporal Maxwell Johnson as they reside and/or work in Austin, Texas, and over the City of Austin because it is a Texas municipality, within the Western District of Texas.

9. This Court has specific *in personam* jurisdiction over Defendants because this case arises out of conduct which caused the death of Landon Nobles, which occurred in Austin, Travis County, Texas, within the Western District of Texas.

10. Venue of this cause is proper in the Western District pursuant to 28 U.S.C. §1391(b) because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in Austin, Texas, which is within the Western District of Texas.

III. FACTS

11. On or about May 7th, 2017, Landon Nobles, a twenty-four-year-old African-American Austinite, went to 6th Street in Austin to celebrate a birthday with his cousins Royie Nobles and Frankie Nobles. At approximately 2:30 am, Landon Nobles, Royie Nobles, and Frankie Nobles noticed a crowd of people gathered near the Jackalope and Moose Knuckle Pub in the 400 block of East Sixth Street and decided to observe the crowd. There was much jockeying and posturing as two people interacted as if "fixing to fight." A small crowd gathered around the fighters.

12. The crowd dispersed after a loud popping noise emanated from the crowd.

Landon Nobles walked away to the nearby intersection and then after a few minutes started walking briskly away from the corner of Sixth Street and Trinity Street toward 7th and Trinity

Street, when suddenly an unidentified Austin Police Officer threw a bike in front of Landon Nobles, which caused him to fall.

13. At no time did any officer of the Austin Police Department announce their presence or instruct Landon Nobles to stop.

14. As Landon Nobles attempted to regain his balance, he was subsequently shot in the back multiple times by Sergeant Richard Egal and Corporal Maxwell Johnson. According to several non-police witnesses, Landon Nobles was not displaying a gun and posed no danger to Sergeant Richard Egal, Corporal Maxwell Johnson, or anyone for that matter at the time of the shooting, or at any time at all. There is no evidence that Defendants Sergeant Richard Egal and Corporal Maxwell Johnson or any third party feared for their lives or the lives of anyone else at the time lethal force was used against Landon Nobles.

15. Landon was killed right there on the street and he was left to die in the gutter as he bled out from the gunshot wounds inflicted by Officers Egal and Maxwell Johnson who shot Landon in the back. Twenty minutes later, Landon Nobles was later rushed to Brackenridge Hospital by Austin-Travis EMS where he was pronounced dead at approximately 3:08 am on May 7th, 2017.

16. As a result of Sergeant Richard Egal and Corporal Maxwell Johnson's unreasonable and senseless use of deadly force, Landon Nobles died after suffered agonizing pain.

17. Based on media reports, Austin Police officers use deadly force against African- American suspects at a higher rate than white suspects, even though African- Americans comprise only 8% of Austin's population. Additionally, the Austin Police Department utilizes deadly force against unarmed individuals disproportionately when the victims are African-American.

IV. CLAIMS

A. 42 U.S.C. §1983: EXCESSIVE FORCE CLAIMS AGAINST DEFENDANTS SERGEANT RICHARD EGAL AND CORPORAL MAXWELL JOHNSON

18. Plaintiffs incorporate by reference all of the foregoing and further allege as follows:

19. Defendants, who were acting under color of law, shot Nobles multiple times in the back when he posed no threat of serious bodily injury or death to anyone. In fact, Landon Nobles was not known to be armed when Officers shot and killed him.

20. As a consequence, Defendants' unlawful use of deadly force against Landon Nobles was clearly excessive and was objectively unreasonable in light of established law, and directly caused his death. Therefore, Sergeant Richard Egal's and Corporal Maxwell Johnson's actions violated Landon Nobles's Fourth and Fourteenth Amendment rights to be free from use of excessive force and any unreasonable seizure of his person.

21. As a direct and proximate result of Defendants' actions, Landon Nobles suffered agonizingly before dying. Plaintiff Ida Renae Nobles lost her twenty-four year-old son and the anguish she feels and will feel for the rest of her life is truly horrific, it is unfathomable. Both L.N. and K.N. have suffered grave emotional damage and distress as a result of the untimely and unlawful killing of Landon Nobles. Plaintiffs are devastated beyond words.

B. 42 U.S.C. § 1983 CLAIMS AGAINST THE CITY OF AUSTIN

22. The acts and omissions of Defendants on the occasion in question were unlawful, unreasonable, unconscionable, deliberately indifferent, wanton and depraved, and were the proximate cause and the producing cause of the injuries, aggravation of injuries, damages, and

aggravation of damages, and ultimately caused the death of Plaintiff. Defendants are liable to Plaintiff under 42 U.S.C. § 1983 for violating Plaintiff's constitutional rights under the Fourth and Fourteenth Amendments and his federal rights under § 1981.

23. Sergeant Richard Egal's and Corporal Maxwell Johnson's actions were unlawful, excessive, inappropriate, and amount to depraved and wanton use of deadly force – in that Defendant Sergeant Egal intentionally assaulted Landon Nobles by throwing his APD issued bicycle at Landon Nobles, causing Landon to trip over the bicycle and stumble to the ground, and while Landon was recovering his footing after tripping over the bicycle, Defendant Sergeant Egal himself drew his service weapon and shot Landon several times in the back. Then seconds later, Defendant Corporal Maxwell Johnson ran up to Landon Nobles as he was falling down after being shot in the back by Defendant Egal, whereupon Defendant Maxwell Johnson then also without any provocation or good cause shot Landon Nobles in the back several times more.

24. The City of Austin is liable to Plaintiff under 42 U.S.C. § 1983 because the City's inadequate policies, inadequate training, inadequate hiring practices, and its established customs and/or practices constituted a deliberate indifference to the deprivation of constitutional rights of black and minority citizens in this case and in similar prior cases, and those customs and practices served as the moving force behind Sergeant Richard Egal's and Corporal Maxwell Johnson's use of excessive force against Plaintiff, who Defendants Sergeant Egal and Corporal Johnson each shot in the back without provocation. These inadequate policies, customs, and/or practices include:

a. An inadequate policy for preventing use of force violations by its police officers (de-escalation);

b. An inadequate training program for training its officers in the proper use of force and the proper use of deadly force;

c. An inadequate hiring policy in that it failed to screen out potential officers who presented a plainly obvious risk of committing use of force violations;

d. An inadequate disciplinary policy in that it failed to adequately punish officers who committed excessive use of force violations;

e. A deliberate indifference to the established unwritten custom, practice, or policy of racial targeting and racist motivations in its officers' uses of excessive force;

f. An inadequate training program for training its officers with respect to the rights of citizens to be free from racism in law enforcement and encounters with law enforcement officials;

g. An inadequate hiring policy in that it failed to screen out potential officers who presented a plainly obvious risk of abusing their position and taking unwarranted law enforcement actions against persons based on the race of the persons who were the subjects of those actions; and

h. An inadequate disciplinary policy in that it failed to adequately punish officers who violated the rights of persons to be free from racially-motivated law enforcement actions.

25. Chief of Police Brian Manley is the official policymaker for the Austin Police Department with regard to all policies relevant to the acts and omissions that resulted in the deprivation of Plaintiff's constitutional and federal rights. Chief Manley is appointed to the position of Chief by the Austin City Council.

26. The acts of omissions of the City were a proximate cause of Plaintiff's death.

V. DAMAGES

27. Defendants deprived Landon Nobles of his civil rights under the United States Constitution and under federal law. Moreover, these acts and omissions by Defendants, their agents, employees, and/or representatives, proximately caused and/or were the moving force behind the injuries and damages to Plaintiffs, and those same acts and/or omissions proximately caused and/or were the moving force behind the wrongful death of Landon Nobles. Accordingly, Plaintiffs Ida Renae Nobles, in her individual capacity and in her capacity as heir at law on behalf of the Estate of Landon Nobles, and Kadeidra Bell as Guardian of K.N., a Minor, and Michelle Dashaun Smith as Guardian of L.N., a Minor, assert claims under 42 U.S.C. §1983 and the Texas wrongful death and survivorship statutes.

28. Plaintiffs Ida Renae Nobles, Kadeidra Bell as Guardian of K.N., a Minor, and Michelle Dashaun Smith as Guardian of L.N., a Minor, in their capacities as statutory heirs asserting survival claims on behalf of Landon Nobles's Estate, have incurred damages including, but not limited to, the following:

- Physical pain and mental anguish suffered by Landon Nobles prior to his death; and
- Funeral and burial expenses.

29. Plaintiffs K.N. and L.N., Landon Nobles surviving minor children, asserting a wrongful death claim, have incurred damages including, but not limited to, the following:

- Past and future mental anguish; and
- Past and future loss of companionship, society, services, and affection with their father.

30. Plaintiff Ida Renae Nobles, in her individual capacity asserting wrongful death claims, has incurred damages including, but not limited to, the following:

- Past and future mental anguish; and
- Past and future loss of companionship, society, services, and affections with her son.

VI. EXEMPLARY DAMAGES

31. The conduct of Sergeant Richard Egal and Corporal Maxwell Johnson justifies an award of punitive and exemplary damages against Sergeant Richard Egal and Corporal Maxwell Johnson individually due to their extreme, outrageous, and unjustifiable conduct. Sergeant Richard Egal and Corporal Maxwell Johnson acted with malice and acted intentionally, recklessly, or with callous indifference to the unlawful deprivation of Plaintiff's constitutionally protected rights.

VII. ATTORNEY'S FEES

32. It was necessary for Mrs. Ida Renae Noble, Kadeidra Bell as Guardian of K.N. and Michelle Dashaun Smith as Guardian of L.N. to hire the services of the undersigned attorneys to represent them in this complex and difficult proceeding and attendant cause of action. The Plaintiffs hired the undersigned attorneys to represent them, and pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, they are entitled to recover their reasonable and necessary fees incurred for these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim. Plaintiffs are entitled to an award of attorney's fees and costs including, but not limited to, expert witness fees pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act when they prevail.

VIII. PRESERVATION OF EVIDENCE

33. Plaintiffs requests and demands that all Defendants in this case retain, preserve, and protect from loss, damage, discard, or destruction all physical, written or electronic items that are, or may be, evidence of the incident above described, which may form the basis of this

Complaint including, but not limited to video, recorded statements, photographs, e-mails, text messages, and personal or official notes made by any of the Officers or the City of Austin.

IX. JURY DEMAND

34. Pursuant to Federal Rule of Civil Procedure 48, Plaintiffs hereby request a jury trial.

X. PRAYER FOR RELIEF

35. Accordingly, Plaintiffs ask that judgment be awarded against Defendants for:

a. compensatory damages against all Defendants, jointly and severally,

b. punitive damages as to Sergeant Richard Egal and Corporal Maxwell Johnson.

c. attorneys' fees, including reasonable and necessary expenses such as expert fees, pursuant to 42 U.S.C. §1988,

d. costs of court;

e. judgement at the highest rate allowable under the law; and

f. all other relief to which Plaintiffs are justly entitled.

Respectfully submitted,

/s/ Edmund Davis
EDMUND DAVIS
LAW OFFICE OF EDMUND DAVIS

Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com
LEAD COUNSEL

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com

ATTORNEYS FOR PLAINTIFFS

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

IDA RENAE NOBLES individually, K.N., minor, by his guardian Kadeidra Bell, & L.N., minor by his guardian Michelle Dashaun Smith as heirs at law to the ESTATE OF LANDON NOBLES

(b) County of Residence of First Listed Plaintiff Travis County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Law Office of Edmund Davis, P.O. Box 201123, Austin, TX 78720, 512-698-2215; and Law Office of Charles Medearis, 710 W 14th Street, Suite C, Austin, TX 78701, 512-524-0814

DEFENDANTS

CITY OF AUSTIN, RICHARD EGAL, and MAXWELL JOHNSON

County of Residence of First Listed Defendant Travis County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. section 1983

Brief description of cause:
Police Brutality-Shooting of Man in the back when he posed no threat of serious bodily injury or death to anyone.

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE
04/05/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-LY**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN, **Defendants.**	§	

DEFENDANT CITY OF AUSTIN'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE LEE YEAKEL:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs' Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs' Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiffs, Defendant expressly denies that averment. [1]

I. PARTIES

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1 of the Complaint.

[1] Paragraph numbers in Defendant's Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

2. Upon information and belief, Defendant admits the allegations contained in Paragraph 2 of the Complaint.

3. Upon information and belief, Defendant admits the allegations contained in Paragraph 3 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 5 of the Complaint.

6. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

II. JURISDICTION AND VENUE

7. Defendant admits the allegations contained in Paragraph 7 of the Complaint.

8. Defendant admits the allegations contained in Paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Defendant admits the allegations contained in Paragraph 10 of the Complaint.

III. FACTS

11. Defendant is without sufficient knowledge or information to form a belief about the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies same.

12. Defendant denies the allegations contained in Paragraph 12 of the Complaint.

13. Defendant denies the allegations contained in Paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of the Complaint.

15. Defendant denies the allegations contained in Paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in Paragraph 16 of the Complaint.

17. Defendant denies the allegations contained in Paragraph 17 of the Complaint.

IV. CLAIMS

A. 42 U.S.C. §1983: Excessive Force Claims Against Defendants Sergeant Richard Egal and Corporal Maxwell Johnson

18. Defendant incorporates its responses to the allegations contained in the previous paragraphs of the Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Complaint.

21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

B. 42 U.S.C. §1983 Claims Against the City of Austin

22. Defendant denies the allegations contained in Paragraph 22 of the Complaint.

23. Defendant denies the allegations contained in Paragraph 23 of the Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of the Complaint.

a. Defendant denies the allegations contained in Paragraph 24(a) of the Complaint.

b. Defendant denies the allegations contained in Paragraph 24(b) of the Complaint.

c. Defendant denies the allegations contained in Paragraph 24(c) of the Complaint.

d. Defendant denies the allegations contained in Paragraph 24(d) of the Complaint.

e. Defendant denies the allegations contained in Paragraph 24(e) of the Complaint.

f. Defendant denies the allegations contained in Paragraph 24(f) of the Complaint.

g. Defendant denies the allegations contained in Paragraph 24(g) of the Complaint.

h. Defendant denies the allegations contained in Paragraph 24(h) of the Complaint.

25. Defendant admits that Chief of Police Brian Manley is the official policymaker for the Austin Police Department. Defendant denies the remaining allegations contained in Paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in Paragraph 26 of the Complaint.

V. DAMAGES

27. Defendant denies the allegations contained in Paragraph 27 of the Complaint.

28. Defendant denies the allegations contained in Paragraph 28 of the Complaint.

29. Defendant denies the allegations contained in Paragraph 29 of the Complaint.

30. Defendant denies the allegations contained in Paragraph 30 of the Complaint.

VI. EXEMPLARY DAMAGES

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

VII. ATTORNEY'S FEES

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.

VIII. PRESERVATION OF EVIDENCE

33. Defendant will comply with applicable Federal Rules of Civil Procedure and Federal Rules of Evidence with regard to preservation of evidence.

IX. JURY DEMAND

34. Defendant admits the allegations contained in Paragraph 34 of the Complaint.

X. PLAINTIFFS' PRAYER FOR RELIEF

35. Defendant denies the allegations contained in Paragraph 35 of the Complaint and specifically denies that the Plaintiffs are entitled to any relief whatsoever of and from the Defendant.

AFFIRMATIVE DEFENSES

1. Defendant asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant asserts the affirmative defense of governmental immunity, in that its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3 Defendant denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983 as it is a political subdivision.

4. Defendant asserts the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any.

5. Defendant asserts the affirmative defense that Plaintiffs failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.

6. Defendant asserts the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by Landon Nobles's contributory negligence. Landon Nobles, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.

7. Defendant affirmatively pleads that the Plaintiffs' claims are barred in whole or in part since Landon Nobles's intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.

8. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiffs be denied, and that the Court dismiss the Plaintiffs' claims with prejudice and award Defendant its costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin – Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

I certify that on the 3rd day of May, 2019, I served a copy of *Defendant's Answer and Affirmative Defenses to Plaintiffs' Complaint* on Plaintiffs, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-LY**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN,	§	
Defendants.	§	

DEFENDANT OFFICERS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE LEE YEAKEL:

Defendants Sergeant Richard Egal and Corporal Maxwell Johnson file this Answer and Affirmative Defenses to Plaintiffs' Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants respond to each of the specific averments in Plaintiffs' Complaint as set forth below. To the extent that Defendants do not address a specific averment made by Plaintiffs, Defendants expressly deny that averment. [1]

[1] Paragraph numbers in Defendants' Answer correspond to the paragraphs in Plaintiffs' Original Complaint.

I. PARTIES

1. Upon information and belief, Defendants admit the allegations contained in Paragraph 1 of the Complaint.

2. Upon information and belief, Defendants admit the allegations contained in Paragraph 2 of the Complaint.

3. Upon information and belief, Defendants admit the allegations contained in Paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.

II. JURISDICTION AND VENUE

7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

8. Defendants admit the allegations contained in Paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint.

10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

III. FACTS

11. Defendants are without sufficient knowledge or information to form a belief about the truth of the allegations contained in Paragraph 11 of the Complaint and therefore deny same.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. Defendants deny the allegations contained in Paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

IV. CLAIMS

A. 42 U.S.C. §1983: Excessive Force Claims Against Defendants Sergeant Richard Egal and Corporal Maxwell Johnson

18. Defendants incorporate their responses to the allegations contained in the previous paragraphs of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

B. 42 U.S.C. §1983 Claims Against the City of Austin

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

a. Defendants deny the allegations contained in Paragraph 24(a) of the Complaint.

b. Defendants deny the allegations contained in Paragraph 24(b) of the Complaint.

c. Defendants deny the allegations contained in Paragraph 24(c) of the Complaint.

d. Defendants deny the allegations contained in Paragraph 24(d) of the Complaint.

e. Defendants deny the allegations contained in Paragraph 24(e) of the Complaint.

f. Defendants deny the allegations contained in Paragraph 24(f) of the Complaint.

g. Defendants deny the allegations contained in Paragraph 24(g) of the Complaint.

h. Defendants deny the allegations contained in Paragraph 24(h) of the Complaint.

25. Defendants admit that Chief of Police Brian Manley is the official policymaker for the Austin Police Department. Defendants deny the remaining allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

V. DAMAGES

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

VI. EXEMPLARY DAMAGES

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

VII. ATTORNEY'S FEES

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

VIII. PRESERVATION OF EVIDENCE

33. Defendants will comply with applicable Federal Rules of Civil Procedure and Federal Rules of Evidence with regard to preservation of evidence.

IX. JURY DEMAND

34. Defendants admit the allegations contained in Paragraph 34 of the Complaint.

X. PLAINTIFFS' PRAYER FOR RELIEF

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint and specifically deny that the Plaintiffs are entitled to any relief whatsoever of and from the Defendants.

AFFIRMATIVE DEFENSES

1. Defendants assert the affirmative defense of qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

2. Defendants assert the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any.

3. Defendants assert the affirmative defense that Plaintiffs failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.

4. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by Landon Nobles's contributory negligence. Landon Nobles, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.

5. Defendants affirmatively plead that the Plaintiffs' claims are barred in whole or in part since Landon Nobles's intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.

6. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANTS' PRAYER

Defendants Sergeant Richard Egal and Corporal Maxwell Johnson pray that all relief requested by Plaintiffs be denied, and that the Court dismiss the Plaintiffs' claims with prejudice and award Defendants their costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin – Law Department
P. O. Box 1546
Austin, Texas 78767-1546

Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS SERGEANT RICHARD EGAL AND CORPORAL MAXWELL JOHNSON

CERTIFICATE OF SERVICE

I certify that on the 3rd day of May, 2019, I served a copy of *Defendant Officers' Answer and Affirmative Defenses to Plaintiffs' Complaint* on Plaintiffs, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:
Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

/s/ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES **Plaintiffs,**	§	**CIVIL ACTION NO. 1:19-cv-00389-LY**
v.	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN **Defendants.**	§	

DEFENDANT CITY OF AUSTIN'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE LEE YEAKEL, UNITED STATES DISTRICT JUDGE:

Defendant the City of Austin, Texas files this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure as follows:

I. INTRODUCTION

Plaintiffs Ida Renae Nobles, K.N., Minor, by and through his guardian Kadeidra Bell, and L.N., Minor, by and through his guardian Michelle Dashaun Smith, as Heirs to the Estate of Landon Nobles, bring a §1983 claim for excessive force against Sergeant Richard Egal and Corporal Maxwell Johnson and a §1983 *Monell* claim against the City of Austin as a result of the death of Landon Nobles. Landon Nobles died from injuries he received when he was shot by Egal and Johnson after Nobles pointed a gun in the direction of Austin Police Department officers. The City denies the Plaintiffs' claims and maintains that Plaintiffs cannot meet their considerable evidentiary burden to establish liability against the City under 42 U.S.C. §1983.

It is undisputed that the City provides extensive training to its officers (which far exceeds state minimums) and specific training—both in practical application and in the law—on the use of force. With respect to Plaintiffs' claim that the City failed to supervise Sergeant Egal and Corporal Johnson, the undisputed evidence shows that the City has comprehensive policies and procedures in place to ensure that all uses of force are investigated, and that officers are disciplined when appropriate and that the Austin Police Department followed these policies and procedures. Moreover, Plaintiffs cannot show that any failure to train, discipline, or supervise was the "moving force" behind Nobles's injury. Additionally, Plaintiffs' claim that the City violated Nobles's constitutional rights fails because the evidence shows that the City subjected Egal and Johnson to a vigorous pre-hiring review which did not turn up any evidence that they posed a significant risk of engaging in excessive force.

II. SUMMARY JUDGMENT EVIDENCE

Exhibit 1	Affidavit of Maxwell Johnson
Exhibit 2	Affidavit of Richard Egal
Exhibit 3	Affidavit of Brian Manley
Exhibit 4	Affidavit of Mark Spangler

III. FACTS

This lawsuit arises out of an officer-involved shooting which occurred on May 7, 2017 on Trinity Street in Austin, Texas. Corporal Maxwell Johnson was one of a group of Austin Police Department officers who responded to a report of a shot fired near a bar on Sixth Street in downtown Austin. As the group of officers walked eastbound on Sixth Street, the officers saw a man, later identified as Landon Nobles, who matched the description of the person who fired the shot. (Ex. 1, Affidavit of Johnson, pp. COA2758-2761) As the officers approached Nobles, he ran north on Trinity Street away from the officers.

As the officers chased Nobles northbound on Trinity Street, Sergeant Richard Egal, who heard the reports of a shot fired and who was on his patrol bike on Trinity Street, saw Nobles running north on Trinity Street. (Ex. 2, Affidavit of Egal, p. COA2822) In an effort to stop Nobles, Egal rolled his bike into the path of Nobles, causing Nobles to stumble. (Ex. 2, p. COA2822) When Nobles stumbled, Egal heard a "strange clanking sound" come from Nobles's location and Egal saw that Nobles had a handgun. (Ex. 2, pp. COA2822-2823) Nobles then continued to run north on Trinity. Johnson then saw Nobles turn toward the officers with a handgun in his right hand and swing the gun in the officers' direction, and Egal saw Nobles turn in the officers' direction. (Ex. 1, pp. COA2762-2763; Ex. 2, pp. COA2823; 2832) Johnson also saw the muzzle flash from Nobles's gun. (Ex. 1, p. COA2763) In response, Egal and Johnson fired their service pistols at Nobles and struck him three times. Nobles later died from the gunshot wounds.

The City of Austin's Police Department (APD) maintains extensive and detailed policies and procedures regarding the use of force (including deadly force), forbidding the use of excessive force, and requiring close investigation of all incidents involving police officer use of force. (Exhibit 3, Affidavit of Manley, ¶¶ 8-11, Attachment 1). APD's highest level of scrutiny applies whenever an officer discharges his firearm at a suspect. *Id.* APD also disciplines officers determined to have used excessive force, and regularly reviews whether officers show a pattern of using force that calls for closer scrutiny. *Id.* at ¶¶ 13-15; 20. These policies and procedures were followed in this incident.

In addition, APD has rigorous hiring standards and carefully screens its potential employees to determine that they do not pose any unusual risk of using excessive force. *Id.* at ¶ 4. APD also trains all of its cadets and officers on all facets of police work, including the use of force,

proper search and seizure, and mental health. (Ex. 4, Affidavit of Spangler). APD's training requirements far exceed the minimum standards required by the state. *Id.*

All of APD's policies and procedures were followed with respect to the hiring, screening, and training of Sergeant Egal and Corporal Johnson. (Ex. 3, Affidavit of Manley; Ex. 4, Affidavit of Spangler). Moreover, APD closely investigated this incident, and that investigation revealed that Egal and Johnson did not violate any APD policies or criminal laws. (Ex. 3, Affidavit of Manley, ¶¶ 18-19).

A. Use of Force Policies and Investigation

At all times relevant to this incident, APD had extensive and detailed policies in place regarding the use of force, forbidding the use of excessive force, and outlining the procedures for investigating all incidents in which an officer used force on a citizen. (Ex. 3, Affidavit of Manley, ¶¶ 8-11, Attachment 1). APD officers are required to report any use of force to a supervisor. APD investigates every reported use of force by one of its officers. *Id.* at ¶ 9.

APD initially tailors investigations for use of force incidents depending on the level of force used. APD applies its highest level of scrutiny for any incident categorized as Level 1 (which includes use of a firearm). *Id.* at ¶¶ 9-11. For any Level 1 use of force, the APD's special investigations unit (SIU) conducts a complete criminal investigation of the incident, secures and gathers evidence, and works with prosecutors to present the evidence to a grand jury. *Id.* at ¶ 11. SIU has all of APD's resources at its disposal—including crime scene personnel, DNA testing, drug testing, and firearms testing. *Id.* At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the determination whether to present cases involving an APD police officer's use of a firearm to a grand jury to consider whether to indict. *Id.*

Concurrent with the SIU criminal investigation, APD's Internal Affairs Division (IAD) conducts its own review to determine whether the officer violated any APD policies (regarding the use of force or other policies). *Id.* at ¶ 12. IAD has complete access to the evidence gathered by SIU. *Id.* IAD investigators may also compel officers to give statements regarding their actions. *Id.* IAD may also take its own investigatory steps. *Id.* Ultimately, IAD presents its evidence to the involved officer's chain-of-command, including the chief of police. *Id.* at ¶ 13. The chief of police makes the final decision whether to discipline the officer. *Id.* According to APD's Discipline Matrix, any officer who uses deadly force in violation of APD policy will be terminated from his employment. *Id.* at ¶ 14, Attachment 4. APD has terminated officers who violated APD policies regarding use of force in officer-involved shootings. *Id.* at ¶ 14.

In this case, APD SIU and IAD conducted investigations into the incident. *See* Exhibit 1, ¶¶ 18-19. The Travis County District Attorney made the decision not to present this incident to the grand jury, and the Chief of Police found that Egal and Johnson did not violate any APD policies. *Id.*

B. APD Hiring

APD has a rigorous and thorough hiring process to ensure that its cadets and potential police officers are honest, professional, and possess the appropriate temperament to be APD police officers. In particular, all successful applicants to APD's police academy must fill out a detailed application, undergo a comprehensive background check, pass a cognitive exam, pass an oral interview, pass a polygraph test, undergo a psychological examination, pass a physical, and pass a physical fitness test. *See* Exhibit 3, ¶ 4. APD will not hire any applicants whose background or psychological evaluation indicates that they pose a higher than normal risk of using excessive force, or that they are otherwise unfit for law enforcement work. *Id.*

C. APD Training

APD has policies and procedures in place requiring all officers to be appropriately and robustly trained for their positions. In particular, every APD officer must be licensed by the Texas Commission on Law Enforcement (TCOLE). (Ex. 4, Affidavit of Spangler). Furthermore, before becoming an officer, every APD cadet receives considerably more than the minimum amount of training required by TCOLE. *Id.* Before becoming full-time officers, every APD officer must successfully complete an eight-month course of instruction at the APD training academy. *Id.* In addition to a wide range of other policing topics, APD cadets receive both practical and classroom instruction on use of force. *Id.* APD cadets receive considerably more training in use of force than the 24 hours required by TCOLE. *Id.* This classroom training includes instruction on the standards for use of force espoused by the Supreme Court in *Graham v. Connor*, and *Tennessee v. Garner*. *Id.* Additionally, APD command staff critically reviews each incident involving an officer-involved shooting for issues related to training, policies and tactics and evaluates the need for any changes in training, policies and tactics. *Id.*

APD officers and cadets also receive considerable training on interacting with the public. In general, APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public and receive considerable mental health training. (Ex. 4, Affidavit of Spangler).

Sergeant Egal and Corporal Johnson successfully completed the course of instruction at the APD training academy before becoming full time APD officers. (Ex. 4, Affidavit of Spangler). At the academy, they received instruction in use of force, search and seizure, communicating effectively with the public, and the entire range of other core police skills. *Id.* They received many hours of instruction in excess of the TCOLE minimum requirements. *Id.* They have been licensed

as peace officers for their entire career as full-time APD police officers. *Id.* They have also fulfilled the continuing education requirements called for by TCOLE. *Id.*

D. APD Officer Discipline

APD has numerous policies and procedures to ensure that officers accused of wrongdoing are properly investigated and, if appropriate, disciplined. (Ex. 3, Affidavit of Manley, ¶ 7). APD has a set of policies that all officers must obey. *Id.* Officers are provided with a copy of APD policies. APD policies govern all forms of officer conduct, from appropriate arrest procedures to appropriate use of force. *Id.* The APD Chief of Police is responsible for making policy within APD and for disciplining officers. *Id.* at ¶ 3.

As described above, every APD officer involved in a use of force incident must report it to his or her supervisors. *Id.* at ¶ 9, Attachment 1. APD supervisors, internal affairs, or the APD's Special Investigations Unit conducts a review of every reported use of force. *Id.* at ¶ 9.

In cases involving an officer's use of a firearm, the chief of police will closely review the results of the internal investigation and make a decision whether the officer violated policy. *Id.* at ¶ 13. If the chief believes that an officer has violated APD general orders, he may discipline that officer with an oral reprimand, written reprimand, unpaid suspension, or terminate the officer's employment. *Id.* at ¶ 14. At the time of this incident, APD general orders included a disciplinary matrix. Under the matrix, if the chief finds that an officer used excessive or unreasonable deadly force, the officer will be terminated. *Id.* at Attachment 4.

APD also proactively screens its officers to identify those that may, among other things, pose a higher than normal risk of using excessive force. Specifically, it uses algorithms that will notify an officer's supervisors if the officer is the subject of a high number of citizen complaints

or has more frequent than expected uses of force. Supervisors must re-review each use of force or complaint to determine if the officer poses any unusual risk. *Id.* at ¶ 20.

APD's disciplinary process also has substantial citizen oversight. In February 2002, the City of Austin created the Citizens Review Panel and the Office of the Police Monitor to exercise independent, citizen oversight of APD internal affairs investigations. At the time of this incident, the Office of the Police Monitor and the Citizens' Review Panel received citizen complaints, reviewed internal affairs files, reviewed APD policies and procedures, and made recommendations to the Chief of Police regarding discipline, policies, and procedures. The Office of the Police Monitor staff were also permitted to sit in on Internal Affairs interviews.

STANDARD OF REVIEW

Summary judgment is proper against a party who bears the ultimate burden of proof and fails to establish the existence of an element essential to its case by raising an issue of material fact. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The moving party satisfies its burden by "pointing out to the district court . . . that there is an absence of evidence to support the non-moving party's case." *Id.* at 326. The plaintiff may not rest on allegations in pleadings, but must produce competent, tangible evidence to survive summary judgment. *Id.* at 325. Moreover, "conclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the non-movant's burden." *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996).

IV. ARGUMENT & AUTHORITIES

A. Claims against Municipalities under 42 U.S.C. §1983

The general contours of municipal liability for the conduct of its employees under 42 U.S.C. §1983 are well-defined in the Fifth Circuit. A city may not be held liable if the court finds

that the plaintiff's constitutional rights were not violated. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Mace v. City of Palestine*, 333 F.3d 621, 625 (5th Cir. 2003). Even if a city employee or police officer violated a plaintiff's constitutional rights, a city may not be found liable under §1983 under a theory of *respondeat superior*. *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978); *Johnson v. Deep East Texas Regional Narcotics Trafficking Task Force*, 379 F.3d 293, 308 (5th Cir. 2004). Cities are almost never liable under §1983 for the isolated actions of their employees, and they can only be held liable for acts that are directly attributable to it "through some official action or imprimatur." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001).

To establish municipal liability under §1983, a plaintiff must show: (1) an official policy (2) promulgated by the municipal policy maker (3) which was the moving force behind the violation of a constitutional right. *Id.* A policy or custom is official only "when it results from the decision or acquiescence of the municipal officer or body with final policymaking authority over the subject of the offending policy." *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 737 (1989); *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 847 (5th Cir. 2009). To establish the "moving force" element, a plaintiff must show a direct causal link between the policy and the constitutional violation. *Piotrowski*, 237 F.3d at 580; *Peterson*, 588 F.3d at 848.

Where a plaintiff alleges that his injury resulted from the lack of an appropriate policy, instead of from a facially unconstitutional policy, a plaintiff must establish municipal liability by showing that the city's failure to adopt a policy needed to circumvent predictable violations of federal law amounted to deliberate indifference. *James v. Harris County*, 577 F.3d 612, 617 (5th Cir. 2009); *see also City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989) (discussing city liability for lack of training); *Piotrowski*, 237 F.3d at 579-80 (municipal liability for lack of supervision).

To show "moving force" causation based on a municipality's alleged failure to train, supervise, investigate, or otherwise adopt appropriate hiring or retention policies, a plaintiff must show that the decision not to adopt appropriate policies or procedures amounts to deliberate indifference. *Valle v. City of Houston*, 613 F.3d 536, 542 (5th Cir. 2010). In other words, "the plaintiff must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision. Deliberate indifference is a high standard—a showing of simple or even heightened negligence will not suffice." *Id.* (internal quotes and citations omitted).

The Fifth Circuit has emphasized the need for *Monell* plaintiffs to establish both the causal link ("moving force") and a city's degree of culpability ("deliberate indifference" to federally protected rights.) *Snyder v. Trepagnier,* 142 F.3d 791, 796 (5th Cir. 1998); *Piotrowski,* 237 F.3d at 580. "These requirements must not be diluted, for "[w]here a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability." *Snyder,* 142 F.3d at 796.

B. Plaintiffs' §1983 claim against the City should be dismissed.

Plaintiffs contend that the City is liable "because the City's inadequate policies, inadequate training, inadequate hiring practices, and its established customs and/or practices constituted a deliberate indifference to the deprivation of constitutional rights of black and minority citizens in this case and in similar prior cases, and those customs and practices served as the moving force behind Sergeant Richard Egal's and Corporal Maxwell Johnson's use of excessive force against Plaintiff…" (Doc. 1, ¶ 24). The bulk of the Plaintiffs' claims against the City involves the failure to properly train officers. *Id.* Plaintiffs allege that the City's training and policy failures were the proximate cause of Nobles's injuries. *Id.*

Plaintiffs have not produced sufficient evidence to raise an issue of material fact to demonstrate that: (1) the City is liable for failing to train APD officers or (2) the City is liable for failing to adequately supervise or discipline APD officers.

1. The Plaintiffs' Inadequate Training Claims should be Dismissed.

"A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick v. Thompson*, __ U.S. __, 131 S. Ct. 1350, 1359 (2011). For a plaintiff to prevail on a failure to train claim, he must allege with specificity how a city's training program is inadequate. *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005). A plaintiff seeking to recover on a theory of failure to train must prove that: "(1) [the city's] training policy or procedures were inadequate, (2) [the city] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the plaintiff's injury]." *Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010).

To show deliberate indifference in the context of a failure to train allegation, a plaintiff may pursue two paths. *Kitchen v. Dallas Cty., Tex.*, 759 F.3d 468, 484 (5th Cir. 2014). The first, and more common path, involves proving that the city had notice of a pattern of prior violations which involved events similar to what transpired when the plaintiff's rights were allegedly violated. *Id.*, *citing Sanders-Burns*, 594 F.3d at 381. Alternatively, a plaintiff can show, based on a single-incident alone, that "in light of the duties assigned to specific officers or employees, the need for more or different training is obvious, and the inadequacy so likely to result in violations of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Sanders-Burns*, 594 F.3d at 381, *quoting Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 386 (5th Cir. 2005). This "single-incident" path is "difficult, although not impossible," for plaintiffs to successfully follow. *Id.* This

is because it is not sufficient for a plaintiff to show that additional training may have avoided the injury, but a plaintiff (following either path) must show that the training was so inadequate that it would pose a "patently obvious risk of recurring constitutional violations." *Kitchen*, 759 F.3d at 485.

As part of their failure to train claim, Plaintiffs contend that the City failed to properly train its officers in the proper use of force and deadly force and failed to properly train its officers on the rights of citizens to be free from racism in law enforcement. (Doc. 1, ¶ 24). Plaintiffs provide no specific factual details as to how they claim the City's training of its officers is constitutionally inadequate.

In this case, Plaintiffs have no evidence to support their inadequate training claim. APD provides comprehensive training to its cadets and police officers. (Ex. 4, Affidavit of Spangler). In fact, APD provides training that actually exceeds what is required by TCOLE. (Ex. 4, Affidavit of Spangler;); *see Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010) (finding that compliance with state training minimums "counsels against" finding a failure to train). In particular, APD provides vastly more training on police use of force than what is required by the state. (Ex. 4, Affidavit of Spangler). This training includes hours of classroom instruction and numerous practical exercises. (Ex. 4, Affidavit of Spangler). Accordingly, Plaintiffs cannot show that the City was deliberately indifferent to the need for more or different training.

The weakness of the Plaintiffs' training claim is demonstrated by the fact that they fail to identify any specific training deficiencies on the part of the City other than bare allegations that the City failed to provide adequate training on the use of force and racism. (Doc. 1, ¶ 24). Plaintiffs have identified no specific failure of the City's training policies. They also have not produced evidence why different training procedures should have been obvious to the City. At its essence,

Plaintiffs' training claim against the City is little more than bare assertions, unsupported by the type of detailed allegations and evidence that are mandated by cases like *Monell* and *Connick*. Accordingly, Plaintiffs' failure to train claim should be dismissed.

2. Plaintiffs Have Not Established a Policy or Practice of Inadequate Supervision, Discipline, and Investigation

Plaintiffs cannot establish that the City has a policy or practice of failing to supervise and discipline its officers or failing to adequately investigate the use of force by its officers. These claims are analyzed under virtually the same stringent, deliberate indifference standard as the failure to train claim. *See Porter v. Epps*, 659 F.3d 440, 446-47 (5th Cir. 2011) (requiring a plaintiff to prove deliberate indifference for failure to promulgate policy, train, and supervise claims); *Gros v. City of Grand Prairie, Texas*, 34 Fed. Appx. 150 *6 (5th Cir. 2002) (per curiam) (requiring a plaintiff to prove deliberate indifference for hiring, training, and supervision claims); and *Barrios-Barrios v. Clipps*, 825 F.Supp.2d 730, 744 (E.D. La. 2011) (citing *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410-11 (1997) (analyzing hiring, training, and supervision claims under a deliberate indifference standard). A showing of even heightened negligence does not suffice to demonstrate deliberate indifference. *Brown*, 520 U.S. at 407.

To prove deliberate indifference in the context of hiring or retention claims, a plaintiff must show that the policy maker hired or retained an individual knowing that the person posed an obvious risk of committing constitutionally unlawful excessive force. *Brown*, 420 U.S. at 412; *see also Estate of Davis*, 406 F.3d at 382-85 (holding that there was no deliberate indifference even though the city knew that the officer had inappropriately fired a weapon, had a propensity for violence, and received several citizen complaints about the officer); *Snyder v. Trepagnier*, 142 F.3d 791, 198 (5th Cir. 1998) (finding no deliberate indifference even though the plaintiff

introduced evidence showing that the officer was stressed, had a quick temper, and had exhibited aggressive behavior).

To prove deliberate indifference in the context of a claim that a city failed to supervise or discipline a police officer accused of excessive force, a plaintiff must identify the individual supervisor who failed to supervise or discipline and demonstrate that the supervisor had subjective knowledge that the police officer posed a serious risk to cause harm by using excessive force. *James v. Harris Cty.*, 508 F.Supp.2d 535, 551-52 (S.D. Tex. 2011). In essence, for all of these types of claims, a plaintiff must prove (usually through demonstrating a pattern of prior similar violations) that the risk of the officer using excessive force was obvious to policymakers. *Id.*

In this case, Plaintiffs again only make a bare allegation that the City did not properly screen, discipline, supervise or take other reasonable steps to supervise officers who presented an obvious risk of using excessive force. (Doc. 1, ¶ 24). Simply put, Plaintiffs have produced no evidence that Sergeant Egal and Corporal Johnson were inadequately supervised on the date of this incident and that any alleged failure to supervise was done so with deliberate indifference to the risk of a constitutional violation.

Similarly, Plaintiffs cannot point to any evidence to show that the City had any indication before the date of this incident that these officers posed an obvious risk of using excessive force or unreasonable deadly force. It is undisputed that the officers passed an extensive background check prior to hiring, and successfully completed the training academy. Moreover, the undisputed evidence shows that APD had a program in place to screen officers based on uses of force, citizen complaints, and other criteria. (Ex. 3, Affidavit of Manley). Simply put, there is no evidence that Egal and Johnson posed any unusual risk of using excessive force. As a result, Plaintiffs' inadequate supervision and discipline claims are without merit and should be dismissed.

3. Plaintiffs have not established a policy or practice of using excessive deadly force

Plaintiffs allege that the City of Austin had an inadequate policy for preventing use of force violations by its police officers. (Doc. 1, ¶ 24). This allegation is not supported by the evidence. It is undisputed that APD had policies in place forbidding excessive force. These policies, in considerable detail, discussed the standards for the application of both lethal and non-lethal force. (Ex. 3, Affidavit of Manley, ¶¶ 8-11, Attachment 1). Plaintiffs do not make any specific allegations about how APD's use of force policies are deficient. To prove their claim, Plaintiffs must establish that there is some pattern in the use of excessive force that demonstrates that the City had an unwritten policy permissive of excessive force. *Peterson*, 588 F.3d at 850. Simply put, Plaintiffs have produced no evidence to support these allegations.

Plaintiffs also have not established any pattern that could constitute official policy. A pattern amounts to an official policy "when it is so common and well-settled as to constitute a custom that fairly represents municipal policy." *Peterson*, 588 F.3d at 850 (internal quotes and citations omitted). To establish that prior incidents constitute a pattern, a plaintiff must show that the incidents have occurred for so long or with such frequency that policymakers must know that the improper conduct is the ordinary and accepted practice of the municipal employees. *Id.* A pattern will not be established based on isolated incidents. Instead, the pattern must be composed of incidents that are numerous and similar to the specific violation alleged. *Id.* at 850-851. To meet these criteria, a plaintiff must place the prior incidents in context. For instance, the mere existence of 27 complaints of excessive force over a four-year period does not show a pattern of allowing excessive force when the city has a large police force that makes thousands of arrests per year. *Id.* at 851. Here, Plaintiffs have produced no evidence of any prior similar incidents in which deadly force was used sufficient to constitute any policy or practice.

The undisputed evidence is that APD has enforced its policies. APD policy requires the reporting and investigation of every use of force. (Ex. 3, Affidavit of Manley). Deadly force incidents receive APD's closest scrutiny. *Id.* The punishment for using inappropriate deadly force is termination. *Id.* Plaintiffs have no evidence that this investigation does not occur or that officers are not disciplined for violating the policies. *See Peterson*, 588 F.3d at 852 (finding that the city investigated every excessive force complaint cuts against the allegation that the city condoned excessive force).

In sum, Plaintiffs have no evidence to demonstrate a pattern of prior incidents that are sufficiently numerous and similar to this incident to show that the City tolerates the use of excessive force by its officers or that it has a practice of employing excessive force. Furthermore, because APD investigates and routinely disciplines officers who use excessive force, Plaintiffs cannot prove that any alleged policy permissive of excessive force was the moving force behind the alleged violations in this case. *See James v. Harris Cty.*, 577 F.3d 612, 618-19 (finding that alleged policies of lax investigation and discipline in officer-involved shootings could not have been the moving force behind the violations because the officer did not have any knowledge of such policies).

Plaintiffs have produced no evidence that Egal's and Johnson's use of force was based on a policy or practice of APD. Instead, the evidence reveals that Egal and Johnson made the decision to use force on Nobles based only on the imminent threat of serious bodily injury or death presented by Nobles's actions. Accordingly, Plaintiffs' §1983 claim against the City should be dismissed.

4. Plaintiffs have not established a policy or practice of using excessive deadly force or discriminating against minority suspects by using unwarranted deadly force

Plaintiffs allege that the City of Austin's customs and practices constituted a deliberate indifference to the deprivation of constitutional rights of black and minority citizens. (Doc. 1, ¶ 24). This allegation is supported by the evidence. It is undisputed that APD had policies in place forbidding excessive force. These policies, in considerable detail, discussed the standards for the application of both lethal and non-lethal force. (Ex. 3, Affidavit of Manley, ¶¶ 8-11, Attachment 1). Additionally, the Austin Police Department has a policy which prohibits bias-based and racial profiling. (Ex. 3, Attachments 4, 5). APD's Policy No. 328 strictly prohibits bias-based profiling and Policy No. 329 prohibits racial profiling. Plaintiffs do not make any specific allegations about how these policies are deficient, nor do they provide specific evidence as to how APD fails to train and discipline its officers on the need to be free from racially-motivated law enforcement actions. Instead, Plaintiffs appear to contend that APD does not enforce them since it fails to adequately discipline its officers on investigate the use of force. To prove their claim, Plaintiffs must establish that there is some pattern in the use of excessive force that demonstrates that the City had an unwritten policy permissive of excessive force against minorities. Simply put, Plaintiffs have produced no evidence to support these allegations.

In sum, Plaintiffs have no evidence to demonstrate a pattern of prior incidents that are sufficiently numerous and similar to this incident to show that the City tolerates the use of excessive force by its officers or that it has a practice of employing excessive force disproportionately against minorities. Furthermore, because APD investigates and routinely disciplines officers who use excessive force, Plaintiffs cannot prove that any alleged policy permissive of excessive force was the moving force behind the alleged violations in this case. *See James v. Harris Cty.*, 577 F.3d 612, 618-19 (finding that alleged policies of lax investigation and

discipline in officer-involved shootings could not have been the moving force behind the violations because the officer did not have any knowledge of such policies).

Simply alleging that APD officers use deadly force against African-American suspects at a higher rate than white suspects falls far short of establishing sufficient similarity to this incident to constitute an unconstitutional unwritten policy. Moreover, Plaintiffs have produced no evidence that race or ethnicity played any role in Egal's and Johnson's use of force on Nobles. Accordingly, Plaintiffs' claims against the City should be dismissed.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant City of Austin respectfully requests that the Court grant its Motion for Summary Judgment and dismiss the Plaintiffs' claims against it with prejudice with all costs assessed to the Plaintiffs. Defendant further requests that it recover any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
State Bar No. 24087054
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
gray.laird@austintexas.gov
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 12th day of February, 2021.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

/s/ H. Gray Laird III
H. GRAY LAIRD III

Exhibit 1

State of Texas

AFFIDAVIT

County of Travis

IAD CONTROL #

On August 22, 2017 in the offices of the Internal Affairs Division, I was ordered to submit this memo by Sergeant Villanueva representing Brian Manley, Chief of Police. I submit this memo as a condition of continued employment, with the understanding that:

1. I am responsible for complying with Departmental policies, which require that I cooperate with the investigation and provide full and accurate information regarding the incident under investigation, and;

2. This compelled statement cannot be used against me in any subsequent criminal proceeding, except if I make false statements under oath to the investigator (perjury or aggravated perjury), and;

3. This compelled statement can be used by the City of Austin for any lawful purpose, and is not limited to use in the investigative and disciplinary processes.

VILLANUEVA: Okay today is August 22, 2017. The time is 10:38 am and we're located at the Internal Affairs office at 1520 Rutherford Lane in Austin, Texas. This interview is with Corporal Maxwell Johnson. Uh, this interview is regardin' Internal Affairs case 2017-0554. Will everyone please state and spell your full name for the record, starting with Corporal Johnson?

JOHNSON: Sure, my full name is Maxwell Anthony Johnson, uh, it's M-A-X-W-E-L-L A-N-T-H-O-N-Y J-O-H-N-S-O-N.

GOODWIN: Grant Goodwin, G-R-A-N-T G-O-O-D-W-I-N, CLEAT staff attorney.

HARDING: Ryan Harding, R-Y-A-N H-A-R-D-I-N-G, Office of the Police Monitor.

SEVIER: John Sevier, J-O-H-N S-E-V as in Victor, I-E-R, Sergeant, Internal Affairs.

VILLANUEVA: Randy - Randy Villanueva, R-A-N-D-Y V-I-L-L-A-N-U-E-V-A, Sergeant with Internal Affairs. Max were you informed today that this interview is gonna be recorded...

JOHNSON: Yes, sir.

VILLANUEVA: ...by audio means and that this room is also subject to be monitored as well?

JOHNSON: Yes, sir.

VILLANUEVA: Okay. The process for this interview is established by the meet and confer contract. The Office of the Police Monitor, OPM, is allowed to have a representative present for the interview. The meet and confer contract also allows for the representative of the Office of the Police Monitor to ask questions of the officer who is the subject of the inquiry at the end of the in- at the end of the interview before it is concluded. However, because you are the subject officer of this inquiry, you must first agree to foll- to allow the representative of the OPM to ask questions directly of you. This is your choice. It is voluntary. Neither the course of this - neither the course of this investigation nor this interview will change based on your decision. If you do agree then you will ne- then you will not be able to refuse to answer a question asked of you by the representative of the OPM. If you do not agree then the representative of the OPM may not ask questions directly of you. If the representative of the OPM ma- has any questions I will step outside with the representative and I will determine if the questions are relevant to the investigation. If so, then we'll come back and continue with the questions on record. Before we continue, I'm - I'm askin' you, are - if you are willin' t- to allow the representative of the OPM to directly ask questions at the end of this interview?

JOHNSON: I'd rather not.

VILLANUEVA: Okay. I understand that you are not agreein' to allow the representative of the OPM to ask questions directly of you, is this correct?

JOHNSON: Yes, sir.

VILLANUEVA: Okay. Have you voluntary elected to participate in this interview without repren- with representation?

JOHNSON: Yes, sir.

VILLANUEVA: 'Okay. Were you informed that this interview could - excuse me. Were you informed that this interview would cover the incident discussed in your notice of administrative inquiry?

JOHNSON: Yes, sir.

VILLANUEVA: Have you had sufficient time to reflect on the incident in question and prepare for this interview?

JOHNSON: Yes, sir.

VILLANUEVA: Did you receive your administrative warnings, your notice of, uh - excuse me, your notice of allegations - excuse me, your notice of...

SEVIER: Admin...

VILLANUEVA: ...admin inquiry and the copy of the complaint?

JOHNSON: I believe so.

SEVIER: Yeah. This was the...

JOHNSON: That's what you showed me yesterday, yes.

VILLANUEVA: It was issued to you on, uh...

JOHNSON: I got you.

VILLANUEVA: ...May 23 of this year.

JOHNSON: I got you, yes, sir.

VILLANUEVA: Okay. Yeah. Prior to beginning this interview, were you given an opportunity to review any items obtained in this investigation that documented or recorded your conduct of which the allegations were made?

JOHNSON: Yes, sir.

VILLANUEVA: Do you have any questions regarding the Internal Affairs paperwork that was presented to you?

JOHNSON: No, sir.

VILLANUEVA: Okay. Are you under the influence of any kind of medication or substance that would inhibit your ability to understand and answer my questions?

JOHNSON: No, sir.

VILLANUEVA: If you hear a question you don't understand...

JOHNSON: Sure.

VILLANUEVA: ...just let me know and I'll rephrase it.

JOHNSON: Sure.

VILLANUEVA: We are here today to discuss an officer-involved shooting that you were a part of on May 7, 2017. Do you recall the incident that I'm speakin' of?

JOHNSON: Yes, sir.

VILLANUEVA: Okay. We're gonna go into questions a little about you.

JOHNSON: Sure.

VILLANUEVA: Okay, how long have you been employed with APD?

JOHNSON: A little over 7-1/2 years.

VILLANUEVA: What is your current duty assignment?

JOHNSON: I'm the corporal for the George 600s.

VILLANUEVA: Is this the same assignment you had on the night of this incident?

JOHNSON: Yes, sir.

VILLANUEVA: Okay. What did you do prior to joining APD?

JOHNSON: I worked in a molecular pathology lab at the Scott & White Hospital in Temple.

VILLANUEVA: Did you serve any time in the military?

JOHNSON: No, sir.

VILLANUEVA: How long did you work for this medical lab?

JOHNSON: A few years my first main job outta college.

VILLANUEVA: Okay. Now where did you attend school at?

JOHNSON: Texas State or formerly Southwest.

VILLANUEVA: Okay. What made you make the decision to leave the medical field into law enforcement?

JOHNSON: Oh it was always something that interested me. I was living in (unintelligible) at the time. I would go to a rec center and play sports and stuff and one of the guys I got to know who worked for the department. Well, when I originally asked him, you know, "What do you do?" He's, like, "I work for the city,"

and, like - you know.

VILLANUEVA: Typical answer.

JOHNSON: Right. Yeah. After getting to know him for a little while, you know, he started to trust me, he's like, "Yeah, I'm a cop." I was, like, "Oh, that's awesome." I'm, like, "I love watching cops, you know." And he's, like, "Well, if you like watching cops, like, why don't you try a ride-along?" And I had never heard of anything like that and I was, like, "What's a ride-along?" And he's, like, "Well, it's, like, an episode of cops but you're there in person, just in the passenger seat for one of my shifts." And so I did a ride-along and then the next day, like, put my packet in, like...

VILLANUEVA: Wow.

JOHNSON: Yeah. So, my class - it did take a while, for the whole process. It was about a year and a half after turning it in but yes. It's awesome, so...

VILLANUEVA: Was there any great calls you remember from that first ride-along?

JOHNSON: He was doing a lotta DWI stuff.

VILLANUEVA: Okay.

JOHNSON: And you know, we were just on MoPac and some car just couldn't keep it, you know, and I was, like, look at this guy. And we stopped him and sure enough, you know, two beers...

VILLANUEVA: Yeah.

JOHNSON: ...you know the whole thing was interesting to me.

VILLANUEVA: Excellent.

JOHNSON: I was, like, "Yeah, I'm down. Sign me up."

VILLANUEVA: So the next day you put the paperwork in.

JOHNSON: Yeah, I was, like...

VILLANUEVA: That's fantastic.

JOHNSON: I printed it out and it was, like, 60 pages or something and I was - all right, we're doing it, like, you know, I'm - yeah.

VILLANUEVA: Excellent, that's good to hear. How long have you been assigned to DTAC

before the critical incident?

JOHNSON: I transferred over there end of May, like, 16 and the incident was May, you know, so it was about a year, maybe a little bit less. I think, I was in an acting capacity for a month or so before my promotion date.

VILLANUEVA: Okay.

JOHNSON: So about...

VILLANUEVA: Where were you prior to DTAC?

JOHNSON: I worked in Region Three, Metro Tac, it's Charlie and Henry with Sergeant Jones.

VILLANUEVA: Okay. Did you go through any type of specialized training...

JOHNSON: Yes, sir.

VILLANUEVA: ...and if so what kinda training you go through?

JOHNSON: We went through OCD school. And so that's out here at this campus where it's, you know, basically the experts and that sorta, the narcotics and dangerous people field. There was all sorts of scenarios, you know, real-life scenarios that they put you through, in addition to class. You know, a lotta training with narcotics and surveillance and stuff like that. We targeted specifically, street crime, drugs, prostitution, violent crime, that sorta thing, so I did a good job but, and a little bit of on-job training, you know, we were all paired with a senior guy but they also did formal training, through OCD and the academy and stuff. So it was good, good times.

VILLANUEVA: Sound like it was a lot of investigative type of training, was there any type of tactics with firearms or...

JOHNSON: I pursue a lotta stuff myself, so it's hard to remember what was...

VILLANUEVA: Okay.

JOHNSON: ...put together through them and what I just decided to do on my own. But one of the guys that I worked with, was on the shoot team and so me and him, you know, trained a lot together. He's, like, my work wife, you know, so we went through Edward sector together and then he went over there and then I followed him and we do a lot of the same stuff together, so...

VILLANUEVA: Can you go into a little bit about the training that you do on your own?

JOHNSON: Sure. The Austin Police Department has a marksmanship team. That's - you know, they got their own set of SOPs, their standard operating procedures, guidelines, things like that. I think they have 14 to 16 full-time members and then they have an auxiliary team which is, you know, sorta the guys who are, like, waiting in the wings to try out for a full-time spot. The full-time guys get approved time off to practice each month and a little bit of time to go shoot at matches. The auxiliary guys it's sort of up to the chain of command, you know, as staffing allows. You know, we try to make these practices. It's all at Best of the West.

VILLANUEVA: Okay.

JOHNSON: The first Monday of every month we have a 10-hour practice and it's a TCLOE training time for advanced pistol, but it's mostly three gun so pistol, rifle, and shotgun. Then every year, minus this year we have a two-day match that we put on, for law enforcement and military and we get people from all over the country come to it.

VILLANUEVA: How long you been part of this team?

JOHNSON: Four or five years. It's been a while. Some of the best shooters in the department, it's pretty wild in there. They're good, and it's frustrating because it's, like, how are you that good? It's a lotta fun.

VILLANUEVA: Besides that type of - you said the first of every month, that Monday...

JOHNSON: Mm-hm.

VILLANUEVA: ...you guys shoot, is there any additional shooting you do on your own?

JOHNSON: I try to go out to the range. We just went practicing last night, they had open practice. You know, it's sort of hard to get in classes but I've been through the rifle handler course and advanced pistol training through the academy, things of that nature.

VILLANUEVA: Okay. Now we're gonna go back into a little bit about this critical incident here.

JOHNSON: Sure.

VILLANUEVA: Do you remember what your sleep cycle was like the day before the incident?

JOHNSON: Sure. Normal I think we were on a 5:00 to 3:00, type of deal.

VILLANUEVA: Okay.

JOHNSON: Seeing only it takes me, I don't know, an half hour to get home and I'll watch an episode of "The Office" or something to wind down and go to sleep pretty quick. I do most of my day-to-day stuff before work starts so I get eight hours typically. I mean, I don't have a whole lotta distractions at the house.

VILLANUEVA: Okay. On the day of the critical incident, what uniform were you wearing?

JOHNSON: I was wearing the DTAC-approved uniform, with shorts, because we were gonna be walking around a lot for the Pecan Street Festival so it's the one that's, the blue, kinda bright blue on top, it's got the little silver reflective piece in the middle that sorta breaks it from top and bottom, and then it's, like, a dark, navy or maybe black on the bottom. And it says real big on the back "Austin Police" in sort of a reflective deal. I've got the Austin Police patches on each shoulder, I've got my badge sewn on, it's my name and employee number sewn on.

VILLANUEVA: Okay.

JOHNSON: Yeah, just athletic black shoes and the navy blue shorts, cargo shorts.

VILLANUEVA: Okay. What assets did you have on your duty belt on the day of the incident?

JOHNSON: Every standard thing you could think of. I guess from my midsection wrapping around, it's my pistol I do have a tack light on my pistol so it's appropriate holster for that, I've got my OC, double handcuff pouch, I've got a flashlight for the stinger, the holder and a stinger, LED flashlight. I've got my PR24 ring. Didn't have my PR24 on me, it's in the car. Radio pouch with the radio in it. I use the little wires through the clothes for the earpiece...

VILLANUEVA: Earpiece, gotcha.

JOHNSON: ...uh, because it's so loud, the lapel mic isn't effective. Then a double pistol magazine pouch and then my Taser in a cross draw sort of, so I would grab it with my right but it's on my left midline in the holster, and it's sort of canted...

VILLANUEVA: Okay.

JOHNSON: ...so when I sit down it doesn't...

VILLANUEVA: Go underneath the (unintelligible)?

JOHNSON: Yeah. Yeah.

VILLANUEVA: Any other police gear? Pocket knife...

JOHNSON: A tourniquet, um...

VILLANUEVA: 'Okay.

JOHNSON: I have a little tourniquet holder that we all are issued and a little tourniquet.

VILLANUEVA: Any blades?

JOHNSON: Not on my belt.

VILLANUEVA: (Unintelligible).

JOHNSON: I carry one, inner shorts pocket. After Frank Wilson it's just, you know, real hidden away.

VILLANUEVA: Okay.

JOHNSON: And it's more of a tool really.

VILLANUEVA: What was your health like on that particular day?

JOHNSON: Cholesterol's a little high. Um...

VILLANUEVA: Were you like, running a fever or anything like that?

JOHNSON: No, sir.

VILLANUEVA: Okay.

JOHNSON: I felt good. It was a good day. I mean, Pecan Street Festival.

VILLANUEVA: On the day of the incident were you operating on a foot, bike, marked patrol car?

JOHNSON: I checked out a car that day but I had parked it on Red River. We were inside the barricades and we were just doing sorta loops around 6th Street and, you know, patrolling the alleyways and stuff. You obviously can't drive so I use it more to, like, store my gear, and just have, like, kind of a mobile office so I don't have to walk all the way back to the main. If I needed a camera or if I needed, you know, any of my equipment or, you know, R2R stuff.

VILLANUEVA: Okay.

JOHNSON: You know it was nice to have.

VILLANUEVA: All right. Just a reminder that anytime you need a break or Grant, you need a

break, just let us know.

JOHNSON: Sure.

VILLANUEVA: Okay, you've been here reviewing for a good hour or so and again, just let me know if you need a break, okay?

JOHNSON: Sure, yes, sir.

VILLANUEVA: Okay. Now we're gonna focus our time to the critical incident, but first please explain to us what you were doing before you became involved in the critical incident and I'll do my best not to interrupt you.

JOHNSON: Okay.

VILLANUEVA: Okay you may see me take notes on my notepad but this is to help me to refer...

JOHNSON: Sure.

VILLANUEVA: ...back to some questions and also just take your time and again, if you need a break just let us know.

JOHNSON: Okay.

VILLANUEVA: Okay, so just walk us through before you got into that event, okay?

JOHNSON: Okay. So just the - kinda leading up to...

VILLANUEVA: Sure.

JOHNSON: Okay.

VILLANUEVA: And I mean, describe the environment, the scene, the lighting...

JOHNSON: Sure.

VILLANUEVA: ...and all that.

JOHNSON: I remember it pretty well. So it was a little bit different than your typical you know, 6th Street night because of Pecan Street. Everything was barricaded off and the vendors were just gonna leave their tents out overnight because they were gonna do it again next day. So the streets, you know, up and down 6th and then the side streets basically from the front edge, you know, to Brazos had stuff as well. There were a lot of tents like, easy-up type big tents. A lotta people had food, you know, like, little homemade, like, paintings and candles

and jewelry and you know, just, like, kinda, you know, Austin-type stuff. It was all pretty neat. They had a lotta live music. I know Red River had a big stage because I parked my car there and I was listening to some music earlier in the day. So throughout the day, you know, there was a ton of people and it was kinda cool because 6th Street is normally, you know, a bar district, there's a lot of drinking going on, you know, things can get, you know, rambunctious or whatever but it was more of a family-friendly type of scene. You know, people walking their kids, you know, like, hanging out, having a good time, listening to music. It's, you know, kinda what Austin's about. So it was refreshing. You know, as the night went on, you know, the reasonable people you know, left. You still had a few that were - baby strollers at 2:00 am or whatever, but that's typical, unfortunately. Pretty much to fast forward through the - the day or whatever, 2 o'clock, all the bars close and you know, (TABC) requires to basically get 'em all outta there so we had sort of an influx of people, you know, standing around and, you know, I had heard some of the guys from my shift go out on a disturbance, you know, uh, a little bit west on 6th Street over in the San Jac area. And so that's to be expected, you know, there's gonna be, you know, disturbances here and there, fights, it's pretty common. You know, and where there's fights officers need to break it up and you know, potential for R2Rs is there. So I wanted to go over there and make sure, you know, none of my guys, you know, were involved in an R2R, if they needed to report it to me. You know, it was getting close to end of shift time, so went over there and hung out with them, everything had broken up. I was, like, "All right, guys, you know, it's, like, 2:15, 2:20, let's start, you know, heading back," you know, because we gotta catch up on reports and you know, upload photos, all the stuff that comes with the end of a shift. About that time, we heard either an officer or dispatch pipe up on the radio and say, "Hey, we got, you know, shots fired call." And I couldn't remember exactly where the call came out. I knew it was on 6th Street and I knew it was close to us. Personally didn't hear any shots, but that's not, you know, totally uncommon because it was loud. There was a lotta people on the street, I even told the guy, he's, like, "Man, I didn't hear anything." And I was, like, "Well, that's not uncommon, you know, if they're a block away, you know, it'd be kinda hard to hear what the"...

VILLANUEVA: You told which guy?

JOHNSON: I don't remember. It was another officer on my shift.

VILLANUEVA: Okay.

JOHNSON: They were, like, "Hey, did you hear anything?" And I was, like, "No." I think it was Allegretti. I couldn't be 100%. I just remember making that comment and at that time we were, like, okay, well we'll walk that way and see what we see. And that was sort of the scene, prior to the incident.

VILLANUEVA: Okay. Just continue...

JOHNSON: Sure, sure.

VILLANUEVA: Tell us what happened.

JOHNSON: Sure. So after that initial, sort of information came out, HALO officer, the realtime crime center folks, they have all the surveillance cameras, they were actually, able to catch that offense on video, is what they said. And so from my understanding they went from a live view and had to rewind, so they could, you know, see exactly what happened and see if they could catch a suspect, you know. From what it sounded like is, they saw the guy, pretty good because they put out a description of him and I remember the description, it was very detailed. It was, you know, a black male, younger - wearing a white shirt. Later said that he had a blue Jordan logo on it like typical silhouette, you know, he's, like, dunking...

VILLANUEVA: Okay.

JOHNSON: ...uh, with blue basketball shorts with a stripe on the side. I was, like, man, that's very specific. And so he gave us the description but because he wasn't live, I think he was trying to catch up so he was trying to, you know, catch up, to tell us, you know, where he went and you know, he was sort of in the process of doing that. You know, we had a good description so it was, like, hey, let's keep an eye out for this guy. We were coming, I guess, towards the sub on 6th Street from San Jac and, you know it's 2:00 - 2:25, 2:30 at this time so some people have cleared out, some people are still hanging out on the street, there's still a good amount of people on the street. I kinda know, you know, if the guys get into, like, an R2R, if I'm involved physically then I can't report it, so my method is sorta hang back and be a good witness unless, you know, the incident is getting outta hand and then I have to help.

VILLANUEVA: Sure.

JOHNSON: So there was, like, a pod of my guys sorta walking in front of me, I'm sorta hanging towards the back. I see an officer sorta break off from the pod, you know, off to my right where all the tents and booths are at and that sorta caught my eye and I looked at him and he seemed like he was walking with a purpose. So I start looking to see what he's seeing and I see a guy who matches that exact description.

VILLANUEVA: Just one second.

JOHNSON: Sure.

VILLANUEVA: Can you tell us officers in that pod with you?

JOHNSON: Sure, um...

VILLANUEVA: Just give us the names and you can continue.

JOHNSON: I know for sure, the guy who broke off initially was Anthony Allegretti.

VILLANUEVA: Okay.

JOHNSON: I know Officer Pena was with me, Steve Pena. I wanna say there was another one but I honestly, I couldn't tell you. I just know those two guys for sure. I could guess, but I'm not...

VILLANUEVA: No.

JOHNSON: ...I'm not sure.

VILLANUEVA: But there were two others?

JOHNSON: Okay.

VILLANUEVA: Were there two others?

JOHNSON: Uh, that - that could be. Um...

VILLANUEVA: Okay.

JOHNSON: I felt like I was in a decent group. You know, I know it wasn't just us three. I know there was more but it's one of those deals where I couldn't say how many more, you know, or...

VILLANUEVA: During the review...

JOHNSON: I did see a group, yeah, so now Officer Dale was there, Mark Dale. I can't remember the last one.

VILLANUEVA: Okay. Tamez or Garcia MY 6775

JOHNSON: Yeah, it may be ~~Tom Azergarcia~~ but it was - it was one of those guys, I think. So Allegretti, you know, breaks off. I see the suspect or somebody who matches the suspect's description very well. He was a black guy, had the white shirt, had the blue Jordan logo. He was facing me so I could see. Initially he was in the crowd of people so I really couldn't see his shorts, but it was enough to where I was now keyed in on this guy. And so the whole pod of guys sorta follow Allegretti into the crowd, and Allegretti's getting closer to the suspect and the suspect looks up and sees the officer or what I

MY

understood, you know, I couldn't tell you what he saw because I'm not him but to me it looked like he saw the officer because I could see his face, have a noticeable demeanor change, you know, just from kind of, indifferent or just kinda normal to, like, surprised. It looked like he was surprised to see an officer. Again, we're all in about the same uniform so it's very obvious and you know, 6th Street is lit, you know, in that area. You know, to me I don't know what Allegretti said to him but to me it looked like he was trying to stop him. And when he tried to stop him the suspect was, you know, sort of off to my right. I was sorta more in the middle of the street. He ran from right to left in front of me. And because there were people, you know, and all the officers had to go into the crowd to make contact with this guy, I had sort of an unobstructed path, you know, whereas, you know, they were weaving in and outta people. You know, they're not pushing, shoving, people out of the way but they gotta get through the crowd.

SEVIER: About what was your distance from the suspect who fit the description as he went to your right...

JOHNSON: Right. Right.

SEVIER: ...right to left?

JOHNSON: He was pretty close. I mean, I could see very well. Um, ten yards maybe.

SEVIER: Ten yards?

JOHNSON: Something in that ballpark. So you know, I'm reacting to his actions so he gets outta the crowd and so I sorta close the distance straight towards him because he's almost perfectly perpendicular. He's running up Trinity, I'm running, you know, down 6th Street.

SEVIER: Had he seen you?

JOHNSON: I don't think so.

SEVIER: Okay.

JOHNSON: I don't think so because I never personally made eye contact with him. I mean, I'm locked in on him, you know, doing my body scan or whatever, but to me he's looking for an avenue, you know, to get out of there, it looked like. And so it's sort of a training scar but when we chase somebody who runs, you know, I immediately go to Taser, right. And so like I said, it's in a cross draw, it's the, you know, holster that they issue us so it's - it's kinda, like, a button latch and then there's a big plastic hood that kinda keeps the~~ir attention.~~ You know, I'm looking at him while I'm grabbing my holster and as he's, you know, chopping I see a gun in his hand.

SEVIER: As he's chopping?

JOHNSON: Working his arms back and forth.

VILLANUEVA: I understand what you're sayin' but this is gonna be...

JOHNSON: I'm - ~~non~~-visual a...

SEVIER: ...audio recorded so that doesn't...

JOHNSON: Right, understand. Um...

SEVIER: Right. So swinging his arms up and down in a running motion...

JOHNSON: Swinging his arms up and down, right.

SEVIER: Okay.

JOHNSON: You know, to build momentum and speed. You know, and at this point he's, you know, perpendicular to me so I can see his left side but his right side, you know, is obviously screened. But when he brings his right hand up, as he's running I see a black pistol in his hand. So you know, I immediately abandon the Taser, it never came out of the holster. I never defeated it, I mean, it was a fraction of a second, it was very fast. So I see the handgun and, recognize that he's just displaying a deadly force option. I know that's he's potentially fired the weapon according to HALO, so you know, fear for my safety and the potential - further potential violence, you know, I draw my duty pistol and basically chase him, get behind him as he's running up Trinity. So I'm chasing him, it all happens pretty fast and he always keeps that about, you know, ten yard buffer from me. You know, I gain a little bit on him but, you know, it's about somewhere in that distance. About that time I see Sergeant Egal, who's on a bicycle at this time, coming down almost towards us. You know, he's a little offset to the left. I'm not sure if he came out of the alley, I'm not sure if he came, from 7th Street all the way down or, you know, down 7th Street from somewhere else. I'm not sure his avenue or whatever. And I don't know what he knows but he sees us chasing, the subject and, I see him basically take a rear dismount off his bike. So he basically hops off of it, straight off the back. You know, and the bike continues on basically in front of, the suspect, I think. I don't know if the bike actually contacted him, I don't know if he was able to, sidestep it or if he stumbled over it, but about that time, I see him turn towards us, sort of quartering I guess to the left, you know, present the firearm and shoot, at least one round. I don't know if he continued to shoot.

SEVIER: What you were mimicking, for clarification on audio...

JOHNSON: Sure.

SEVIER: ...was a pistol in his right hand...

JOHNSON: Right.

SEVIER: ...he's running away from you and he turns, swings the pistol across the front of his body back towards you, is that correct?

JOHNSON: Exactly right.

SEVIER: Okay.

JOHNSON: So I guess toward, turning his torso to the left, so you know, he turns towards us. I hear the shot, I see the shot so I actually saw the muzzle flash, you know, orange and yellow or whatever for, you know, an instant, and I can feel, like, the shockwave, or what I perceived to be the shockwave. About that time I returned fire. I know Sergeant Egal was to my left because I, made an effort to get on line with him.

SEVIER: On line with Sergeant Egal?

JOHNSON: Yes, sir, because I didn't want anyone between, you know, my pistol and the suspect. I didn't want, you know, be unsafe in that way. I know there was officers to my right but they were coming, they were trying to catch up. So Sgt. Egal was the only one that was, you know, close. You know, I shot, what I thought was a couple rounds at the time. After my second round it was effective, it seemed effective because I saw the suspect fall. When the suspect fell I actually saw the gun fly out of his hand so the gun hit the ground and sorta slid off to the right which was sorta where his feet were, because he fell and then sorta laid sideways, mid-block of Trinity. So, you know, basically there's a buncha people out and I wanted preserve evidence and keep him away from the handgun. I can hear him yelling and he's moving around so I knew he was conscious, I knew he was still capable of, you know, moving. You know, I don't wanna allow him access to that gun anymore so I make my way to the gun. There's people running around closer than I would like, they're uncomfortably close. So I step, actually step on the pistol because I don't wanna give up my lethal coverage, you know. I've been trained the whole plus one rule, if a guy has a weapon, you know, he's more likely to have another weapon. So I'm still focused on him but I wanna make sure that gun is safe. You know, I can see him, officers are to my left, you know, also cued on him. I feel like a pat or something on my right leg, the leg that I'm stepping on the gun with, so I look over, for a moment and see that it's, Officer Pena and he's, like, "Hey, get off it, I got it." I was, like, "Okay, perfect." So I step off the gun, I see him grab it. Once he has control of it I

know, okay, you know, it's safe, you know, we need to deal with the known threat. So I turn my attention back over to the suspect, he's lying on the ground and, I hear somebody say, "Hey, I got lethal, go hands-on." So it was, like, okay, at that time I holstered my pistol. I decided not to put gloves on, I wanted to get him in custody faster so you know, I bend down over him, he was, laying on his stomach or on his chest. So I grab one arm, his right arm with both hands and then I believe it was Officer Tamez was to my left, and he had his handcuffs out already. Like, cool, so he handcuffs, he handcuffs his wrists together, you know, double locks. So at that point I'm, like, okay, I don't have gloves on. I can see that he's been shot, he's bleeding.

SEVIER: How could you tell he's been shot?

JOHNSON: I saw blood on his clothes.

SEVIER: On what...

JOHNSON: His...

SEVIER: ...part of his body?

JOHNSON: He was wearing a white shirt so it was obvious to me, but like, his upper torso area, kinda - I guess when he was quartering towards me he sort of exposed his upper back and I guess side area.

SEVIER: Left side?

JOHNSON: Left side, yes, sir.

SEVIER: You know, I'm only sayin' it...

JOHNSON: I'm sorry, yeah.

SEVIER: because you're motioning left side.

JOHNSON: Yeah, I keep...

SEVIER: I just wanna make sure (unintelligible) audio.

JOHNSON: Sure, I mean, I can't tell exactly where he's hit because it's, you know, an area, but I know it's in that area. I couldn't tell you how many times, you know, he had been hit but, I could tell that he had been hit so there's a little exposure risk there. So I disengage because there's several guys now dealing with him. You know, they have gloves on. I look, you know, back to the crowd towards 6th Street and I can see the crowd is encroaching you know, in a hostile, aggressive manner. You know, some people have cell phones out,

some people are yelling at us. So I see a few officers trying to keep the crowd back but it looks like they need help so I go over there and I see an officer deploy pepper spray, I think it was Officer Pena, after he had secured the firearm you know, he had seen that the crowd was coming also and so he started to deploy pepper spray. At that time I remember, Officer Pena had just bought a real nice med kit, a personal med kit, hat he actually keeps on his belt so I knew he had it, because a week or so before we had actually talked about it and we, like, went over what was in it and you know, it's legit. And so I tap him, I'm, like, "Hey, Pena go do medical," you know the whole preservation of life. You know, I know the guy's still awake and breathing and conscious. You know, we do everything we can for him. You know, we're secure that he's not a threat anymore, so you know, he puts gloves on real quick and then deploys his, med bag. About that time, I think mounted showed up in there somewhere so they helped with the crowd and people respect the horses. You know, they may not care about us but the horses are very effective.

SEVIER: Mm-hm.

JOHNSON: Because I remember seeing and thinking, man, that's a good feeling. About that time somebody replaced me and they start putting up crime scene tape. You know, I look back at the subject and they're applying all sorts of lifesaving measures. I see Sergeant Willis, (Steve Willis), you know, basically standing over, the guy and the officers and he's sort of, coaching, like, giving direction, like, "Hey, put a chest seal on here," you know, do this, do that. It's, like, oh man, they got that covered. I was, like, okay, now it's time to recuse myself pretty much because I was involved. I didn't hear a whole a lot radio traffic, but I did hear someone say, "Hey, is it officer involved?" And so I said you know, something like, you know, "680, a 10-4, it's officer involved," something like that. About that time I see my Sergeant Pat Eastlick come down Trinity in a marked car and his driver's side window rolled down and he said something like, "Hey, where do you want the car?" Or, you know, something along those lines and I let him know, I was, like, "Hey, sir, I was involved," and so he goes, "Okay, cool." He's like, "Okay, hop in," and so I jumped into the passenger seat, and he'd pulled into, the alleyway, mid-block of Trinity between 6th and 7th. I think it was his third day so I sorta started coaching him, was, like, "Hey, you know, this is where the public safety questions are at," and so we sorta went through that. You know, he asked if I had a critical incident officer and, you know, CLEAT and APA and then people start showin' up. He was, like, "Yeah, you know, I'm gonna - I'm gonna take your pistol and I'm gonna put it in the trunk," and I was, like, "Okay." You know, he put gloves on, you know, and took my pistol and he put it in the trunk. And so I was sittin' in there in the car for a little while and then he's, like, "Hey, you know, I want you to have my gun, you know, so you're not just sittin' here." And so I was just sitting in the passenger's seat so he opened the door, have an empty holster, and so you know, he just puts his

gun in my holster and, you know, I don't really mess with it. You know, that part I didn't know how, you know, it all worked out really. The chief showed up, I think ~~not~~ the chaplain, Sergeant Kresta, my commander, you know, a buncha people, notified my wife, that I wasn't gonna be home right away. And the little RV showed up and they moved me into there and took pictures of what I was wearing, my belt, you know, they counted my rounds in front of me, issued me a new pistol. I went and did drug test right away.

VILLANUEVA: 'Okay.

JOHNSON: That's - yeah.

VILLANUEVA: That's really good, I thank you for that. Do you need a break?

JOHNSON: I'm okay.

VILLANUEVA: You good? You guys need a break? Okay. All right, so I have to go back and ask ...

JOHNSON: Sure.

VILLANUEVA: ...some questions.

JOHNSON: Sure.

VILLANUEVA: When you saw that individual, the suspect...

JOHNSON: Mm-hm.

VILLANUEVA: ...and when he pulled away and he's running in front of you...

JOHNSON: Mm-hm.

VILLANUEVA: ...you said you did the body scan...

JOHNSON: Mm-hm.

VILLANUEVA: ...at that moment. Did you key on or did you make a note and said, this is the guy they're described over HALO?

JOHNSON: Yeah, I was certain that that was the gentleman they were talking about. I mean, they teach - you know, they teach in the academy (the works) and it's whole body, hands, you know, demeanor, waistline, lungeable area, and so those five things, I mean, I got to two and I was, like, there's a pistol in his hand, you know, so it was - I don't wanna say, like, you know, without - beyond a shadow of a doubt but it was, like, yes, this is the guy.

VILLANUEVA: Gotcha.

JOHNSON: And so in my mind I believe it was him.

VILLANUEVA: Okay. When you observed the suspect running from the police did you identify yourself as a police officer?

JOHNSON: I believe I yelled, "Stop, police."

VILLANUEVA: Okay. Did you hear of any other officer giving commands?

JOHNSON: I heard a lot yelling.

VILLANUEVA: Okay.

JOHNSON: I couldn't tell you who said what, though, I don't...

VILLANUEVA: At any point when the suspect saw Officer Allegretti...

JOHNSON: Mm-hm.

VILLANUEVA: ...and at that time when - right when he ran in front of you did he ever make eye contact with you?

JOHNSON: Not with me, no. Even when he turned back, towards us I don't think - I think he was intending to shoot at where he last saw officers beause it was so fast I don't know how much information he really obtained.

VILLANUEVA: Okay. The distance between you guys running was about ten yards?

JOHNSON: To the best of my knowledge, I was trying to close the distance so I was running as well but it seemed like almost, like, when you pace a car.

VILLANUEVA: Okay.

JOHNSON: You know, we were goin' about the same speed so he kept a majority of the distance until he fell and then I closed the distance.

VILLANUEVA: Okay. Do you remember what officers were chasing the suspect?

JOHNSON: I know for sure it was myself, I think Officer Pena was probably the closest behind me, and Officer Allegretti was, you know, coming' up the rear somewhere. I think Officer Dale was trying' to work the radio more than anything.

VILLANUEVA: Okay. When you initially observed the suspect do you remember what the suspect was doing before he ran?

JOHNSON: He was standing in a group, you know. Nothing out of the ordinary. When people just kinda hang out when bar closes they just sorta, you know, get in their little social groups or cliques or whatever and it seemed like he was, you know, with people.

SEVIER: Did you see him with people, or is this something you were gleaning from watching the videos and...

JOHNSON: At the time was he standing in a group of people, I couldn't tell you if he was associated or just standing in the group.

SEVIER: But he was with among other people?

JOHNSON: Yes.

SEVIER: Okay, I...

JOHNSON: Yes.

SEVIER: I was misunderstanding, I thought the first time you saw him was once Allegretti focused in on him and he started to depart, so...

JOHNSON: W...

SEVIER: ...I'm clear.

JOHNSON: Right, there was a moment where he didn't know we were coming for him, I don't think, so I saw Allegretti go, Allegretti keyed on him and so I keyed on Allegretti and then him and then he looked up and saw (Allegretti).

SEVIER: Clear.

JOHNSON: So there was a moment or two, not long, obviously the video helps, but you know, my recollection is, like, oh shit, that's the guy, you know. I could care less about the, you know, other guys really, because he was the known threat at that point.

SEVIER: Clear.

VILLANUEVA: Going back to my question, could you see his hands at that time?

JOHNSON: He was in a crowd of people, I could see his, you know, basically waistline up so you know, his hands were sorta down at his sides. I couldn't really make

those out until he broke free from all the people.

VILLANUEVA: Those people that he was near or with, did it seem to you that they were doing something for him?

JOHNSON: I don't know. I hate to say I had tunnel vision, but there was definitely an element of that there. I was mainly focused on that guy, you know, with the aftermath, I thought I heard family show up, but I couldn't be for sure if that was the group of people he was with initially or if, you know, because it sort of - a divide there, you know, they shut the mid-block down so people got split...

VILLANUEVA: And how far is the - before the contact was made between Allegretti and I hope I'm sayin' his name right.

JOHNSON: Yeah, Allegretti, it's...

VILLANUEVA: Allegretti...

JOHNSON: Yeah.

VILLANUEVA: ...made contact with the suspect that fled, what was the distance between you and Allegretti?

JOHNSON: Maybe five yards.

VILLANUEVA: Okay.

JOHNSON: I was a little bit closer, you know.

VILLANUEVA: Did Allegretti mention to you that he spotted a possible suspect?

JOHNSON: I noticed that he started to move off and then I heard his voice on the radio, so I think he was trying to get confirmation of a description. And so that kinda, like helped me key in on what he was looking for. It was, like, oh shit, yeah, that is, you know, the description.

SEVIER: So what you're describing to me is - is non-verbal cop communication, you're judging by responses and actions of other people and you're inferring that...

JOHNSON: Right.

SEVIER: ...everything is, what you believed it to be?

JOHNSON: Correct.

SEVIER: Okay.

VILLANUEVA: And under the circumstances and the dynamic of the situation, there was no way to form a plan to detain the individual or was there time to for a plan.

JOHNSON: It was - it was very fast, so from me seeing the guy to me returning fire was, like, five or six seconds maybe, under ten, when the whole thing was done with. So you know, I guess I fell back to my training, you know, and just did the best I could under those circumstances.

VILLANUEVA: Can you tell us where you were standing when the suspect ran?

JOHNSON: Sure. So I was sort of in the middle, like...

VILLANUEVA: And you can use...

JOHNSON: I will okay, cool.

VILLANUEVA: ...this as a...

JOHNSON: I'll try to explain, for the audio but...

VILLANUEVA: Sure.

JOHNSON: ...this'll kinda help me articulate a little bit. So this is 6th Street here, and Trinity and I - north is up top. It's kinda hard, I guess it's a tree there. You know, and there's all sorts of vendor booths in the middle lane and so basically the outside laying on both sides is where pedestrians travel so because we're in America I guess everybody likes to walk on the right side of the road, you know, one direction. So the flow we're kind of going against the flow of traffic so people are walking this way, we're walking this way. I would have been, you know, somewhere in the intersection sort of on the north side of it. He would be also on the north side of the tent but more south than me. So from my point of view if I'm facing, you know, towards 35 on 6th Street, you know, he's slightly off to my right, uh, towards, like, where all the tents and stuff are set up.

VILLANUEVA: Okay.

JOHNSON: Yeah, so when he ran he ran from right to left in front of me.

VILLANUEVA: Okay. Do you remember what part of the bike made contact with the suspect?

JOHNSON: I'm not even sure if it necessarily did make contact.

VILLANUEVA: Okay.

JOHNSON: I don't know if it just fell down on its own accord or if he pushed it down or if it collided with him. There was a reaction to it. I don't know if it was more of, like, an evasive action or if he got tripped up by it. That part was hard to say because that sort of occurred in his, like, lower half and I was watching sort of his upper half if that sounds right.

VILLANUEVA: You said there's a lit area around 6th Street and that...

JOHNSON: Mm-hm.

VILLANUEVA: ...that particular intersection of 6th and Trinity but at this point now we 'regarding the bicycle, is the light conditions still the same? W...

JOHNSON: It's - it's a little less lit, unfortunately, so you know, 6th Street is lit pretty well but there's this tree here on the side of Chupacabra, that may have been casting a shadow in that area. It was lit obviously enough to where I could still make out detail, but it's not lit like main street, 6th Street.

VILLANUEVA: Did the suspect fall to the ground at any time, at that time of the bicycle?

JOHNSON: No, I don't think so. He fell when he was shot.

VILLANUEVA: Is it possible that he fell, but it was too dark for you to see it?

JOHNSON: It's kind of hard. I think he stumbled would be more accurate. I don't think he completely fell onto the ground, no.

VILLANUEVA: Okay. When he stumbled with the bike, did you hear any, strange or odd sounds to you that wasn't normal?

JOHNSON: I mean, it sounded like a bike falling on the ground. And then shortly after that that's when he turned and shot.

VILLANUEVA: Okay. Do you believe that using the police bike was reasonable to stop the suspect from running or attempt to slow him down?

JOHNSON: Yes, sir.

VILLANUEVA: Did you attend the APD bike school?

JOHNSON: Not the formal school. I went through the DTAC, you know, commander-approved deal and so you know, bicycle school only comes along so often.

VILLANUEVA: Sure.

JOHNSON: I'm sort of required to be on a bike, you know, hit the ground running...

VILLANUEVA: Okay.

JOHNSON: ...so I had a bicycle-certified instructor, run me through the course and, you know, got approved through the commander and all that.

VILLANUEVA: Okay. Do you recall if that instructor, discussed or taught you - if you could use the bike as a tool to stop...

JOHNSON: Yes, sir.

VILLANUEVA: ...someone that's fleein' from you?

JOHNSON: Yes, sir. And I think, we're moving more and more towards that so, just recently they put on sort of a crowd control class. ~~Almost~~ SRT, and we went to Cleveland and - and saw how they, you know, handled a large crowd with bicycles, extremely effective. Sort of a force multiplier deal. You know, command staff liked what they saw, they brought it back here. They put on a class, you know, with the DTAC guys, you know, instructing how to use a bike, you know, to contain and direct people, and it basically turns one officer into three, you know, so it's - bicycles are very effective at - at that sort of thing.

I'm on my #6775

VILLANUEVA: Okay. Do you think by using the police bike as a device to detain the suspect, was it objectively reasonable?

JOHNSON: Yes, sir.

VILLANUEVA: Did you give any voice command when he stumbled with the bike?

JOHNSON: I think I initially said, "Stop, police," as I was trying to get my Taser out but once I saw the gun voice commands sorta stopped. You know, I was trained, it's hard to shoot and speak, you know, to think or speak at the same time so for me it was, you know, my mind was a one-track deal, you know, just the threat.

VILLANUEVA: That threat was presented to you after the bicycle?

JOHNSON: Right.

VILLANUEVA: Okay.

JOHNSON: I think so, yeah.

VILLANUEVA: And the distance still was about ten yards?

JOHNSON: Right. So the thing was, is I was able to close on him a little bit when he stumbled but because, Sergeant Egal was in front of me I had to sorta slow down, so we would be on line, if that makes sense, because Egal was stationary for a moment so you know, I was running, Egal was stationary after he just gets off the bike. I have to sorta slow down so I don't pass him up and then, you know, I'm in front of him and then I go from being a liability or a - an asset to being a liability.

VILLANUEVA: Okay. What went through your mind when upon seeing the gun or hearing' the gunshot?

JOHNSON: I thought he was gonna shoot me.

VILLANUEVA: Did the suspect display any signs of compliance after he was struck with the police bike?

JOHNSON: No.

VILLANUEVA: Do you believe the suspect made eye contact with you when he turned back towards you?

JOHNSON: It's hard to say.

VILLANUEVA: Okay

JOHNSON: I just saw the gun flash.

VILLANUEVA: Did you see the suspect pointing the gun at your direction?

JOHNSON: Yes.

VILLANUEVA: You said you heard one gunshot. Was there any others?

JOHNSON: I wasn't gonna wait to find out. I mean, he had forced my hand at that point, I couldn't afford to wait for more and I was doing the best to get a good sight picture at that point.

VILLANUEVA: Under the circumstances, did you feel that you had an opportunity to give a verbal command to drop the weapon?

JOHNSON: No, sir.

VILLANUEVA: Why did you fire your weapon?

JOHNSON: To keep him from killing me.

VILLANUEVA: What did you think the armed suspect's intentions was at that point when he turned back towards you and the officers?

JOHNSON: To kill us. I think he was going above and beyond, you know, any reasonable means to get away. I think he woulda done anything.

VILLANUEVA: At that moment what was your body position?

JOHNSON: So you know, I'm square to him, he's quartered back towards me. But he's sort of, you know, he's in front of me but he's sort of offset to the left so I guess he'd be at, like, my 11 o'clock.

VILLANUEVA: Yeah. Do you recall any other officers besides Sergeant Egal to your left present?

JOHNSON: He was the only one that I was aware of. I know or I assumed that guys were coming from my right, because they were chasing him through the crowd, you know, but they got held up a little bit.

VILLANUEVA: Okay. You said the suspect fired then you returned fire.

JOHNSON: Yes, sir.

VILLANUEVA: Did you lose any hearing?

JOHNSON: No, the volume was turned down. So we learned a little bit about auditory exclusion, but I was aware of my gun was shooting and I could hear the shots. I mean, and like I said it all happened, like, five, six seconds or something...

VILLANUEVA: Sure.

JOHNSON: ...so you know, being able to differentiate, like, I mean, one shot from two from three from four from five, very difficult. But I could tell you that I could hear noise for sure.

VILLANUEVA: Did you hear any other gunshots?

JOHNSON: I perceived Sergeant Egal to shoot, but like I said I was so focused on the front sight, and the suspect that I couldn't tell you, like, how many times.

SEVIER: If Sergeant Egal shot or fired his weapon do you know who fired first, you or he?

JOHNSON: I've thought about that a lot. It was damn near simultaneous. I think we had both made up our minds, you know, and then he forced us. I don't know who

shot first, to be honest.

VILLANUEVA: When you discharged your duty pistol do you think your shots were objectively reasonable with APD policy?

JOHNSON: Yes, sir.

VILLANUEVA: Under the circumstances you faced do you think at that moment, was there a- another option in order to stop the threat?

JOHNSON: No, sir.

VILLANUEVA: At what point did you realize you shot the suspect?

JOHNSON: I could tell you the suspect had been shot but I didn't - I knew because there was another officer involved, like, that was one of the things that I struggle with, to be honest. So we obviously couldn't talk about the details, you know, and I wasn't gonna ask him. I didn't wanna, like, jeopardize any kind of investigation but it's one of those deals where I know what I shot, like, I know how many times I shot. I don't really know how many times he was hit. I know that he was hit but I don't know how many times this guy shot. Maybe he had all the hits and I had misses, maybe I had hits and he had misses. You know, there's no way to know. So I wasn't - I'm still not very sure, you know, of what went where.

SEVIER: Were the injuries that you observed on the subject consistent with where your, rounds would have gone?

JOHNSON: Yes. So my sight picture was pretty much where the injuries were, so I mean, I felt good about 'em.

SEVIER: Describe that.

JOHNSON: Well, in shooting, you know, like, a super awesome shooter can almost call his shots and say, that third one, I'm a little bit off. I'm obviously not, like, super awesome but, you know, I could tell you that my front sight and side picture was very good. I mean, I knew there were nobody in between me and him, I knew I had a decent backdrop, and you know, center mass and that's where, you know, I observed injury.

SEVIER: You said you had a decent backdrop. What was your backdrop?

JOHNSON: It was a buncha, like, booths and cars and stuff. I mean, it's hard to see on this flat picture but the nice thing about Trinity is there's an actual grade, it's a hill and you know there's gonna be people at the top but if you're shooting level it's gonna hit ground because it's, you know, the - I would say the street rises,

you know, 30 feet, 40 feet from 6th to 7th so you know, worst case scenario a ricochet or something but you know, under the circumstances that was the best case scenario in my mind because of so many people around it was a miracle that, you know, his shot didn't go back towards all those people and our shots, you know, went where they went.

VILLANUEVA: What do you believe would have happened if you not shot the suspect?

JOHNSON: I think he woulda continued to shoot at us or civilians, anything to get away.

SEVIER: What was your sight picture?

JOHNSON: So, the way to shoot, is basically like, intense focus on the front sight. The actual target will almost be, like, fuzzy, it won't be in focus. The main focus is on the front sight. The rear sight will sort of take care of itself, you know, if you have a decent platform. So I could see my front sight and I could see center mass of the suspect.

SEVIER: What was the center mass?

JOHNSON: His white t-shirt, so the contrast actually - I mean, if he was wearing a black t-shirt it woulda been much more difficult.

SEVIER: Was it his back, his side, or his front?

JOHNSON: In between his back and his side, I think, so I was aiming, like, probably in this, like, left kinda flank or whatever.

SEVIER: Okay.

JOHNSON: It wasn't facing me at that time because he had recovered, you know, took his shot and then recovered, I think, a little bit, you know, in the - my reaction time.

VILLANUEVA: What, if anything, do you think should have been done differently in this incident?

JOHNSON: I would have liked to had a body-worn camera, to tell you that.

VILLANUEVA: In your opinion, do you think there are any training issues regarding this incident?

JOHNSON: Again, the camera, maybe. I don't - it's hard because HALO is such a luxury and we depend on, but with the booths and stuff, like, it obscures so much of the view of what they can see. I don't know if there's some ex- additional camera or something they could place to -I don't know.

VILLANUEVA: Gotcha.

JOHNSON: So it's hard for me to say.

VILLANUEVA: Under the circumstances in which you were a part of, was there anything that you observed that APD can do better regarding officer-involved shooting?

JOHNSON: No. I was impressed with the procedure of it all. I think the officers who were there, you know, they sorta had the hard work, you know, preserving, the scene and the evidence. I was shocked to find out that not only did they secure all the evidence at the incident but they secured evidence at the original, crime scene as well, and with thousands of people walking around and sort of the police culture being what it is today, I mean, I am shocked that all that was recovered. So you know, I'm - I was totally proud of all those guys. The aftermath, you know, the public safety questions, that all seemed very fair and you know, like, Garrity wasn't an issue. I was happy to give that information. The process seemed long, you know, but you know, that's kind of what I would expect when someone's life was taken and I would assume there's gonna be a detailed investigation. You know, the drug testing and all that makes sense. I mean, none of it seemed unreasonable. I didn't feel like my rights were violated in any way, you know. Everybody's been more than fair and the explanation of why they do things helped, you know, so, like, "Hey, you know, this is why we swab your hands, this is why we take pictures," blah, de blah, instead of just doing it without any - I didn't - and I understand that I'm the subject of the investigation but I didn't feel like a suspect, if that makes sense.

VILLANUEVA: Absolutely. Were you contacted by peer support?

JOHNSON: Yes.

VILLANUEVA: Were you given time off from the incident?

JOHNSON: Yes. Just, like, admin time, I guess.

VILLANUEVA: Did you feel comfortable coming back to work?

JOHNSON: Yes, I was ready to come back. The time off is almost just as bad - sorry.

VILLANUEVA: No, it's good.

JOHNSON: Because you're just left with your thoughts, you know, and second guessing, so getting back to normalcy as soon as possible helps.

VILLANUEVA: And when you returned back to work you felt like you were fit for duty and...

JOHNSON: Yes, sir.

VILLANUEVA: ...good to go? Did your chain of command give you support?

JOHNSON: Yeah, they're - they're good guys. I actually begged to stay where I was because it turned out so well.

VILLANUEVA: Good deal. Okay. We're gonna take a break.

JOHNSON: Sure.

SEVIER: We're gonna go off the record. It's 11:42. (Here).

JOHNSON: Okay.

VILLANUEVA: It's 11:45, goin' back on the record. Corporal Johnson, everyone that left the room, are they back in room?

JOHNSON: Yes, sir.

VILLANUEVA: Okay. Just wanted to ask you, when the suspect fell...

JOHNSON: Mm-hm.

VILLANUEVA: ...after being shot, you guys walked up to him and did you say he was talking?

JOHNSON: Yes, sir.

VILLANUEVA: Do you recall the words or what he was saying to you?

JOHNSON: Sure do. He said, "Stop - please stop shooting me, it hurts."

VILLANUEVA: Did he kept on saying that over and over? Or anything else?

JOHNSON: I heard it once and then I stopped listening.

VILLANUEVA: Okay.

SEVIER: Do you know if he said anything else? Were you said he was he talking or was he shouting, please...

JOHNSON: He was screaming in pain, yeah.

SEVIER: Okay. And how long would you say after you realized, the totality of the incident, the guy goes down, shots were fired, he's down, until you directed, I

guess Officer Pena to initiate medical on him?

JOHNSON: Within seconds. Within seconds. It - I mean, the way everything worked out, it - it was, like, the only way it would have been better is if it would have happened in a hospital. I mean, we were on him and rendering lifesaving aid as soon as humanly practicable, like, under the circumstances.

VILLANUEVA: You guys - when he went down you guys didn't hold your position, look for cover, and gave him commands to put his hands behind his back?

JOHNSON: No, it was...

VILLANUEVA: ...guys walked up on him and...

JOHNSON: The nice thing about it was the gun came out and it was very obvious. You know, had he fallen on it, you know, with his arms tucked under, different story. You know, it would have been a long, drawn-out, like, thing most likely, hey, you know, can we get a shield, you know, we had to find one or you make the safety sacrifice and you know, go up to him with an unknown thing. But under those circumstances I don't think that part could have worked out much better because it did come flying out and you know, we were able to secure it pretty fast.

VILLANUEVA: Okay. We're gonna end here, okay?

JOHNSON: Okay.

VILLANUEVA: Is there anything I haven't asked about that you would like to comment on?

JOHNSON: I don't think so.

VILLANUEVA: Is there anything I've asked you about that you would like to further explain or clarify?

JOHNSON: Nothing I can think of.

VILLANUEVA: Is there any other information that you have related to this investigation that - that may or may not be important?

JOHNSON: I don't think so.

VILLANUEVA: Okay. This audio file here will be transcribed and you will be asked to review the transcription.

JOHNSON: Okay.

VILLANUEVA: When you do so you'll be expected to read it thoroughly. After you sign it the document will become your formal statement...

JOHNSON: Okay.

VILLANUEVA: ...in this investigation and you will be held accountable for its truthfulness and accuracy. If you have any additional information to add to your statement at that time, we will record the additions or for clarifications you can write a memo to it, okay?

JOHNSON: Sure.

VILLANUEVA: We're now ending this interview at 11:49.

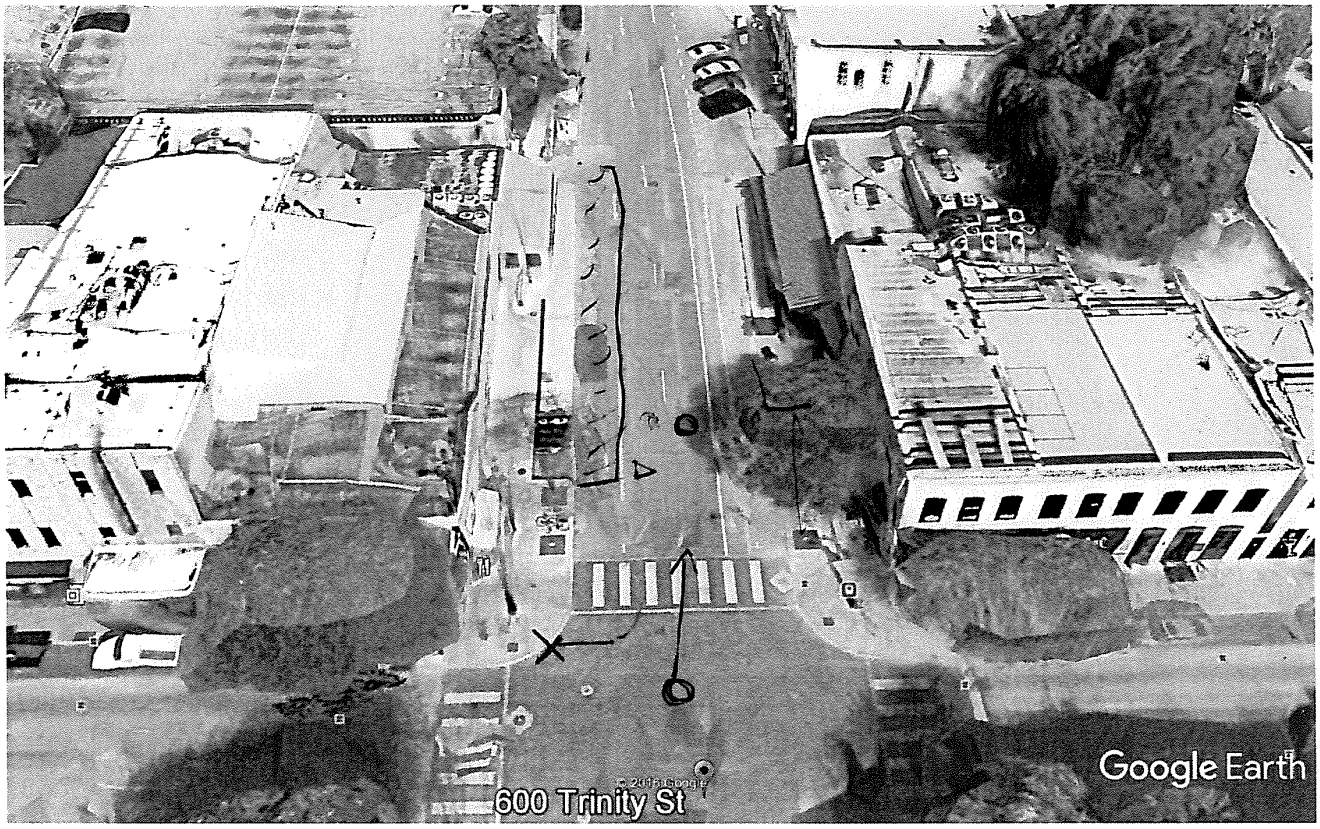
#6775

Cpl. Maxwell Johnson #6775

SUBSCRIBED AND SWORN TO BEFORE ME THE UNDERSIGNED AUTHORITY ON THIS THE 21 DAY OF September, 2017.

#5333

PEACE OFFICER IN AND FOR THE STATE OF TEXAS.



Google Earth

feet 100
meters 30

S

E

M

MJ# 6775

05/09/2017

@ 12:24 pm

Exhibit 2

State of Texas

AFFIDAVIT

County of Travis

IAD CONTROL #

On August 22, 2017 in the offices of the Internal Affairs Division, I was ordered to submit this memo by Sergeant Villanueva representing Brian Manley, Chief of Police. I submit this memo as a condition of continued employment, with the understanding that:

1. I am responsible for complying with Departmental policies, which require that I cooperate with the investigation and provide full and accurate information regarding the incident under investigation, and;

2. This compelled statement cannot be used against me in any subsequent criminal proceeding, except if I make false statements under oath to the investigator (perjury or aggravated perjury), and;

3. This compelled statement can be used by the City of Austin for any lawful purpose, and is not limited to use in the investigative and disciplinary processes.

VILLANUEVA: Okay. Today is August 22, 2017. The time is 1:58 pm. We're located at the Internal Affairs office at 1520 Rutherford Lane in Austin, Texas. This interview is with Sergeant Richard Egal. This interview is regarding Internal Affairs case #2017-0554. Will everyone please state and spell your full name for the record ste- starting with Sergeant Egal?

EGAL: Richard Paul Egal, Junior. R-I-C-H-A-R-D, P-A-U-L, E-G-A-L.

((Crosstalk))

GOODWIN: Grant Goodwin, G-R-A-N-T, G-O-O-D-W-I-N, CLEAT staff attorney.

HARDING: Ryan Harding, R-Y-A-N, H-A-R-D-I-N-G, Office of the Police Monitor.

SEVIER: John Sevier, J-O-H-N, S-E-V as in Victor, I-E-R, sergeant Internal Affairs.

VILLANUEVA: Randy Villanueva, R-A-N-D-Y, V-I-L-L-A-N-U-E-V-A, sergeant with Internal Affairs. Is it all right if I call you Richard?

EGAL: Absolutely.

VILLANUEVA: Richard. Were you informed and are you aware that this interview is being recorded?

EGAL: Yes.

VILLANUEVA: Okay. The process for this interview is established by the Meet and Confer contract. The Office of the Police Monitor is allowed to have a representative present for the interview. The Meet and Confer contract also allows for the representative of the OPM to ask questions of the officer who is the subject of the inquiry at the end of the - at the end of - of the interview before it is concluded. However because you are the subject officer of this inquiry you must first agree to allow the representative of the OPM to ask questions directly of you. This is your choice and it is - and it is voluntary. Neither the - neither the course of the investigation nor this interview will change based on your decision. If you do agree then you will - then you will not able to refuse to answer a question asked of you by the representative of the OPM. If you do not agree then the representative of the OPM may not ask questions directly of you. If the representative of the OPM has any questions I will step outside with the representative and I will determine if the questions are relevant to the investigation. If so then we will come back and continue with the questions on record. Before we continue I am asking you if you're willing to allow the representative of the OPM to directly ask questions at the end of this interview?

EGAL: No thank you.

VILLANUEVA: Okay. I understand that you are agreeing to allow the representative of - excuse me - you're not allowing - you're not agreeing to allow the representative of the OPM to ask questions directly of you. Is this correct?

EGAL: Yes.

VILLANUEVA: Okay. Were you informed that this interview would cover the incident r- discussed in your Notice of, Administrative Inquiry?

EGAL: Yes.

VILLANUEVA: Okay. Have you had sufficient time to reflect on the incident in question and prepare for this interview?

EGAL: Yes.

VILLANUEVA: Okay. Did you receive an administrative warning, this document here, and a copy of the complaint - and a copy of the complaint that was up there on the board, um...

SEVIER: On May 24?

EGAL: The- Their complaint?

VILLANUEVA: Yeah. Y...

SEVIER: You were given a copy of the complaint when you were given this paperwork.

((Crosstalk))

GOODWIN: Notice of the...

EGAL: Oh, notice of inquiry.

MAN: Uh...

VILLANUEVA: On the notice of administrative inquiry.

EGAL: Right.

VILLANUEVA: The fourth from the right.

EGAL: I am sorry, I misunderstood when you said complaint.

SEVIER: Yeah that's what it's called. It's an Internal Affairs complaint.

MAN: Here.

SEVIER: Richard, right here. This document. This one here.

EGAL: Yes.

VILLANUEVA: Okay. And those documents were given to you on May 24, 2017?

EGAL: Yes.

VILLANUEVA: Okay. Um, prior to beginning this interview were you given an opportunity review any items obtained in this investigation that documented or recorded your conduct of which the allegations were made?

EGAL: Yes.

VILLANUEVA: Okay. Do ya have any questions a- about any of the notice of inquiry paperwork you received?

EGAL: No.

VILLANUEVA: Okay. Are you under the influence of any kind of medication or substance that will inhibit your ability to understand or - in answering my questions?

EGAL: No.

VILLANUEVA: Okay. If you hear questions you don't understand please let me know and I'll rephrase it.

EGAL: Okay.

VILLANUEVA: We are here today to discuss an officer involved shooting that you were a part of on May 7, 2017. Do you recall this incident I'm speakin' of?

EGAL: Yes.

VILLANUEVA: Okay. We're gonna go into -- we'll get you a copy of this later. Um...

EGAL: Okay.

VILLANUEVA: ...we're gonna go into questions about your history about your - before you joined APD. Um, how long were you been employed with APD?

EGAL: For 18 1/2 years.

VILLANUEVA: Okay. And your current duty assignment? What is it now?

EGAL: I'm a Patrol sergeant in the Downtown Area Command, on the evening shift, the 400's.

VILLANUEVA: Is this the same shift that you were on when this incident took place?

EGAL: Yes.

VILLANUEVA: Okay. What did you do prior to joining APD?

EGAL: I was a United States Marine for five years. When I left the Marine Corp I temporarily worked for (Wakenhut) Security at Dell Computer in Round Rock and North Austin while I was going through the application process and waiting for the police academy to start.

VILLANUEVA: During your time in the Marines were you ever in a combat zone?

EGAL: No.

VILLANUEVA: Okay.

SEVIER: What'd you do in the military?

EGAL: I was, anti-aircraft warfare. I worked on a missile system, air defense. And then my last two and a half years were a B billet secondary job. I was with Marine Security Forces protecting assets vital to national security.

SEVIER: Whereabout?

EGAL: Yorktown, Virginia.

SEVIER: Virginia? Were you the whole five years?

EGAL: I was not, I was only there for the last two and a half.

SEVIER: And where were you the first initial years?

EGAL: Uh...

SEVIER: Doin' the anti-aircraft stuff.

EGAL: Cherry Point, North Carolina was my first duty station. And then I was in Yuma, Arizona for I think a little over 18 months.

SEVIER: Okay. I ask, my son was in the Navy, he's assigned to the Marine Corp. He was their medic.

EGAL: I - I like those guys.

SEVIER: Yeah. Yeah, he's pretty popular.

VILLANUEVA: During your time with APD how much time was that on Patrol?

EGAL: My first year and a half I was on the Charlie 500's, evening shift. I was then briefly on the Charlie 100's for a month or two before I went to work on the Frank 100's where I spent about four years. So about five and a half years total p- time on Patrol at the beginning of my career.

VILLANUEVA: Okay. Did you leave Patrol to go somewhere?

EGAL: Yes.

VILLANUEVA: Where'd you go?

EGAL: February 2005 I was selected to be a member of our full-time SWAT Team. I

was there until October of 2013 when I promoted to detective.

VILLANUEVA: Your time with APD SWAT Team were you ever involved in any critical incidents?

EGAL: I was involved but I was not - I was more of a witness.

VILLANUEVA: Okay.

EGAL: Or a less than lethal capacity. Um, there were several critical incidents where suspects had been shot that I was in that immediate vicinity. But I had never shot one.

VILLANUEVA: Okay. How long have you been assigned to DTAC before the critical incident?

EGAL: I was assigned to DTAC on December 25 as an acting sergeant. Uh, December 25, 2016. I promoted to sergeant on January 8 of 2017. And I've been down there since.

VILLANUEVA: Okay.

EGAL: So I was there for about five months.

VILLANUEVA: Very short period. Um, on the day of the critical incident were you working your regular assignment?

EGAL: Yes.

VILLANUEVA: Okay. On that day what kind of uniform were you wearing?

EGAL: I was wearing the bright blue uniform shirt that the Downtown officers wear typically on Bike Patrol or foot patrol. It has an Austin Police badge on the front left. It has Austin Police patches on the shoulders. I was wearing the - and it says Austin Police on the back. I- I was wearing the police issued - I believe I was wearin' the bicycle shorts. But I'm not positive if I was wearin' the shorts or the pants. But I had on the bright blue shirt.

VILLANUEVA: Okay. What was your health like that day?

EGAL: It was fine. Normal.

VILLANUEVA: You w- you weren't sick?

EGAL: No.

SEVIER: And this is an evening shift you're assigned to, correct?

EGAL: Yes.

SEVIER: And what was your sleep cycle immediately preceding this date?

EGAL: Um, I had worked 6:00 to 4:00 - 6:00 pm to 4:00 am the day before. I typically go to bed probably within an hour of getting home. So I probably went to bed around 5:00. Probably got up between noon and 1:00. Um, did - I believe that day I cut the grass before I went to work. So it was normal.

SEVIER: Normal?

EGAL: Yes.

SEVIER: So nothing outta the ordinary? You didn't hold over with the night shift or come in -- okay.

EGAL: No.

VILLANUEVA: On that day of this incident were you operating on foot? Bike? Or a marked patrol car?

EGAL: I was on bike.

VILLANUEVA: What kind of police gear did you have on your duty belt that day?

EGAL: I have pepper spray, duty pistol, expandable baton. Usually when I'm working down on 6th Street I'll carry a PR24, I was carryin' like an expandable PR24 that day. Handcuffs, um, I'm not sure if I had the tourniquet on my belt or not but I carry a tourniquet on my belt. I carry a flashlight, I carry a Taser. I carry a - a police radio. And then two spare magazines.

VILLANUEVA: Okay. At any time during this interview if you wanna take a break just let me know.

EGAL: Okay.

VILLANUEVA: Okay? So we're gonna move to the focus of this critical incident now. I'd like for you to just start to tell us what you were doin' before the incident and then just walk us through the incident itself. I may write on a notepad here. Just to make key points for me to ask questions later. So but I'll do my best not to interrupt you. So just take your time and, just describe the environment, the - the lighting conditions and what not and just walk us through.

EGAL: Okay. Will do.

VILLANUEVA: Thank you.

EGAL: It was, uh, Saturday night, Sunday morning and the Pecan Street Festival was in progress. There were a lot of large white tents and boots - booths and structures kind of in the middle of the street dividing it. Uh, that kinda had the effect of compressing the crowds on both sides. Which m- made for it seemed like more interactions, more disturbances than typical. I had just worked a disturbance at - in front of Terminal Six, which woulda been in the 300 block with a - a group of officers. I had pulled or pushed somebody off one of the officers during that incident. So I was involved in a response to resistance incident. So I had to get another supervisor to handle that situation. Uh, once we got those suspects in custody we all went back to Caritas which is the remote processing station that we use on the weekends when we close 6th Street. When we f- that was - this was before bar closing so it was 1:30, 1:40 in the morning. Um, we went to Caritas, I got with the officers. I explained to them my involvement. I talked to the other supervisor which is Sergeant (Eastlick) and explained that I had been involved in a minor R2R level 3. Um, no injury, no complaint of pain on my part of the R2R. Once we finished doing the short processing at Caritas, um, bar closing had happened while we were there so it was after 2:00 am when we left Caritas. The radio was gettin' really busy so I remembered I wanted to get us back out on the street. We were working in the area of 6th and (San Jac), that was our kind of area assigned to so it was the 200 block and the 300 block. We walked back into 6th and (San Jac) where we had been earlier. And we found Officer (Collins)' bicycle was missin'. Uh, we had all put our bikes on the side of the road to go deal with the other disturbance. Um, I had been there earlier so I had actually locked my bike up and was stationary in that area. I believe Officer (Collins) arrived to help with the disturbance when we were in the middle of it. And so he had just left his bike there and come and help us. Which is typical on a busy...

VILLANUEVA: Sure.

EGAL: ...night down there.

VILLANUEVA: Sure.

EGAL: So when we got back we found his bike was missing. We found some of his bike gear a short distance away in the 600 block of San Jac. So I told Officer Collins and Officer Delacerta to kind of stay in that area and just deal with whatever situations may come up and I would get on my bike and I would check the area around us just to see if on the chance that maybe somebody was just messing around or just took the bike and threw it in a dumpster or something like that. So I got on my bike and I started checking the area. I checked the 600 block of San Jac. I checked some of the alleys in the 200

block. I checked in the 300 block. I went back up San Jac into the parking lots in the 300 block of East 7th Street between San Jac and Trinity. While I was in that parking lot, I heard the call come out on the radio about shots fired. I did not hear any shots, I did not specifically key into where they said it happened but I figured since I did not hear any shots it probably was not in my immediate area. I do know that sometimes especially down on the street with the acoustics and buildings sometimes you do not hear things that happen very close to you.

VILLANUEVA: 'Kay.

EGAL: So I was aware it, I was paying attention but I wasn't overly concerned in that immediate area.

VILLANUEVA: Okay.

EGAL: I was still looking for Officer Collins' bicycle. A short time after that I heard a description on the radio from H.A.L.O. They said they had video of a suspect firing a weapon. They gave a description of a black male and I remember them saying with, "Wearing blue shorts with white stripes." And that part of the description just stuck with me. Kinda kept with. So as I was moving through the parking lot near the corner of 7th and Trinity I came across a group of people, they said, "It wasn't us," I said, "I believe you."

VILLANUEVA: I'm curious when they said, "It wasn't us," did they know what you were looking for? Were you asking them, were you talking to them about it or?

EGAL: I didn't say anything but I was assuming they heard the shots.

VILLANUEVA: Okay.

EGAL: And so when I came across them and I kinda stopped for a moment and was looking in their direction I think they thought that I thought that they were involved. And so they said, "It wasn't us." I remember looking at them and just checking and said okay none of them were wearing blue shorts with white stripes. So they don't match the suspect description so I'm just gonna continue lookin' for the bicycle. I kinda made a passing comment with them like, "I know it's not y'all, ya know, have a nice night." And just continued looking for the bicycle. I went from 7th Street and that parking lot at 7th and Trinity. I came down Trinity from 7th Street. So I came south through the 600 block of Trinity. Again I was checking for Officer Collins' bicycle. I was looking in the alleys, I was looking to the side of the street where people might have just thrown it to the side.

VILLANUEVA: Okay.

EGAL: As I came down Trinity and got to 6th Street there were tents along the west side in the 600 block of Trinity. So it was kind of compressed. As I was coming down the street I could see the crowd. There was a lotta people on the street, this was 2:40, this was after bar close. But we weren't opening the street that night because of the Pecan Street Festival. So normally, we open the street and that pushes all the people off the street, kinda guides them back to wherever they're going. That night they weren't opening the street so people just stayed. And there were hundreds if not thousands of people on the street just moving. I could see them moving up and down 6th Street which would have been across Trinity where I was. And what stood out to me was I saw a black male subject running north toward me kind of against the grain of the crowd moving. So when you're down on the street when something goes against the crowd or against the grain or somebody's running it typically stands out more than the regular crowd movement. So it caught my attention that he was running and then I saw the two bright blue shirts like I was wearing, the police officers wearing their bright blue DTAC shirts were chasing him. At that time I didn't know why they were chasing him. There were a lotta people down there, it was still very loud. Sometimes we have a hard time hearing the radio because the crowd noise is so loud. I have a radio earbud in my left ear and I don't have anything in my right ear. Sometimes the crowd noise can actually drown out the radio in your left ear. I didn't hear them saying anything but it was obvious to me that they were chasing this guy for some reason. Which again is not uncommon on 6th Street because we're on foot or we're on bikes and when we go to talk to people they have a tendency to run away from us more than maybe they do in other parts of town. So I saw them chasing him toward me. I was on my bicycle. I wasn't sure why they were chasing him, I was just fairly certain that they were chasing this guy. He was coming toward me I could see that I had an opportunity where I could impede his progress or stop him by just pushing my bicycle in front of him. There wasn't a lot of time for me to react. I didn't want to get off my bicycle and physically run up and tackled him. I tackled a young man on St. Patrick's Day on the street and I banged up both of my knees. I banged up my elbows. I didn't wanna physically run up and tackled this guy. Again I don't know why they're chasing him. So I saw an opportunity for me to push my bicycle in front of him and stop his ability to go forward. I thought he would either stop running or trip over it and fall down and we'd be able to take him into custody. So as he got to where I was I had a clear path straight in front of me and he was running from my right to my left. And I pushed the bicycle out from underneath me straight in front of me directly in his path of travel. He hit the bicycle and my perception was was that he fell with the bicycle to the ground. When he fell to the ground or hit the bicycle and crashed to the ground I heard a strange sound. It was like a clanking sound. It was an odd sound. It didn't sound right and it drew my attention to I guess where his hands were. Because then I became aware that there was a gun there. I wasn't sure if the gun was on the ground by his hand or in his hand or exactly what his positioning was. This was all very dynamic and fluid. But I heard the

strange clanking sound, became aware that there was a gun there. I saw at that point in time that he was wearing blue shorts with a white stripe. And I put it altogether that this is probably the guy that had been involved in the shots fired call. This is most likely why they're chasing him. I'm processing this information he's continuing to move. He doesn't stop. It slows him a little bit but he turns or spins or does something but he gets up and continues north up Trinity Street towards 7th Street. And as he's getting up and moving away I see that he's got the gun in his right hand as he's moving away from me. I'm again processing all this information, my gun is still holstered. I would consider kind of behind the power curve so to speak. I realize that he is a lethal threat, that he is most likely the person who has already fired a gun down here on this crowded street. One of my first weekends on 6th Street, on New Year's Day that year I took a shots fired call where a woman had been hit by a bullet that fell from the sky. She was sitting on a bench across the street from the Driskill and the round fell and hit her in the thigh. Just after midnight. And so what we concluded was that somebody had fired a gun in celebration of the new year and that round had come down and hit her. So I knew that even this person firing a gun in the air in this crowded area could cause serious bodily injury or death to anybody down here on the street. I knew he had the gun, I knew he was moving away from me. I knew he left a more crowded area. The area in the 600 block of Trinity at that time was much less crowded. I don't remember there being a lot of people on that street. I remember ~~them~~ there being maybe some on ~~a~~ the side and then more people being up by 7th and Trinity which is the direction that he was heading. As he is moving away from me, as he's got the gun in his hand I'm processing all this information. I'm coming to a conclusion that I'm going to have to use lethal force to stop this lethal threat. I know from my training and experience that he can act faster than I can react. He can shoot me, he can shoot anybody around me faster than I can react and stop him. There's no physical object between us that could stop him from shooting me. There's no ballistic protection or cover. As all of this information is being processed he ~~starts~~ turning to his left. And I starts immediately realize that I've gotta take action right now as fast as I possibly can. So I draw my weapon, I believe I was moving to my right and still kinda toward him. 'Cause as he got up and moved away ~~he~~ I was going toward him to help take him into custody. So as I drew as he was turning toward me I drew my weapon and I was moving to my right and up the street north - kind of northeasterly. And I believe he was northeast of my location and was moving northwesterly. So I was moving up and to my right, he was moving away from me to my left as I drew my weapon. I focused on the front sight of my weapon, I focused on the sights as I placed them on the largest part of his body which was his torso. I didn't see anybody between me and him. I didn't see anybody immediately behind him. I focused on the sights. I put them on his torso and I fired two to three rounds and I kept the gun on him until he went down to the ground. So I tracked him down to the ground, I stopped firing when I no longer perceived him as a lethal threat. As he was going to the ground or when he got on the ground then I registered that he wasn't a

threat anymore. At that point I covered him with my weapon, I saw the pistol that he had been holding was on the ground by his feet. I remember giving him verbal commands to, "Show me your hands - show me your hands." He was lying on his back kind of on his left side and they kinda put his hands up over his head. He said some things but I don't remember what he said precisely. I maintained cover on him. There were other officers around us. I remember closing the distance on him and directing other officers to secure him. Once he was handcuffed and secured I looked back to where the pistol had been on the ground and it wasn't there anymore. I remembered an officer, Officer Pena being right there by me when I first saw the pistol on the ground. So I checked with him and he said yes, he had secured the weapon. We were very concerned about the crowd. I was immediately concerned about the people up Trinity by 7th Street in the direction that I had been facing. I asked the officers around me, "Did anybody else fire?" And that's when Corporal (Johnson) said, "Yes," he fired as well. From the time the suspect hit my bicycle and I heard that clanking sound, that very distinct kind of metal sound until he was on the ground I didn't process hearing anything. I didn't hear any other sounds. I did not hear my gunshots. I did not remember hearing Corporal Johnson's gunshots. It wasn't until the suspect was on the ground and I was telling him show me his hands that I remember him saying something but that I don't remember precisely what it was. But that time period from that time he hit my bicycle until he was on the ground I didn't hear anything. Once he was secured I found out Corporal Johnson fired rounds. Officers were treating the suspect. We got him secured, I believe they were searching him. As other officers arrived from the alley, Sergeant Willis and a group of other officers came through the, what would have been the 400 block, the north alley. They had their guns drawn and they weren't sure what was - it was obvious they weren't sure what was going on. So I immediately direct- I told them, I said, "We're okay here. I need you guys to check up by 7th and Trinity to make sure nobody's hurt up there." So it was three or four officers went up to 7th and Trinity which was the direction that we were facing when we fired. And they checked with the people up there to make sure there was no one injured. I was never told that anybody was injured and I - there was no reported injuries up there. Officers were doing medical treatment to the suspect but the crowd was around us. The crowd was on 6th Street. There were people up on 7th Street and the crowd, especially from 6th Street started trying to push into the crime scene. So that became our next immediate concern. So officers began being directed to the intersection of 6th and Trinity to try and hold the crowd back. We called for the Mounted Unit to come out there. I notified Sergeant Willis that myself and Corporal Johnson had been involved in the shooting. I tried to distance myself from what was going on but the immediacy of the situation required that I take some command and control to try and maintain the scene and to try and help organize and keep the crowd back until we could get more resources there. As we got more resources to the scene I just stepped back and removed myself from the situation. Sergeant Willis later asked or a short time later asked if I had my

personal digital recorder which I normally carry with me when I'm on a bicycle. I told him it was in my bike bag. And my bike had been involved and he said he understood, he needed the recorder to administer public safety questions. So I went back to my bike bag, I took the recorder out of it. I gave it to him. A few minutes later he brought it back to me and he said he didn't need it, that Sergeant Dwyer was gonna administer the public safety questions to me when he got there with his car. I believe that was it for the immediacy of that situation.

VILLANUEVA: Okay. Thank you. You need to take a break? You're good?

EGAL: Just a drink.

VILLANUEVA: Sure.

EGAL: Of water.

VILLANUEVA: Sure. I have one cell left on that battery.

MAN: You better check it.

SEVIER: Keep an eye on it. It'll probably get us through the interview.

VILLANUEVA: Okay. Now we're gonna go back and just ask some questions.

EGAL: I understand.

VILLANUEVA: Okay, when you observed the suspect running from the police did you identify yourself as a police officer?

EGAL: I did not verbally identify myself as a police officer.

VILLANUEVA: Okay. Did you hear if the officers that were chasing the suspect did they verbalize that they were? "Stop Police." Or gave any voice command?

EGAL: I didn't hear them.

VILLANUEVA: Okay.

SEVIER: Can you describe from your perception the lighting conditions and the environment down there? You skimmed over or you did touch on it. But in just more detail. If you...

EGAL: Okay.

SEVIER: ...could.

EGAL: It was brighter at the intersection of 6th and Trinity. As you got into the 600 block it got darker. But it was just - it wasn't dark so to speak. There was still a lot of ambient light. There was - it was just the light was brighter at the intersection right there at the corner. And as you moved north up the alley the lighting conditions - the light diminished somewhat. But it was still typically, you BPC didn't use a flashlight, didn't need to because there was enough ambient light to see whatever you needed to see.

SEVIER: Okay. And you'd also alluded to the fact that when you were approaching there you could see the people - the foot traffic going back and forth which caught your attention that this guy was running through there.

EGAL: Yes.

SEVIER: But then ya also said that when there was more pedestrian traffic up on 7th Street. Would you associate as more foot traffic, as like people have already departed 6th Street and are now leaving or is there something else going on on 7th Street?

EGAL: 'Okay. I - no what - what is happening at the corner of 7th and Trinity is there's some food trailers up there on the southeast corner. So there are people that congregate up near that corner but they're not typically moving. The people that are moving on Trinity are usually going from 6th Street up Trinity to 7th Street to maybe a parking lot or to those food trailers. So there's much less at that point in time there was much less foot traffic going up Trinity than there was going back and forth on 6th Street.

VILLANUEVA: Okay. When the suspect was running away from the officers do you believe he saw you? Do you believe he made eye contact with you?

EGAL: I don't believe he saw me. I don't believe - I don't know if he perceived me at all. I don't think he registered my presence until the bicycle was in front of him. I don't recall him looking over at me. I recall him looking at the bike and hitting the bike. And then just from my observation he appeared just determined to get away. And so he just continued moving the way he had been moving.

VILLANUEVA: 'Okay. Do you remember the distance between the officers that were chasing the suspect? The distance that the suspect had on the officers.

EGAL: It was, it was in the crowd.

VILLANUEVA: Mm-hm.

EGAL: And maybe five to ten yards. It's hard to say because I'm looking through the

BPC

crowd and people are going this way and it's, ya know, a hard to see them. They were more toward the middle of the intersection coming toward Trinity when I first saw them. But I - I'm not s- sure exactly how far away from them he was.

VILLANUEVA: Okay. And do you know who the officers were that were chasing him?

EGAL: No.

VILLANUEVA: Okay.

EGAL: Well I didn't know at that time. I know who one of them was. I don't remember who the other one was. And just from the situation and circumstance. We had a critical incident debrief so yes I do know specifically one of them a...

VILLANUEVA: But at that time when you were - when he was being chased you didn't know which officers...

EGAL: No - no.

VILLANUEVA: Okay.

EGAL: I just saw two officers...

VILLANUEVA: And...

EGAL: ...in the same bright blue shirts.

VILLANUEVA: Correct.

EGAL: And, ya know...

VILLANUEVA: Perfect.

EGAL: ...very obvious we're ver- we stand out down there in the crowd. Be- and that's another reason why I wear the bright blue shirts.

VILLANUEVA: Gotcha.

((Crosstalk))

VILLANUEVA: Do you remember what part of the police bike made contact with the suspect?

EGAL: Well I pushed it straight out from underneath me. So it was still on two wheels and it was rolling across the street when he crashed into it. It looked like he

tried to get around the front end of it.

VILLANUEVA: Mm-hm.

EGAL: But I don't think he made it because he ended up hitting it. So I'm thinkin' he hit either the front portion of the frame or the front handlebar. And then went down with the bike or hit the bike and did some kind of spin move or something like that. But it was still on two wheels rolling across the street when he ran into it from the side.

VILLANUEVA: Can you go into more about how he fell? Did he land on his chest? On his side? His back? Or if you didn't see that or?

EGAL: This all happened very quickly. And what I recall is pushing the bicycle out of in front of him. Him running toward it trying to get around the front. Hitting the bicycle. I believe he ended up going down on the ground on the bicycle or hit the bicycle and pushed off the, I'm not certain. I heard the clanking noise. I remember seeing a gun and I remember the background of where I saw the gun ~~be in~~ the street. The pavement. So I thought that the gun had either fallen to the ground or on his hand on the ground. So I thought that he had hit the ground and then spun around to his right and continued running or hit the ground and - and jumped up. And - and continued running north. But I distinctly remember him hitting the bicycle, hearing that clanking sound and then as he got away from that bicycle, away from that area he was on his feet and the gun was in his right hand as he was moving - continued to move away.

VILLANUEVA: What was the distance when you - from you when he made contact with the bike and where you were standing after dismounting it?

EGAL: The bicycle travelled I think about two - two and a half bike lengths. So maybe eight to ten feet that way. But he was running across me so he kinda moved across me kind of north - northeast. So I would say ten to 15 feet in front of me. It could have been eight, somewhere in that range.

VILLANUEVA: Do you believe that using the police bike was reasonable to stop the suspect from running?

EGAL: Yes.

VILLANUEVA: Okay. Do you recall being trained to use the police bike as a tool to stop individuals from fleeing on foot?

EGAL: We were trained to use the bicycle as a barrier to protect us during interviews, to cordon or corral people while we're talking to them. To impede them if they were trying to flee. I don't recall specifically being trained to push my

bicycle in front of a fleeing subject but I was just applying that same concept to a dynamic situation. I was trying to use it as a barrier to impede his movement, to stop him from fleeing the officers.

VILLANUEVA: Okay. When did you attend APD Bike School?

EGAL: I was on Region 4 MetroTAC. I believe it was in November or December of 2014. I know during my SIU interview I said 2013 but I knew it was when I was on Region 4 MetroTAC but I'm fairly certain I had been there for about a year before I went to Bike School. So I believe it was in 2014.

VILLANUEVA: That's good. Okay. Is it safe to say that under the rapid unfolding conditions that you were confronted, at that particular moment is it practical to improvise the police bike as a method to detain that individual?

EGAL: Yes.

VILLANUEVA: Okay. Do you think by using the police bike as a device to detain the suspect was it objectively reasonable?

EGAL: Yes.

VILLANUEVA: When the suspect fell to the ground did you hear - you said you heard a - a clatter or a...

EGAL: A clatter or...

VILLANUEVA: ...clacking s...

EGAL: ...clanking kinda...

VILLANUEVA: ...clanking sound.

EGAL: ...sound.

SEVIER: Would that sound be different than the bicycle, you know, the bicycle's made out of metal, correct? Okay or a pedal say scraping the curb just like that. How is it different than the - the standard...

EGAL: It was...

SEVIER: ...sound of a bike falling?

EGAL: ...it was more like a hollow metal sound. And I don't know specifically what caused that sound. I just know that when I heard that sound that's when I became aware of the gun. And that's when I recall seeing the gun...

SEVIER: Okay.

EGAL: ...is when I heard that sound.

SEVIER: So it's safe to say - to say you heard a stimulus and you saw the gun and that would be in keeping with the sound you heard?

EGAL: It could have been.

SEVIER: Okay.

EGAL: It could have been. I just recall it being an odd sound and - and sticking out. And at the same point in time is when visually I was aware of the gun. So I just, uh, I just associated those.

VILLANUEVA: At that particular moment, what we're just discussing, did you hear a gunshot at that time?

EGAL: No.

VILLANUEVA: 'Okay. When the suspect fell to the ground due to the bike did you give any voice commands?

EGAL: No.

VILLANUEVA: Do you recall where the officers were at that time when the individual fell to the ground?

EGAL: They were still to my right. So they would have still been behind him.

VILLANUEVA: And is it still those two officers? Or do you see more in the area?

EGAL: When he crashed into the bike I was looking at him.

VILLANUEVA: 'Okay.

EGAL: I wasn't looking at the area around me. I was thinking that okay he crashed into the bike, now these officers are gonna be able to take him into custody. Then I was somewhat shocked that he was continuing and realized that okay now I have to get involved and so now I'm gonna have to - and so that's when I started moving toward him. I believe when I pushed the bike in front of him that it was gonna stop him or trip him and the officers chasing him were just gonna take him into custody at that point.

VILLANUEVA: Did the suspect display any signs of compliance after he was struck with the

police bike?

EGAL: No.

((Crosstalk))

VILLANUEVA: Do you believe the suspect made eye contact with you when he got up off the ground?

EGAL: I don't recall, no.

VILLANUEVA: 'Okay.

EGAL: I'm not sure. I was still processing information. So I didn't see - and I didn't make eye contact with him. I didn't register seeing his eyes. I was still processing everything that was happening as he was continuing to move. So after he hit the bike and hit the ground and got up the next thing that I looked at were his hands. And saw the gun in his hand. So I wasn't looking at his head or face. So I don't know if he looked at me or not.

VILLANUEVA: Can you take us back again what was going through your mind when you saw the gun in his hand? At that time.

EGAL: When I saw the gun in his hand after he hit the bicycle. So when he hit the bicycle and ended up on the ground I saw the gun, I saw the blue shorts with the white stripe. I put all that together. As he was moving away with the gun it was apparent to me that he was very determined to get away from the police. I mean him crashing into the bicycle barely slowed him down. He had been running from these uniformed officers that had been chasing him. I was standing right there and he still got up with that gun in his hand and maintained that capability of killing us. As he was trying to get away. So my perception was he was determined to get away from us. As however he needed to.

VILLANUEVA: Did you see the suspect pointing the gun at you?

EGAL: No.

VILLANUEVA: Under the circumstances do you feel that you had an opportunity to give verbal commands to drop the gun?

EGAL: No.

VILLANUEVA: Did the suspect fire? Do you remember?

EGAL: I did not perceive the suspect firing.

VILLANUEVA: Do you remember seeing a muzzle flash coming from his direction?

EGAL: No.

VILLANUEVA: What do you think the armed suspect intentions was at that point when he turned back towards you and the officers?

EGAL: To kill me. Or kill the officers.

VILLANUEVA: What was your body position at that moment?

EGAL: As he was moving away from me he was - I woulda been facing toward him so he hit the bicycle, got up with the gun, was moving up the street. I was west of his location and I started moving east and north kind of going after him. He turned to his left as I moved basically across the center axis of his body so I was moving to the right side of his body as he was turning this way. When I saw him initially again there was nobody between me and him. Nobody immediately behind him. But the initial angle that we were at was more toward 7th and Trinity and I wanted to move and get that angle more straight up Trinity. To just lessen the chance of anybody being in that back stop. I also wanted to get kind of out of his line and kind of what we call break the plane. But this I believe was all subconscious and just training that I've had over the years. I don't remember consciously thinking I need to move to the right. I was moving to the right when I realized I needed to draw my gun and shoot him I was moving to my right as he was turning to his left. And I was coming this direction. And he woulda been up here.

VILLANUEVA: Okay. Can you describe the moving? Are you walking fast? Are you jogging?

EGAL: I - it was...

VILLANUEVA: How would you describe that pace?

EGAL: I believe I was walking. And moving to my right. I'm not for certain. Just the perceptions that I have as he was turning I was moving to my right. He was moving - which woulda been to his left. As I was trying to put the sights on him I was trying to keep them on his torso as we were both moving. I don't believe I was moving anything faster than a walk pace.

VILLANUEVA: Okay.

EGAL: While that was happening. I was focused on the sights. And, you know, basically like we're trained. I had, ya know, a clear sight and the torso of the subject that I was trying to shoot was a little fuzzier. Because I was focused on something that was closer to me.

VILLANUEVA: 'Okay. Were there any obstructions in your way? Was the bike at this point is behind you, is that correct?

EGAL: The bike is to the right and behind us, I believe at this point.

VILLANUEVA: Okay.

EGAL: Yes.

VILLANUEVA: There's tents out there and tables or anything that could have obstructed your path? Or with this individual?

EGAL: No the tents and the tables and stuff I believe were on the west side of the street. Which would have been to my left as I was facing north. He was more toward the east side of the street moving to the west side of the street as he went north up the street. And I was more in the center of the street moving toward the east side of the street as I was moving north as well.

VILLANUEVA: 'Okay. When you discharged your duty pistol do you think your shots were objectively reasonable within APD policy?

EGAL: Yes.

VILLANUEVA: Under the circumstances you faced did you think at that moment was there another option to stop the threat?

EGAL: No.

VILLANUEVA: At what point did you realize you shot the suspect?

EGAL: When he was down on the ground I realized that I had fired two to three rounds. Again I drew my weapon, I was moving, I focused on my front sight tips, I put them on him. I fired until he was no longer a threat. And then once he was down on the ground I stopped firing. I recall it was two to three rounds. I don't remember specifically.

VILLANUEVA: Where do you think the suspect was shot at?

EGAL: He was shot in the - I believe upper shoulder or back. When he first went down to the ground, I didn't see any blood or any injuries. It wasn't until he was rolled over that I saw injuries on his back. I think he had on a white shirt and it was, a contrast there. But initially when he first went down I didn't perceive any injuries. Again I was still very focused on his hands and on the whole situation. But I believe he was shot in the back. I'm not sure, I don't recall if it was upper right or left.

VILLANUEVA: When he fell he fell belly down or on his side or back?

EGAL: When he went down he was on his back. And I believe on his left side like this. And I'm kind of leaning to my left. His hands were up over here and when they rolled him over to handcuff him they rolled him over on his stomach. And that's when I became aware that he had, injuries on his back.

VILLANUEVA: Okay.

SEVIER: Have you ever been in foot chase with someone who was armed before?

EGAL: Yes.

SEVIER: Tell me...

EGAL: Um...

SEVIER: ...about that.

EGAL: ...on St. Patrick's Day I was working Downtown. We had the street closed. We had barriers that were, kind of giving us a channel in the middle of the street. So the crowd was pushed to both sides. And the officers were able to function in the middle of the street. It was, basically it was an emergency vehicle lane in case we needed to bring ambulances or fire trucks. As I was walking down 6th Street towards San Jac I saw a young man smoking what appeared to be a marijuana cigarette. I - there was a lot of that goin' on down there, it's a minor violation. I just looked at him and I said, "Hey just put it out." And he just looked at me and laughed and continued to smoke it. And so I said, "No I said put it out." And he continued to laugh at me. So I reached through the barrier, there was a break in the barrier, I reached through the barrier and I pulled him into the center section. When I did that he threw the marijuana cigarette into the crowd. So I realized basically the minor violation had stopped but I now had the subject in custody so I needed to continue with this investigation. So I brought him back to me into the center and as I was going to handcuff him, he pulled one arm away from me and began running away. He got the second arm away from me. I was at the time I was alone and there were no other officers in the immediate area. He got his second arm away from me and started running west down 6th Street. I caught him maybe ten or 15 feet and tackled him to the ground. When I got on the ground with him I felt something hard hit my stomach underneath my vest. I looked down because we were kind of sandwiched together wrestling on the ground. I looked down and I saw a gun tucked in his waistband. And I saw his hands moving around very close to that gun. I did not have control of him, I had his elbows but he was still free to move his arm and hand from the elbow down. I knew that there was very little I could do at that point to keep him from

grabbing that gun so I just tried to maintain and hold onto him as best I could. I pushed him over and tried to pin his arms against the street. Fortunately, there were other officers just down the block and they got there very quickly. They each grabbed - an officer grabbed an arm and a leg and another officer was able to remove the gun from his waistband. That was the most recent incident of me chasing somebody with a gun.

VILLANUEVA: Would that have been a deadly force incident?

EGAL: If I had known that he had that gun and he had turned toward me and reached for that weapon then yes absolutely. I know through my training and experience a suspect with a weapon in their hand can act faster than you can react, especially in a very close distance. I've done a lot of training with simmunition rounds which are small plastic marking projectiles. We have tested this theory many times and not only do we know but the Supreme Court has recognized that action is faster than reaction. And we as police officers do not have to wait for an assault to manifest itself. Based on the totality of the circumstances we can take justifiable action to stop that assault from happening. So somebody with a weapon in their hand within the distance where they're capable of using that weapon on me is a lethal threat. If they have a gun or a knife or something like that.

VILLANUEVA: Is that why you shot this person in this situation?

EGAL: Yes, it is.

VILLANUEVA: You said after the shots were fired you learned that Corporal Johnson was there and he also fired. Prior to that did you see any other officer beside Corporal Johnson near you?

EGAL: Yes. There were - I don't wanna say a lot but there were three or four officers in that immediate area. My focus again once I focused on the suspect until he was handcuffed until other officers were dealing with him. Then my next focus was as Sergeant Willis and other officers arrived was getting help up the street. I knew some officers were dealing with the crowd behind me on 6th Street. So when the suspect first went down there were three or four officers that were there with me. 'Cause I remember thinking okay I've got lethal cover, somebody else needs to handcuff this guy. "Hey somebody come up and handcuff this guy." And it seemed like a long time but it really wasn't. Somebody stepped up and began to pull him over and handcuff him. And then start searching and then start doing medical aide on him. But yes there were other officers there. I'm not exactly sure of the number.

VILLANUEVA: Do you remember their names or who they were?

EGAL: Um,...

VILLANUEVA: Just - just the ones...

EGAL: ...Corporal Johnson...

VILLANUEVA: Corporal Johnson.

EGAL: ...was there. Steve Pena was there because I remember he picked up the gun. Corporal Johnson told me he fired. A short time after that I remember Officer Collins being there. I believe he was doing CPR on the suspect a little bit later. So he may come later. I believe one of the officers that was chasing him again - and some of this information I learned after the fact and during our critical incident debrief. But at the time, you know, the ones that I remember specifically by name were Johnson and, Pena because Pena picked up the gun and because Corporal Johnson fired. I know Allegretti was there. And I'm not sure of the name of the other officers.

VILLANUEVA: Okay.

EGAL: That were immediately there.

VILLANUEVA: That's good. What do you believe would have happened had you not shot the suspect?

EGAL: I believe he would have killed one of us or seriously injured or killed somebody else in that immediate area.

VILLANUEVA: 'Okay. What, if anything, do you think should have been done differently in this incident?

EGAL: I think he should have just stopped and surrendered to the officers at the very beginning.

VILLANUEVA: 'Okay.

EGAL: I mean and if he had stopped at that point, if he had stopped when my bicycle hit him, at any point in time he would have just been like any other foot pursuit that we have on 6th Street. And we have them all the time. It's not a good thing but we deal with armed people on 6th Street. A lot. And, you know, South by Southwest we had a very large number of shots fired calls. We had a large number of UCW's and DOC discharges. So we were all very aware ~~an~~ and cognizant that there were armed people out there. And that we were very fortunate that nobody had been seriously injured or killed up until that point. Except for, ya know, the lady on New Year's. I mean she'd been seriously injured by a round falling from the sky.

PE

PE

VILLANUEVA: In your opinion do you think there are training issues regarding this incident?

EGAL: I think we can always learn and we can always come up with some training - good training points. For one we can use bicycles as barriers. And we have used them before. I don't know if anybody else has ever thought of using a bicycle like this. It just again seemed opportunistic. As the suspect was running toward me I did not see any weapon. I normally am very good about a scanning sequence on people. You know, I look at the whole person, their hands, their waistline. But I also recognize that this was very dynamic. And it happened very quickly in a very small area with a lotta people around. We can always use more firearms training. Especially moving and shooting, especially dealing with people around us because in Downtown Area Command, in DTAC we have had incidents, I remember last summer, not this past summer but the year before we had one person trying to shoot another person that ended up hitting five or six innocent bystanders. So there are always people around us. So one of the things that I thought of after this incident was incorporating moving past target backers to engage threat targets. And training my officers on that. Because there are always people around us, there are always people in that immediate area when we're working Downtown. And all the equipment that we have is just what's on our belts. We don't have any, you know, we have - some of us have rifles but they're usually in cars.

VILLANUEVA: Good.

EGAL: And most of the time we're on foot or on bicycles. So that was a couple of the training things that I thought of.

VILLANUEVA: Okay.

EGAL: That I'm gonna try and work with some of my officers.

VILLANUEVA: Good. Good. Were there anything that you observed that APD can do better regarding officer involved shootings?

EGAL: Do you mean the process?

VILLANUEVA: Yeah everything you were exposed to, anything that we can do better as an agency.

EGAL: I believe that I was - for the situation and the circumstances I was treated very well. By the department, everyone explained everything to me. Once we got the scene somewhat secure and and we started with a lot of the administrative processes I think they went very smoothly. Whenever I had a question people answered it. I contacted, the CLEAT and the APA and they came to the scene. And everybody seemed to work together really well. So I - I think the process at the scene went very well.

VILLANUEVA: Okay.

EGAL: Given the situation.

VILLANUEVA: Sure. Were you contacted by Peer Support?

EGAL: I was.

VILLANUEVA: Good. Were you given time off from the incident?

EGAL: Yes I was.

VILLANUEVA: When did you return back to work?

EGAL: I came back on administrative duty I believe it was the following week.

VILLANUEVA: Okay.

EGAL: My shift, rotated off the streets. We do a thing on Downtown called an initiative shift.

VILLANUEVA: Good.

EGAL: Where we don't take calls for service. We do like, um, special operations or special assignments or training. So the next week was shift change and my shift went to that rotation so I came in to the office in an administrative capacity.

VILLANUEVA: And did you feel comfortable coming back to work?

EGAL: Yes.

VILLANUEVA: 'Okay. And when you returned to work did you feel like you were fit for duty?

EGAL: Yes.

VILLANUEVA: Okay. Did your chain of command give you support?

EGAL: Yes.

VILLANUEVA: Okay. All right. You guys need a break? Okay we're gonna take a break. And be right back.

EGAL: 'Okay.

VILLANUEVA: We're gonna stop this recording at 2:56. Going back on the record, it's 3:04 pm. Sergeant Egal are the same people back in the room that left the room earlier?

EGAL: Yes.

VILLANUEVA: Okay. We're just gonna go ahead and conclude, okay?

EGAL: Yes, sir.

SEVIER: What time you got?

VILLANUEVA: 3:04.

SEVIER: Okay.

VILLANUEVA: Yeah, 3:04. Is there anything I haven't asked about that you would like to f- comment on?

EGAL: No.

VILLANUEVA: Is there anything I have asked you about that you would like to further explain or clarify?

EGAL: I - no. I - I mean again I'll just reiterate the fact that I didn't want this to happen. I tried to use a different way of stopping that whole foot pursuit. And it - situation was basically determined by the suspect. And the outcome was determine by his actions toward us. And it's nothing that I or I don't believe any of the other officers - it's not the kinda outcome that we wanted. Or it's not the kinda outcome that we typically experience even when we're chasin' after people. So it's...

VILLANUEVA: Okay. Thank you. Is there any other information you have related to this investigation that may or may not be important?

EGAL: No.

VILLANUEVA: 'Okay. This audio file here will be transcribed and you will be asked to review i- review the transcription. When you do so you will be expected to read it thoroughly. After you sign it the document will become your formal statement in this investigation. And you will be held accountable for its truthfulness and accuracy. If you have any additional information to add to your statement at that time we will tape record the additions for cla- or clarifications. We're now ending this interview. And the time is 3:06.

Richard P Egal J 3936
Sgt. Richard Egal

SUBSCRIBED AND SWORN TO BEFORE ME THE UNDERSIGNED AUTHORITY ON THIS THE 22nd DAY OF September, 2017.

T Hall J786 PEACE OFFICER IN AND FOR THE STATE OF TEXAS.

Google Earth

feet 100
meters 30

JE 3976

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-LY**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN, **Defendants.**	§	

AFFIDAVIT OF BRIAN MANLEY

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME the undersigned authority, appeared Brian Manley, who, being by me duly sworn, deposed and said as follows:

1. "My name is Brian Manley, I am over the age of eighteen years, and I am authorized to make this affidavit in support of Defendant City of Austin's Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as the Chief of Police for the City of Austin Police Department (APD). I have been the Chief of Police for APD since December, 2016. I am a certified Texas law enforcement officer. Overall, I have been a professional law enforcement

officer with APD since 1990. Prior to becoming Chief of Police, I held numerous patrol, investigative, supervisory, and management positions with the Austin Police Department.

3. As the Chief of Police, I manage the personnel, budget, and police operations for APD. I have final responsibility for setting the operational policies ("APD Policies"), hiring standards, and training standards for APD. I also have personal knowledge of how APD (and the City of Austin) investigates complaints against officers and of the discipline of sworn APD officers. In my role as the police chief, I have final authority over internal affairs investigations and police officer discipline, subject to State of Texas Civil Service laws and the Meet and Confer Agreement between the City of Austin and the Austin Police Association (the "Agreement"). Through my employment as the APD Chief of Police, I have personal knowledge of the Agreement, APD work rules and APD policies, APD training requirements, personnel and hiring information for APD police officers, and APD investigative and disciplinary policies and procedures.

I. APD Hiring

4. The Chief of Police has final authority to hire new APD cadets. I know that all APD applicants must undergo and pass a written cognitive test, sit for an oral interview before a board of APD officers, pass a medical examination, and pass a physical fitness test. Additionally, before any new cadets are hired, APD's recruiting division conducts comprehensive employment, criminal, and military background checks. All applicants must also undergo and pass a psychological evaluation and a polygraph examination before hiring. APD does not hire any candidates whose background or psychological evaluation indicates that they pose a higher than normal risk of using excessive force, or that they are otherwise unfit for law enforcement work.

5. I know that APD conducted a comprehensive background investigation on Richard Egal and Maxwell Johnson before they were hired as cadets.

6. Based on the results of the extensive background investigation conducted on Richard Egal and Maxwell Johnson, and the fact that they passed all of their pre-employment examinations, there was no indication that they posed any higher than normal risk of using excessive force as a police officer for the City of Austin.

II. APD Investigations and Discipline

7. APD has policies and procedures in place to ensure that officers accused of violating APD policies are investigated and, if appropriate, disciplined. APD has a set of policies that all officers must obey. The APD policies govern all manner of officer conduct, including, but not limited to, pursuit of fleeing suspects, appropriate arrest procedures, reasonable suspicion and detention, use of APD computers, officer discipline, and use of force. Every APD officer is issued a set of these policies. As the APD policies are updated or revised, they are distributed to all officers.

8. At the time of this incident, May 7, 2017, APD had policies in place specifically forbidding the use of excessive force. These policies specify when an officer may use force, and, when appropriate, the level of force that may be used. APD policies also include a specific policy covering the use of a firearm. Officers who violate the APD policies with respect to use of force are subject to discipline up to, and including, termination. APD also had policies in place which specifically prohibit bias-based profiling and racial profiling which are set forth in Policies 328 and 329.

9. APD's use of force reporting and investigation requirements are set forth in Policy 211. APD monitors its officers' use of force by requiring all officers who use force to report their

use of force. APD conducts a review of and inquiry into every reported use of force to determine whether it comported with APD's policies. APD employs a sliding scale to determine the extensiveness of review and inquiry into each use of force – less serious uses of force (e.g., those involving the use of chemical spray or use of a takedown technique) are reviewed by supervisors and the officer's chain of command, while more serious uses of force (e.g. use of lethal force or incidents resulting in an in-custody death) are reviewed by APD's Internal Affairs Division (IAD) and APD's Special Investigations Unit (SIU). An intermediate level of investigation is conducted for uses of force classified as "Level 2," which include weaponless blows to a subject's head. These uses of force require a detailed inquiry packet, review by the officer's chain of command, and review by the APD's Force Review Board.

10. If an incident involves different levels of force, a single review is conducted, and the incident is classified using the most serious level of force applied. For example, if an incident involves the officer using a Taser, blows to the head, and a firearm, then the incident is classified as Level 1, and receives the most stringent review.

11. Following every Level 1 use of force, the APD's Special Investigations Unit (SIU) performs a criminal investigation into the police officer's actions. Officers selected to work in SIU are all experienced investigators who have experience investigating high-profile crimes. SIU detectives have the full panoply of APD resources at their disposal for the investigation—including crime scene specialists, firearms and trajectory analysis, DNA analysis, etc. SIU detectives work closely with the Travis County District Attorney (assuming the incident occurred in Travis County) to gather and present the evidence collected to a grand jury. At the conclusion of its investigation, SIU turns its investigative materials over to the Travis County District Attorney who makes the

determination whether to present cases involving an APD police officer's use of a firearm to a grand jury to consider whether to indict.

12. APD maintains an internal affairs unit (IAD). IAD is responsible for investigating any violation of general orders by APD officers—including all officer-involved shootings. IAD investigators are all experienced law enforcement officers who hold the rank of sergeant or above. All formal complaints about APD officers, whether generated internally or externally, are investigated by IAD. IAD is responsible for producing a report on the allegation and detailing the evidence collected, which includes compelled statements given by the officer involved in the shooting (if officers refuse to give statements to IAD, they may be terminated from their employment). IAD also has complete access to all of the evidence gathered by SIU.

13. In cases of officer-involved shootings, I review the IAD report myself. I also seek the recommendations of the officer's chain-of-command (the sergeant, lieutenant, commander, and assistant chief) regarding whether they believe the officer violated policy based on their independent review of the evidence. When appropriate, I will conduct a disciplinary review hearing with the officer to get his or her side of the story. Following the hearing, if one is conducted, and after hearing the recommendations of the chain of command, the Office of the Police Monitor, and the Citizens Review Panel, I determine whether the officer violated APD policies and, if so, the appropriate discipline.

14. Under Texas civil service law, and the Agreement, I can discipline officers by oral reprimand, written reprimand, unpaid suspension, demotion, or indefinite suspension (termination). The APD Chief of Police uses a "disciplinary matrix" to determine the level of punishment for particular offenses. Through the matrix, which was embodied in APD policy at the time of the incident, officers are made aware that any use of deadly force that the Chief

determines is unreasonable under APD's policy will result in the termination of their employment. APD has, in fact, terminated the employment of officers who were found to have violated APD policies regarding the use of force in officer-involved shootings. A true and correct copy of APD's disciplinary matrix (APD Policy 903) is attached hereto.

15. APD maintains disciplinary records for its officers. Sergeant Egal and Corporal Johnson have never been disciplined by APD for excessive force and have never had any complaints or allegations alleging excessive force sustained against them.

16. There is considerable citizen oversight of APD and IAD. The City established the Office of the Police Monitor (OPM) and the Citizens' Review Panel (CRP) in 2002. At the time of this incident in May 2017, the OPM monitored APD in several ways. For instance, OPM staff sat in on interviews conducted by IAD investigators to ensure that they are conducted fairly and impartially. The OPM received complaints from the public and ensured that they are investigated by IAD. The OPM also reviewed IAD investigative files, reviewed disciplinary decisions made by the Chief of Police, and created reports on APD performance.

17. At the time of this incident, the CRP was a panel of citizens selected by the Austin City Council to monitor APD. The CRP conducted public hearings, during which it received complaints from the public regarding APD, discussed completed IAD investigations, and it received information from APD and OPM staff. The CRP also reviewed ongoing investigations in closed sessions, and had complete access to IAD files. The CRP could vote to recommend discipline in certain cases or could request that the Austin City Manager hire an independent third-party firm to conduct a review of an IAD investigation or a specific incident.

18. In this case, SIU conducted a complete criminal investigation of the May 7, 2017 incident. The Travis County District Attorney made the decision to decline prosecution of criminal charges against Sergeant Egal and Corporal Johnson.

19. As SIU conducted its criminal investigation, IAD also conducted its investigation to determine if Egal and Johnson violated any APD policies with respect to their use of force and otherwise. I know that OPM monitored the IAD investigation. When IAD concluded its investigation, the APD chain of command concluded that Egal and Johnson did not violate any of APD's policies during the encounter with Landon Nobles.

20. APD has assessment tools in place that can identify officers who may pose an unusual risk for using excessive force. For example, APD uses an algorithm that will automatically send notifications to an officer's supervisors if the officer reports more than a specified number of uses of force over a specified period of time. (Supervisors may also be notified if an officer uses excessive sick leave, is the subject of a number of complaints, or is involved in a number of vehicle collisions). If such a notification occurs, the officer's supervisors must re-review each of the officer's uses of force or citizen complaints to determine if the officer acted appropriately, or if the officer needs additional training, counseling, or disciplinary action. This process is followed even though every use of force and every citizen complaint receives a thorough review when it first occurs.

21. At the time of this incident, APD never had any indication that Egal or Johnson posed any unusually high risk of using excessive force, or that APD police officers are not adequately trained for their jobs.

22. In support of this affidavit and Defendant City of Austin's Motion for Summary Judgment, the following Attachments are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

Attachment 1: APD Policy 200

Attachment 2: APD Policy 202

Attachment 3: APD Policy 211

Attachment 4: APD Policy 903

Attachment 5: APD Policy 412.1

Attachment 6: APD Policy 412.2

Attachment 7: APD Policy 305

Attachment 8: APD Policy 900.3.1

I declare under penalty of perjury that the above statements are within my personal knowledge and are true and correct."

Further affiant sayeth not.

Signed this 8 day of February, 2021.

BRIAN MANLEY

BEFORE ME, personally appeared **BRIAN MANLEY,** proved to me through a government issued identification to be the person whose name is subscribed in the foregoing instrument and acknowledged to me that she executed the same for purposes and consideration thereby expressed.

SWORN TO AND SUBSCRIBED before me on this 8 day of February, 2021.

JANET D DEATON
NOTARY PUBLIC
ID# 12666105-8
State of Texas
Comm. Exp. 03-29-2021

Notary Public, State of Texas

ATTACHMENT 1

Policy
200

Austin Police Department
Austin PD Policy Manual

Response to Resistance

200.1 PURPOSE AND SCOPE

This policy recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this policy is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This policy is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee.

200.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may exercise control over another in carrying out their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare requires a careful balancing of all human interests.

200.1.2 DEFINITIONS

Bodily Injury - Physical pain, illness or any impairment of physical condition (Tex. Penal Code § 1.07(8)).

Deadly Force - Force that is intended or known by the officer to cause, or in the manner of its use or intended use is known to be capable of causing death or serious bodily injury (Tex. Penal Code § 9.01(3)).

Force - Any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject.

Non-Deadly Force - Any application of force other than deadly force.

Objectively Reasonable - An objective standard viewed from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight, and within the limitations of the totality of the circumstances presented at the time of the incident.

Serious Bodily Injury - Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ (Tex. Penal Code § 1.07(46)).

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

200.1.3 DUTY TO INTERCEDE
Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Such officers should also promptly report these observations to a supervisor.

200.1.4 RESPONSE TO RESISTANCE RELATED POLICIES

(a) Policy 200 (Response to Resistance).

(b) Policy 202 (Firearm Discharge Situations).

(c) Policy 204 (Leg Restraint Guidelines).

(d) Policy 206 (Control Devices and Techniques).

(e) Policy 208 (TASER® Guidelines).

(f) Policy 211 (Response to Resistance Inquiry, Reporting and Review).

(g) Policy 212 (Force Review Board).

200.2 RESPONSE TO RESISTANCE POLICY

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

(a) Given that no policy can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate response to resistance in each incident.

(b) Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use any of the standard tools, weapons, or methods provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.

(c) While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying objectively reasonable force.

(d) Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

200.2.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE
Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

(a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

1. The conduct of the individual being confronted as reasonably perceived by the officer at the time.
2. Officer/subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers vs. subjects.
3. Influence of drugs/alcohol or mental capacity.
4. Proximity of weapons.
5. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained.
6. Time and circumstances permitting, and the availability of other options (what resources are reasonably available to the officer under the circumstances).
7. Seriousness of the suspected offense or reason for contact with the individual.
8. Training and experience of the officer.
9. Potential for injury to citizens, officers and subjects.
10. Risk of escape.
11. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
12. Other exigent circumstances.

200.2.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

(a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful.

(b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful.

(c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

200.2.3 NOTICE OF AUTHORITY AND IDENTITY
If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).

200.3 DEADLY FORCE APPLICATIONS
An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

(a) Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.

(b) Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:

1. The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
2. The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

200.4 REPORTING THE RESPONSE TO RESISTANCE
Any response to resistance by a member of this department shall be documented promptly, completely and accurately in an appropriate report as prescribed by Policy 211 (Response to Resistance Inquiry, Reporting, and Review).

200.4.1 NOTIFICATION TO SUPERVISORS
Supervisor notification shall be made as soon as practicable following any force incident or allegation of use of force.

200.4.2 MEDICAL ATTENTION
Prior to booking or release, medical assistance shall be obtained for any subject who has sustained visible injury, expressed a complaint of injury or continuing pain or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail.

A subject who exhibits extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain (sometimes called "excited delirium"), or who requires a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

200.4.3 ASSISTING MEDICAL PROFESSIONALS

(a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in APD Policies 211 and 200.4.1.

1. Medical personnel are:

(a) Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)

(b) Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties

(b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to APD Policies 211 and 200.4.1 Response to Resistance by:

(a) Notifying their supervisor, and

(b) Completing an incident report including the title code 8400

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 2

Policy
202

Austin Police Department
Austin PD Policy Manual

Firearm Discharge Situations

202.1 PURPOSE AND SCOPE

The purpose of this policy is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This policy is for internal use only and does not increase the Department's and/or an officer's civil or criminal liability in any way. Violations of this policy can only form the basis for departmental administrative actions.

202.1.1 POLICY

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances.

(a) An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

1. Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
   (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
   (b) The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

(b) To stop a dangerous and aggressive animal:

1. In circumstances where officers encounter any animal which reasonably appears, under the circumstances, to pose an imminent threat of bodily injury to officers or others, officers are authorized to use objectively reasonable force up to and including deadly force (when lesser means would be impractical) to neutralize the threat.
2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g., dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g., fire extinguisher, TASER Device, oleoresin capsicum (OC) spray, assistance of animal control). Nothing in this policy shall prohibit any officer from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impracticable.
3. In the event force is used against an animal by an officer and the animal is injured or there is a reasonable belief the animal was injured, regardless of whether visible

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

injury exists, officers shall make a reasonable attempt to ensure the animal receives care for its' injuries. This may include but is not limited to:

(a) Contacting the owner to arrange private treatment in an appropriate time frame.

(b) Contacting Animal Control to have the animal collected and treated

(c) Arranging transport of the animal to a veterinary facility

(d) Transporting the animal to a veterinary facility

(c) With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impracticable.

(d) For target practice or recreational shooting at an approved range or any area where firing a weapon would be safe and not a violation of law.

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this policy; only that a warning be given if feasible.

202.1.2 WARNING SHOTS
Warning shots are prohibited.

202.1.3 MOVING VEHICLES
Disabling a vehicle by use of a firearm will only be attempted by units specially trained in and equipped for this tactic and only under extraordinary circumstances. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1 (a) above.

(a) Officers shall exercise good judgment and will not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.

(b) Unless it reasonably appears that it would endanger officers or the public, officers will move out of the path of any approaching vehicle.

(c) When encountering a vehicle being operated in a threatening manner, officers may leave a position of cover only:

1. to utilize an avenue of escape
2. move to a position of better cover, or
3. if the need to apprehend the suspect outweighs the danger that the apprehension would impose to the officer or any other person.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(d) This is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others.

202.1.4 DISPLAY OF FIREARMS
Firearms may be readied for use in situations where it is anticipated they may be required. Firearms shall not be displayed or pointed in a threatening or intimidating fashion unless it is objectively reasonable to believe there is a substantial risk that the situation may escalate to the point where deadly force would be permitted. Firearms shall be secured or re-holstered as soon as reasonably practicable when it is determined that deadly force is no longer necessary.

202.2 REPORT OF INTENTIONAL FIREARM DISCHARGE AGAINST A PERSON

For any intentional firearm discharge against a person, regardless of whether the person is hit, the incident shall be handled as a Level 1 Force Incident and the employee shall comply with the reporting procedures prescribed in Policy 211 (Response to Resistance Inquiry, Reporting and Review).

202.3 REPORT OF INTENTIONAL FIREARM DISCHARGE AGAINST AN ANIMAL

This section is written to cover the reporting procedures for the following situations:

(a) The humane destruction of a seriously injured animal.

(b) In defense against an attacking or dangerous animal.

Any intentional firearm discharge which results in an injury to another person will be investigated by SIU (211.2.1).

202.3.1 REPORTING A FIREARM DISCHARGE FOR THE HUMANE DESTRUCTION OF A SERIOUSLY INJURED ANIMAL
The following reporting guidelines shall be followed for the humane destruction of a seriously injured animal or an attacking or dangerous animal.

(a) Employees who need to destroy a seriously injured animal for humane reasons shall first request approval from a supervisor.

(b) Employees shall complete an incident report entitled Injured Animal Firearm Used (Title Code 3449-7). The incident report should detail the circumstances requiring the animal's destruction. The authorizing supervisor should be identified in this report.

(c) Supervisors who approves the destruction shall:

1. Add a comment in the CAD call notating their notification and approval.
2. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:
    (a) Involved employee's chain of command up to the lieutenant.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

3. Review the primary reporting employees' incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident

(d) Each level of the chain-of-command, up to the lieutenant, shall review the incident and complete a case note to document their review. In the event the reviewing lieutenant identifies concerns with the destruction, he/she will notify the commander.

(e) The chain-of-command shall determine what, if any, corrective action is needed.

(f) Employees are not required to be placed on restricted duty.

202.3.2 REPORTING A FIREARM DISCHARGE AGAINST A DANGEROUS AND THREATENING ANIMAL

The following reporting guidelines will be followed for the destruction of a dangerous or attacking animal.

(a) Employees who destroy an attacking or dangerous animal will notify their supervisor or another on-duty supervisor in the absence of their immediate supervisor, as soon as practical.

(b) The supervisor, or designated acting supervisor, will respond to the scene and conduct an on-scene investigation of the incident, interview witnesses, and insure digital photographs are taken and downloaded into the Digital Crime Scene Management System.

(c) The involved employee(s) are required to complete an incident report entitled Dangerous Animal - Firearm Used (3434-7) detailing the event and the reason(s) for selecting deadly force over other force options..

(d) Investigating supervisors will complete a supplement to the incident report detailing their investigation and findings.

(e) The investigating supervisor will notify, via e-mail, each member of the involved employee's chain of command up to the assistant chief when the investigation is ready for review. This notification will include the incident report number. Each member of the chain-of-command through the assistant chief shall add a Versadex case note to the incident report indicating they have reviewed the incident.

(f) The chain-of-command will determine what, if any, corrective action is needed.

(g) Employees are not required to be placed on restricted duty.

202.4 REPORT OF UNINTENTIONAL FIREARM DISCHARGE

This section is written to cover the reporting procedures for the following unintentional firearm discharge situations:

(a) While at the APD firearms range.

(b) While at an approved firearms training site.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(c) While on-duty.

(d) While off-duty.

202.4.1 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE AT THE APD FIREARMS RANGE OR APPROVED FIREARMS TRAINING SITE

The following reporting guidelines will be followed when an employee discharges a firearm unintentionally while at the APD firearms range or approved firearms training site.

DEFINITONS:

Unintentional Discharge- The discharge of a firearm that the shooter did not intend to occur.

Preventable Discharge- An unintentional discharge that constitutes a gross deviation from Department training received prior to the incident or a discharge which exhibits a failure to exercise the care that a reasonably prudent employee would have exercised in similar circumstances.

(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to Policy 211 (Response to Resistance Inquiry, Reporting and Review).

(b) If there is no injury or the injury is only to self:

1. Employees will report the discharge immediately to range personnel and request emergency medical assistance if needed.
    (a) The Learned Skills sergeant will be notified immediately.
    (b) Employees may be immediately disqualified and placed on restricted duty depending on the severity of the incident.
2. The Learned Skills Unit will:
    (a) Notify the involved employee's immediate supervisor regarding the incident.
    (b) The training instructor will completed an UD/PD form and forward it to the Learned Skills Sergeant.
    (c) The Learned Skills Sergeant will review the UD/PD form and make the determination on whether the firearms discharge was unintentional or preventable. He/she will prepare a memorandom addressed to the employee's immediate supervisor regarding the incident and send a copy to the Learned Skills Lieutenant.
3. If the discharge is determined to be unintentional the employee's chain-of-command will handle the inquiry.
4. If the discharge is determined to be preventable the incident will be handled as a Class B Investigation as outlined in Policy 902 (Administrative Investigations):
    (a) The Learned Skills Lieutenant will review the prepared memorandum and complete an Internal Affairs complaint and forward it to Internal Affairs.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

5. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

202.4.2 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE ON-DUTY
The following reporting guidelines will be followed when an on-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.

(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to Policy 211 (Response to Resistance Inquiry, Reporting and Review).

(b) If there is no injury:

1. Employees will report the situation immediately and request their immediate supervisor to respond to the scene.
2. Employees may be placed on restricted duty.
3. The incident will be handled as a Class B Investigation as outlined in Policy 902 (Administrative Investigations):
   (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.
   (b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.
   (c) The employee's chain-of-command will determine what, if any, corrective action is needed.
4. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

202.4.3 REPORTING OF UNINTENTIONAL FIREARM DISCHARGE WHILE OFF-DUTY
The following reporting guidelines will be followed when an off-duty employee discharges a firearm unintentionally anywhere other than at the APD firearms range.

(a) If the result is death or injury to another then the incident will be handled as a Level 1 force incident. Refer to Policy 211 (Response to Resistance Inquiry, Reporting and Review).

(b) If there is no injury:

1. Employees will report the situation immediately and request an on-duty supervisor to respond to the scene.
2. Employees may be placed on restricted duty.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

3. The incident will be handled as a Class B Investigation as outlined in Policy 902 (Administrative Investigations):
   (a) An incident report will be completed and witness statements taken. Digital photos will be taken and downloaded into the Digital Crime Scene Management System.
   (b) The employee's immediate supervisor has investigative responsibility for the incident. If the immediate supervisor is not available, an on-duty lieutenant from the employee's assigned area will designate an on-duty supervisor to investigate the incident.
   (c) The employee's chain-of-command will determine what, if any, corrective action is needed.
4. If the incident occurs out of city, the proper law enforcement authority having jurisdiction must be notified. The employee's supervisor will coordinate the investigation with the responsible agency.
5. The incident will be reviewed by the Force Review Board after the internal investigation is complete.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 3

Policy
211

Austin Police Department
Austin PD Policy Manual

Response to Resistance Inquiry, Reporting, and Review

211.1 PURPOSE AND SCOPE

This directive sets forth Department policy and procedures for inquiring, reporting, and reviewing force incidents in response to resistance involving Department personnel. The specific required inquiry, reporting, and review of these incidents is determined by the force level, as defined in this policy.

Personnel may delay compliance with the provisions of this order if the scene is unstable, there is unrest, or other conditions make immediate compliance impracticable. The protection of the public, Department personnel, and maintenance of public safety shall remain a top priority. Compliance with this order shall occur as soon as practicable. The approving supervisor shall ensure the reason for the delay is documented in the supervisor's supplement or inquiry memorandum.

211.1.1 DEFINITIONS

Inquiry: The preliminary review of the events surrounding a response to resistance incident, including the initial response to the scene and follow-up investigations.

Reporting: The process of documenting the information gathered in the inquiry of a response to resistance incident through written, oral and visual means and compiling that information into the appropriate packet for review.

Review: The process of evaluating all the given information obtained in the force incident inquiry and reporting stages to determine if the response to resistance was objectively reasonable and within policy guidelines.

211.1.2 IDENTIFYING RESPONSE TO RESISTANCE DOCUMENTATION

The following Response to Resistance reports and forms are required as determined by the force level of the incident:

Response to Resistance Incident Report: The initial incident report written by the primary reporting employee for all force level incidents. Title Code 8400 shall be added to the incident report by the primary reporting employee to identify the incident as a response to resistance incident. The Use of Force section of the "Details" page shall also be completed.

Response to Resistance Supplement: A supplement written to the primary reporting employee's incident report.

Response to Resistance SIU Inquiry Report: A separate incident report written by the Special Investigations Unit (SIU) for all Level 1 incidents and in-custody deaths.

Response to Resistance Level 2 Inquiry Control Sheet (PD0060): A coversheet completed by the supervisor for all Level 2 incidents.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

Response to Resistance Supervisor Inquiry Memorandum: A memorandum completed by the supervisor reviewing all Level 2 incidents.

Response to Resistance Case Note: A note that is added to the Incident Report in Versadex.

Response to Resistance Inquiry Packet: A packet compiled in response to resistance inquiries to be handled by the appropriate person, unit, or chain-of-command.

- Level 1 inquiry packets are completed by the SIU.
- Level 2 inquiry packets are completed by the supervisor conducting the inquiry.
- Level 3 incidents do not require an inquiry packet as documentation is handled through Versadex case notes.

211.2 DETERMINING THE CORRECT FORCE LEVEL

Force levels are broken up into three types: Level 1, Level 2, and Level 3. Each level is defined below by the response to resistance used in the incident. These levels are established for inquiry, reporting, and review purposes only. If there is uncertainty about which level to designate a particular incident then the higher level shall be used.

211.2.1 LEVEL 1 FORCE INCIDENTS AND IN-CUSTODY DEATHS

(a) Any force resulting in death.

(b) Any force that resulted in asubstantial risk of death.

(c) Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.

(d) Any intentional firearm discharge at an animal that results in injury to another person.

(e) Any unintentional firearms discharge resulting in another person's injury or death.

(f) Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g., serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).

(g) Use of any impact weapon, including kinetic energy projectiles, and improvised weapons, that strikes the head of a subject.

(h) **In-Custody Deaths**: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as Level 1 incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.

(i) The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.

211.2.2 LEVEL 2 FORCE INCIDENTS

(a) Any strike to the head by an employee with any weaponless technique.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(b) Use of any impact weapons, including kinetic energy projectiles (other than a Taser), and improvised weapons, to strike a subject and contact is made, regardless of injury. (A strike to the head is a Level 1).

(c) Any deployment of a police canine resulting in a bite to a subject's clothing or skin, or which results in any injury to a subject.

(d) Any use of the Taser where the cartridge is fired at a subject and causes neuromuscular incapacitation.

(e) The utilization of the Precision Immobilization Technique, unless serious bodily injury or death occurs.

211.2.3 LEVEL 3 FORCE INCIDENTS

(a) Use of Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent on a subject.

(b) Any Taser application where there is no neuromuscular incapacitation (e.g. drive stun with or without cartridge attached)

(c) Use of any impact weapon, including kinetic energy projectiles or any other similar object, in an attempt to strike a subject but no contact is made.

(d) Use of a baton for a non-striking purpose (e.g., prying limbs, moving, or controlling a subject).

(e) Any force resulting in injury or a complaint of pain beyond the temporary discomfort of unresisted handcuffing, but not rising to a Level 1 or 2 incident.

(f) A weaponless technique is used with or without complaint of injury or pain. (A strike to the head is a Level 2). Examples of weaponless techniques include:

1. Hand/palm/elbow strikes.
2. Kicks or leg sweeps.
3. Pressure points.
4. Take-downs.

211.2.4 ELEVATION OF A FORCE LEVEL INCIDENT

If information is uncovered during a response to resistance inquiry to indicate that the original force level falls into a higher category, the force level should be elevated to conduct the appropriate inquiry.

(a) Supervisors have the discretion to elevate any Level 3 force incident to a Level 2 in order to conduct a more extensive inquiry and review of the incident.

(b) An employee's lieutenant, with the approval of the commander or Duty Commander, may elevate any response to resistance incident to a Level 1 force incident.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

211.3 VIOLATIONS OF LAW OR POLICY

Supervisors receiving a complaint regarding a response to resistance incident will review the available information regarding the incident to determine if any credible evidence a violation of policy or law may have occurred.

(a) Supervisors making a determination based on objective evidence (e.g., MAV shows an allegation is false) that there is **no credible evidence** a violation of policy or law has occurred by the officer shall complete a *Complainant Contact Form* and forward it to IA.

1. The incident shall be closed as information and tracked in the IA database for information purposes only.
2. The force incident shall be handled based on the normal criteria as outlined in this policy and the initiation of an IA investigation is not required.

(b) Supervisors discovering during the normal course of their review, or in response to a complaint, **any credible evidence** a violation of law or policy may have occurred concerning the officer's response to resistance shall follow the guidelines outlined below.

211.3.1 CRIMINAL MISCONDUCT

Regardless of the original force level of the incident, if there is **any credible evidence** that criminal misconduct may have occurred by the officer then the incident shall be treated as a Level 1 force incident.

(a) The supervisor shall immediately notify the SIU and IA. The supervisor shall document the time and date the SIU and IA were notified in the supervisor's supplement.

(b) The Chief of Police shall be notified on all credible allegations of criminal conduct.

(c) SIU and IA shall handle the concurrent investigation of criminal allegations as outlined in the Criminal Investigations and Administrative Investigations policies.

211.3.2 POLICY VIOLATION

(a) If there is **any credible evidence** a policy violation may have occurred by the officer then the incident shall be handled as follows:

1. Level 1 force incidents - If the original incident would have been handled as a Level 1 force incident, supervisors shall notify the SIU and IA of the possible policy violation and handle the response to resistance inquiry as a Level 1 force incident. Supervisors shall document the date and time SIU and IA were notified in the supervisor's supplement.
2. Level 2 and Level 3 force incidents - If the original incident would have been handled as a Level 2 or a Level 3 force incident, supervisors shall notify IA of the possible policy violation and handle the response to resistance inquiry as a Level 2 force incident. Supervisors shall document the date and time IA was notified in the supervisor's supplement.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(b) Internal investigations of policy violations shall be handled as outlined in Policy 902 (Administrative Investigations).

211.4 EMPLOYEE RESPONSIBILITIES FOR ALL FORCE LEVEL INCIDENTS

The following outlines the required responsibilities of involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident. If a juvenile is in custody related to the incident, the juvenile should not be interviewed unless the juvenile has been brought before a magistrate.

(a) Involved employees shall notify their supervisor as soon as practicable of any force incident or allegation of use of force.

(b) Involved employees shall request EMS as soon as practicable when a subject complains of injury, has visible injuries, or the circumstances indicate that an injury may have occurred. For purposes of this section "Injury" does not include TASER probe marks that are not in a sensitive area of the body. Officers will comply with section 208.5 in regards to post-TASER deployment medical treatment.

(c) If a person not under arrest is transported for medical treatment as a direct result of an officer's response to resistance, an officer will accompany that person to the medical facility for monitoring unless or until a supervisor believes such monitoring is no longer necessary.

(d) Employees not involved in the force incident may be directed by a supervisor to assist at a force incident scene. This may include locating and identifying witnesses to the incident.

1. Employees shall notify a supervisor in the event a witness refuses to give a statement or provide identifying information.
2. Employees shall not detain or delay a witness who refuses to remain at the scene.
    (a) The witness' physical description, license plate, comments, or other identifiers shall be documented in the employee's supplemental report.
    (b) Any photographs or videotape containing images of a witness who refused to remain at the scene shall be turned in with the response to resistance inquiry packet.

211.4.1 EMPLOYEE REPORTING GUIDELINES FOR ALL FORCE LEVEL INCIDENTS

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

(a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.

(b) Supplements shall be completed by:

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

1. All other employees who are involved in a force incident.
2. Employees who witness a force incident.
3. Employees assisting at the scene of a force incident.
4. A supervisor is required to complete a supplement to the response to resistance incident report for Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.

(c) The following information shall be included in each report and supplement:

1. The original reason for police presence on the scene.
2. The name and employee number of the supervisor notified of the incident.
3. A detailed description of the circumstances and subject actions that resulted in the use of force.
4. A detailed description of the force used.
   (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
5. Subject and witness information.
6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.

(d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.

(e) A copy of the response to resistance incident report, any supplements, and any ancillary documents should be submitted to the reviewing supervisor prior to the end of the employee's tour of duty.

211.5 DESIGNATION OF SUPERVISOR TO CONDUCT INQUIRY

The supervisor of the employee involved in the force incident shall typically be the primary supervisor conducting the force inquiry. The following exceptions apply:

(a) If an incident involves multiple employees with different supervisors, a lieutenant from the area where the incident occurred, or the Watch Lieutenant, shall assign one supervisor to be the primary inquiring supervisor. The responding supervisor will conduct the force inquiry. Additionally, the responding supervisor will notify the other involved employees'

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

supervisor(s) of the force incident and their employee's involvement. This notification will be made by e-mail and will include the incident report number.

(b) A supervisor involved in a force incident shall not review the incident. A supervisor who is at the scene and witnesses the incident, but is not directly involved in the force incident, may conduct the inquiry.

(c) If an employee the rank of sergeant or lieutenant is involved in a Level 2 or 3 force incident, another supervisor the rank of the involved employee or higher shall conduct the inquiry.

(d) If an employee the rank of commander or higher is involved in a level 2 or level 3 force incident, the employee will notify their immediate supervisor and the Duty Commander. At the direction of the Duty Commander, an on duty lieutenant may be designated to complete the inquiry.

(e) Corporals may be designated as the inquiry supervisor as follows:

1. Level 1 Incidents - Corporals may not act as the designated supervisor to conduct inquiries for Level 1 Force Incidents.
2. Level 2 Incidents - As long as an employee is in their chain-of-command, or when responding as the acting sergeant to an incident occurring in their sector involving a Department officer working an off-duty LERE position, corporals may conduct the initial on-scene inquiry of a Level 2 incident when serving as acting sergeant or when the sergeant is not immediately available. The initial Level 2 packet shall be turned over by the end of the shift to the corporal's supervisor, lieutenant or other designated supervisor for final approval or further inquiry.
3. Level 3 Incidents: Corporals may function as the designated supervisor to conduct inquiries for Level 3 force incidents.

211.6 LEVEL 1 AND IN-CUSTODY INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 1 force incidents and in-custody deaths occurring prior to or within 24 hours after booking require concurrent inquiries conducted by the SIU and IA. The following sections explain the responsibilities in Level 1 force incidents and in-custody deaths for:

(a) Supervisors.

(b) Special Investigations Unit (SIU).

(c) Lieutenants.

(d) Chain-of-command.

(e) Internal Affairs (IA)

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

211.6.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY INCIDENTS
Supervisors shall respond to the scene of all Level 1 force incidents and in-custody deaths unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

(a) Supervisors are responsible for managing the scene until a higher ranking supervisor or the ranking SIU supervisor arrives.

(b) Supervisors should secure and manage the scene upon arrival and:

1. Take all reasonable steps to obtain emergency medical attention for all injured individuals.
2. Ensure involved personnel, subjects, and witnesses are separated, identified and advised that communication regarding the incident with other people is prohibited.
3. Obtain a brief overview of the situation from available sources.
4. Involved personnel subject to a potential criminal investigation shall be able to speak with an APA union representative and/or their attorneys prior to speaking with a supervisor. If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information to secure the scene and pursue subjects.
    (a) Public safety information shall be limited to such things as outstanding subject information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses, and similar information.
5. Ensure a crime scene is established:
    (a) Ensure a *Crime Scene Security Log* (PD0175) is maintained to record the time and identifying information of all persons entering and exiting the scene.
    (b) Ensure the *Crime Scene Security Log* is delivered to the SIU investigator.
6. Ensure an appropriate sized perimeter is established, if needed.
7. Assess the need for additional resources and notify the Watch Lieutenant and appropriate lieutenant.
8. Identify the number of subjects involved and coordinate the apprehension of subject(s)who are unaccounted for.
9. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene investigators as soon as practical and shall be documented in the employee's supplement.
10. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any information regarding sources of pertinent

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

video should be provided to on scene investigators as soon as practical and shall be documented in the employee's supplement.

11. Coordinate the preliminary inquiry with the SIU and IA investigators to include, but not limited to:
    (a) Identifying employees either involved in or witness to the incident.
    (b) Designating the primary reporting officer for the response to resistance incident report.
    (c) Ensuring the preservation of evidence.
    (d) Assisting investigators to ensure statements are taken.

(c) Once the scene has been cleared, supervisors shall be responsible for the following:
    (a) Completing a supplement to the response to resistance incident report detailing their actions. SIU may direct a supervisor to complete a supplement to the SIU inquiry report as well.
    (b) Reviewing the primary reporting employees' response to resistance incident report and change the 8400 title code to 8401 to indicate a Level 1 force incident.
    (c) Identifying Department or individual equipment, training, and tactical issues.
    (d) Making recommendations for corrective action when appropriate. Recommendations shall be documented in a memorandum forwarded through the chain-of-command.

211.6.2 SPECIAL INVESTIGATIONS UNIT (SIU) RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The ranking SIU supervisor on-scene of a Level 1 incident shall assume command of the scene. SIU shall conduct a response to resistance inquiry and forward the inquiry packet to IA or the involved employee's chain of command within forty-five (45) calendar days, unless extended by an assistant chief.

211.6.3 LIEUTENANT RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

On-duty lieutenants responsible for the area in which the response to resistance incident has occurred will respond to the scene to assume scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary inquiry. When appropriate, lieutenants may place the involved employees on restricted duty with the approval of the employee's commander or the Duty Commander.

211.6.4 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The chain-of-command, up to and including the appropriate assistant chief, shall review the response to resistance inquiry packet for Level 1 force incidents. All reviewers shall:

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(a) Document their review following IA administrative procedures relating to the IA investigation of the incident.

(b) Review the inquiry packet and evaluate the report and supplements for compliance with law and Department policy. Any reports that are incomplete or inadequate shall be returned to ensure corrections are made.

(c) Order further inquiry or additional resources when necessary.

(d) Evaluate and comment on any training, tactical, or equipment issues.

(e) Document any extension approvals for report deadlines. The employee's commander shall ensure SIU and IA are notified of any deadline extensions.

(f) Forward the response to resistance inquiry packet to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within four work days from the time it was received for review.

(g) Upon completion of the review, and the final disposition of any Administrative Investigation, if applicable, the commander shall:

  (a) Forward all approved inquiry packet links via email to APD Training.

  (b) Document any identified individual, command or Department-wide training issues:

    1. If an individual or command training issue is identified, the commander shall ensure training is conducted and a training memorandum is completed and forwarded to the commander of the Training Division for review and appropriate additional action, if any; and/or

    2. Request Department-wide training from the Training Division.

    3. Scan the final signed memorandum into the electronic folder.

211.6.5 INTERNAL AFFAIRS RESPONSIBILITIES IN LEVEL 1

(a) If an Administrative Investigation is initiated due to alleged misconduct by an APD employee, at any stage of the inquiry or review process, the process established by Policy 902 (Administrative Investigations) will be followed.

(b) Upon final disposition of the Administrative Investigation, IA will notify the involved employee’s commander.

(c) For in custody deaths and officer involved shootings, IA will forward the electronic link to the Force Review Board.

211.7 LEVEL 2 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

The following sections explain the responsibilities in Level 2 force incidents for:

(a) Supervisors.

(b) Chain-of-Command Review.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

211.7.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

Level 2 force incident inquiries are conducted by the designated inquiry supervisor. A supervisor shall respond to the scene of all Level 2 force incidents unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor. The reporting and review requirements for a Level 2 Precision Immobilization Technique will be completed as part of the Pursuit Critique. The review will be handled by the chain-of-command responsible for the Pursuit Critique up to and including the rank of Commander. Level 2 Precision Immobilization Techniques will not typically be reviewed by the Force Review Board.

(a) Supervisors should secure and manage the scene upon arrival and:

1. Ensure involved personnel, subjects, and witnesses are identified, separated, and advised that communication regarding the incident with other people is prohibited.
2. Verbally review the general circumstances of the incident individually with the involved personnel, subjects, and witnesses. Ensure the reporting level is consistent with the facts and assess whether injuries, if present, are consistent with the force applied.
3. Ensure a perimeter is established if needed.
4. Locate injured subjects and ensure medical services have been requested as needed.
5. Assess the need for additional resources and make appropriate notifications.
6. Identify the number of subjects involved. Coordinate the apprehension of subject(s)outstanding.
7. Personally interview the subjects upon whom the force was used, or alleged to have been used, and obtain a statement. The statement should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their inquiry memorandum and explain the circumstances that prevented the recording.
8. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene supervisor as soon as practical and shall be documented in the employee's supplement. Witness information shall also be documented in the supervisor inquiry memorandum.
    (a) Witness statements should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their inquiry memorandum and explain what circumstances prevented the recording.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

9. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any sources of pertinent video should be provided to on scene supervisor as soon as practical and shall be documented in the employee's supplement.

10. Ensure digital images or photographs are taken of:

    (a) The physical condition of the subject and involved personnel to record the presence or lack of injuries.

    (b) The scene where the response to resistance incident occurred.

    (c) Other relevant evidence.

11. Supervisors shall ensure all MAV media is turned in as evidence if it contains any information or statements related to the incident.

(b) Once the scene has been cleared, supervisors shall be responsible for the following:

(a) Send email notifications with the incident report number prior to the end of the tour of duty to the:

    (a) Involved employee's chain-of-command up to the commander.

    (b) Reviewing supervisor's chain-of-command up to the commander, if not already included.

    (c) Commander of the area where the incident took place, if not already included.

    (d) IA (Internal.Affairs@austintexas.gov) if the inquiry indicates there is any credible evidence a violation of law or policy may have occurred concerning the officer's use of force that may reasonably lead to formal discipline.

(b) Supervisors shall review the primary reporting employee's response to resistance incident report and change the 8400 title code to 8402 for Level 2 force incidents.

(c) Complete a response to resistance inquiry memorandum. The inquiry memorandum shall include:

    (a) The incident number of the involved employee's response to resistance incident report.

    (b) A description of any injury to the subject and/or APD personnel including the medical assistance that was provided.

    (c) Any relevant information revealed in interviews with personnel, subjects involved, and witnesses at the scene.

    (d) Information on the digital images or photographs that were taken. If none were taken then the reason why.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(e) Whether statements were taken and in what format (e.g., MAV, written). If a statement was not taken, or if the statement was not captured on video or audio, the reasons should be documented.

(f) Detailed information on any circumstances that delayed or prevented response to the scene.

(g) Identify Department or individual equipment, training, and tactical issues and make recommendations for corrective action, when appropriate.

(h) Whether the response to resistance was objectively reasonable and within Department Policy.

(d) Prepare a response to resistance inquiry packet that includes the following documents:

(a) A Level 2 inquiry control sheet.

(b) Supervisor inquiry memorandum.

(c) CAD sheet of the incident.

(d) Any ancillary documentation (e.g. Taser downloads and audio wave files).

(e) Electronically store the response to resistance inquiry packet in the Level 2 Response to Resistance Inquiry folder in the G drive (\\ausps.org\Data\Groups\R2R Level 2 Inquiry Packets) within a folder titled by the case number. A physical folder is no longer required.

(f) Complete and forward the response to resistance inquiry packet link via email to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within eight work days from the time the incident occurred.

211.7.2 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

The chain-of-command, up to and including the commander, shall review the response to resistance inquiry packet for Level 2 force incidents.

(a) All reviewers shall:

1. Review the inquiry packet and evaluate the report and supplements for compliance with law and Department policy.

2. Document whether the response to resistance was within Department policy:

(a) Add a notation at the end of the supervisor inquiry memorandum if you agree that the response to resistance was within Department policy.

(b) If necessary, each level of the chain-of-command may write a supplemental memorandum to be included in the inquiry packet.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

3. Evaluate and comment on any training, tactical, or equipment issues.
4. Order further inquiry or additional resources when necessary.
5. Any reports that are incomplete or inadequate shall be returned to ensure corrections are made.
6. Forward the response to resistance inquiry packet link via email to the next level in the chain-of-command under which the involved employee was working when the incident occurred within eight work days from the time it was received for review.
7. Document any extension approvals for report deadlines. The commander shall ensure IA is notified of any significant deadline extensions, when applicable.

(b) Upon completion of the review, the commander shall:

1. Forward all approved inquiry packet links via email to APD Training.
2. Document any identified individual, command or Department-wide training issues:
   (a) If an individual training issue is identified an Employee Success Plan may be implemented. If a command training issue is identified, the commander shall ensure training is conducted; and/or
   (b) Request Department-wide training from the Training Division.
   (c) Scan the final signed memorandum into the electronic folder.

211.8 LEVEL 3 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

Level 3 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 3 force incidents as outlined below but may upgrade any Level 3 force incident to a Level 2 force incident in order to conduct a more extensive review.

(a) Supervisors shall respond to the scene of any Level 3 incident involving:

1. Use of OC spray or other chemical agent on a subject.
2. Use of a TASER Device. See the "Report of Use" section of Policy 208 (TASER® Guidelines) for specific information to be included in the report.
3. Use of an impact weapon.
4. Any incident resulting in injury or complaint of pain beyond the temporary discomfort of unresisted handcuffing. Supervisors shall review the general circumstances of the incident with the involved personnel and ensure the reporting level is correct based on the facts.

(b) Supervisors shall review the primary reporting employees' response to resistance incident report:

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

1. Incomplete or inadequate reports shall be returned for additional details or clarification.
2. Supervisors shall change the 8400 title code in the Versadex incident report and detail page to 8403 for Level 3 force incidents.
3. Supervisors shall add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.

(c) If a TASER Device is used in the force incident, the data report shall be downloaded and a copy scanned into the image section of the Versadex incident report or submitted into evidence with the spent cartridge for retention.

(d) Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality. Each level of the chain-of-command, up to the lieutenant, shall review the incident and complete a case note to document their review, within 8 work days of receiving the incident for review.

(e) Level 3 incidents that involve the use of OC, Taser, or weaponless strikes on a restrained subject will be forwarded to the Force Review Board for their review.

211.9 INCIDENTS DURING SECONDARY LAW ENFORCEMENT RELATED EMPLOYMENT (LERE)

Officers involved in a force incident while working secondary law enforcement related employment (LERE) shall be required to comply with this policy. Supervisors in the area where the force incident occurred shall conduct the inquiry. However, for Level 3 force incidents, should the LERE assignment employ two or more officers and one of the officers is a supervisor not involved in the force incident, the LERE supervisor may conduct the review.

211.10 INCIDENTS OCCURRING OUTSIDE THE CITY OF AUSTIN

Employees involved in a Level 1, 2, or 3 force incident while taking police action outside of the City of Austin shall notify the proper law enforcement authority having jurisdiction, contact their supervisor, and follow the reporting procedures outlined in this policy.

211.11 SPECIAL CIRCUMSTANCES

Any deviation from the above reporting requirements must be approved by an assistant chief and only for special circumstances (e.g., mass arrest situations, emergency crowd control). Commanders may approve a Level 3 incident to be documented in an after-action report for tactical situations arising from a search warrant, SWAT call-out, or other incident requiring an approved operations plan. The after-action report must comply with the reporting and review requirements for a Level 3 incident. An electronic copy of the after-action report shall be forwarded to the Inspections Unit.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 4

Policy
903

Austin Police Department
Austin PD Policy Manual

Discipline Matrix

903.1 PURPOSE AND SCOPE

The Discipline Matrix is designed as a guide to be used in conjunction with Policy 902 (Administrative Investigations). This matrix is not an all-encompassing document, but should provide some guidance for the vast majority of investigations involving discipline. As a general rule, those violations below that are listed as IS (Indefinite Suspension), Fact Specific, or those that may include discipline greater than a 15-day suspension will be investigated by Internal Affairs.
See attachment: Discipline Matrix 2016-3.4.1.pdf

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

Attachment

Discipline Matrix 2016-3.4.1.pdf

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Required reporting of violations	900-General Conduct and Responsibilities 900.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Requirements of duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Time and attention to duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Unprofessional or abusive behavior to coworkers	900-General Conduct and Responsibilities 900.5	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Duty to Identify	900-General Conduct and Responsibilities 900.4.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources not involving personal gain	1000 - Department Technology Use 1000.3.1	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources involving personal gain	900 - Employee Speech, Expression, and Social Networking 972.4	4-15 Days	Indefinite Suspension	
Confidentiality	900-General Conduct and Responsibilities 900.3.5	4-15 Days	Indefinite Suspension	
Criminal violation while on duty or related to job duties	900-General Conduct and Responsibilities	Indefinite Suspension		
Driving While Intoxicated	900-General Conduct and Responsibilities	Indefinite Suspension		
Other criminal violations	900-General Conduct and Responsibilities	Fact Specific		
Dishonesty (false official statements)	900-General Conduct and Responsibilities 902.4.1	Indefinite Suspension		
Neglect of Duty (misleading statements)	900-General Conduct and Responsibilities 902.4.1	Fact Specific		
Duty to take action	900-General Conduct and Responsibilities 900.4.1	Fact Specific		
Dereliction of Duty	900-General Conduct and Responsibilities	4-15 days to Demotion	Demotion to Indefinite Suspension	

Neglect of duty	900-General Conduct and Responsibilities 900.4.1	Fact Specific		
Association with those of ill repute	900-General Conduct and Responsibilities 900.3.3	Fact Specific		

Failure to properly investigate a complaint and/or forward an external complaint contact form to Internal Affairs	902.2.5- Administrative Investigations	15 days up to Indefinite Suspension	Indefinite Suspension	
Courtesy (rudeness complaints)	301-Responsibilty to Community 301.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Impartial attitude	301-Responsibilty to Community 301.2	Fact Specific		
Insubordination	110-Organizational Structure and Responsibility 110.4.4	4-15 Days	Indefinite Suspension	
Refusing to cooperate with Internal Affairs	902-Administrative Investigations 902.6	Indefinite Suspension		
Quid pro quo sexual harassment	914-Discrimination and Harassment 914.3.2	Indefinite Suspension		
Failure of Random drug test or test resulting from reasonable suspicion	916-Drug and Alcohol Free Workplace 916.2.3	Indefinite Suspension		
Missed court appearance	935-Court Appearances	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Written Reprimand to 1-3 Days
Secondary employment violations	949-Secondary Employment 949	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Abuse of sick leave	955-Attendence and Leave Policy 955.7	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Failure to properly investigate	401-Preliminary Field Investigations, 403-Follow-Up Investigations	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper handling of evidence (not related to criminal conduct)	701-Property and Evidence	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper destruction of evidence	701-Property and Evidence 701.2	Written Reprimand to 4-15 Days	Increased one level	Increased one level

Biased based profiling/Racial Profiling	328-Biased Based Profiling 329-Racial Profiling	Fact Specific		
Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Intentional Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	4-15 Days	Indefinite Suspension	
Intentional Electronic Recording (DMAV, MAV) violation at a criminal incident	303 & 304-Mobile Audio Video Recording Operation	Indefinite Suspension		
Inappropriate electronic messages *	305-Radio and Mobile Data Computer Use 305.2	Written Reprimand	1-3 Days	4-15 Days
Internet/Computer violations	1000 & 1002-Department Technology Use	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Objectively unreasonable use of deadly force	Chapter 2-Response to Resistance	Indefinite Suspension		
Objectively unreasonable use of force	Chapter 2-Response to Resistance	Fact Specific		
Preventable discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Unintentional discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Violations of duty weapons policy	803-Duty Weapons	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Violations of pursuit policy	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Pursuit policy, Aggravated	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	1-15 Days	4-15 Days	4-15 Days to IS
Operation of police vehicle (noncollision)	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At Fault collision (not involving serious bodily injury or death)	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level

Negligent/Reckless conduct resulting in SBI or death	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit Policies	Indefinite Suspension		
Violation of tactics, other than above "A".	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit Policies	Fact Specific		
Notes:				
* If inappropriate electronic messages bring discredit to the Department, increase one level				

ATTACHMENT 5

Policy
412

Austin Police Department
Austin PD Policy Manual

Hostage, Barricaded, and Suicidal Subject Incidents

412.1 PURPOSE AND SCOPE

Hostage situations and barricaded suspects present unique problems for law enforcement. The protection of the public and law enforcement personnel is of the utmost importance. Proper planning and training will tend to reduce the risks involved with these incidents. The Critical Incident Negotiation Team's (CINT) sole purpose is to facilitate the professional resolution of hostage and/or barricaded subject incidents.

For purposes of this document, "professional resolution" means utilizing nationally recognized law enforcement negotiation techniques which focus on saving human life during critical times involving emotionally disturbed persons and/or criminal subjects. Professional resolution further means recognizing the importance of safety and inter-unit communication and cooperation with regard to the overall success of critical incident resolution.

412.1.1 DEFINITIONS

Barricaded Subject - A person who takes a position of cover or concealment or maintains a position in a structure and who resists capture by law enforcement personnel. A barricaded subject may be armed, suspected of being armed, threatening violence and/or have demonstrated the potential to commit violence against others or themselves.

Hostage - A person held by one party in a conflict as security, so that specified terms will be met by the opposing party.

Hostage Negotiator - An officer who has been selected, trained and certified by the CINT Coordinator.

"Jumper" Situations - An unarmed suicidal subject who is threatening to jump from an elevated position which is capable of causing death.

Unarmed Suicidal Subject - An unarmed suicidal subject who presents no immediately apparent danger to officers or the public.

412.2 CRITICAL INCIDENT NEGOTIATION TEAM RESPONSE

The primary function of the Austin Police Department Critical Incident Negotiation Team is to assist other members of the Austin Police Department and/or other law enforcement agencies who require assistance with the professional resolution of hostage/barricaded subject situations, and unarmed suicidal subjects.

The CINT is a direct support unit to the SWAT Team and together comprise a component of Special Operations. As such, the CINT is on the SWAT call-up trigger page. All requests for hostage negotiators or the CINT are made through the Communications supervisor.

(a) **Hostage and Barricaded Subjects**

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

1. SWAT and CINT shall always respond to hostage/barricaded subject incidents.

(b) **"Jumper" Situations**

1. Hostage negotiators may be called to the scene of "jumper" situations. When requested, generally two (2) hostage negotiators will respond.

(c) **All Other Unarmed Suicidal Subjects Situations**

1. SWAT and CINT will not normally respond to any other type of unarmed suicidal subject. In unarmed suicidal subject situations other than a "jumper," officers may request a response from crisis intervention officers or the Crisis Intervention Team (CIT).

412.3 FIRST RESPONDER ASSESSMENT

Nothing in this policy precludes an officer from making a call inside a structure to determine what is going on, or to request that a subject come outside to speak with officers.

The ranking officer may request the assistance of an on-duty hostage negotiator to aid in the initial assessment, phone call or verbal contact.

As soon as it becomes apparent that a hostage/barricaded subject incident or "jumper" situation is in progress, officers shall adhere to the notification process outlined in this policy.

412.3.1 NOTIFICATION PROCESS AND RESPONSIBILITIES

(a) If the assessment determines a hostage/barricade situation exists, the first responder shall immediately request a supervisor to respond and notify Communications to request a SWAT/CINT response.

(b) If the assessment determines that a "jumper" situation exists, the ranking officer should notify Communications to request a CINT-only response.

(c) The ranking officer on the scene of an actual or potential hostage/barricade situation shall consider the following:

1. Avoid confrontation in favor of controlling and containing the situation until the arrival of trained personnel and/or trained hostage negotiation personnel.
2. Evacuation of bystanders and injured persons.
3. Provide responding officers with a safe arrival route to the location.
4. Follow Department guidelines for perimeter control, containment, and communications.

(d) The ranking officer is responsible for ensuring that personnel on scene with pertinent information are available to relay it to SWAT/CINT as soon as possible.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(e) The responsibility for the disposition of a subject who has been taken into custody for a criminal offense or mental health evaluation lies with the uniformed first responders.

412.4 SUPERVISOR RESPONSIBILITIES

(a) Supervisors shall immediately respond to the scene of all hostage/barricade situations and be responsible for the following:

1. Rapidly evaluate and assess the situation, and obtain a briefing by the initial responders.
2. Assume the role of Incident Commander and retain this role until relieved.
3. Establish a Command Post and appropriate chain-of-command.
4. Notify tactical and hostage negotiation personnel.
5. Notify appropriate persons within and outside the agency, such as command officers, dog handlers or helicopter pilots.
6. Establish inner and outer perimeters.
7. Request ambulance, rescue, fire and surveillance equipment.
8. Authorize news media access and news media policy.
9. Pursuit/surveillance vehicles and control of travel routes.

(b) Supervisors or the Watch Lieutenant should advise the Special Operations commander with as much of the following information as is available:

1. The number of suspects, known weapons and resources available.
2. Whether the suspect is in control of hostages.
3. If the suspect is barricaded.
4. The type of crime involved.
5. If the suspect has threatened or attempted suicide.
6. The location of the Command Post and a safe approach to it.
7. The extent of any perimeter and the number of officers involved.
8. Whether the suspect has refused an order to surrender, and any other facts critical to the immediate situation.

412.5 ON-SCENE COMMAND RESPONSIBILITIES

(a) Upon arrival of the Special Operations supervisor at the scene, the Special Operations supervisor shall be briefed about the situation by the original on-scene supervisor and/or on-scene personnel with knowledge of the incident.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(b) Once briefed, the Special Operations supervisor or designee shall be responsible for the tactical portion of the operation.

(c) The original on-scene supervisor shall be responsible for perimeter security and general support for the Special Operations teams.

(d) The original on-scene supervisor and the Special Operations supervisor, or authorized designees, shall maintain communication as the situation develops.

412.6 REPORTING

Unless otherwise relieved by a supervisor, the initial officer at the scene is responsible for completion of reports or coordination of reports for the hostage/barricade incident.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 6

Policy
412

Austin Police Department
Austin PD Policy Manual

Hostage, Barricaded, and Suicidal Subject Incidents

412.1 PURPOSE AND SCOPE

Hostage situations and barricaded suspects present unique problems for law enforcement. The protection of the public and law enforcement personnel is of the utmost importance. Proper planning and training will tend to reduce the risks involved with these incidents. The Critical Incident Negotiation Team's (CINT) sole purpose is to facilitate the professional resolution of hostage and/or barricaded subject incidents.

For purposes of this document, "professional resolution" means utilizing nationally recognized law enforcement negotiation techniques which focus on saving human life during critical times involving emotionally disturbed persons and/or criminal subjects. Professional resolution further means recognizing the importance of safety and inter-unit communication and cooperation with regard to the overall success of critical incident resolution.

412.1.1 DEFINITIONS

Barricaded Subject - A person who takes a position of cover or concealment or maintains a position in a structure and who resists capture by law enforcement personnel. A barricaded subject may be armed, suspected of being armed, threatening violence and/or have demonstrated the potential to commit violence against others or themselves.

Hostage - A person held by one party in a conflict as security, so that specified terms will be met by the opposing party.

Hostage Negotiator - An officer who has been selected, trained and certified by the CINT Coordinator.

"Jumper" Situations - An unarmed suicidal subject who is threatening to jump from an elevated position which is capable of causing death.

Unarmed Suicidal Subject - An unarmed suicidal subject who presents no immediately apparent danger to officers or the public.

412.2 CRITICAL INCIDENT NEGOTIATION TEAM RESPONSE

The primary function of the Austin Police Department Critical Incident Negotiation Team is to assist other members of the Austin Police Department and/or other law enforcement agencies who require assistance with the professional resolution of hostage/barricaded subject situations, and unarmed suicidal subjects.

The CINT is a direct support unit to the SWAT Team and together comprise a component of Special Operations. As such, the CINT is on the SWAT call-up trigger page. All requests for hostage negotiators or the CINT are made through the Communications supervisor.

(a) **Hostage and Barricaded Subjects**

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

1. SWAT and CINT shall always respond to hostage/barricaded subject incidents.

(b) **"Jumper" Situations**

1. Hostage negotiators may be called to the scene of "jumper" situations. When requested, generally two (2) hostage negotiators will respond.

(c) **All Other Unarmed Suicidal Subjects Situations**

1. SWAT and CINT will not normally respond to any other type of unarmed suicidal subject. In unarmed suicidal subject situations other than a "jumper," officers may request a response from crisis intervention officers or the Crisis Intervention Team (CIT).

412.3 FIRST RESPONDER ASSESSMENT

Nothing in this policy precludes an officer from making a call inside a structure to determine what is going on, or to request that a subject come outside to speak with officers.

The ranking officer may request the assistance of an on-duty hostage negotiator to aid in the initial assessment, phone call or verbal contact.

As soon as it becomes apparent that a hostage/barricaded subject incident or "jumper" situation is in progress, officers shall adhere to the notification process outlined in this policy.

412.3.1 NOTIFICATION PROCESS AND RESPONSIBILITIES

(a) If the assessment determines a hostage/barricade situation exists, the first responder shall immediately request a supervisor to respond and notify Communications to request a SWAT/CINT response.

(b) If the assessment determines that a "jumper" situation exists, the ranking officer should notify Communications to request a CINT-only response.

(c) The ranking officer on the scene of an actual or potential hostage/barricade situation shall consider the following:

1. Avoid confrontation in favor of controlling and containing the situation until the arrival of trained personnel and/or trained hostage negotiation personnel.
2. Evacuation of bystanders and injured persons.
3. Provide responding officers with a safe arrival route to the location.
4. Follow Department guidelines for perimeter control, containment, and communications.

(d) The ranking officer is responsible for ensuring that personnel on scene with pertinent information are available to relay it to SWAT/CINT as soon as possible.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(e) The responsibility for the disposition of a subject who has been taken into custody for a criminal offense or mental health evaluation lies with the uniformed first responders.

412.4 SUPERVISOR RESPONSIBILITIES

(a) Supervisors shall immediately respond to the scene of all hostage/barricade situations and be responsible for the following:

1. Rapidly evaluate and assess the situation, and obtain a briefing by the initial responders.
2. Assume the role of Incident Commander and retain this role until relieved.
3. Establish a Command Post and appropriate chain-of-command.
4. Notify tactical and hostage negotiation personnel.
5. Notify appropriate persons within and outside the agency, such as command officers, dog handlers or helicopter pilots.
6. Establish inner and outer perimeters.
7. Request ambulance, rescue, fire and surveillance equipment.
8. Authorize news media access and news media policy.
9. Pursuit/surveillance vehicles and control of travel routes.

(b) Supervisors or the Watch Lieutenant should advise the Special Operations commander with as much of the following information as is available:

1. The number of suspects, known weapons and resources available.
2. Whether the suspect is in control of hostages.
3. If the suspect is barricaded.
4. The type of crime involved.
5. If the suspect has threatened or attempted suicide.
6. The location of the Command Post and a safe approach to it.
7. The extent of any perimeter and the number of officers involved.
8. Whether the suspect has refused an order to surrender, and any other facts critical to the immediate situation.

412.5 ON-SCENE COMMAND RESPONSIBILITIES

(a) Upon arrival of the Special Operations supervisor at the scene, the Special Operations supervisor shall be briefed about the situation by the original on-scene supervisor and/or on-scene personnel with knowledge of the incident.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(b) Once briefed, the Special Operations supervisor or designee shall be responsible for the tactical portion of the operation.

(c) The original on-scene supervisor shall be responsible for perimeter security and general support for the Special Operations teams.

(d) The original on-scene supervisor and the Special Operations supervisor, or authorized designees, shall maintain communication as the situation develops.

412.6 REPORTING

Unless otherwise relieved by a supervisor, the initial officer at the scene is responsible for completion of reports or coordination of reports for the hostage/barricade incident.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 7

Policy
305

Austin Police Department
Austin PD Policy Manual

Radio and Mobile Data Computer Use

305.1 PURPOSE AND SCOPE

Digital radio and data communications are extremely vital elements of effective law enforcement. These communications will be conducted in a professional, concise, and effective manner.

Employees are reminded that all digital radio and data transmissions are recorded and subject to public information requests.

305.2 MOBILE DATA COMPUTER USE GUIDELINES

(a) The mobile data computer (MDC) shall be used for official police communications only.

(b) There is no expectation of privacy concerning sending or receiving messages via the MDC system. Messages may be reviewed by supervisors at any time without prior notification.

(c) The MDC will remain docked and the docking switch will be in the locked position when the vehicle is in motion or if the MDC is left unattended unless otherwise approved by a supervisor.

(d) Employees will not intentionally disrupt the GPS signal.

(e) Employees driving vehicles equipped with an MDC shall:

1. Accept all updates to the MDC prior to logging on and while at a hot-spot; however, employees reporting to duty from a location that is not a hot-spot shall ensure the updates are downloaded as soon as practicable.
2. Log on at the start of a shift with complete and accurate information.
3. Log off at the end of the shift.

(f) Employees granted access to the Watch List should limit the number of additional sectors they are watching to two (2) unless needed for an official reason (e.g., monitoring a significant event that could impact all sectors).

(g) When an MDC is utilized in an area where the public might be able to view the screen, the user will take reasonable measures to ensure any information is not viewable by unauthorized persons (e.g., lower the screen, lock the computer).

(h) Unless Officers are utilizing dual factor authentication, Mobile Data Computers may only be removed from the vehicle for remote operation if they are used in a secure facility (substation, arrest review, etc).

305.2.1 MDC USE WHILE DRIVING

Use of the MDC by the operator should be limited to times when the vehicle is stopped. When the vehicle is in motion, the operator should only attempt to read messages that are likely to contain information that is required for immediate enforcement, investigative, or safety needs.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

Short transmissions, such as a license plate check, are permitted if it reasonably appears they can be done safely.

305.3 RADIO USE GUIDELINES

305.3.1 COMPLIANCE

(a) Employees shall comply with FCC regulations relating to the use of radio communications systems, as well as the established guidelines outlined below:

1. Communications involving the protection of life and property shall be afforded priority.
2. False calls, false or fraudulent distress signals, unnecessary and unidentified Communications and the transmission of unassigned call signals are specifically prohibited.
3. Employees shall monitor the talk-group on which they intend to transmit for a sufficient period to ensure their transmissions will not interfere with others.
4. Duration of radio transmissions must be restricted to the minimum practical transmission time.

(b) Employees shall comply with the Greater Austin/Travis County, Texas, Regional Radio System (GATRRS), Interoperability Plan when necessary, to communicate on interoperability channels that are part of the GATRRS and is related to the use of radio interoperability.

305.3.2 RADIO TRANSMISSION PROTOCOL

(a) Only English shall be spoken.

(b) Employees calling or responding to dispatch shall identify themselves by their assigned unit number. They should not continue the transmission until acknowledged by the dispatcher.

(c) The employee's primary talk-group dispatcher shall be notified before an employee changes to another talk-group (e.g., a Central West officer switching to the North West talk-group).

(d) Employees shall not call for another employee by name unless their radio or unit number is unknown (e.g., "Baker 101 to Sgt. Doe").

(e) Long transmissions should only be done over a secondary talk-group, as an MDC message, or via a cell phone if available.

(f) Employees shall refrain from seeking advice from a dispatcher regarding a point of law, enforcement action, or Department policy. Employees should consult their immediate supervisor on these matters or obtain the information from their laptop computers.

(g) Under normal circumstances, employees will not turn off or lower their in-car police radios to a volume that cannot be captured by the vehicle's DMAV equipment regardless if the employee is wearing a ear-bud listening device on their portable radio. An exception would

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

be under circumstances when it is deemed necessary to safeguard transmissions from a prisoner seated in the patrol car during and incident.

305.3.3 REQUESTING RECORDED TRANSMISSIONS
Employees with a legitimate need to hear or copy a radio or telephone recording may do so by making a request to the Communication supervisor on duty.

305.4 ADDITIONAL GUIDELINES

305.4.1 DOCUMENTATION OF ACTIVITY
Radio and MDC transmissions are used to record an employee's daily activity. To ensure the most accurate recording of these activities, the following are required:

(a) All contacts or activity shall be documented at the time of the contact.

(b) Whenever the activity or contact is initiated by voice, it shall be entered into the Computer Aided Dispatch (CAD) system by a dispatcher.

(c) Whenever the activity or contact is not initiated by voice, the employee shall record it on the MDC.

305.4.2 STATUS CHANGES

(a) Employees shall make changes in status (e.g., arrival at scene, meal periods, in-service) through the MDC system when safe and practicable.

1. If MDC use is not safe or practical, employees shall advise the dispatcher of status changes using proper radio codes.

2. Employees responding to in-progress calls shall advise changes in status over the radio to assist other employees responding to the same incident.

(b) An employee's status shall be made Code 4 when it is determined that no other units are needed. Any additional units still responding to the incident shall change their status to available.

305.4.3 HIGH PRIORITY INCIDENTS
Transmissions regarding emergencies (e.g., high-speed pursuits, serious crimes in progress) shall be given priority over all other transmissions. Units not involved in the emergency shall stay off the air until the situation has been resolved.

Units coming in-service during an emergency shall change their status on the MDC. If unable to do so, the unit will switch to an adjoining sector talk-group, advise that dispatcher they are in-service and then switch back to their primary talk-group.

305.4.4 EMERGENCY BUTTON ACTIVATION
If the emergency button is depressed on the MDC or Radio, the dispatcher will call the unit and ask if the unit is Code 4.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(a) If there is no emergency the employee should respond "Code 4" and all units shall resume their normal activity.

(b) If there is no response or the employee answers in some other way, the dispatcher shall send available units to assist in locating the unit that is transmitting the emergency. Available units may self assign the call via the MDC and respond as appropriate.

1. Units shall refrain from transmitting on the radio until there is a Code 4, unless they are themselves handling an emergency.
2. When the situation is considered Code 4, all units not on-scene shall go back in service.

305.4.5 BOMB THREATS

Bombs and other explosive devices can be detonated by radio waves (e.g., mobile phones, radio, MDC) transmitted in close proximity to the device.

(a) When responding to bomb threats, employees should be conscious of the location of any suspected devices (e.g., parking lot, inside a building, open field) and park their patrol unit accordingly.

(b) When investigating reports of a bomb threat, employees shall follow Policy 414 (Bomb Threat and Explosive Device Response).

305.4.6 CLOSING THE CHANNEL

Closing a radio channel ("holding the air") is done for the safety of officers involved in a call or event that requires the radio remain silent. Events that require a channel be closed will follow these guidelines:

(a) Any supervisor (including a dispatch supervisor) may close a channel to ensure officer safety. If the dispatcher does not apply the channel marker, units involved in the event may request that it be applied.

(b) The dispatcher will broadcast the channel is closed and should enable the channel marker on that channel so that a low audible "beep" will occur every 8-10 seconds. The "beep" is a clear indication that the channel is closed to all non-emergency radio traffic.

(c) When safe and practical, the dispatcher will then broadcast the channel is open and will remove the channel marker

305.5 RESPONSIBILITY OF SUPERVISORS

Supervisors shall:

(a) Be responsible for entering complete and accurate roster information into the current electronic system, including capability codes for all qualified personnel.

(b) Use the MDC to monitor incidents and the activity of employees when practicable.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(c) Carefully monitor and supervise the use of the radio to assist employees as needed. Supervisors may monitor additional talk-groups; however, supervisors shall remain available to their primary talk-group. Supervisors are responsible for the radio conduct of their subordinates and should immediately correct improper radio procedures.

(d) Self-assign calls when practical and other units are not available.

(e) Respond to any scene when requested to the location by a subordinate.

(f) Inform and update the Watch Lieutenant of any significant call or critical issue.

(g) APD Risk Management will select random CAD audit dates and notify Lieutenants and Sergeants/Civilian Supervisors via departmental email quarterly. Any Supervisor of sworn or non-sworn employees (to include Communications, Victim Services, and Crime Scene units) who use CAD messaging shall audit their employees' messages and submit an electronic report using APD Approved Form PD0128A to their next level manager for review within 10 days from the date of the notification from Risk Management. Sergeants will also conduct a Taser functionality test at this time and report the results on Form PD0128A, in compliance with APD Policy 208.7.1. If a Sergeant is unavailable during the entire 10 day time frame, the audit shall be conducted by the Corporal of that shift or a Sergeant from another shift.

1. If an employee did not work on the dates to be audited they will be audited on the next available working day. The date will be noted on the report.
2. If the employee is on extended leave (FMLA, Light Duty, etc.) the reason of absence will be documented on the report.

The report shall be retained by the Sergeant/Civilian Supervisor for at least 3 years in an APD group drive. A scanned copy of the CAD messages for each person audited will be included with the report.

If an inappropriate CAD message is found that involves dialogue with an employee from another shift/unit, the Sergeant/Civilian Supervisor conducting the CAD audit shall notify the other employee's Sergeant/Civilian Supervisor via Departmental e-mail for follow-up.

If a subordinate's message results in counseling a copy of the message and memo will be placed in the employee's file. If no further counseling is needed in the three years following the counseling, the CAD messages may be discarded.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 8

(a) Employees will report any employee known or believed to be guilty of any violation of a rule, regulation, or order issued by the Department to their immediate supervisor.

(b) Supervisors will immediately take action as outlined in Policy 902 (Administrative Investigations) when a violation of a directive comes to their attention, regardless of the supervisor's or violator's assignment or rank within the Department.

900.2.1 CONFIDENTIALITY

All information relating to an employee's suspected criminal act or policy violation is confidential.

(a) Except as required in reporting the incident:

1. Employees will not disclose or discuss such information with anyone except investigators assigned to the case, the employee's attorney, employee's chain-of-command or other persons specifically designated by the Chief.

2. Investigators of such cases will not disclose or discuss information about any such investigation with anyone except other investigators assigned to assist with the investigation, the investigator's chain-of-command, officers of the court, or other persons specifically designated by the Chief.

900.2.2 RETALIATION PROHIBITED

Employees will not, in any way, cause or conspire to cause retaliatory action against any individual who has been involved in any such investigation or subsequent proceeding as a defendant, complainant, witness, victim, investigator, or any other capacity. While the Department wishes to avoid reassigning an employee while a complaint or grievance is being investigated, this policy does not prohibit the Department from doing so, including the complainant/victim, while the complaint or grievance is under investigation should an assistant chief determine that a reassignment is in the best interest of the Department and/or the employee.

900.3 GENERAL CONDUCT

This section contains the expectations and requirements of employee conduct, both on-duty and off-duty, and causes for disciplinary action due to employee misconduct. This is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Department service.

900.3.1 HONESTY

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

(a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.
2. Verbal or written statements made by an officer in connection with their official duties to:
    (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
    (b) A supervisor conducting an inquiry into the officer's use of force.
    (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.

(b) Employees who obtain their employment by willful misrepresentation or false statements may be dismissed from the Department.

(c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

(d) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.

(e) Employees will not falsely report themselves ill or injured, or otherwise deceive or attempt to deceive the Department as to the condition of their health.

900.3.2 ACTS BRINGING DISCREDIT UPON THE DEPARTMENT

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

(a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

(b) Employees will refrain from being a party to any malicious gossip, rumor, report or activity, whether written or oral, that would tend to bring discredit to the Department or any member thereof.

1. "Malicious gossip, rumor, report or activity" includes statements made with knowledge of their falsity or made without regard to whether the statements are true or false.

(c) Employees will not engage in any activity in which there is a potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee.

1. "Conflict of interest" includes any activity which would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency which

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 9

Policy
328

Austin Police Department
Austin PD Policy Manual

Bias-Based Profiling

328.1 PURPOSE AND SCOPE

The Austin Police Department strives to provide law enforcement services to our diverse community with due regard to the racial, cultural or other inherent differences of those we serve. It shall be the policy and practice of this department to provide law enforcement services and to enforce the law equally and fairly without discrimination toward any individual(s) or group. Race, ethnicity or nationality, religion, gender, gender identity or gender expression, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group shall not be utilized as the basis for providing differing levels of law enforcement service or the enforcement of the law.

328.2 DEFINITION

Bias-Based Profiling - Any pattern or practice that includes, but is not limited to, stopping, detaining, frisking, or searching of subjects by police officers based on an individual's race, ethnicity, nationality, religion, gender, gender identity or gender expression, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Racial Profiling - Bias-based profiling specifically dealing with instances of disparate treatment by law enforcement based on race, ethnicity, or national origin. (Tex. Code of Crim. Pro. art. 3.05, and 2.132(b)(1)).

328.3 POLICY

Police action must be based upon credible information known to the officer, which leads them to believe that an individual is, has been, or is about to be engaged in activity that is in violation of the law. Any other motivation for such actions is strictly prohibited.

(a) The practice of bias-based profiling shall not be tolerated by the Department.

(b) Officers shall ensure that the stopping, detaining, frisking, and/or searching of residents is based upon solid legal principles that conform to their training in arrest, search, and seizure.

(c) While the practice of racial profiling is strictly prohibited, it is recognized that race or ethnicity may be legitimately considered by an officer in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., subject description is limited to a specific race or group).

328.4 TRAINING

All sworn members of this department will complete all Texas Commission on Law Enforcement (TCOLE) mandated training on the subject of bias-based profiling.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

328.5 COMPLIANCE

The Austin Police Department will investigate all complaints involving bias-based profiling by any employee as outlined in Policy 902 (Administrative Investigation Procedures).

328.5.1 DISCIPLINARY ACTION

Officers are not subject to disciplinary action based solely on the statistical data collected as a result of this policy. It is the motivating action(s) and/or inaction(s) of officers that will constitute the basis of any internal disciplinary action.

328.6 REQUIRED DOCUMENTATION

The Austin Police Department profoundly rejects the practice of bias-based profiling and attempts to accurately document officer-initiated contacts with the public. Documentation requirements are located in Policy 402 (Incident Reporting and Documentation).

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

ATTACHMENT 10

Policy
329

Austin Police Department
Austin PD Policy Manual

Racial Profiling

329.1 PURPOSE AND SCOPE

The Austin Police Department strives to provide law enforcement services to our diverse community with due regard to the racial, cultural or other inherent differences of those we serve. It shall be the policy and practice of this department to provide law enforcement services and to enforce the law equally and fairly without discrimination toward any individual(s) or group. Race, ethnicity or nationality shall not be utilized as the basis for providing differing levels of law enforcement service or the enforcement of the law.

329.2 DEFINITIONS

Racial Profiling- Any instance of disparate treatment by law enforcement based on race or ethnicity, rather than on behavior or information identifying the individual as having engaged in criminal activity. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witness, complainants, persons needing assistance, or other citizen contacts.

Race or Ethnicity- individuals of a particular descent. This includes, but is not limited to: Caucasian, African American, Hispanic, Asian, Middle Eastern or Native American.

Acts Constituting Racial Profiling- initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, or nationality or on the basis of racial or ethnic stereotypes, rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.

Motor Vehicle Contact- an occasion in which a peace officer stops a motor vehicle for an alleged violation of law or ordinance.

Pedestrian Stop- an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

329.3 POLICY

It is the policy of this Department to police in a proactive manner and to investigate suspected violations of the law. Officers shall actively enforce local, state and federal laws in a responsible and professional manner, without regard to race, ethnicity, or nationality.

Police action must be based upon credible information known to the officer, which leads them to believe that an individual is, has been, or is about to be engaged in activity that is in violation of the law. Any other motivation for such actions is strictly prohibited.

(a) The practice of racial profiling shall not be tolerated by the Department.

(b) Officers shall ensure that the stopping, detaining, frisking, searching, or arrresting of persons is based upon solid legal principles that conform to their training in arrest, search, and seizure.

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(c) While the practice of racial profiling is strictly prohibited, it is recognized that race or ethnicity may be legitimately considered by an officer in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., subject description is limited to a specific race or group).

329.4 TRAINING

All sworn members of this department will complete all Texas Commission on Law Enforcement (TCOLE) mandated training on the subject of bias-based profiling.

329.5 COMPLIANCE

The Austin Police Department will investigate all complaints involving racial profiling by any employee as outlined in Policy 902 (Administrative Investigation Procedures).

329.5.1 DISCIPLINARY AND CORRECTIVE ACTIONS

See policy 903 (Discipline Matrix)

329.5.2 DISCIPLINARY ACTION

Officers are not subject to disciplinary action based solely on the statistical data collected as a result of this policy. It is the motivating action(s) and/or inaction(s) of officers that will constitute the basis of any internal disciplinary action.

329.6 COMPLAINT PROCESS

See policy 902 (Administrative Investigations)

329.7 PUBLIC EDUCATION

The Department will provide brochures in every police facility as well as on the Austin Police Department website.

329.8 REQUIRED DOCUMENTATION

The Austin Police Department profoundly rejects the practice of racial profiling and attempts to accurately document officer-initiated contacts with the public.

Every member of the Department is required to document any detention, frisk, search, nonconsensual stop and/or arrest resulting from a pedestrian or motor vehicle stop.

(a) Officers shall document the following information in the appropriate fields of an incident report, field release citation, warning, FO card or electronic street check:

  (a) The reason for the contact/stop; and

  (b) The race and ethnicity of the subject(s) of the contact/stop; and

  (c) Whether the officer knew the race or ethnicity of the subject(s) before conducting the contact/stop; and

  (d) Whether a subject or vehicle was searched and, if so, the reason for the search; and

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

(e) Whether any contraband or other evidence was found during the search and, if so, a description of it.

*NOTE: When there is no other way to determine an individual's race or ethnicity officers will ask the individual to identify their race or ethnicity.

b. Officers shall include those facts giving rise to the officer's reasonable suspicion or probable cause for the contact/stop in the report narrative or appropriate documentation field of a citation, warning, FO card or electronic street check.

329.9 BWDR AND DMAV

See policy 303 (Body Worn Digital Recording Systems) and policy 304 (Digital Mobile Audio Recording)

329.10 ANNUAL REPORTING

The Chief of Police shall submit an annual report, which includes complaints of disparate treatment based on race or ethnicity, as required by Tex. Code of Crim. Pro. § 2.132(b) to TCOLE and each governing body served by this agency. Further, unless exempt under Tex. Code of Crim. Pro. art. 2.135, each year prior to March 1. the Chief of Police shall provide to TCOLE and to each governing body served by this agency a report containing an analysis of the information required by Tex. Code of Crim. Pro. art. 2.133 {Tex. Code of Crim. Pro. art. 2.134(b)).

Copyright Lexipol, LLC 2017/04/26, All Rights Reserved.
Published with permission by Austin Police Department

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES **Plaintiffs,**	§	**CIVIL ACTION NO. 1:19-cv-00389-LY**
v.	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN **Defendants.**	§	

AFFIDAVIT OF MARK SPANGLER

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME the undersigned authority, appeared Mark Spangler, who, being by me duly sworn, deposed and said as follows:

1. "My name is Mark Spangler, I am over the age of eighteen years, and I am authorized to make this affidavit in support of Defendant City of Austin's Motion for Summary Judgment. I have never been convicted of a crime and am competent to make this affidavit. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as a Commander of the Recruiting and Training Division of the City of Austin Police Department (APD). Prior to becoming a Commander, I held numerous patrol, investigative, supervisory, and management positions with APD.

3. As a Commander of the Recruiting and Training Division of the City of Austin Police Department, I have personal knowledge of APD hiring and training standards. Once an individual is hired by APD, he or she becomes a cadet in APD's training academy. Every APD cadet must successfully complete a 30-week training course at the APD training academy before becoming an APD officer. At the academy, all APD officers receive over 800 Texas Commission on Officer Standards and Education (TCOLE) approved hours of training. (TCOLE is the Texas state agency responsible for certifying and licensing law enforcement officers in Texas). APD's training requirements far exceed the minimum 618 TCOLE hours required by the State of Texas for TCOLE certification. All APD cadets must be certified by TCOLE before they become APD officers. All APD officers must maintain their TCOLE certification to remain APD officers.

4. All APD cadets receive comprehensive training at the academy on topics including, but not limited to: Arrest, Search, and Seizure; Penal Code; Use of Force; Firearms Training; Defensive Tactics; use of the APD Motor-Vehicle Recorder; and Mental Health and Crisis Intervention Training. This training includes numerous practical skills tests, including exercises where cadets are trained on how to make the decision whether to use force, and choose the appropriate level of force, in simulated situations.

5. In particular, for at least the last several years, APD has required all cadets to undergo at least 190 hours of TCOLE approved training related to use of force and arrest techniques. This vastly exceeds the 24 hours required by TCOLE. In general, APD trains its officers and cadets using the "Dynamic Response to Resistance Model." This model and philosophy supports progressive and reasonable escalation and de-escalation of officer applied force in response to the actions and resistance posed by the subject. Officers and cadets are trained that the level of their response should correspond to the situation encountered on the scene and the

actions of the subject in response to the officer's commands. This philosophy is taught through practical and classroom exercises.

6. I also know that the APD training academy includes classroom training on use of force law and policy. I know that cadets are instructed, based at least in part on the Supreme Court's decisions in *Graham v. Connor* and *Tennessee v. Garner*, that they are only permitted to use the amount of force that is reasonable under the circumstances, judged from the perspective of a reasonable officer on the scene.

7. APD officers also receive considerable training on interacting with the public. APD cadets and officers are instructed and trained on how to communicate effectively and professionally with the public.

8. I know that Richard Egal and Maxwell Johnson successfully completed the APD training academy by passing all of the required written and practical tests. They received over 800 TCOLE hours and received training in all facets of police work, as described above. I know that Richard Egal and Maxwell Johnson were licensed/certified by TCOLE as peace officers on or about the time they became a full-time APD police officers. True and correct copies of the TCOLE training records of Egal and Johnson are attached hereto as Attachments 1 and 2.

9. After officers are commissioned, TCOLE requires officers to undergo at least 40 hours of continuing education and training every two years. To ensure that its officers remain TCOLE certified, and to make sure that its officers receive the latest training, APD offers a number of continuing educational and training opportunities for its officers. Richard Egal and Maxwell Johnson have satisfied this ongoing requirement and maintained their TCOLE licenses.

10. One of my duties as APD Commander includes participating in reviews of each officer-involved shooting. APD command staff critically reviews each incident involving an

officer-involved shooting for issues related to training, policies and tactics and evaluates the need for any changes in training, policies and tactics. APD has, in fact, amended its policies and made changes to various training and tactics as a result of these reviews of officer-involved shootings and other critical incidents.

11. In support of this affidavit and Defendant City of Austin's Motion for Summary Judgment, the following attachments are records retained in the normal course and scope of business of the City of Austin, and are true and correct copies of what they purport to be:

Attachment 1: TCOLE Training Record for Richard Egal

Attachment 2: TCOLE Training Record for Maxwell Johnson

I declare under penalty of perjury that the above statements are within my personal knowledge and are true and correct."

Further affiant sayeth not.

Signed this 11th day of February, 2021.

Mark Spangler, Commander
Digitally signed by Mark Spangler, Commander
Date: 2021.02.11 09:26:35 -06'00'

Mark Spangler

BEFORE ME, personally appeared MARK SPANGLER, proved to me through a government issued identification to be the person whose name is subscribed in the foregoing instrument and acknowledged to me that she executed the same for purposes and consideration thereby expressed.

SWORN TO AND SUBSCRIBED before me on this 11 day of February, 2021.

PRISCILLA L CHAVEZ
NOTARY PUBLIC
ID# 13119688-2
State of Texas
Comm. Exp. 07-06-2021

Notary Public, State of Texas

ATTACHMENT 1

Texas Commission On Law Enforcement

Personal Status Report

Name	TCOLE ID (P ID)	STATUS
RICHARD P. EGAL JR	252400	

Citizen	Race	Gender	Federal ID	State ID
Yes	White	Male		10021932

Education Information

Institution	Hours	Education
	0	High School
Total Hours	0	
Total Training Hours	0	

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Peace Officer	AUSTIN POLICE DEPARTMENT	Peace Officer License	7/9/1999		20 years, 11 months

Total Service Time

Description	Service Time
Peace Officer	20 years, 11 months
Total officer time	20 years, 11 months

Award Information

Award	Type	Action	Action Date
Peace Officer License	License		
		Granted	7/12/1999
Homeowner's Insurance Inspector	Certificate		
		Certification Issued	7/5/1999
Basic Peace Officer	Certificate		
		Certification Issued	7/17/2000
Intermediate Peace Officer	Certificate		
		Certification Issued	8/1/2003
Basic Instructor Proficiency	Certificate		
		Certification Issued	1/4/2005
Advanced Peace Officer	Certificate		
		Certification Issued	6/21/2008
Master Peace Officer	Certificate		
		Certification Issued	7/3/2013

Texas Commission On Law Enforcement

Personal Status Report

Academy History

	Date	Institution	Course Title
Completed	7/9/1999	Austin Police Academy	Basic Peace Officer

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
667371	TEEX Active Attack Event Resp. Leadership	4/10/2020	4	Texas A & M Engineering Extension Service Criminal	
355	Annual Firearms Qualification 1701.355	2/13/2020	0	Austin Police Academy	
3517	Suicide Prevention (not 3501)	10/10/2019	4	Austin Police Academy	
3038	Agency Operations (General)	10/10/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	10/9/2019	8	Austin Police Academy	
3940	Community Policing	10/8/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	10/8/2019	2	Austin Police Academy	Civilian Interaction Training Program
1849	De-escalation Tech (SB 1849)	10/7/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
3751	Effective Leadership / Leadership Training	9/3/2019	3	Austin Police Academy	
		Unit Hours	41		

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
6035	Crime Analysis Course	8/20/2019	8	Austin Police Academy	
3185	85th Legislative Session Legal Update	6/20/2019	4	Austin Police Academy	85th Session State and Federal Law Update
3305	Active Shooter Response	4/30/2019	16	Austin Police Academy	
66300	FEMA Int. ICS Exp. Incident (Class Rm) (FEMA IS-30	4/10/2019	18	Austin Police Academy	
2058	Patrol w/Horse or Canine	1/25/2019	240	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/23/2019	0	Austin Police Academy	
8158	Body Worn Camera	9/26/2018	2	Austin Police Academy	
3305	Active Shooter Response	9/5/2018	4	Austin Police Academy	
2040	Defensive Tactics	5/8/2018	3	Austin Police Academy	
3303	Law Enforcement Officer Flying Armed - (FAA)	5/3/2018	2	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3836	Concealed Carry for Law Enforcement Officers	5/2/2018	10	Austin Police Academy	
3737	New Supervisor's Course	2/8/2018	40	Austin Police Academy	Cultural Diversity (Intermediate) New Supervisor's Required Training Special Investigative Topics (Intermediate)
3737	New Supervisor's Course	2/1/2018	40	Austin Police Academy	Cultural Diversity (Intermediate) New Supervisor's Required Training Special Investigative Topics (Intermediate)
355	Annual Firearms Qualification 1701.355	1/30/2018	0	Austin Police Academy	
2055	Firearms	1/30/2018	2	Austin Police Academy	
2040	Defensive Tactics	1/8/2018	3	Austin Police Academy	
3362	All Terrain Vehicle Operation	11/9/2017	4	Austin Police Academy	
3316	ALERRT First Responder Operations in Rural Terrain	10/26/2017	24	Hays Co. Sheriff's Academy	
3312	ALERRT Update	10/19/2017	16	Hays Co. Sheriff's Academy	
3311	ALERRT	10/13/2017	16	Hays Co. Sheriff's Academy	
3311	ALERRT	9/29/2017	16	Hays Co. Sheriff's Academy	
		Unit Hours	468		

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3311	ALERRT	9/29/2017	16	Hays Co. Sheriff's Academy	
3358	Police Bicycle	7/19/2017	20	Austin Police Academy	
3311	ALERRT	5/23/2017	16	Hays Co. Sheriff's Academy	
355	Annual Firearms Qualification 1701.355	5/23/2017	0	Austin Police Academy	
2055	Firearms	5/23/2017	3	Austin Police Academy	
3032	Basic Principles of Supervision	4/18/2017	10	Austin Police Academy	
3313	ALERRT Terrorism Response Tactics Active Shooter L	4/7/2017	16	Hays Co. Sheriff's Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	3/15/2017	6	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3184	84th Legislative Session Legal Update	3/7/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3315	ALERRT- Terrorism Response Tactics - Active Shoote	3/3/2017	40	Hays Co. Sheriff's Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	2/13/2017	10	Austin Police Academy	
3864	Manual Breaching	10/10/2016	2	Austin Police Academy	
3342	Tactical Firearms Training	9/6/2016	2	Austin Police Academy	
6014	Tactical Entry Training	9/6/2016	4	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	7/11/2016	8	Austin Police Academy	
77380	PoliceOne- Racial Profiling Part 1	6/2/2016	1	Austin Police Academy	
3258	Racial Profiling Update	6/2/2016	1	Austin Police Academy	
2045	Patrol Procedures	5/20/2016	10	Austin Police Academy	
3316	ALERRT First Responder Operations in Rural Terrain	4/6/2016	24	Hays Co. Sheriff's Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	2/22/2016	5	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	2/9/2016	20	Austin Police Academy	
6014	Tactical Entry Training	1/25/2016	5	Austin Police Academy	
3311	ALERRT	1/15/2016	40	Hays Co. Sheriff's Academy	
7771	Barricades and Cover	12/14/2015	5	Austin Police Academy	
2028	Surveillance Techniques	11/12/2015	5	Austin Police Academy	
3836	Concealed Carry for Law Enforcement Officers	11/12/2015	10	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	11/12/2015	5	Austin Police Academy	
6014	Tactical Entry Training	11/12/2015	10	Austin Police Academy	
6014	Tactical Entry Training	10/13/2015	6	Austin Police Academy	
6014	Tactical Entry Training	9/28/2015	5	Austin Police Academy	
3342	Tactical Firearms Training	9/28/2015	3	Austin Police Academy	
3312	ALERRT Update	9/25/2015	16	Hays Co. Sheriff's Academy	
6014	Tactical Entry Training	9/23/2015	4	Austin Police Academy	
		Unit Hours	332		

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
6014	Tactical Entry Training	5/26/2015	8	Austin Police Academy	
3305	Active Shooter Response	5/14/2015	20	Austin Police Academy	
3132	Search Warrants (Writing)	3/9/2015	4	Austin Police Academy	
3305	Active Shooter Response	2/27/2015	20	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	2/23/2015	10	Austin Police Academy	
782096	DPS - Interdiction for Protection of Children	2/20/2015	16	Austin Police Academy	Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)
3183	83rd Legislative Session Legal Update	2/7/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
3305	Active Shooter Response	1/22/2015	20	Austin Police Academy	
3305	Active Shooter Response	1/18/2015	10	Austin Police Academy	
3305	Active Shooter Response	12/9/2014	10	Austin Police Academy	
2055	Firearms	11/21/2014	1	Austin Police Academy	
2055	Firearms	10/30/2014	1	Austin Police Academy	
2040	Defensive Tactics	9/16/2014	10	Austin Police Academy	
2055	Firearms	7/11/2014	1	Austin Police Academy	
62040	Defensive Tactics - Canine Encounters (Proprietary	6/18/2014	4	Austin Police Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
2055	Firearms	6/18/2014	1	Austin Police Academy	
3513	Identification of Prison Gangs	5/22/2014	3	Austin Police Academy	
2055	Firearms	5/22/2014	1	Austin Police Academy	
2055	Firearms	4/25/2014	1	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	4/23/2014	6	Austin Police Academy	
3864	Manual Breaching	4/7/2014	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	3/27/2014	6	Austin Police Academy	
3864	Manual Breaching	3/19/2014	4	Austin Police Academy	
3316	ALERRT First Responder Operations in Rural Terrain	2/26/2014	24	Hays Co. Sheriff's Academy	
2095	Use of Force (Non-Intermediate Core Course)	2/12/2014	4	Austin Police Academy	
2025	Organized Crime	1/30/2014	40	Austin Police Academy	
3200	Investigations	1/17/2014	40	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3200	Investigations	1/9/2014	40	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	12/19/2013	5	Austin Police Academy	
3358	Police Bicycle	12/5/2013	40	Austin Police Academy	
2055	Firearms	11/25/2013	1	Austin Police Academy	
2055	Firearms	10/22/2013	1	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	9/12/2013	6	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	9/11/2013	6	Austin Police Academy	
		Unit Hours	372		

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3304	Hostage and Barricade Suspect Situations	7/30/2013	5	Austin Police Academy	
3315	ALERRT- Terrorism Response Tactics - Active Shoote	7/19/2013	40	Hays Co. Sheriff's Academy	
4052	Hearing Disabilities	6/24/2013	2	Austin Police Academy	
3313	ALERRT Terrorism Response Tactics Active Shooter L	6/18/2013	16	Hays Co. Sheriff's Academy	
3304	Hostage and Barricade Suspect Situations	6/12/2013	4	Austin Police Academy	
3311	ALERRT	6/2/2013	32	Hays Co. Sheriff's Academy	
3182	82nd Legislative Session Legal Update	5/27/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
3304	Hostage and Barricade Suspect Situations	4/3/2013	8	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	2/14/2013	2	Austin Police Academy	
2053	Baton (All)	1/31/2013	10	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	1/30/2013	4	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	1/23/2013	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	1/10/2013	8	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	1/9/2013	4	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3304	Hostage and Barricade Suspect Situations	1/8/2013	8	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	11/28/2012	4	Austin Police Academy	
3106	Conference (General)	11/14/2012	4	Hays Co. Sheriff's Academy	
3312	ALERRT Update	11/13/2012	8	Hays Co. Sheriff's Academy	
4029	Aircraft Operations	10/11/2012	24	Texas Tactical Police Officers Association	
3316	ALERRT First Responder Operations in Rural Terrain	9/28/2012	24	Hays Co. Sheriff's Academy	
3304	Hostage and Barricade Suspect Situations	9/19/2012	4	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	9/18/2012	3	Austin Police Academy	
2050	S.W.A.T. (other than 3301 or 3310)	9/13/2012	3	Austin Police Academy	
3300	Patrol/Tactical	9/12/2012	5	Austin Police Academy	
3300	Patrol/Tactical	9/11/2012	3	Austin Police Academy	
3342	Tactical Firearms Training	8/28/2012	5	Austin Police Academy	
3342	Tactical Firearms Training	8/16/2012	5	Austin Police Academy	
3342	Tactical Firearms Training	8/2/2012	4	Austin Police Academy	
3345	Less Lethal Impact Weapons Training (Bean Bag/Impa	7/31/2012	10	Austin Police Academy	
3343	Less Lethal Chemical Weapons Training (OC, Mace, e	7/31/2012	10	Austin Police Academy	
2016	Collection & Pres. of Evidence	7/25/2012	8	Austin Police Academy	
3342	Tactical Firearms Training	6/28/2012	4	Austin Police Academy	
3310	SWAT Inservice Training	6/26/2012	4	Austin Police Academy	
3310	SWAT Inservice Training	6/19/2012	6	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	5/30/2012	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	5/29/2012	5	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	5/15/2012	4	Austin Police Academy	
3300	Patrol/Tactical	5/9/2012	6	Austin Police Academy	
2055	Firearms	5/3/2012	4	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	4/10/2012	1	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3342	Tactical Firearms Training	4/5/2012	4	Austin Police Academy	
3854	Computer Operations	3/30/2012	8	Austin Police Academy	
3342	Tactical Firearms Training	3/28/2012	5	Austin Police Academy	
3300	Patrol/Tactical	3/27/2012	4	Austin Police Academy	
3304	Hostage and Barricade Suspect Situations	3/15/2012	4	Austin Police Academy	
3324	SWAT Sniper Training	3/7/2012	4	Austin Police Academy	
2055	Firearms	3/6/2012	4	Austin Police Academy	
3310	SWAT Inservice Training	2/29/2012	4	Austin Police Academy	
3310	SWAT Inservice Training	2/16/2012	4	Austin Police Academy	
3300	Patrol/Tactical	2/15/2012	4	Austin Police Academy	
3342	Tactical Firearms Training	2/14/2012	4	Austin Police Academy	
3300	Patrol/Tactical	1/18/2012	8	Austin Police Academy	
2055	Firearms	1/12/2012	5	Austin Police Academy	
3300	Patrol/Tactical	11/28/2011	8	Hays Co. Sheriff's Academy	
3311	ALERRT	11/16/2011	16	Hays Co. Sheriff's Academy	
3312	ALERRT Update	11/16/2011	4	Hays Co. Sheriff's Academy	
3311	ALERRT	11/10/2011	72	Hays Co. Sheriff's Academy	
		Unit Hours	475		

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3311	ALERRT	8/27/2011	16	Hays Co. Sheriff's Academy	
3700	Management/Supervision	4/29/2011	80	Austin Police Academy	
3181	81st Legislative Session Legal Update	3/22/2011	8	Austin Police Academy	State and Federal Law Update
3311	ALERRT	2/6/2011	32	Hays Co. Sheriff's Academy	
3311	ALERRT	1/23/2011	24	Hays Co. Sheriff's Academy	
3342	Tactical Firearms Training	12/14/2010	9	Austin Police Academy	
3342	Tactical Firearms Training	12/10/2010	40	Permian Basin LEA	
3311	ALERRT	11/11/2010	20	Hays Co. Sheriff's Academy	
3200	Investigations	10/7/2010	8	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3300	Patrol/Tactical	9/12/2010	32	Texas State University Texas School Safety Center	
3300	Patrol/Tactical	8/1/2010	32	Texas State University Texas School Safety Center	
3304	Hostage and Barricade Suspect Situations	6/23/2010	8	Austin Police Academy	
3300	Patrol/Tactical	6/2/2010	24	Texas State University Texas School Safety Center	
3300	Patrol/Tactical	5/6/2010	10	Austin Police Academy	
3300	Patrol/Tactical	5/1/2010	24	Texas State University Texas School Safety Center	
3300	Patrol/Tactical	4/28/2010	24	Texas State University Texas School Safety Center	
3300	Patrol/Tactical	1/21/2010	2	Austin Police Academy	
3912	Community Relations	1/5/2010	2	Austin Police Academy	
3200	Investigations	11/3/2009	1	Austin Police Academy	
		Unit Hours	396		

09/01/2007 - 08/31/2009

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2040	Defensive Tactics	8/25/2009	20	Austin Police Academy	
3300	Patrol/Tactical	7/30/2009	24	ROUND ROCK POLICE DEPT. (Training Rosters)	
2055	Firearms	7/27/2009	10	Austin Police Academy	
3300	Patrol/Tactical	7/20/2009	8	Austin Police Academy	
3232	Special Investigative Topics	7/20/2009	8	Austin Police Academy	Special Investigative Topics (Intermediate)
3700	Management/Supervision	6/26/2009	24	Austin Police Academy	
3300	Patrol/Tactical	4/15/2009	30	Austin Police Academy	
3800	Technical/Specialized	4/8/2009	4	Austin Police Academy	
3300	Patrol/Tactical	4/4/2009	24	Texas Tactical Police Officers Association	
3300	Patrol/Tactical	4/3/2009	8	Texas Tactical Police Officers Association	
3300	Patrol/Tactical	4/1/2009	24	Texas State University Texas School Safety Center	
3939	Cultural Diversity	2/12/2009	10	Austin Police Academy	Cultural Diversity (Intermediate)

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2007 - 08/31/2009

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3300	Patrol/Tactical	12/9/2008	1	Austin Police Academy	
3300	Patrol/Tactical	11/21/2008	40	Texas Tactical Police Officers Association	
3300	Patrol/Tactical	9/3/2008	24	Hays Co. Sheriff's Academy	
3300	Patrol/Tactical	9/3/2008	24	Hays Co. Sheriff's Academy	
3300	Patrol/Tactical	8/19/2008	8	Texas Tactical Police Officers Association	
3311	ALERRT	8/1/2008	40	Hays Co. Sheriff's Academy	
3200	Investigations	7/22/2008	17	Texas Attorney General's Office	
3304	Hostage and Barricade Suspect Situations	6/25/2008	4	Austin Police Academy	
3300	Patrol/Tactical	4/14/2008	32	Texas Tactical Police Officers Association	
3300	Patrol/Tactical	4/13/2008	24	Texas Tactical Police Officers Association	
3100	LAW	3/6/2008	4	Austin Police Academy	
3310	SWAT Inservice Training	2/15/2008	40	Texas Tactical Police Officers Association	
3300	Patrol/Tactical	12/13/2007	8	Austin Police Academy	
3300	Patrol/Tactical	12/12/2007	8	Austin Police Academy	
3300	Patrol/Tactical	12/11/2007	8	Austin Police Academy	
3300	Patrol/Tactical	12/10/2007	8	Austin Police Academy	
3300	Patrol/Tactical	9/13/2007	8	Austin Police Academy	
3310	SWAT Inservice Training	9/12/2007	8	Hays Co. Sheriff's Academy	
3894	Basic Scuba for Law Enforcement	9/1/2007	160	AUSTIN POLICE DEPARTMENT (Training Rosters)	
		Unit Hours	660		

09/01/2005 - 08/31/2007

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3300	Patrol/Tactical	8/10/2007	40	TEEX Central Texas Police Academy	
3100	LAW	6/19/2007	10	Austin Police Academy	
3300	Patrol/Tactical	3/14/2007	5	Austin Police Academy	
3800	Technical/Specialized	1/30/2007	1	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2005 - 08/31/2007

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3910	Sexual Harassment Recognition	12/27/2006	1	Austin Police Academy	
3800	Technical/Specialized	10/16/2006	8	Austin Police Academy	
3841	Crisis Intervention Training	10/10/2006	20	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
66100	FEMA Intro ICS (FEMA IS-100a)	9/2/2006	3	Austin Police Academy	
3807	TCIC/NCIC for Less than Full Access Operators	8/29/2006	2	Austin Police Academy	
3800	Technical/Specialized	8/3/2006	8	Austin Police Academy	
3800	Technical/Specialized	7/27/2006	16	OTHER TRAINING	
3300	Patrol/Tactical	6/9/2006	40	Texas Tactical Police Officers Association	
3232	Special Investigative Topics	5/3/2006	4	Austin Police Academy	Special Investigative Topics (Intermediate)
66700	FEMA National ICS (FEMA IS-700a)	2/23/2006	3	Austin Police Academy	
3300	Patrol/Tactical	11/4/2005	40	Austin Police Academy	
2222	Firearms Instructor Certification	10/14/2005	40	Austin Police Academy	
3300	Patrol/Tactical	9/8/2005	8	Austin Police Academy	
3300	Patrol/Tactical	9/7/2005	20	Austin Police Academy	
		Unit Hours	269		

09/01/2003 - 08/31/2005

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3300	Patrol/Tactical	7/19/2005	16	Texas Tactical Police Officers Association	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2003 - 08/31/2005

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3907	MultiCultural Diversity/Awarness for L.E. Prof.	6/28/2005	10	Austin Police Academy	
3277	Identity Theft	4/30/2005	4	Austin Police Academy	Identity Theft (Intermediate)
3300	Patrol/Tactical	9/10/2004	40	Austin Police Academy	
1014	Basic Instructor Course	8/27/2004	40	Austin Police Academy	
3300	Patrol/Tactical	8/19/2004	4	Austin Police Academy	
3800	Technical/Specialized	8/13/2004	3	Austin Police Academy	
3300	Patrol/Tactical	7/8/2004	4	Austin Police Academy	
3300	Patrol/Tactical	5/8/2004	8	Austin Police Academy	
3300	Patrol/Tactical	4/28/2004	2	Austin Police Academy	
3800	Technical/Specialized	2/26/2004	1	Austin Police Academy	
3800	Technical/Specialized	1/26/2004	2	Austin Police Academy	
3301	Basic S.W.A.T. Course	10/21/2003	60	Austin Police Academy	
3300	Patrol/Tactical	9/4/2003	8	Austin Police Academy	
		Unit Hours	202		

09/01/2001 - 08/31/2003

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3800	Technical/Specialized	6/27/2003	4	Austin Police Academy	
3800	Technical/Specialized	6/13/2003	1	Austin Police Academy	
3800	Technical/Specialized	5/8/2003	4	Austin Police Academy	
3232	Special Investigative Topics	2/11/2003	10	Austin Police Academy	Special Investigative Topics (Intermediate)
3939	Cultural Diversity	2/10/2003	10	Austin Police Academy	Cultural Diversity (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	2/7/2003	40	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3800	Technical/Specialized	6/25/2002	4	Austin Police Academy	
3257	Combined Asset Forfeiture and Racial Profiling	6/4/2002	8	Austin Police Academy	Asset Forfeiture (Intermediate) Racial Profiling (Intermediate)
3400	Traffic	6/4/2002	2	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2001 - 08/31/2003

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3800	Technical/Specialized	12/15/2001	4	Austin Police Academy	
3800	Technical/Specialized	10/30/2001	2	Austin Police Academy	
3800	Technical/Specialized	10/23/2001	4	Austin Police Academy	
		Unit Hours	93		

09/01/1999 - 08/31/2001

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
10002	Credit by Evaluation Retro	9/29/2000	0	TCLEOSE / COLLEGE AGREEMENT	
3200	Investigations	9/7/2000	20	Austin Police Academy	
3800	Technical/Specialized	6/20/2000	10	Austin Police Academy	
3200	Investigations	6/18/2000	2	Austin Police Academy	
3300	Patrol/Tactical	5/25/2000	20	Austin Police Academy	
3300	Patrol/Tactical	5/22/2000	4	Austin Police Academy	
3232	Special Investigative Topics	5/16/2000	6	Austin Police Academy	Special Investigative Topics (Intermediate)
3300	Patrol/Tactical	5/16/2000	7	Austin Police Academy	
3800	Technical/Specialized	5/16/2000	1	Austin Police Academy	
3700	Management/Supervision	5/15/2000	1	Austin Police Academy	
3939	Cultural Diversity	5/15/2000	5	Austin Police Academy	Cultural Diversity (Intermediate)
3400	Traffic	1/28/2000	80	Austin Police Academy	
		Unit Hours	156		

09/01/1997 - 08/31/1999

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3300	Patrol/Tactical	8/19/1999	10	Austin Police Academy	
2067	S.F.S.T. Practitioner	8/11/1999	24	TEEX Central Texas Police Academy	
1000	Basic Peace Officer	7/9/1999	865	Austin Police Academy	Cultural Diversity (Mandate) Special Investigative Topic (Mandate)
2102	Crime Prevention II - ICJS 2009	7/1/1999	40	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/1997 - 08/31/1999

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
1999	Personnel Orientation by Dept. Basic Proficiency	6/30/1999	0	OTHER TRAINING	Personnel Orientation
3939	Cultural Diversity	6/4/1999	10	Austin Police Academy	Cultural Diversity (Intermediate)
2106	Crime Scene Investigation (Intermediate)	5/28/1999	25	Austin Police Academy	Crime Scene Investigation (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	5/27/1999	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
3232	Special Investigative Topics	5/20/1999	10	Austin Police Academy	Special Investigative Topics (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	5/3/1999	8	Austin Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	4/8/1999	25	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
2109	Spanish for Law Enforcement (Intermediate)	4/1/1999	32	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
2107	Use of Force (Intermediate)	2/19/1999	25	Austin Police Academy	Use of Force (Intermediate)
		Unit Hours	1098		
		Total Hours	4562		

Total Hours

TotalTraining Hours From Education	0
Total Course Hours	4546
Total Hours	4546

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

ATTACHMENT 2

Texas Commission On Law Enforcement

Personal Status Report

Name	TCOLE ID (P ID)	STATUS
MAXWELL A. JOHNSON	381038	

Citizen	Race	Gender	Federal ID	State ID
Yes	White	Male		

Education Information

Institution	Hours	Education
	0	High School
Texas State University	124	Bachelor
Austin Community College	4	College Credits
Total Hours	128	
Total Training Hours	2560	

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Peace Officer	AUSTIN POLICE DEPARTMENT	Peace Officer License	4/22/2010		10 years, 2 months

Total Service Time

Description	Service Time
Peace Officer	10 years, 2 months
Total officer time	10 years, 2 months

Award Information

Award	Type	Action	Action Date
Peace Officer License	License		
		Granted	4/23/2010
Basic Peace Officer	Certificate		
		Certification Issued	8/6/2011
Basic Instructor Proficiency	Certificate		
		Certification Issued	11/28/2012
Intermediate Peace Officer	Certificate		
		Certification Issued	5/8/2013
Advanced Peace Officer	Certificate		
		Certification Issued	4/11/2015
Master Peace Officer	Certificate		
		Certification Issued	4/19/2019

Texas Commission On Law Enforcement

Personal Status Report

Academy History

	Date	Institution	Course Title
Completed	4/22/2010	Austin Police Academy	Basic Peace Officer

Courses Completed

09/01/2019 - 08/31/2021

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3186	86th Legislative Session Legal Update	5/26/2020	3	Austin Police Academy	86th Session State and Federal Law Update
3340	Crowd Control	2/25/2020	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	1/21/2020	0	Austin Police Academy	
		Unit Hours	13		

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2058	Patrol w/Horse or Canine	3/27/2019	10	Austin Police Academy	
3038	Agency Operations (General)	2/21/2019	4	Austin Police Academy	
3517	Suicide Prevention (not 3501)	2/21/2019	4	Austin Police Academy	
2096	Arrest, Search & Seizure (Non-Intermediate Core Co	2/20/2019	8	Austin Police Academy	
3940	Community Policing	2/19/2019	8	Austin Police Academy	
30418	Civilian Interaction Training	2/19/2019	2	Austin Police Academy	Civilian Interaction Training Program
1849	De-escalation Tech (SB 1849)	2/18/2019	8	Austin Police Academy	De-escalation Tech (SB 1849)
355	Annual Firearms Qualification 1701.355	1/24/2019	0	Austin Police Academy	
3305	Active Shooter Response	8/1/2018	4	Austin Police Academy	
3185	85th Legislative Session Legal Update	7/16/2018	4	Austin Police Academy	85th Session State and Federal Law Update
2040	Defensive Tactics	5/17/2018	3	Austin Police Academy	
2058	Patrol w/Horse or Canine	3/22/2018	30	Austin Police Academy	
3340	Crowd Control	3/21/2018	10	Austin Police Academy	
2058	Patrol w/Horse or Canine	3/15/2018	40	Austin Police Academy	
2058	Patrol w/Horse or Canine	3/2/2018	40	Austin Police Academy	
2040	Defensive Tactics	2/21/2018	3	Austin Police Academy	
2058	Patrol w/Horse or Canine	2/21/2018	40	Austin Police Academy	
2055	Firearms	2/16/2018	2	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3342	Tactical Firearms Training	2/5/2018	10	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	2/1/2018	0	Austin Police Academy	
3358	Police Bicycle	11/14/2017	20	Austin Police Academy	
3340	Crowd Control	10/24/2017	6	Austin Police Academy	
3342	Tactical Firearms Training	10/2/2017	10	Austin Police Academy	
9909	Officer Involved Shooting	9/27/2017	10	Austin Police Academy	
3340	Crowd Control	9/20/2017	8	Austin Police Academy	
		Unit Hours	284		

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
9909	Officer Involved Shooting	9/27/2017	10	Austin Police Academy	
3340	Crowd Control	9/20/2017	8	Austin Police Academy	
2055	Firearms	8/7/2017	10	Austin Police Academy	
2055	Firearms	7/10/2017	10	Austin Police Academy	
8158	Body Worn Camera	5/31/2017	4	Austin Police Academy	
355	Annual Firearms Qualification 1701.355	5/11/2017	0	Austin Police Academy	
2055	Firearms	5/11/2017	3	Austin Police Academy	
3342	Tactical Firearms Training	4/10/2017	10	Austin Police Academy	
3907	MultiCultural Diversity/Awarness for L.E. Prof.	4/6/2017	10	Austin Police Academy	
3305	Active Shooter Response	2/24/2017	20	Austin Police Academy	
2055	Firearms	2/6/2017	10	Austin Police Academy	
3184	84th Legislative Session Legal Update	1/17/2017	4	Austin Police Academy	84th Session State and Federal Law Update
3342	Tactical Firearms Training	1/2/2017	8	Austin Police Academy	
3342	Tactical Firearms Training	11/7/2016	8	Austin Police Academy	
3342	Tactical Firearms Training	10/3/2016	8	Austin Police Academy	
3342	Tactical Firearms Training	9/5/2016	8	Austin Police Academy	
3258	Racial Profiling Update	7/30/2016	2	Austin Police Academy	
3340	Crowd Control	6/25/2016	6	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3836	Concealed Carry for Law Enforcement Officers	6/14/2016	10	Austin Police Academy	
3342	Tactical Firearms Training	6/6/2016	8	Austin Police Academy	
6030	Tactical Vehicle Traffic Stops & Extractions	5/25/2016	2	Austin Police Academy	
4100	Information Technology (General)	5/24/2016	10	Austin Police Academy	
4100	Information Technology (General)	5/23/2016	10	Austin Police Academy	
2025	Organized Crime	5/5/2016	40	Austin Police Academy	
3342	Tactical Firearms Training	4/4/2016	8	Austin Police Academy	
2192	Animal Handling Training	3/23/2016	3	Austin Police Academy	
3737	New Supervisor's Course	1/21/2016	80	Austin Police Academy	Cultural Diversity (Intermediate) New Supervisor's Required Training Special Investigative Topics (Intermediate)
3342	Tactical Firearms Training	1/4/2016	8	Austin Police Academy	
2029	Tech. Interviewing & Interrog.	12/10/2015	40	Austin Police Academy	
3342	Tactical Firearms Training	11/2/2015	8	Austin Police Academy	
3342	Tactical Firearms Training	10/5/2015	8	Austin Police Academy	
3342	Tactical Firearms Training	9/12/2015	10	Austin Police Academy	
3342	Tactical Firearms Training	9/7/2015	8	Austin Police Academy	
		Unit Hours	392		

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3342	Tactical Firearms Training	8/3/2015	8	Austin Police Academy	
2055	Firearms	7/21/2015	1	Austin Police Academy	
3342	Tactical Firearms Training	7/6/2015	8	Austin Police Academy	
2055	Firearms	6/16/2015	1	Austin Police Academy	
3342	Tactical Firearms Training	4/6/2015	8	Austin Police Academy	
782096	DPS - Interdiction for Protection of Children	3/3/2015	16	Austin Police Academy	Missing and Exploited Children (Advance) Missing and Exploited Children (Intermediate)

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3342	Tactical Firearms Training	2/2/2015	8	Austin Police Academy	
3183	83rd Legislative Session Legal Update	1/31/2015	4	Austin Police Academy	83rd Session State and Federal Law Update
66201	FEMA ICS Single Res/Initial Incident (FEMA IS-200b	12/10/2014	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
66800	FEMA National Resp Plan Intro (FEMA IS-800b)	12/10/2014	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
3340	Crowd Control	11/18/2014	7	Austin Police Academy	
2055	Firearms	11/17/2014	1	Austin Police Academy	
2055	Firearms	10/7/2014	1	Austin Police Academy	
3342	Tactical Firearms Training	10/6/2014	8	Austin Police Academy	
3702	Field Training Officer	9/18/2014	40	Austin Police Academy	
3342	Tactical Firearms Training	9/6/2014	8	Austin Police Academy	
3342	Tactical Firearms Training	9/1/2014	8	Austin Police Academy	
3835	Tactical Trauma Care	8/19/2014	4	Austin Police Academy	
3342	Tactical Firearms Training	8/4/2014	8	Austin Police Academy	
2055	Firearms	7/21/2014	1	Austin Police Academy	
3342	Tactical Firearms Training	7/7/2014	8	Austin Police Academy	
3305	Active Shooter Response	7/4/2014	40	Austin Police Academy	
2055	Firearms	6/27/2014	1	Austin Police Academy	
2055	Firearms	5/1/2014	1	Austin Police Academy	
2055	Firearms	4/21/2014	1	Austin Police Academy	
3871	Stress Manangement	3/12/2014	10	Austin Police Academy	
3342	Tactical Firearms Training	3/3/2014	8	Austin Police Academy	
4100	Information Technology (General)	2/27/2014	10	Austin Police Academy	
2046	Driving	12/16/2013	10	Austin Police Academy	
3322	Patrol Rifle	11/19/2013	20	Austin Police Academy	
2055	Firearms	11/4/2013	1	Austin Police Academy	
3751	Effective Leadership / Leadership Training	11/1/2013	120	Austin Police Academy	
2055	Firearms	10/25/2013	1	Austin Police Academy	
3308	Officer Safety/Survival	9/10/2013	10	Austin Police Academy	
2055	Firearms	9/9/2013	1	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

Unit Hours 388

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
6030	Tactical Vehicle Traffic Stops & Extractions	8/2/2013	3	Austin Police Academy	
2055	Firearms	7/25/2013	1	Austin Police Academy	
2055	Firearms	7/25/2013	1	Austin Police Academy	
3702	Field Training Officer	7/2/2013	20	Austin Police Academy	
2055	Firearms	7/2/2013	1	Austin Police Academy	
4052	Hearing Disabilities	6/24/2013	2	Austin Police Academy	
2055	Firearms	6/17/2013	1	Austin Police Academy	
3308	Officer Safety/Survival	5/22/2013	8	Texas Municipal Police Association	
3408	Roadside Interview Techniques/patrol activities	5/21/2013	16	Austin Police Academy	
2055	Firearms	5/17/2013	1	Austin Police Academy	
2055	Firearms	5/10/2013	1	Austin Police Academy	
3270	Human Trafficking	5/2/2013	4	Austin Police Academy	Human Trafficking
3182	82nd Legislative Session Legal Update	4/28/2013	4	Austin Police Academy	82nd Session State and Federal Law Update
2055	Firearms	4/8/2013	1	Austin Police Academy	
2055	Firearms	10/23/2012	1	Austin Police Academy	
1014	Basic Instructor Course	10/19/2012	40	Austin Police Academy	
2055	Firearms	10/3/2012	1	Austin Police Academy	
3200	Investigations	9/20/2012	32	Alamo Area LEA	
4043	Mobile Video Training	9/11/2012	8	Austin Police Academy	
3702	Field Training Officer	8/23/2012	40	Austin Police Academy	
3844	Crisis Training/Peer support	8/17/2012	5	Austin Police Academy	
3344	Less Lethal Electronic Control Device Training	4/18/2012	1	Austin Police Academy	

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
4001	Mental Health Officer Training Course	3/22/2012	40	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3830	General First Aid Training	3/19/2012	2	Austin Police Academy	
		Unit Hours	234		

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3722	Peace Officer Field Training	7/23/2011	160	Austin Police Academy	Peace Officer Field Training
3181	81st Legislative Session Legal Update	3/22/2011	8	Austin Police Academy	State and Federal Law Update
2055	Firearms	2/9/2011	10	Austin Police Academy	
3300	Patrol/Tactical	11/30/2010	2	Austin Police Academy	
3311	ALERRT	11/11/2010	20	Hays Co. Sheriff's Academy	
3300	Patrol/Tactical	8/5/2010	20	Austin Police Academy	
66700	FEMA National ICS (FEMA IS-700a)	6/7/2010	3	AUSTIN POLICE DEPARTMENT (Training Rosters)	
1000	Basic Peace Officer	4/22/2010	618	Austin Police Academy	Crisis Intervention Training (Mandate) Cultural Diversity (Mandate) S.F.S.T. NHTSA24hour Practitioner Special Investigative Topic (Mandate) State and Federal Law Update
3939	Cultural Diversity	4/16/2010	8	Austin Police Academy	Cultural Diversity (Intermediate)

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2105	Child Abuse Prevention and Investigation (Interm.)	4/14/2010	24	Austin Police Academy	Child Abuse Prevention and Investigation (Intermediate)
3232	Special Investigative Topics	4/6/2010	8	Austin Police Academy	Special Investigative Topics (Intermediate)
2106	Crime Scene Investigation (Intermediate)	4/1/2010	34	Austin Police Academy	Crime Scene Investigation (Intermediate)
3255	Asset Forfeiture	3/22/2010	2	Austin Police Academy	Asset Forfeiture (Intermediate)
3807	TCIC/NCIC for Less than Full Access Operators	3/16/2010	8	Austin Police Academy	
2109	Spanish for Law Enforcement (Intermediate)	3/5/2010	40	Austin Police Academy	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
2176	S.F.S.T. NHTSA 24hour Practitioner - BPOC	1/15/2010	0	Austin Police Academy	
3841	Crisis Intervention Training	1/14/2010	16	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3842	CIT(16hr)-BPOC	1/7/2010	0	Austin Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09

Texas Commission On Law Enforcement

Personal Status Report

Courses Completed

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
66100	FEMA Intro ICS (FEMA IS-100a)	1/4/2010	3	Austin Police Academy	
2107	Use of Force (Intermediate)	12/11/2009	13	Austin Police Academy	Use of Force (Intermediate)
3256	Racial Profiling	11/23/2009	4	Austin Police Academy	Racial Profiling (Intermediate)
3277	Identity Theft	11/23/2009	4	Austin Police Academy	Identity Theft (Intermediate)
2108	Arrest, Search, and Seizure (Intermediate)	10/8/2009	32	Austin Police Academy	Arrest, Search, and Seizure (Intermediate)
3910	Sexual Harassment Recognition	9/15/2009	2	Austin Police Academy	
1999	Personnel Orientation by Dept. Basic Proficiency	9/14/2009	0	Austin Police Academy	Personnel Orientation
		Unit Hours	1039		
		Total Hours	2350		

Total Hours

TotalTraining Hours From Education	2560
Total Course Hours	2332
Total Hours	4892

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KAIDEN NOBLES, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-LY-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN	§	
Defendants		

JOINT STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

TO THE HONORABLE JUDGE OF SAID COURT:

The parties to this action, acting through counsel, hereby stipulate to the Dismissal With Prejudice for the following Defendants: City of Austin Texas, pursuant to Rule 41(a)(1)(A)(ii) including all claims and counterclaims stated herein against the parties, with each party to bear its own attorney's fees and costs. The action remains pending and is not dismissed as to any other Defendants, namely Officer Richard Egal and Officer Maxwell Johnson.

RESPECTFULLY SUBMITTED,

/s/ Edmund M. Davis_____
Edmund M. Davis
State Bar No. 24028272
Law Offices of Edmund M. Davis.
PO Box 201123
Austin, TX 78720
Phone: (512) 698-2215
Attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

ANNE MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION
/s/__
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311
gray.laird@austintexas.gov
ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KAIDEN NOBLES, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-LY-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN	§	
Defendants		

ORDER DISMISSING SPECIFIC DEFENDANTS

The stipulation is approved. The action, including all claims and counterclaims stated herein against the aforementioned specific Defendants: City of Austin Texas, is hereby dismissed from this action with prejudice.

On this _____day of July 2021

_____
Hon. Mark Lane
U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KAIDEN NOBLES, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN	§	
Defendants		

ORDER DISMISSING SPECIFIC DEFENDANTS

The stipulation is approved. The action, including all claims and counterclaims stated herein against the aforementioned specific Defendants: City of Austin Texas, is hereby dismissed from this action with prejudice.

On this 15th day of July 2021,

Hon. Mark Lane
U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

JOINT PROPOSED JURY INSTRUCTIONS

Plaintiffs Ida Renae Nobles, Kadeidra Bell, Michelle Dashaun Smith and Defendants Richard Egal and Maxwell Johnson file their Joint Proposed Jury Instructions and Verdict Form.

DATED: November 18, 2021.

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, LITIGATION CHIEF

/s/ H. Gray Laird__
H Gray Laird
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

Telephone: (512) 974-1342
Facsimile: (512) 974-1311
ATTORNEYS FOR DEFENDANTS

/s/ Edmund Davis
Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

Instructions for the Beginning of Trial[1]

Members of the jury panel, if you have a cell phone, PDA, Blackberry, smart phone, iPhone or any other wireless communication device with you, please take it out now and turn it off. Do not turn it to vibrate or silent; power it down. During jury selection, you must leave it off.

There are certain rules you must follow while participating in this trial.

First, you may not communicate with anyone about the case, including your fellow jurors, until it is time to deliberate. I understand you may want to tell your family, close friends and other people that you have been called for jury service so that you can explain when you are required to be in court. You should warn them not to ask you about this case, tell you anything they know or think they know about it, or discuss this case in your presence, until after I accept your verdict or excuse you as a juror.

Similarly, you must not give any information to anyone by any means about this case. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, camera, recording device, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, YouTube, or Twitter, or any other way to communicate to anyone any in- formation about this case until I accept your verdict or until you have been excused as a juror. This includes any information about the parties, witnesses, participants, claims, evidence, or anything else related to this case.

Second, do not speak with anyone in or around the courthouse other than your fellow jurors or court personnel. Some of the people you encounter may have some connection to the

[1] All modeled off the Fifth Circuit Model Jury Charge Unless otherwise noted.

case. If you were to speak with them, that could create an appearance or raise a suspicion of impropriety.

Third, do not do any research—on the Internet, in libraries, in books, newspapers, magazines, or using any other source or method. Do not make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or view any place discussed in the testimony. Do not in any way research any information about this case, the law, or the people involved, including the parties, the wit- nesses, the lawyers, or the judge, until after you have been excused as jurors. If you happen to see or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

These rules protect the parties' right to have this case decided only on evidence they know about, that has been presented here in court. If you do any research, investigation or experiment that we do not know about, or gain any information through improper communications, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, which includes the oath to tell the truth and cross-examination. It could also be unfair to the parties' right to know what information the jurors are relying on to decide the case. Each of the parties is entitled to a fair trial by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide the case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions could result in the case having to be retried.

Preliminary Instructions to Jury

MEMBERS OF THE JURY:

You have now been sworn as the jury to try this case. As the judge, I will decide all questions of law and procedure. As the jury, you are the judges of the facts. At the end of the trial, I will instruct you on the rules of law that you must apply to the facts as you find them.

You may take notes during the trial. Do not allow your note-taking to distract you from listening to the testimony. Your notes are an aid to your memory. If your memory should later be different from your notes, you should rely on your memory. Do not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any greater weight than each juror's recollection of the testimony.

Until this trial is over, do not discuss this case with anyone and do not permit anyone to discuss this case in your presence. This includes your spouse, children, relatives, friends, coworkers, and people with whom you commute to court each day. During your jury service, you must not communicate any information about this case by any means, by conversation or with the tools of technology. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, camera, recording device, Blackberry, PDA, computer, the Internet, any Internet ser- vice, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, or any other way to communicate to anyone any information about this case until I accept your verdict or excuse you as a juror.

Do not even discuss the case with the other jurors until the end of the case when you retire to deliberate. It is unfair to discuss the case before all of the evidence is in, because you may become an advocate for one side or the other. The parties, the witnesses, the attorneys,

and persons associated with the case are not allowed to communicate with you. And you may not speak with anyone else in or around the courthouse other than your fellow jurors or court personnel.

Do not make any independent investigation of this case. You must rely solely on what you see and hear in this courtroom. Do not try to learn anything about the case from any other source. In particular, you may not use any electronic device or media, such as a telephone, cell phone, smartphone, or computer to research any issue touching on this case. Do not go online or read any newspaper account of this trial or listen to any radio or television newscast about it. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or to view any place discussed in the testimony. In sum, you may not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge, until after you have been excused as jurors.

There are some issues of law or procedure that I must decide that the attorneys and I must discuss. These issues are not part of what you must decide and they are not properly discussed in your presence. To avoid having you leave the courtroom and to save time, I may discuss these issues with the attorneys at the bench, out of your hearing. When I confer with the attorneys at the bench, please do not listen to what we are discussing. If the discussions require more time, I may have you leave the courtroom until the lawyers and I resolve the issues. I will try to keep these interruptions as few and as brief as possible.

The trial will now begin. Lawyers for each side will make an opening statement. Opening statements are intended to assist you in understanding the significance of the evidence that will be presented. The opening statements are not evidence.

After the opening statements, the plaintiffs will present their case through witness

testimony and documentary or other evidence. Next, the defendants will have an opportunity to present his case. The plaintiffs may then present rebuttal evidence. After all the evidence is introduced, I will instruct you on the law that applies to this case. The lawyers will then make closing arguments. Closing arguments are not evidence, but rather the attorneys' interpretations of what the evidence has shown or not shown. Finally, you will go into the jury room to deliberate to reach a verdict.

Keep an open mind during the entire trial. Do not decide the case until you have heard all of the evidence, my instructions, and the closing arguments.

It is now time for the opening statements.

I. GENERAL INSTRUCTIONS FOR THE JURY

MEMBERS OF THE JURY:

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

GENERAL INSTRUCTIONS

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admit- ted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the plaintiff or the defendant in arriving at your verdict.

Plaintiffs have the burden of proving their case by a preponderance of the evidence. To establish by a preponderance of the evidence means to prove something is more likely so than not so. If you find that Plaintiffs have failed to prove any element of their claim by a preponderance of the evidence, then they may not recover on that claim.

The evidence you are to consider consists of the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact

exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor of the witness stand, any feelings or interest in the case, or any prejudice or bias about the case, that he or she may have, and the consistency or inconsistency of his or her testimony considered in the light of the circumstances. Has the witness been contradicted by other credible evidence? Has he or he made statements at other times and places contrary to those made here on the witness stand? You must give the testimony of each witness the credibility that you think it deserves.

Even though a witness may be a party to the action and therefore interested in its outcome, the testimony may be accepted if it is not contradicted by direct evidence or by any inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of wit- nesses, but the relative convincing force of the evidence. The testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

In determining the weight to give to the testimony of a witness, consider whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony given at the trial.

A simple mistake by a witness does not necessarily mean that the witness did not tell the

truth as he or she remembers it. People may forget some things or remember other things inaccurately. If a witness made a misstatement, consider whether that misstatement was an intentional falsehood or simply an innocent mistake. The significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely on it.

Certain testimony has been presented to you through a deposition. A deposition is the sworn, recorded answers to questions a witness was asked in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness's testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the par- ties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers have been shown to you today. This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility and weighed and otherwise considered by you in the same way as if the witness had been present and had testified from the witness stand in court.

You are required to evaluate the testimony of a law-enforcement officer as you would the testimony of any other witness. No special weight may be given to his testimony because he is a law enforcement officer.

SPECIFIC INSTRUCTIONS

I will now instruct you on the specific law to be applied in this case.

INSTRUCTIONS FOR QUESTION 1

Plaintiffs Ida Renae Nobles, Kadeidra Bell, and Michelle Dashaun Smith claim that Defendants Richard Egal and Maxwell Johnson violated Landon Nobles's constitutional right to be free from the use of excessive force. To recover damages for this alleged constitutional violation, Plaintiffs must prove by a preponderance of the evidence that:

1. Defendants Richard Egal and/or Maxwell Johnson committed an act that violated the constitutional rights Plaintiffs claim were violated; and

2. Defendants Richard Egal and/or Maxwell Johnson's acts were the cause of Plaintiffs' damages.

There are two defendants in this case. You are instructed to consider the actions of Defendants separately unless the instructions say otherwise.

The Constitution prohibits law enforcement officers from using unreasonable or excessive force, even when the arrest or detention is otherwise proper. To prevail on a Fourth Amendment excessive-force claim, Plaintiffs must prove the following by a preponderance of the evidence:

1. an injury;
2. that the injury resulted directly from the use of force that was excessive to the need; and
3. that the excessiveness of the force was objectively unreasonable.

To determine whether the force used was reasonable under the Fourth Amendment, you

must carefully balance the nature and quality of the intrusion on Landon Nobles's right to be protected from excessive force against the government's right to use some degree of physical coercion or threat of coercion when faced with an imminent threat. Not every use of force, even if it may later seem unnecessary in hindsight, violates the Fourth Amendment. In deciding this issue, you must pay careful attention to the facts and circumstances, including the severity of the crime at issue, whether Landon Nobles posed an immediate threat to the safety of the officers or others, and whether he posed an imminent threat at the time the officers used deadly force against him.

Finally, the reasonableness of a particular use of force is based on what a reasonable officer would do under the circumstances. You must decide whether a reasonable officer on the scene would view the force as reasonable, without the benefit of 20/20 hindsight. This inquiry must take into account the fact that police officers are sometimes forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

If you find that Plaintiffs have proved by a preponderance of the evidence that the force used was objectively unreasonable, then Defendants Richard Egal and Maxwell Johnson violated Landon Nobles's Fourth Amendment protection from excessive force and you must then consider whether the Defendants are entitled to Qualified Immunity, which is a bar to liability that I will explain later. If Plaintiffs failed to make this showing, then the force was not unconstitutional, and your verdict will be for Defendants Richard Egal and Maxwell Johnson on the excessive-force claim.

Question 1 has two parts, 1a and 1b. Each part corresponds to one of the two Defendants against whom Plaintiffs have an excessive force claim.

Question 1a asks, "Did Richard Egal violate Landon Nobles's Fourth Amendment right to be protected from excessive force by using excessive force against Mr. Nobles?" Answer "Yes" or "No"

Question 1b asks, "Did Maxwell Johnson violate Landon Nobles's Fourth Amendment right to be protected from excessive force by using excessive force against Mr. Nobles?" Answer "Yes" or "No"

If you answered "Yes" as to 1a and/or 1b, move on to Question 2. If not, answer no further questions.

INSTRUCTIONS FOR QUESTION 2

If you find that Plaintiffs have proved each essential element of this claim, you must consider whether Richard Egal and Maxwell Johnson are entitled to what the law calls "qualified immunity." Qualified immunity bars a defendant's liability even if he violated a plaintiff's constitutional rights. Qualified immunity exists to give government officers breathing room to make reasonable but mistaken judgments about open legal questions. Qualified immunity provides protection from liability for all but the plainly incompetent government officers or those who knowingly violate the law. It is Plaintiffs' burden to prove by a preponderance of the evidence that qualified immunity does not apply in this case.

Qualified immunity applies if a reasonable officer could have believed that the use of force was lawful in light of clearly established law and the information Richard Egal and Maxwell Johnson each possessed. But Richard Egal and Maxwell Johnson are not entitled to qualified immunity if, at the time Richard Egal and Maxwell Johnson used force on Landon Nobles, a reasonable officer with the same information could not have believed that these actions were

lawful. Law enforcement officers are presumed to know the clearly established constitutional rights of individuals they encounter. In this case, the clearly established law at the time was that law enforcement officials may use deadly force when an officer would have reason to believe that a suspect poses an imminent threat of serious bodily harm to the officer or others.

If, after considering the scope of discretion and responsibility generally given to police officers in performing their duties and after considering all of the circumstances of this case as they would have reasonably appeared to Richard Egal and Maxwell Johnson at the time of their respective uses of force, you find that Plaintiffs failed to prove that no reasonable officer could have believed that the use of force was lawful, then Richard Egal and Maxwell Johnson are entitled to qualified immunity, and your verdict must be for Richard Egal and Maxwell Johnson. But if you find that Richard Egal and Maxwell Johnson violated Landon Nobles's constitutional rights and that Richard Egal and Maxwell Johnson are not entitled to qualified immunity, then your verdict must be for Plaintiffs.

[INSTRUCTIONS FOR QUESTIONS 3,4,5,6, &7]

If Plaintiffs have proved his claim against Defendants Richard Egal and Maxwell Johnson by a preponderance of the evidence, you must determine the damages to which Plaintiffs are entitled. You should not interpret the fact that I am giving instructions about Plaintiffs damages as an indication in any way that I believe that Plaintiffs should, or should not, win this case. It is your task to decide whether Defendants Richard Egal and Maxwell Johnson are liable. I am instructing you on damages only so that you will have guidance in the event you decide that Defendants are liable and that Plaintiffs are entitled to recover money from Defendants Richard Egal and Maxwell Johnson.

If you find that any Defendant is liable to Plaintiffs, then you must determine an amount that is fair compensation for all of Plaintiffs' damages. These damages are called compensatory damages. The purpose of compensatory damages is to make Plaintiffs whole—that is, to compensate Plaintiffs for the damage that they have suffered. Compensatory damages are not limited to expenses that Plaintiffs may have incurred because of Landon Nobles's injuries. If Plaintiffs win, they are entitled to compensatory damages for the physical injuries, pain and suffering and mental anguish that they and Landon Nobles suffered because of Defendants' wrongful conduct.

You may award compensatory damages only for injuries that Plaintiffs prove were proximately caused by Defendants' wrongful conduct. The damages that you award must be fair compensation for all of Plaintiffs' damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize Defendants. You should not award compensatory damages for speculative injuries, but only for those injuries that Plaintiffs have actually suffered or that Plaintiffs are reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that Plaintiffs prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. The elements of damages you may consider are an amount for loss of companionship and society and for mental anguish that you find from the evidence that Plaintiffs endured as a result of Richard Egal and Maxwell Johnson's conduct. You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You may award damages for any bodily injury that Landon Nobles sustained and any pain and suffering, and mental anguish that Plaintiffs and Landon Nobles experienced in the past or will experience in the future as a result of the bodily injury. No evidence of the value of intangible things, such as mental or physical pain and suffering has been or need be introduced. You are not trying to determine value, but an amount that will fairly compensate Plaintiffs for the damages he has suffered. There is no exact standard for fixing the compensation to be awarded for these elements of damage. Any award that you make must be fair in the light of the evidence.

Questions 3, 4,5, and 6 asks, "What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their injuries, if any, that resulted from the occurrence in question?"

Question 3 has three parts: 3a, 3b, 3c, each of which corresponds to an element of damages listed below. Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

3a. Medical Expenses incurred in the past for Landon Nobles's care and treatment;

3b. Physical pain and suffering and mental anguish in the past;

3c. Physical pain and suffering and mental anguish in the future;

Question 4 has two parts: 4a and 4b, each of which corresponds to an element of damages listed below. Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice

for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

4a. Loss of companionship and society for Ida Renae Nobles;

4b. Mental Anguish for Ida Renae Nobles;

Question 5 has two parts: 5a and 5b, each of which corresponds to an element of damages listed below. Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

5a. Loss of companionship and society for Kadeidra Bell as Next Friend of K.N.;

5b. Mental Anguish for Kadeidra Bell as Next Friend of K.N.;

Question 6 has two parts: 6a and 6b, each of which corresponds to an element of damages listed below. Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

6a. Loss of companionship and society for Michelle Dashaun Smith as Next Friend of L.N.;

6b. Mental Anguish for Michelle Dashaun Smith as Next Friend of L.N.;

Question 7: If you find that the Defendants are liable for the Plaintiffs' injuries, you must award the Plaintiffs the compensatory damages that they have proven. You also may award punitive damages, if the Plaintiffs have proved that the Defendants acted with malice or

willfulness or with callous and reckless indifference to the safety or rights of others. One acts willfully or with reckless indifference to the rights of others when he acts in disregard of a high and excessive degree of danger about which he knows or which would be apparent to a reasonable person in his condition.

If you determine the Defendants' conduct was so shocking and offensive as to justify an award of punitive damages, you may exercise your discretion to award those damages. In making any award of punitive damages, you should consider that the purpose of punitive damages is to punish a defendant for shocking conduct, and to deter the defendant and others from engaging in similar conduct in the future. The law does not require you to award punitive damages. However, if you decide to award punitive damages, you must use sound reason in setting the amount of the damages. The amount of an award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. It should be presumed the Plaintiffs have been made whole by compensatory damages, so punitive damages should be awarded only if the Defendants' misconduct, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. You may consider the financial resources of the Defendants in fixing the amount of punitive damages and you may impose punitive damages against one or more of the Defendants, and not others, or against more than one Defendant in different amounts.

CONCLUDING INSTRUCTIONS

It is now your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on your honest beliefs because the other jurors think differently, or just to finish the case.

Remember at all times, you are the judges of the facts. You have been allowed to take

notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a presiding juror to guide you in your deliberations and to speak for you here in the courtroom. Your verdict must be unanimous. After you have reached a unanimous verdict, your presiding juror must fill out the answers to the written questions on the verdict form and sign and date it. After you have concluded your service and I have discharged the jury, you are not required to talk with anyone about the case.

If you need to communicate with me during your deliberations, the presiding juror should write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any question.

You may now proceed to the jury room to begin your deliberations.

PROPOSED VERDICT FORM

QUESTION ONE

a. Did Richard Egal violate Landon Nobles's Fourth Amendment right to be protected from excessive force by using excessive force during the course of Mr. Nobles's shooting?

Answer: _____

b. Did Maxwell Johnson violate Landon Nobles's Fourth Amendment right to be protected from excessive force by using excessive force during the course of Mr. Nobles's shooting?

Answer: _____

If you answered "Yes" to Question 1a, or 1b, answer Question 2. If you answered "No" do not answer any more questions.

QUESTION TWO

Answer only as to the Defendant or Defendants for whom you answered "Yes" in Question No. 1. Answer "Yes" or "No."

2a. Do you find that Richard Egal's actions during the shooting of Landon Nobles were objectively unreasonable in light of the clearly established law at the time, such that no reasonable officer could have believed that the shooting was lawful?

Answer: _____

2b. Do you find that Maxwell Johnson's actions during the shooting of Landon Nobles were objectively unreasonable in light of the clearly established law at the time, such that no reasonable officer could have believed that the shooting was lawful?

Answer: _____

If you answered "yes" to Questions 2a or 2b, proceed to Questions 3, 4, 5, 6, and 7.

QUESTION THREE

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, that they experienced as a result of Landon Nobles' injuries?

Answer in Dollars and cents, if any:

a. Medical Expenses incurred in the past for his care and treatment;

ANSWER:_____

b. Physical pain and mental anguish in the past;

ANSWER:_____

c Physical pain and mental anguish in the future;

ANSWER:_____

QUESTION FOUR

What sum of money, if paid now in cash, would fairly and reasonably compensate Ida Renae Nobles for her damages, if any, resulting from the death of her son, Landon Nobles?

Answer in Dollars and cents, if any:

a. Loss of companionship and society.

"Companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Ida Renae Nobles, in reasonable probability, would have received from Landon Nobles had he lived.

Were sustained in the past:

ANSWER: $_____

In reasonable probability will be sustained in the future:

ANSWER: $_____

b. Mental Anguish.

Were sustained in the past:

ANSWER: $_____

In reasonable probability will be sustained in the future:

ANSWER: $_____

[DEFENDANTS OBJECT TO QUESTION 4b ON THE GROUNDS THAT IT IS DUPLICATIVE OF QUESTION THREE]

QUESTION FIVE

What sum of money, if paid now in cash, would fairly and reasonably compensate Kadeidra Bell, as Next Friend of K.N., for K.N's damages, if any, resulting from the death of K.N.'s father, Landon Nobles?

Answer in Dollars and cents, if any:

a. Loss of companionship and society.

"Companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society K.N., in reasonable probability, would have received from Landon Nobles had he lived.

Were sustained in the past:

ANSWER: $_____

In reasonable probability will be sustained in the future:

ANSWER: $_____

b. Mental Anguish.

Were sustained in the past:

ANSWER: $_____

In reasonable probability will be sustained in the future:

ANSWER: $_____

[DEFENDANTS OBJECT TO QUESTION 5b ON THE GROUNDS THAT IT IS DUPLICATIVE OF QUESTION THREE]

QUESTION SIX

What sum of money, if paid now in cash, would fairly and reasonably compensate Michelle Dashaun Smith, as Next Friend of L.N., for L.N's damages, if any, resulting from the death of L.N.'s father, Landon Nobles?

Answer in Dollars and cents, if any:

a. Loss of companionship and society.

"Companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society L.N., in reasonable probability, would have received from Landon Nobles had he lived.

Were sustained in the past:

ANSWER: $_____

In reasonable probability will be sustained in the future:

ANSWER: $_____

b. Mental Anguish.

Were sustained in the past:

ANSWER: $_____

In reasonable probability will be sustained in the future:

ANSWER: $_____

[DEFENDANTS OBJECT TO QUESTION 6b ON THE GROUNDS THAT IT IS DUPLICATIVE OF QUESTION THREE]

QUESTION SEVEN

What sum of money, if paid now in cash, should be assessed against Defendant, Richard Egal, and awarded to Plaintiffs as exemplary damages, if any, for his actions?

ANSWER: $_____

What sum of money, if paid now in cash, should be assessed against Defendant, Maxwell Johnson, and awarded to Plaintiffs as exemplary damages, if any, for his actions?

ANSWER: $_____

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. Gray Laird III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1358
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

/s/ Edmund Davis
Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing Joint Proposed Jury Instructions, in compliance with the Federal Rules of Civil Procedure, on this 18th day of November, 2021, as follows:

Via CM-ECF to:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

\s\ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

DEFENDANTS' MOTION IN LIMINE

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell Johnson (collectively "Defendants") file this Motion in Limine and request rulings on the following issues prior to commencement of voir dire examination in the above-referenced action.

Defendants make this motion to the Court to enter an order prior to the voir dire examination of the jury panel, instructing opposing counsel and any and all witnesses called to testify at the trial of this cause, to refrain from any mention or interrogation, directly or indirectly, in any manner whatsoever, including the offering of documentary evidence, concerning any of the matters set forth herein.

Accordingly, Defendants request the Court to order, if any opposing counsel wishes to propose a theory of admissibility concerning these matters, that opposing counsel first must request

a ruling from the Court outside the presence and hearing of all prospective jurors and jurors ultimately selected in this cause.

The matters set out below would be inadmissible in evidence for any purpose on proper and timely objection in that they have no bearing on the issues in this case or the rights of the parties to this suit.

Permitting interrogation of witnesses, comments to jurors, or prospective jurors, or offers of evidence concerning any of the matters set forth below would prejudice the jury, and sustaining objections to such questions, statements or evidence introduced by counsel or witnesses may well fail to prevent prejudice, but instead reinforce the development of questionable evidence.

The following matters would not be admissible for any purpose in this cause:

1. Any grievances, complaints, internal affairs investigations or lawsuits against or involving the City of Austin, or any of its employees including police officers, other than the instant lawsuit.

2. Any disciplinary actions or measures taken by the Austin Police Department or any other law enforcement agency against the Defendants not related to the incident which is the subject of this lawsuit.

3. Any alleged complaint against Officers Egal and Johnson which was not sustained, and for which no discipline was imposed. Unsustained complaints are protected from disclosure under Chapter 143, Texas Local Gov't Code.

Any of the foregoing matters, if brought to the attention of the jury, would be prejudicial to the defendants and would deprive the defendants of their right to a fair trial. To require the

defendants to object to such matters in the presence of the jury would be prejudicial to the defendants, even though such objections were sustained by the Court. Such prejudicial matters should not be removed from the jury's consideration by instructions of the Court.

WHEREFORE, Defendants hereby request that this Court enter an order as follows: That all counsel and all parties herein be and are instructed to refrain from any mention or interrogation, directly or indirectly, in any manner whatsoever, regarding any of the matters set forth in this motion, including the offering of documentary evidence, without first requesting and obtaining a ruling from the Court outside the presence and hearing of all prospective jurors and jurors ultimately selected in this cause in regard to any alleged theory of admissibility of such matters.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. Gray Laird III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1358
Facsimile: (512) 974-1311
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing *Defendants' Motion in Limine*, in compliance with the Federal Rules of Civil Procedure, on this 18th day of November, 2021, as follows:

Via CM-ECF to:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

\s\ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

DEFENDANTS' PRE-TRIAL SUBMISSIONS

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell Johnson (collectively "Defendants") file these pre-trial documents pursuant to Local Rule CV-16(e) and the scheduling order in this case:

I. Defendants' Proposed Voir Dire

II. Defendants' Statement of Claims and Defenses

III. Joint Stipulation of Facts

IV. Defendants' Exhibit List

V. Witness List

VI. Deposition Testimony

VII. Jury Instructions

VIII. Defendants' Motion in Limine has been e-filed separately.

IX. Estimated Length of Trial

I. Defendants' Proposed Voir Dire

Defendants respectfully request that the Court ask the following questions to prospective jurors during voir dire examination:

1. Are any of you, or your immediate family members, acquainted with the following persons? If so, in what manner?

(a) Ida Renae Nobles, Kadeidra Bell, Michelle Dashaun Smith, and Landon Nobles, the plaintiffs in this case.

(b) Richard Egal and Maxwell Johnson, the defendants in this case.

(c) Edmund "Skip" Davis and Charles Medearis, the Plaintiff's lawyers in this case.

(e) Gray Laird and Monte Baron, the Defendants' lawyers in this case.

(f) The Judge, or any member of the court staff.

2. The plaintiff has indicated that the following individuals may testify. Do you, or any of your immediate family members, know any of these individuals? If so, in what manner?

[Read plaintiff's witness list]

3. The defendants have indicated that the following individuals may testify. Do you, or any of your immediate family members, know any of these individuals? If so, in what manner?

[Read defendants' witness list]

4. Do you know anyone else on the jury panel? If so, how?

5. Have you, your family members, or close friends ever been a plaintiff, defendant, or witness in a civil lawsuit? If so, please state:

(a) Whether you or they were a plaintiff, defendant, or witness;

(b) The nature of the lawsuit;

(c) The names of the parties involved in the lawsuit;

(d) The outcome of the lawsuit; and

(e) Anything about the experience that might affect your ability to be a fair and impartial juror in this case.

6. Have you, any of your immediate family members, or any of your close friends ever been questioned or arrested by law enforcement officials? If so, what was the nature of the encounter or arrest with the law enforcement official? (Approach the bench if appropriate). Has that experience caused you to view law enforcement officials in a negative light?

7. Have you, any member of your family, or any close friends ever filed a claim, complaint, lawsuit or grievance concerning the actions of a law enforcement officer, a governmental body (like a city, county, or state), or an employee of a governmental body? If so, what was the nature of the complaint, grievance, or lawsuit and what was the outcome?

8. Have you, any member of your family, or any close friends ever filed a claim, complaint, lawsuit or grievance complaining of a violation of their civil rights? Examples of civil

rights violations include, but are not necessarily limited to, wrongful arrest, use of excessive force, violation of the right to free speech.

9. Have you, any member of your family, or any close friends ever filed a claim, complaint, lawsuit or grievance complaining of the actions of a law enforcement officer of the Austin Police Department? As a result of that experience, do you view Austin police officers in a negative light?

10. Have you, any member of your family, or any close friends ever filed a claim, complaint, lawsuit or grievance complaining of the City of Austin or any of its employees?

11. Have you, your family members, or any of your close friends had any interactions with any law enforcement officers that might affect your ability to be a fair and impartial juror in this case?

12. Does anyone have any factual knowledge of this case or any cases involving similar claims?

13. Has anyone seen, heard or read any reports in the media concerning this incident or this case?

14. Does anyone have any specialized legal knowledge involving constitutional claims or civil rights claims in general?

15. Has anyone formed an opinion, based merely on what you have heard so far, that the plaintiffs are entitled to compensation in this case?

16. Does anyone here believe that police officers or law enforcement officials have too much power or discretion in performing their duties? If you have that belief, can you disregard it

and act fairly and impartially if you are selected as a juror in this case involving claims that police officers used excessive force?

17. The Court will instruct you concerning the nature of constitutional rights. Would you be able and willing to follow the Court's instructions concerning the law, even if the instructions differ from your own personal views?

18. In this lawsuit the plaintiffs will claim that Landon Nobles's civil rights were violated. Do you, your family members, or any of your close friends belong to an organization whose primary purpose is the protection of civil rights?

19. Does anyone believe that an individual has the right to disregard lawful instructions of a police officer?

20. Do you, your family members, or any of your close friends have training in police procedures or policies? If so, please describe the nature of the training.

22. When you hear that a member of a racial minority was injured in a police encounter, without knowing anything more about the interaction, do you suspect the officer likely used force because the injured person is a minority?

23. Is there anything we have not talked about that you believe might affect your ability to be a fair and impartial juror?

II. Defendants' Statement of Claims and Defenses

Defendants Egal and Johnson respectfully request that the Court provide the following statement of claims and defenses to prospective jurors during the voir dire examination:

The Plaintiffs claim that the Defendants, Richard Egal and Maxwell Johnson, who were uniformed police officers, violated Brandon Nobles's civil rights by using excessive force when they fired their firearms at Landon Nobles on May 7, 2017. The Defendants admit that they fired their firearms at Nobles, but deny that they used excessive force. The Defendants contend that the force they used on Nobles was objectively reasonable under the totality of the circumstances because Nobles posed an imminent threat of serious bodily injury to the officers and others.

III. Joint Stipulation of Facts

At this point, the parties have not reached agreement on any joint stipulation of facts. The parties will file any stipulations they reach in advance of trial.

IV. Defendants' Exhibit List

A. Expected Exhibits

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
D-1.	APD General Offense Reports (COA001-188)			
D-2.	APD Crime Scene Video (COA2634)			
D-3.	APD SIU George Radio (COA2649)			
D-4.	APD SIU Radio MET7 (COA2650)			
D-5.	SIU HALO Video (COA2651)			
D-6.	SIU HALO Video (COA2652)			
D-7.	SIU HALO Video (COA2653)			

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
D-8.	SIU HALO Video (COA2654)			
D-9.	SIU HALO Video (COA2655)			
D-10.	SIU HALO Video (COA2656)			
D-11.	SIU Video—Gun Fired (COA2670)			
D-12.	SIU Video—YouTube (COA2671)			
D-13.	SIU Internet Video—Larry Goodman (COA2672)			
D-14.	SIU Video—Fight (COA2673)			
D-15.	SIU Video—Kalu (COA2674)			
D-16.	SIU Video—Surber (COA2675)			
D-17.	APD Incident Detail Report (COA1024-1043)			
D-18.	Photo of Nobles (COA1433)			
D-19.	Photo of Nobles (COA1434)			
D-20.	Satellite Photo of Incident Area (COA1579)			
D-21.	HALO Still Image (COA1595)			
D-22.	HALO Still Image (COA1596)			
D-23.	Photo of Nobles (COA1606)			
D-24.	Photo of Gun (COA1647)			
D-25.	Photo of Gun (COA1651)			
D-26.	Photo of Gun (COA 1654)			
D-27.	Photo of Magazine (COA 1656)			

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
D-28.	Photo of Bullet (COA1658)			
D-29.	Photo of Bullet (COA1659)			
D-30.	APD Crime Scene Photos (COA1764-2135)			
D-31.	Satellite Photo of Incident Area (COA2475)			
D-32.	APD Firearm Report (COA 3128-3135)			
D-33.	APD Firearm Report (COA 3117)			
D-34.	APD Forensic Science Laboratory Report (COA3119-3124)			
D-35.	APD Forensic Science Laboratory Report (COA3125-3127)			
D-36.	APD Forensic Science Laboratory Report (COA3091-3093)			
D-37.	C.V. of Albert Rodriguez			
D-38.	C.V. of Greg Karim			
D-39.	C.V. of Steven Aston			

Defendants reserve the right to introduce or utilize any exhibit listed by the Plaintiffs.

V. Defendants' Witness List

The witnesses listed below along with their contact information have previously been identified to Plaintiffs.

A. Expected Witnesses

- Defendant Richard Egal
- Defendant Maxwell Johnson

B. Witnesses to be Called if Necessary

- Anthony Allegretti, APD Officer
- Steven Pena, APD Officer
- Mark Dale, APD Officer
- Lee Travis, APD Officer
- Uri Tamez, APD Officer
- Brian Huckaby, APD Officer
- Adam Collins, APD Officer
- Steven Boline, APD Detective
- Greg Karim, APD Firearms Examiner (retired); Non-retained Expert; May render opinions which are expected to be consistent with his report prepared as a result of this incident; See Defendants' Designation of Experts.
- Steven Aston, APD Firearms Examiner; Non-retained Expert; See Defendants' Designation of Experts.
- Albert Rodriguez; Retained Expert and will render opinions which are expected to be consistent with his report which has been previously produced.
- Daisy Garcia-Morquecho, APD Crime Scene Specialist
- Warren Held, APD Crime Scene Specialist

- Vince Gonzalez, APD Crime Scene Specialist
- Victor Ceballos, APD Crime Scene Specialist
- Jennifer Mezei, APD Crime Scene Specialist
- Defendants reserve the right to call any witness identified and/or designated by Plaintiffs.

VI. Deposition Testimony

None at this time.

VII. Proposed Jury Instructions and Verdict Forms

Defendants' proposed jury instructions and verdict forms have been e-filed separately.

VIII. Motion in Limine

Defendants' Motion in Limine has been e-filed separately.

IX. Estimated Length of Trial

The parties estimate that the trial of this case will require approximately five days.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. Gray Laird III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546

Austin, Texas 78767-1546
Telephone: (512) 974-1358
Facsimile: (512) 974-1311
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing *Defendants' Pretrial Submissions*, in compliance with the Federal Rules of Civil Procedure, on this 18th day of November, 2021, as follows:

Via E-Filing to:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

\s\ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, *Plaintiffs*	§	CIVIL ACTION NO. 1:19-CV-00389-ML
v.	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN, *Defendants*	§	

PLAINTIFFS' PRE-TRIAL SUBMISSION

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

COMES NOW, Plaintiffs IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES and files this Pretrial Submission pursuant to Local Rule CV-16(f) and the scheduling order in this case:

I. Plaintiffs' Proposed Voir Dire

II. Plaintiffs' Statement of Claims and Defenses

III. Joint Stipulation of Facts

IV. Plaintiffs' Exhibit List

V. Witness List

VI. Deposition Testimony

VII. Jury Instructions

VIII. Plaintiffs' Motion in Limine

IX. Estimated Length of Trial

I. PLAINTIFFS' PROPOSED VOIR DIRE

Plaintiffs respectfully request that the Court ask the following questions prospective jurors during voir dire examination:

1. Are any of you, your immediate family members, acquainted with the following persons? If so, in what manner?
    a) Ida Renae Nobles, Kadeidra Bell, Michelle Dashaun Smith, the Plaintiffs in this case.
    b) Richard Egal, Maxwell Johnson, the Defendants in this case.

2. The plaintiffs have indicated that the following individuals may testify. Do you, or any of your immediate family members, know any of these individuals? If so, in what manner?
   [Read plaintiffs' witness list]

3. The defendants have indicated that the following individuals may testify. Do you, or any of your immediate family members, know any of these individuals? If so, in what manner?
   [Read defendants' witness list]
4. Do you know anyone else on the jury panel? If so, how?

5. Have you, your family members, or close friends ever been a plaintiff, defendant, or witness in a civil lawsuit? If so, please state:
    - Whether you or they were a plaintiff, defendant, or witness;
    - The nature of the lawsuit;
    - The names of the parties involved in the lawsuit;

- The outcome of the lawsuit; and
- Anything about the experience that might affect your ability to be a fair and impartial juror in this case.

6. Has anyone seen, heard or read any reports in the media concerning this incident or this case?

7. Who here, with all other things being equal, would tend to give more credibility to a police officer than to a witness who is not a police officer?

   I am not talking about specialized training or superior powers of observation that a police officer might have. Just in terms of being more likely to tell the truth.

8. Who here has a set limit beyond which they could not award money damages?

9. Who here could not award money for something intangible like pain and suffering or mental anguish?
10. Who here has a set limit to how much money they could award for something intangible like pain and suffering or mental anguish?

11. Who here has ever worked in law enforcement or had a close friend or family member who worked in law enforcement?

12. Who here has had training in law enforcement?

13. Who here has posted on social media "All Lives Matter" or "Blue Lives Matter" or agree with those sentiments?

14. Is there anyone here who because of his or her religion or philosophical beliefs cannot sit in judgment of another?

15. Who here has ever had a lawsuit filed against them seeking monetary damages?

16. Does anyone feel people should not be allowed to recover money for physical pain, and mental suffering and anguish?

17. Does anyone feel they simply cannot sit in judgement of a police officer and potentially find a police officer liable?

18. Who would be too afraid to serve as a juror in this case knowing that it involves allegations of police misconduct?

19. Is there anyone who simply cannot as a matter of principle award money in a personal injury lawsuit?

20. Who believes the law should not allow individual citizens to sue police officers?

21. Is there anyone who feels that they cannot be fair and impartial because your feelings are so strong in favor of a party that you will base your verdict on those emotions despite the evidence and law as given in this case?

22. Is there anything we have not talked about that you believe might affect your ability to be a fair and impartial juror?

II. PLAINTIFFS' STATEMENT OF CLAIMS AND DEFENSES

On or about May 7th, 2017, Landon Nobles, a twenty-four-year-old African-American Austinite, father of two, went to 6th Street in Austin to celebrate a birthday with his cousins and a few friends. At approximately 2:30 am, Landon Nobles, and the others noticed a crowd of people gathered near the Jackalope and Moose Knuckle Pub in the 400 block of East Sixth Street, and they decided to hang around to observe the crowd. There was much jockeying and posturing as two people interacted as if "fixing to fight." A small crowd gathered around the fighters. The crowd dispersed when a loud popping sound came from within the crowd. Landon Nobles walked away to the nearby intersection of 6th Street and Trinity Street, and then after a few minutes started walking briskly up Trinity toward 7th Street. As Landon Nobles was heading towards 7th Street Sergeant Richard Egal appeared out of nowhere and he threw his patrol bike in the path of Landon Nobles, which caused Nobles to stumble and fall. As Landon Nobles attempted to regain his balance, 2 police officers Sergeant Richard Egal and Corporal Maxwell Johnson shot him in the back multiple times. According to several independent non-police witnesses, Landon Nobles did not display a gun, did not engage in an exchange of gunfire with the police, and he posed no danger to either Sergeant Richard Egal, Corporal Maxwell Johnson, or anyone else for that matter. Plaintiffs dispute Defendants in that there is no evidence that Defendants Sergeant Richard Egal and Corporal Maxwell Johnson or any third party feared for their lives, or the lives of anyone else, at the time deadly force was used against Landon Nobles. Landon was killed right there on the street and he was left to die in the street from the gunshot wounds inflicted by Officers Egal and Maxwell Johnson at point blank range. Twenty minutes later, Landon Nobles was later taken to Brackenridge Hospital by Austin-Travis EMS where he was pronounced dead at approximately 3:08 am on May 7th, 2017. At the time of this occurrence, both Sergeant Richard Egal and Corporal Maxwell Johnson were uniformed City of Austin police officers. Plaintiffs allege that the murdering of Landon Nobles by shooting him in the back was excessive and violated his Constitutional rights. After the shooting, Austin Police Officers handcuffed Landon Nobles and secured the scene. While handcuffed and prior to his death, Landon Nobles suffer agonizing pain and mental anguish.

III. JOINT STIPULATION OF FACTS

At this point, the parties have not reached agreement on any joint stipulation of facts. The parties will file any stipulations they reach in advance of trial.

IV. PLAINTIFFS' EXHIBIT LIST

Expected Exhibits

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
P-1	SIU Video-Fight (COA2671)			
P-2	APD Crime Scene Photographs (COA 1598-2183)			
P-3	Elvis Ingram-KXAN Interview			
P-4	Embalmers Report			
P-5	Embalmers Chart			
P-6	Desirey Simpson-Cell Phone Videos			
P-7	Elvis Ingram-KXAN Interview			
P-8	Landon Nobles KVUE News Conference			
P-9	Pecan Street Vendors Map			
P-10	SIU Case File in its entirety (COA 969-2626)			
P-11	SIU Johnson Public Safety Statement-Eastlick DMAV (COA 2627)			
P-12	SIU Egal Public Safety Statement-Dwyer DMAV (COA 2628)			
P-13	SIU Johnson Interview DMAV (COA 2629)			
P-14	SIU Egal Interview-DMAV (COA 2630)			
P-15	SIU Dwyer DMAV (COA 2631)			
P-16	SIU Huckaby Interview DMAV (COA 2632)			
P-17	SIU Interview DMAV- Randolph Fields (COA 2633)			
P-18	SIU- CSU Crime Scene Video (COA 2634)			
P-19	SIU Johnson Interview Bauzon Audio (COA 2635)			

P-20	SIU Johnson Interview-Audio-Boline (COA 2636)			
P-21	SIU Johnson Walk-Through Video (COA 2637)			
P-22	SIU Johnson SIU Walk-Through-Audio (COA 2638)			
P-23	SIU Egal Interview_Bauzon Audio (COA 2639)			
P-24	SIU Egal Interview-Boline Audio (COA 2640)			
P-25	SIU Egal Walk-Through Video (COA 2641)			
P-26	SIU Egal Walkthrough-Audio (COA 2642)			
P-27	SIU Interview Audio-Huckaby (COA 2643)			
P-28	SIU Audio- Allegretti 7756 (COA 2644)			
P-29	SIU Statement Audio -Dale 6633 (COA 2645)			
P-30	SIU Statement Audio -Pena 6145 (COA 2646)			
P-31	SIU Statement Audio- Tamez 7451 (COA 2647)			
P-32	SIU Statement Audio -Travis 8146 (COA 2648)			
P-33	SIU -George Radio 171270282 (COA 2649)			
P-34	SIU -Radio 171270282(Met 7) (COA 2650)			
P-35	SIU HALO 5_7_2017-02_38_07 (400 BLK E 6th St) (COA 2651)			
P-36	SIU HALO Clip (COA 2652)			
P-37	SIU HALO POD114 400 BLK E 6th St 5_7_2017 02_38_07 (COA 2653)			
P-38	SIU HALO POD118 6th& Trinity N Alley5_7_2017 02_38_07 (COA 2654)			
P-39	SIU HALO POD119 7th& Trinity 5_7_2017 02_38_07 (COA 2655)			
P-40	SIU HALO POD126 6th& Trinity-Old school 5_7_17 02_38_06 (COA 2656)			
P-41	SIU Statement Witness Nicholas Henderson-DMAV (COA 2657)			
P-42	SIU Statement- Andre Anderson (COA 2658)			
P-43	SIU Statement Audio -Randolph Fields			

	(COA 2659)			
P-44	SIU Statement- Elvis Ingram (witness) (COA 2660)			
P-45	SIU Statement- Joeann Kelly On-Scene Interview (COA 2661)			
P-46	SIU Statement- Ralph Surber Audio (COA 2662)			
P-47	SIU Statement- Royie Nobles Interview (COA 2663)			
P-48	SIU Statement -Witness Christy Bowen (COA 2664)			
P-49	SIU Statement- Witness Faisal Ejaz (COA 2665)			
P-50	SIU Statement- Witness Farrukh Kasbati (COA 2666)			
P-51	SIU Statement- Witness Ronnie Bowen (COA 2667)			
P-52	SIU Aaron Morales Audio Statement (COA 2668)			
P-53	SIU Amber Chavana Audio –witness (COA 2669)			
P-54	SIU Gun being fired-VID_20170507_023709 (COA 2670)			
P-55	SIU Youtube [Shooting 6th St AustinTx 5_7_2017] (COA 2671)			
P-56	SIU Internet Video -Larry Goodman (COA 2672)			
P-57	SIU Internet Video-Fight -Newera Bso Prince (COA 2673)			
P-58	SIU Twitter OIS- JOSHUA KALU Video (COA 2674)			
P-59	SIU Witness -R Surber VID_20170507_023709 (COA 2675)			
P-60	SIU Witness Kasbati fight Video 1-diff subj (COA 2676)			
P-61	SIU Witness Kasbati fight Video 2 (COA 2677)			
P-62	SIU Witness Kasbati fight Video 3 (COA 2678)			
P-63	SIU Witness Kasbati fight Video 4 (COA 2679)			
P-64	SIU Witness-Faisak Ejaz fight video (COA 2680)			
P-65	SIU Aunt's 911 Call from Brack (COA 2681)			
P-66	SIU Death Notification (COA 2682)			

P-67	SIU Phn Call- Archie Kelly Msg (COA 2683)			
P-68	SIU Phn Contact- Darrell Daniels 20170615 (COA 2684)			
P-69	SIU Phn Contact- Elvis Ingram VM1 (COA 2685)			
P-70	SIU Phn Contact-Elvis Ingram VM2 (COA 2686)			
P-71	SIU Property Rtrn to Renae Nobles (mother) (COA 2687)			
P-72	SIU Landon Nobles Rap Video (COA 2688)			
P-73	[CONF] IA File 2017-0554 (COA 2689-3223)			
P-74	[CONF] M Johnson IA interview Audio (COA 3224)			
P-75	[CONF] R Egal IA interview Audio (COA 3225)			
P-76	[CONF] M Dale IA Interview Audio 08.14.2017 (COA 3226)			
P-77	[CONF] S Pena IA interview Audio 08.14.2017 (COA 3227)			
P-78	[CONF] M Johnson 201 File (COA 3228-3281)			
P-79	[CONF] M Johnson Informal Transcripts (COA 3282- 3295)			
P-80	[CONF] M Johnson TCOLE Transcripts (COA 3296- 3304)			
P-81	[CONF] M Johnson IA Complete History (COA 3305- 3308)			
P-82	M Johnson IA Sustained History of Allegations (COA 3309)			
P-83	M Johnson Civil Svc File (COA 3310-3397)			
P-84	[CONF] R Egal 201 File (COA 3398-3465)			
P-85	[CONF] R Egal Informa Transcripts (COA 3466- 3481)			
P-86	[CONF] R Egal TCOLE Transcripts (COA 3482- 3495)			
P-87	[CONF] R Egal IA Complete History (COA 3496- 3499)			
P-91	R Egal IA Sustained History of Allegations (COA 3500)			
P-92	R Egal Civil Svc File (COA 3501- 3706)			

P-99	APD General Offense Reports (COA 001-199)			
P-100	C.V. of Richard Ernest			
P-101	C.V. of Keith A. Howse			
P-102	Chris Futrell Deposition Exhibits 1-11			
P-103	Julian Reyes Deposition Exhibits 1-5			

V. PLAINTIFFS' WITNESS LIST

A. Expected Witnesses

Ida Renae Nobles, Plaintiff

Kadeidra Bell, Plaintiff

Michelle Dashaun Smith, Plaintiff

Elvis Ingram

Andre Anderson

Royie Nobles

Joshua Kalu

Chris Futrell

Julian Reyes

Desirey Simpson

Carol Harris

Belinda Thompson

Nicholas Henderson

Barry J.W. Franklin

Darrell Daniels

Lamont Lauderdale

Joeann Trenice Kelly

Anthony Allegretti, Austin Police Officer

Steven Pena, Austin Police Officer

Seven Boline, Austin Police Detective

Keith A. Howse, Expert Witness, previously disclosed in Plaintiffs' Expert Witness Designation

Richard Ernest, Expert Witness

B. Witnesses to be Called if Necessary

Richard Egal, Defendant

Maxwell Johnson, Defendant

Lonnie Harris

Archie Lee Kelly

Greg Karim, Austin Police Department Firearms Examiner

Steven Aston, Austin Police Department Firearms Examiner

Jeffery Bauzon, Austin Police Detective

Brian Manley, Austin Chief of Police

Plaintiffs reserve the right to call any witness identified and/or designated by the Defendants.

VI. DEPOSITION TESTIMONY

None at this time.

VII. PROPOSED JURY INSTRUCTIONS AND VERDICT FORMS

The parties have exchanged proposals for an agreed jury charge and verdict forms. A joint proposed jury instructions was e-filed separately.

VIII. MOTION IN LIMINE

Plaintiffs' Motion in Limine will be e-filed separately.

IX. ESTIMATED LENGTH OF TRIAL

Ten (10) days.

RESPECTFULLY SUBMITTED,

EDMUND DAVIS, ATTORNEY
CHARLES MEDEARIS, ATTORNEY

/s/ Edmund Davis_____

EDMUND DAVIS

LAW OFFICE OF EDMUND DAVIS

Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com
LEAD COUNSEL

/s/ Charles Medearis_____

CHARLES MEDEARIS

LAW OFFICE OF CHARLES MEDEARIS

Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on November 18th, 2021, I electronically filed this document with the Clerk of the Court using CM/ECF and served it upon counsel of record listed below via the electronic filing system of the Court.

Via CM/ECF:

ATTORNEYS FOR PLAINTIFFS

/s/ Edmund Davis
Edmund Davis

/s/ Charles Medearis
Charles Medearis

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§
Plaintiffs,	§
v.	§
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§
Defendants.	§

CIVIL ACTION NO. 1:19-cv-00389-ML

PLAINTIFFS' MOTION IN LIMINE

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

Plaintiffs Ida Renae Nobles, Individually and as Heir to the ESTATE OF LANDON NOBLES, and Michelle Dashaun Smith as guardian of L.N., a Minor, and Kadeidra Bell as guardian of K.N., a Minor, file Plaintiffs'Motion In Limine and request rulings on the following issues prior to commencement of voir dire examination in the above-referenced actions.

1. That no witness for the defendants be allowed to testify to any thing about which that witness does not have personal knowledge, except for a witness who is cleared by the court to testify as to some thing that the witness does not know by personal knowledge.

2. Plaintiffs object to questions or evidence regarding any criminal charges, criminal inquiries or convictions of the Landon Nobles that were not known to the officers responding to the call on the evening of May 7th, 2017. This information is irrelevant and would be highly prejudicial to the Plaintiff in this matter, as the relevant inquiry is to ascertain the information possessed by the officers.

GRANTED:_____ DENIED:_____

3. Plaintiffs object to questions or evidence regarding any involvement or suggestions of gang membership of Landon Nobles. Such information is irrelevant and would be highly prejudicial to the Plaintiff.

GRANTED:_____ DENIED:_____

4. Plaintiffs object to any reference or allusion to Landon Nobles' musical performances on social media, as this is wholly irrelevant to the instant case and could be highly prejudicial to the Plaintiffs. This information was not known to the officers at the time of the shooting.

GRANTED:_____ DENIED:_____

CERTIFICATE OF SERVICE

I hereby certify that on November 18th, 2021, I electronically filed this document with the Clerk of the Court using CM/ECF and served it upon counsel of record listed below via the electronic filing system of the Court..

Via CM/ECF:

ATTORNEYS FOR PLAINTIFFS

/s/ Edmund Davis
Edmund Davis

/s/ Charles Medearis
Charles Medearis

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants.	§	
	§	

DEFENDANTS' MOTION TO EXCLUDE OPINIONS AND TESTIMONY OF RICHARD ERNEST AND, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell Johnson file this Motion to Exclude Expert Opinions and Testimony of Richard Ernest and, in the alternative, Motion for Continuance as follows:

1. This case is currently set for a jury trial beginning on December 6, 2021.

2. The amended scheduling order (Doc. 19) entered in this case provides that the plaintiffs were to designate their testifying experts and serve the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before May 1, 2021. The only retained expert identified by Plaintiffs in their Designation of Testifying Experts is Keith Howse. (Doc. 21)

3. On November 18, 2021, Plaintiffs served their Pre-Trial Submissions which identified an additional testifying expert witness, Richard Ernest, a forensic ballistics consultant. (Doc. 40)

Ernest purportedly has performed inspections and forensic testing on a number of items of physical evidence involved in this incident, including firearms, spent cartridges and live bullets.

4. As of the date of filing this motion, Plaintiffs have not served a report from expert Richard Ernest or provided any other summary of his expected opinions and testimony as required by Rule 26(a)(2)(B)(i-ii) of the Federal Rules of Civil Procedure. Plaintiffs also have not provided Ernest's qualifications, publications, prior testimony and compensation as required by Rule 26(a)(2)(B)(iii-vi).

5. Defendants would be unduly prejudiced if Ernest is permitted to testify as an expert without providing a signed report and other required information concerning his opinions and qualifications in sufficient time in advance of trial. Defendants essentially have no time to fully examine Ernest's opinions and testing of the evidence through a deposition and further testing of the evidence by Defendants' own experts. Defendants also have no time to designate potential rebuttal experts to counter Ernest's opinions and testing. As a result, the Court should exclude the testimony of Plaintiffs' expert Richard Ernest.

6. In the alternative, Defendants respectfully request that the Court grant a continuance of the current trial setting of December 6, 2021 so Defendants may have sufficient time to study and examine Ernest's opinions and testing of the evidence once produced and designate rebuttal experts, if necessary, and conduct limited discovery of Ernest's opinions and qualifications. Defendants believe that a short continuance of approximately sixty days would be sufficient time for these purposes.

DEFENDANTS' PRAYER FOR RELIEF

For the foregoing reasons, Defendants Egal and Johnson respectfully request that Plaintiffs' expert, Richard Ernest, be excluded from providing any testimony in this case.

Alternatively, Defendants respectfully request that the Court continue this case from its current trial setting of December 6, 2021 for at least sixty days to another setting convenient for the Court and parties.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I certify that I conferred with Plaintiffs' counsel by telephone regarding the substance of this motion, and Plaintiffs' counsel advised that they are opposed to the requested relief which requests the exclusion of the testimony of Richard Ernest, but they are unopposed to the requested relief of a continuance of the trial date.

/s/ H. Gray Laird

CERTIFICATE OF SERVICE

I certify that, on the 29th day of November 2021, I served a copy *of Defendants' Motion to Exclude, or in the alternative, for Continuance* on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S TRIAL EXHIBITS

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell johnson (collectively "Defendants"), pursuant to Local Rule CV-16(e), file their Objections to Plaintiff's Trial Exhibits, contained in Plaintiff's Pretrial Filings [Doc. 39].

No.	Plaintiff's Exhibit	Defendants' Objection
P-4	Embalmer's Report	FRE 401-403--Relevance
P-6	Desirey Simpson Cell Phone Videos	FRE 801, 802--Hearsay
P-7	Elvis Ingram—KXAN Interview	FRE 801-802--Hearsay
P-8	Landon Nobles KVUE News Conf.	FRE 401-403—Relevance; FRE 801, 802--Hearsay
P-16	SIU Huckaby Interview DMAV (COA2632)	FRE 801-802--Hearsay

No.	Plaintiff's Exhibit	Defendants' Objection
P-17	SIU Interview DMAV-Randolph Fields (COA2633)	FRE 801-802--Hearsay
P-27	SIU Interview Audio-Huckaby (COA2643)	FRE 801-802--Hearsay
P-28	SIU Audio—Allegretti (COA2644)	FRE 801-802--Hearsay
P-29	SIU Statement Audio—Dale (COA2645)	FRE 801-802--Hearsay
P-30	SIU Statement Audio—Pena (COA2646)	FRE 801, 802—Hearsay
P-31	SIU Statement Audio—Tamez (COA2647)	FRE 801, 802—Hearsay
P-32	SIU Statement Audio—Travis (COA2648)	FRE 801, 802—Hearsay
P-41	SIU Statement Nicholas Henderson (COA2657)	FRE 801, 802—Hearsay
P-42	SIU Statement Andre Anderson (COA2658)	FRE 801, 802—Hearsay
P-43	SIU Statement Randolph Fields (COA2659)	FRE 801, 802--Hearsay
P-44	SIU Statement Elvis Ingram (COA2660)	FRE 801, 802--Hearsay
P-45	SIU Statement Joeann Kelly (COA2661)	FRE 801, 802--Hearsay
P-46	SIU Statement Ralph Surber (COA2662)	FRE 801, 802--Hearsay
P-47	SIU Statement Royie Nobles (COA2663)	FRE 801, 802--Hearsay
P-48	SIU Statement Christy Bowen (COA2664)	FRE 801, 802--Hearsay

No.	Plaintiff's Exhibit	Defendants' Objection
P-49	SIU Statement Faisal Ejaz (COA2665)	FRE 801, 802--Hearsay
P-50	SIU Statement Farrukh Kasbati (COA2666)	FRE 801, 802--Hearsay
P-51	SIU Statement Ronnie Bowen (COA2667)	FRE 801, 802--Hearsay
P-52	SIU Statement Aaron Morales (COA2668)	FRE 801, 802--Hearsay
P-53	SIU Statement Amber Chavana (COA2669)	FRE 801, 802--Hearsay
P-58	SIU Twitter OIS-Joshua Kalu Video (COA2674)	FRE 801, 802--Hearsay
P-65	SIU Aunt's 911 Call from Brack (COA2681)	FRE 801-802—Hearsay; FRE 401-403--Relevance
P-66	SIU Death Notification (COA2682)	FRE 801-802—Hearsay; FRE 401-403--Relevance
P-67	SIU Phone Call—Archie Kelly Msg (COA2683)	FRE 801, 802--Hearsay
P-68	SIU Phn Contact—Darrell Daniels (COA2684)	FRE 801, 802--Hearsay
P-69	SIU Phn. Contact—Elvis Ingram (COA2685)	FRE 801, 802--Hearsay
P-70	SIU Phn. Contact—Elivs Ingram (COA2686)	FRE 801, 802--Hearsay
P-71	SIU Property Return to Renae Nobles (COA2687)	FRE 801-802—Hearsay; FRE 401-403--Relevance
P-73	IA File (COA2689-3223)	FRE 801-802—Hearsay; FRE 401-403—Relevance;
P-76	M. Dale IA Interview Audio (COA3226)	FRE 801, 802--Hearsay

No.	Plaintiff's Exhibit	Defendants' Objection
P-77	S. Pena IA Interview Audio (COA3227)	FRE 801, 802--Hearsay
P-78	M. Johnson 201 File (COA3228-3281)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-79	M. Johnson Informa Transcripts (COA3282-3295)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-80	M. Johnson TCOLE Transcripts (COA3296-3304)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-81	M. Johnson Complete IA History (COA3305-3308)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-82	M. Johnson IA Sustained History (COA3309)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-83	M. Johnson Civil Service File (COA3310-3397)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-84	R. Egal 201 File (COA3398-3465)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-85	R. Egal Informa Transcripts (COA3466-3481)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-86	R. Egal TCOLE Transcripts (COA3482-3495)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-87	R. Egal IA Complete History (COA3496-3499)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-91	R. Egal IA Sustained History (COA3500)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-92	R. Egal Civil Service File (COA3501-3706)	FRE 801-802—Hearsay; FRE 401-403—Relevance; Texas Local Government Code §143.089
P-100	C.V. of Richard Ernest	Not produced; FRE 701-702
P-102	Chris Futrell Deposition Exhibits 1-11	FRE 801-802—Hearsay; FRE 401-403—Relevance

No.	Plaintiff's Exhibit	Defendants' Objection
P-103	Julian Reyes Deposition Exhibits 1-5	FRE 801-802—Hearsay; FRE 401-403—Relevance

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. Gray Laird III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1358
Facsimile: (512) 974-1311
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing *Defendants' Objections to Plaintiffs' Trial Exhibits*, in compliance with the Federal Rules of Civil Procedure, on this 30th day of November, 2021, as follows:

Via CM/ECF to:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

\s\ H. Gray Laird III
H. GRAY LAIRD III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KAIDEN NOBLES, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
v.	§	**CA 1:19-CV-389-ML**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants.	§	

ORDER

Before the court is Defendants' Motion to Exclude Opinions and Testimony of Richard Ernest and, in the alternative Motion for Continuance (Dkt. #42). The court will hear this motion at the Final Pretrial Conference on Thursday, December 2, 2021. Accordingly, the court **ORDERS** Plaintiffs to file a response to the motion no later than 10 a.m. on December 2, 2021.

SIGNED November 30, 2021.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, **Defendants.**	§	

DEFENDANTS' EGAL AND JOHNSON'S NOTICE OF APPEARANCE

TO THE HONORABLE JUDGE MARK LANE:

PLEASE TAKE NOTICE that the undersigned attorney, who is admitted to practice in this Court and is a member in good standing, hereby enters an appearance in the above-styled and numbered cause:

Monte L. Barton
State Bar No. 24115616
Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78717
(512) 974-2409 Telephone
(512) 974-1311 Facsimile
monte.barton@austintexas.gov

Service of all pleadings, papers, orders, and documents required to be served in this action should be served on Monte Barton. Attorney H. Gray Laird will remain lead counsel on this case and should continue to be served.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
monte.barton@austintexas.gov
H. GRAY LAIRD III
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure this Wednesday, November 30, 2021.

Via CM/ECF to:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, **Defendants.**	§	

DEFENDANTS' EGAL AND JOHNSON'S NOTICE OF APPEARANCE

TO THE HONORABLE JUDGE MARK LANE:

PLEASE TAKE NOTICE that the undersigned attorney, who is admitted to practice in this Court and is a member in good standing, hereby enters an appearance in the above-styled and numbered cause:

Monte L. Barton
State Bar No. 24115616
Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78717
(512) 974-2409 Telephone
(512) 974-1311 Facsimile
monte.barton@austintexas.gov

Service of all pleadings, papers, orders, and documents required to be served in this action should be served on Monte Barton. Attorney H. Gray Laird will remain lead counsel on this case and should continue to be served.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF, LITIGATION

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
monte.barton@austintexas.gov
H. GRAY LAIRD III
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure this Wednesday, November 30, 2021.

Via CM/ECF to:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants		

PLAINTIFFS' REPLY TO DEFENDANTS' MOTION TO STRIKE EXPERT WITNESS AND REQUEST FOR LEAVE TO UNTIMELY DESIGNATE EXPERT WITNESS

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

COMES NOW the Plaintiffs in response to Defendants' Motion to Strike Expert Witness. The court is aware that Defendants ostensibly via Austin Police Department (APD) have always been in exclusive possession of the evidence Plaintiffs sought to have examined. During the discovery process, APD even wrongly demurred and falsely stated that they have no practice of releasing evidence to 3rd parties, and in fact such a practice would run afoul of APD policies. Plaintiffs moved the court to compel Defendants to produce the evidence. (Document 26: Motion to Compel). And Defendants ultimately did produce the evidence under court order. Plaintiffs informed the Defendants that Mr. Richard Earnest was the person who would examine the evidence (Document 31 Court Order, 30 June 2021). Mr. Ernest received the evidence in Keller Texas on 12 July 2021. Plaintiff initially intended Mr. Ernest as *consulting* witness. However,

having already informed Defendants that Mr. Ernest would be conducting an examination of the evidence, Defendants demanded Mr. Ernest's report. So in an abundance of caution as witness list deadlines loomed, Plaintiff disclosed Mr. Ernest as a potential expert witness, not sure if his testimony would be appropriate in rebuttal to the Defendants case, or whether his testimony, if any, needed to be raised in the plaintiffs' case in chief. Faced with this decision, Plaintiffs elected to disclose. Thus, here we are.

Mr. Ernest was delayed in producing the report due to a serious family medical emergency that arose and required his close attention.[1] Immediately upon receipt of Mr. Ernest's report, Plaintiffs forthrightly sent a copy to Defendants via email on 30 November 2021. Plaintiffs only recently received the report from Mr. Ernest late in the afternoon 29 November. Likewise, Plaintiff expedited Mr. Ernest's CV and other information on 30 November 2021 as requested.

Defendants cannot complain about surprise since they have been in possession of the evidence since May 2017 and assuredly already performed their own forensic examination of the evidence. Even though APD resisted transferring the evidence for forensic examination, they've indicated in their own witness list that they intend to call 2 ballistic experts, Greg Karim, the one who made the original ballistics report which is what Mr. Ernest reviewed, and another expert who adopted Greg Karim's report. Secondly, the time and place to object to this potential Plaintiff expert was at the time when the Plaintiffs' motion to compel was docketed. Defendants were not only silent on that point, they even acquiesced, thereby forfeiting surprise as a complaint.

Plaintiffs did not dawdle, and immediately when in receipt of the report Plaintiffs provided the report and other information required under the rules, to Defendants.

[1] In a separate motion, Plaintiff will be asking the court to allow Mr. Ernest to testify via Zoom or other videoconferencing technology on the date he is called to testify. He recently had a serious family medical emergency that requires his presence at home.

REQUEST FOR LEAVE TO UNTIMELY DESIGNATE EXPERT WITNESS

Untimely designation of an expert is not an absolute bar to a party's expert testimony or participation at trial. Under Rule 16, the 5th Circuit created a four factor test to assess whether the court should grant leave for an untimely expert designation: (1) the explanation for the failure to timely disclose; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice.

In particular, the 5th Circuit allowed late designation of expert in *Betzel v. State Farm Lloyds*, 480 F.3d 704 (2007), where the plaintiff had failed to timely designate its expert within the deadline. The court found that the last three factors were in favor of the plaintiff and thus granted leave to designate the expert; under the second prong the court found that the two experts were highly necessary to proving claims and damages in the case; under the third prong, the court found that the defendant was not unaware of the experts and their likely use as witnesses, before the deadline had ended; under the fourth prong, the court found that while a continuance was available, it would have entailed additional expenses and delayed trial further.

Now, as applied to the instant case, this revered and august court recognizes that these type of US 1983 Civil Rights cases all involve expert testimony, and oftentimes some germane issues that require resolution by the Jury turn on that expert testimony. Defendants at the time initially and until late in the game were uncooperative and withheld the ballistics evidence from Plaintiffs. There is no prejudice to Defendants, as noted above, because they've designated 2 experts on the issue of ballistics. All three of the Rule 16 factors cut in favor of allowing Plaintiffs' untimely disclosure, especially in order for the court to facilitate a fundamentally fair trial. And finally, in this instance the Defendants have requested a continuance, and Plaintiffs do not oppose Defendants request for continuance.

PRAYER

Plaintiffs respectfully request that the court grant leave and allow the Plaintiffs to designate Mr. Richard Ernest as an expert at trial on the narrow topic of Ballistics, specifically as to those issues he addressed in his report.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 1st day of December, 2021, I served a copy of *Plaintiffs' Reply to Defendants' Motion to Strike Expert Witness* on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants		

MOTION FOR WITNESS RICHARD ERNEST TO TESTIFY REMOTELY VIA VIDEOCONFERENCING UNDER PROVISIONS RULE 43

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

COME NOW THE PLAINTIFFS who move that the testimony of Mr. Richard Ernest be taken under oath remotely from the courtroom under the provisions of Rule 43.

Plaintiff avers that good cause is that Mr. Ernest's wife just last week suffered an unforeseen severe medical incident that requires Mr. Ernest's near full-time attention, close-by presence and attendance. It would be an enormous burden and unnecessary imposition for him to travel from Keller, TX to Austin, TX under these circumstances.

PRAYER

Plaintiffs respectfully request that the court grant leave and allow the Mr. Richard Ernest to testify remotely from a location not in the courtroom because of and due to special

circumstances. Mr. Richard Ernest is designated as an expert at trial on the narrow topic of Ballistics.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 2nd day of December, 2021, I served a copy of Plaintiff 's *Motion For Witness Richard Ernest To Testify Remotely Via Videoconferencing Under Provisions Rule 43* on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Pretrial Conference
Date: Thursday, December 2, 2021 4:23:38 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/2/2021 at 4:23 PM CST and filed on 12/2/2021
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 49

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Final Pretrial Conference held on 12/2/2021. Written order to follow.(Minute entry documents are not available electronically) (Court Reporter ERO)(cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/2/2021] [FileNumber=25934045-0] [39bd95aad73b84cea11180313c02983eb576697afbfa39ad3b40cd83227832e50109611aea149731b6b7d965d2ccd47f59fa8d52457e890c5065cafa5256b638]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants		

PLAINTIFFS' AMENDED STATEMENT CLAIMS

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

COME NOW THE PLAINTIFFS in the above entitled and numbered cause, and files this amended statement of claims as follows:

Plaintiffs are suing Defendant police officers because on May 7, 2017, the Defendants, while on duty as uniformed police officers employed by Austin Police Department, used excessive force by firing their respective weapons into the back of Landon Nobles and thereby causing the death of Landon Nobles. Plaintiffs charge that by causing Landon Nobles' death in that manner, the Defendants' each violated Landon Nobles' constitutionally protected federal civil rights to be free of unreasonable seizure under the 4th and 14th Amendments of the US Constitution.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 2nd day of December, 2021, I served a copy of Plaintiffs' Amended Statement of the Case on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants		

PLAINTIFFS' FIRST AMENDED EXHIBIT LIST

Plaintiffs expect to offer the following exhibits:

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
P-1	Embalmers Report			
P-2	GOOGLE Map of Scene			
P-3	HALO Still Image from DA report (COA 986)-Without Label			
P-3A	HALO Still Image from DA report (COA 986)-Without Label			
P-4	HALO Still Image from DA report (COA 987)-Without Label			
P-4A	HALO Still Image from DA report (COA 987)-Without Label			
P-5	HALO Still Image from DA report (COA 988)-Without Label			
P-5A	HALO Still Image from DA report (COA			

	988)-Without Label			
P-6 P-6A	HALO Still Image from DA report (COA 989)-Without Label HALO Still Image from DA report (COA 989)-Without Label			
P-7	APD Crime Scene Photo (COA 1792)			
P-8	APD Crime Scene Photo (COA 1797)			
P-9	APD Crime Scene Photo (COA 1798)			
P-10	APD Crime Scene Photo (COA 1800)			
P-11	APD Crime Scene Photo (COA 1802)			
P-12	APD Crime Scene Photo (COA 1813)			
P-13	APD Crime Scene Photo (COA 1827)			
P-14	APD Crime Scene Photo (COA 1833)			
P-15	APD Crime Scene Photo (COA 1834)			
P-16	APD Crime Scene Photo (COA 1835)			
P-17	APD Crime Scene Photo (COA 1836)			
P-18	APD Crime Scene Photo (COA1837)			
P-19	APD Crime Scene Photo (COA 1845)			
P-20	APD Crime Scene Photo (COA 1846)			
P-21	APD Crime Scene Photo (COA 1847)			
P-22	APD Crime Scene Photo (COA 1848)			
P-23	APD Crime Scene Photo (COA 1849)			
P-24	APD Crime Scene Photo (COA 1850)			
P-25	APD Crime Scene Photo (COA 1851)			
P-26	APD Crime Scene Photo (COA 1852)			
P-27	APD Crime Scene Photo (COA 1853)			

P-28	APD Crime Scene Photo (COA 1854)			
P-29	APD Crime Scene Photo (COA 1861)			
P-30	APD Crime Scene Photo (COA 1884)			
P-31	APD Crime Scene Photo (COA 1885)			
P-32	APD Crime Scene Photo (COA 1896)			
P-33	APD Crime Scene Photo (COA 1905)			
P-34	APD Crime Scene Photo (COA 1906)			
P-35	APD Crime Scene Photo (COA 1910)			
P-36	APD Crime Scene Photo (COA 1972)			
P-37	APD Crime Scene Photo (COA 1973)			
P-38	APD Crime Scene Photo (COA 1974)			
P-39	APD Crime Scene Photo (COA 1976)			
P-40	APD Crime Scene Photo (COA 1983)			
P-41	APD Crime Scene Photo (COA 1868)			
P-42	APD Crime Scene Photo (COA 2181)			
P-43	ME Autopsy Photo of Landon Nobles (COA 2221)			
P-44	Medical Examiner Photo of Landon Nobles-Body (COA 2267)			
P-45	Medical Examiner Photo of Landon Nobles-Body (COA 2308)			
P-46	Medical Examiner Photo of Landon Nobles-Arm (COA 2343)			
P-47	Medical Examiner Photo of Landon Nobles-Body (COA 2345)			
P-48	APD Property Receipt (COA 2463)			
P-49	Photo of Landon Nobles-hand (COA 2280)			

P-50	Photo of Landon Nobles-hand ring (COA 2272)			
P-51	Photo of Landon Nobles- ring (COA 2270)			
P-52	Photo of Landon Nobles-body (COA 2267)			
P-53	Julian Reyes- Photo of Richard Egal on 6th Street			
P-54	Julian Reyes-Video Footage May 7 2017			
P-55	Julian Reyes-Video Footage May 7 2017			
P-56	Chris Futrell Video Footage			
P-57	Chris Futrell Video Footage			
P-58	APD Crime Scene Photo (COA 1796)			
P-59	APD Crime Scene Photo (COA 1884)			
P-60	APD Crime Scene Photo (COA 1885)			
P-61	Joshua Kalu Video (COA 2674)			

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 3rd day of December, 2021, I served a copy of Plaintiffs' First Amended Exhibit List on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants		

PLAINTIFFS' SECOND AMENDED EXHIBIT LIST

Plaintiffs expect to offer the following exhibits:

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
P-1	Embalmers Report			
P-2	GOOGLE Map of Scene			
P-3	HALO Still Image from DA report (COA 986)-Without Label			
P-3A	HALO Still Image from DA report (COA 986)-Without Label			
P-4	HALO Still Image from DA report (COA 987)-Without Label			
P-4A	HALO Still Image from DA report (COA 987)-Without Label			
P-5	HALO Still Image from DA report (COA 988)-Without Label			
P-5A	HALO Still Image from DA report (COA 988)-Without Label			

P-6 P-6A	HALO Still Image from DA report (COA 989)-Without Label HALO Still Image from DA report (COA 989)-Without Label			
P-7	APD Crime Scene Photo (COA 1792)			
P-8	APD Crime Scene Photo (COA 1797)			
P-9	APD Crime Scene Photo (COA 1798)			
P-10	APD Crime Scene Photo (COA 1800)			
P-11	APD Crime Scene Photo (COA 1802)			
P-12	APD Crime Scene Photo (COA 1813)			
P-13	APD Crime Scene Photo (COA 1827)			
P-14	APD Crime Scene Photo (COA 1833)			
P-15	APD Crime Scene Photo (COA 1834)			
P-16	APD Crime Scene Photo (COA 1835)			
P-17	APD Crime Scene Photo (COA 1836)			
P-18	APD Crime Scene Photo (COA1837)			
P-19	APD Crime Scene Photo (COA 1845)			
P-20	APD Crime Scene Photo (COA 1846)			
P-21	APD Crime Scene Photo (COA 1847)			
P-22	APD Crime Scene Photo (COA 1848)			
P-23	APD Crime Scene Photo (COA 1849)			
P-24	APD Crime Scene Photo (COA 1850)			
P-25	APD Crime Scene Photo (COA 1851)			
P-26	APD Crime Scene Photo (COA 1852)			
P-27	APD Crime Scene Photo (COA 1853)			

P-28	APD Crime Scene Photo (COA 1854)			
P-29	APD Crime Scene Photo (COA 1861)			
P-30	APD Crime Scene Photo (COA 1884)			
P-31	APD Crime Scene Photo (COA 1885)			
P-32	APD Crime Scene Photo (COA 1896)			
P-33	APD Crime Scene Photo (COA 1905)			
P-34	APD Crime Scene Photo (COA 1906)			
P-35	APD Crime Scene Photo (COA 1910)			
P-36	APD Crime Scene Photo (COA 1972)			
P-37	APD Crime Scene Photo (COA 1973)			
P-38	APD Crime Scene Photo (COA 1974)			
P-39	APD Crime Scene Photo (COA 1976)			
P-40	APD Crime Scene Photo (COA 1983)			
P-41	APD Crime Scene Photo (COA 1868)			
P-42	APD Crime Scene Photo (COA 2181)			
P-43	ME Autopsy Photo of Landon Nobles (COA 2221)			
P-44	Medical Examiner Photo of Landon Nobles-Body (COA 2267)			
P-45	Medical Examiner Photo of Landon Nobles-Body (COA 2308)			
P-46	Medical Examiner Photo of Landon Nobles-Arm (COA 2343)			
P-47	Medical Examiner Photo of Landon Nobles-Body (COA 2345)			
P-48	APD Property Receipt (COA 2463)			
P-49	Photo of Landon Nobles-hand (COA 2280)			

P-50	Photo of Landon Nobles-hand ring (COA 2272)			
P-51	Photo of Landon Nobles- ring (COA 2270)			
P-52	Photo of Landon Nobles-body (COA 2267)			
P-53	Julian Reyes- Photo of Richard Egal on 6th Street			
P-54	Julian Reyes-Video Footage May 7 2017			
P-55	Julian Reyes-Video Footage May 7 2017			
P-56	Chris Futrell Video Footage			
P-57	Chris Futrell Video Footage			
P-58	APD Crime Scene Photo (COA 1796)			
P-59	APD Crime Scene Photo (COA 1884)			
P-60	APD Crime Scene Photo (COA 1885)			
P-61	Joshua Kalu Video (COA 2674)			
P-62	Steve Pena Photo (COA 1622)			
P-63	Steve Pena Photo (COA 1624)			
P-64	Steve Pena Photo (COA 1625)			
P-65	Steve Pena Photo of Hand (COA 1625)			
P-66	Steve Pena Photo of Hand (COA 1629)			
P-67	Steve Pena Photo of Hand (COA 1632)			
P-68	Steve Pena Photo of Hand (COA 1633)			
P-69	Steve Pena Photo of Hand (COA 1634)			
P-70	Steve Pena Photo of Hand (COA 1637)			
P-71	Steve Pena Photo of Hand (COA 1655)			

P-72	Steve Pena Photo of Hand holding bullet (COA 1658)			
P-73	Photo of Gun (COA 1647)			
P-74	Photo of Gun (COA 1648)			
P-75	Photo of Gun (COA 1649)			
P-76	Photo of Gun (COA 1650)			
P-77	Photo of Gun (COA 1651)			
P-78	Photo of Gun (COA 1652)			
P-79	Photo of Gun (COA 1653)			
P-80	Photo of Gun (COA 1654)			
P-81	Photo of Bike (COA 1813)			
P-82	Photo of Bike (COA 1814)			
P-83	Photo of Bike (COA 1815)			
P-84	Photo of Bike (COA 1816)			
P-85	Photo of Bike Tire (COA 1818)			
P-86	Photo of Bike Tire (COA 1819)			
P-87	Photo of Bike Tire (COA 1820)			
P-88	Photo of Bike Tire (COA 1821)			
P-89	Photo of Bullet Casing (COA 1822)			
P-90	Keith Howse-CV			
P-91	Richard Ernest-CV			

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 6th day of December, 2021, I served a copy of Plaintiffs' Second Amended Exhibit List on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KAIDEN NOBLES, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-LY-ML
PLAINTIFFS	§	
v.	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN	§	
Defendants		

PLAINTIFF MOTION TO STRIKE DEFENDANTS' EXPERT WITNESS AND REQUEST FOR CONTINUANCE DUE TO UNTIMELY PRODUCTION OF EXPERT WITNESS MATERIALS IN DISCOVERY

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

COMES NOW the Plaintiffs who file this Motion to Exclude Expert Opinions and Testimony of Defendants' Expert Witnesses in Ballistics and, in the alternative, Motion for Continuance, and offers the following:

1. This case is currently set for a jury trial beginning on December 6, 2021.

2. The amended scheduling order (Doc. 19) entered in this case provides that the parties were ordered to complete discovery by 02 July 2021.

3. On 30 June 2021 this venerable court ordered that Plaintiffs produce evidence for forensic inspection by ballistics expert Richard Ernest. Defendants

previously gave Plaintiffs a ballistics report that was buried within the APD Serious Incident Unit (SIU) report of investigation. Plaintiffs provided this incomplete report to Mr. Richard Ernest. There was no supporting evidence or documentation provided by Defendants that would normally accompany such expert reports.

4. Plaintiffs expedited to Richard Ernest, the forensic ballistics expert for Plaintiffs, those pieces of evidence that the court ordered the Defendant to produce for inspection along with the Defendants' incomplete Ballistics report. Mr.Ernest received the materials on 12 July 2021.

5. On November 18, 2021, Plaintiffs served Pre-Trial Submissions and listed Richard Ernest their forensic ballistics consultant as testifying expert witness. (Doc. 40).

6. On 02 December 2021, this court issued an order essentially denying Plaintiff their ballistics expert witness testimony except in rebuttal, thereby effectively throttling Plaintiffs ability to put on a forensic ballistics case-in-chief, allowing Plaintiff expert only in rebuttal, as response to whatever ballistics evidence that Defendants put on. (Doc. 48).

7. Very late in the final workday prior to trial, 03 December 2021, Defendants dumped on Plaintiffs a whole bunch of new "supplemental" discovery, which to Plaintiffs' surprise, included the all-important forensic ballistics bench notes and the results of Defendants' examination of the ballistic evidence and investigation of the incident situs inter alia that Plaintiff had much earlier requested in their initial request for production previously served on Defendants.

8. This untimely production now seriously hamstrings Plaintiffs prosecution of

their case in that Plaintiffs' expert without the lacking information was not able to comprehensively review the handiwork of Defendants' expert, which is the one primary reason why Plaintiff needed a forensic ballistics expert in the first place: to check Defendants' work. It is now literally the day of trial and Plaintiff expert is no longer in possession of the evidence because he has already returned the evidence to APD as demanded by Defendants and APD.

9. This is an egregious violation of federal court discovery practice. Defendants ballistics expert witnesses should be disallowed from testifying about anything having to do with anything that APD Ballistics did or didn't do in relation to the evidence in this case because Plaintiffs were not timely provided all the materials upon which Defendant expert witnesses base their expert opinion.

• Plaintiffs at this point are severely prejudiced in a case where ballistics is the central component. Plaintiffs cannot adequately prepare for Defendants' experts testimony unless and until plaintiff expert Mr. Ernest is permitted to examine the materials again *and this time with the benefit of Defendant ballistics experts bench notes, photographs, etc.* Plaintiffs at this late juncture now have no time to fully examine Karim's and Ashton's opinions and testing of the evidence, nor conduct further independent testing of the evidence as necessary and if required. As a result, the Court should exclude the testimony of Defendant's experts Karim and Ashton.

10. In the alternative, Plaintiff requests a continuance in the proceedings to allow the Plaintiff to further examine the evidence, this time with the actual supporting information from APD Forensics testing.

11. Additionally, if the court grants a continuance, Plaintiffs seek reimbursement

of the considerable expense incurred in serving subpoenas for trial that was slated to commence beginning 06 December 2021. Plaintiff hands are not dirty and plaintiff did not contribute to this Defendants' failure to timely produce discovery incident.

PRAYER

Plaintiffs respectfully request that the court exclude the testimony of Greg Karim and Steven Ashton at any point in this trial. In the alternative, Plaintiffs request that the court grant Plaintiffs' request for continuance and reschedule this case for at least 60 days to allow for Plaintiff expert to do his work. Additionally, Plaintiffs request that this venerable court reconsider its decision to bar the Plaintiffs' use of Mr. Richard Ernest as an expert at trial in their case-in-chief on the narrow topic of Ballistics, after he has had the opportunity to review the APD Ballistics documents and produce an updated expert report.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 6th day of December, 2021, I served a copy of *Plaintiffs' Motion to Strike Defendants' Expert Witness* on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO STRIKE EXPERT WITNESS

Defendants Richard Egal and Maxwell Johnson file this Response to Plaintiff's Motion to Strike Expert Witness (Doc. 53) as follows:

1. Contrary to Plaintiffs' assertions, Defendants did not provide an incomplete expert when Defendants produced the report of Greg Karim on July 1, 2020. Karim's report has remained unchanged since it was prepared during APD's SIU investigation of this incident on June 2, 2017. Defendants produced the report in response to Plaintiffs' Request for Production on July 1, 2020.

2. Defendants designated Greg Karim as an expert when Defendants filed their Designation of Potential Witnesses, Testifying Experts and Exhibits on June 10, 2021 and referred Plaintiffs' to Karim's report which had been previously produced.

3. On June 30, 2021, the Court entered an agreed order permitting Plaintiff's firearms expert, Richard Ernest, to inspect and test a number of evidentiary items including the .32 caliber handgun, .32 caliber cartridges, lead fragments and live .32 caliber bullets. (Doc. 30) These items were shipped by APD to Richard Ernest in early July, 2021.

4. On December 3, 2021, defense counsel learned that expert Greg Karim, who is no longer employed with APD, prepared "bench notes" as he tested and examined the firearms and cartridges and took photos of the firearms and cartridges during his testing. Defendants supplemented their responses to Plaintiffs' request for production and produced the bench notes and photos to Plaintiffs on December 3, 2021. A copy of the items produced with the supplemental responses are being hand-delivered to the Court with this response.

5. The vast majority of items discussed by Karim in the bench notes as well as the majority of photos taken during his testing address evidentiary items which are not at issue in this case, i.e., the two 9 millimeter handguns used by the officers in this incident and the 9 millimeter ammunition used by the officers in this incident. Many other photos involve Karim's efforts to discern the serial number of the .32 caliber of the handgun allegedly in the possession of Landon Nobles and the identification of other lead fragments at the scene, neither of which is a central issue in this case. Karim's photos also include several photos taken at the crime scene which were included in APD's SIU file and previously produced to the Plaintiffs during discovery.

6. The bench notes and photos do contain notes and photographs of the .32 caliber handgun and fired .32 cartridge cases which are at issue in this case, yet Plaintiffs are not unduly prejudiced by the late production. Plaintiffs' own expert, Richard Ernest, has performed separate examination and testing of the .32 caliber handgun and spent .32 caliber cartridges and

reached the same conclusion that Defendants' expert Karim reached: that the spent .32 caliber cartridges were fired from the .32 caliber handgun. Presumably, Ernest has his own bench notes and photos from his testing which he can compare with Karim's bench notes and photos prior to Ernest's trial testimony.

7. Counsel for Defendants acknowledges his mistake with the late production. However, Defendants should not incur the severe sanction of exclusion of their expert based on counsel's mistake. There is no surprise or new opinions contained in the recently produced notes and photos. Plaintiffs have had Defendants' expert's opinions since June of 2020 and Defendants' expert's opinions have not changed since that date. Plaintiffs have not established why they need their expert to perform additional testing of the evidence based on the bench notes and photos. Defendants suggest that any alleged prejudice from the late production of the bench notes and photos can be adequately remedied by permitting Plaintiff's expert, Richard Ernest, to testify near the end of the evidence (either in Plaintiff's case in chief or in rebuttal) which presumably would give Ernest sufficient time to review the bench notes and photos.

PRAYER

Defendants respectfully request that the Court deny Plaintiff's Motion to Strike Defendants' expert Greg Karim and request such additional relief to which they may be entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054

gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 7th day of December 2021, I served a copy of the foregoing document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

/s/ H. Gray Laird III
H. GRAY LAIRD III

From:	TXW_USDC_Notice@txwd.uscourts.gov
To:	cmecf_notices@txwd.uscourts.gov
Subject:	Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Trial - Begun
Date:	Tuesday, December 7, 2021 9:14:43 AM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/7/2021 at 9:14 AM CST and filed on 12/6/2021
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 55

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Jury Trial begun on 12/6/2021. COURT RECESSES UNTIL December 7, 2021 at 8:30 a.m. (Minute entry documents are not available electronically) (Court Reporter Arlinda Rodriguez)(cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/7/2021] [FileNumber=25949189-0] [6e1c3545c766bc0f18beddb4366a9e405184d72be1332aae3b82e835fe515e2c2673ddc5e1df093f12d46d8aa79e78af5b1407408f4e81004d696e7a7a092413]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants		

PLAINTIFFS' THIRD AMENDED EXHIBIT LIST

Plaintiffs expect to offer the following exhibits:

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
P-1	Embalmers Report			
P-2	GOOGLE Map of Scene			
P-3	HALO Still Image from DA report (COA 986)-Without Label			
P-3A	HALO Still Image from DA report (COA 986)-Without Label			
P-4	HALO Still Image from DA report (COA 987)-Without Label			
P-4A	HALO Still Image from DA report (COA 987)-Without Label			
P-5	HALO Still Image from DA report (COA 988)-Without Label			
P-5A	HALO Still Image from DA report (COA 988)-Without Label			

P-6 P-6A	HALO Still Image from DA report (COA 989)-Without Label HALO Still Image from DA report (COA 989)-Without Label			
P-7	APD Crime Scene Photo (COA 1792)			
P-8	APD Crime Scene Photo (COA 1797)			
P-9	APD Crime Scene Photo (COA 1798)			
P-10	APD Crime Scene Photo (COA 1800)			
P-11	APD Crime Scene Photo (COA 1802)			
P-12	APD Crime Scene Photo (COA 1813)			
P-13	APD Crime Scene Photo (COA 1827)			
P-14	APD Crime Scene Photo (COA 1833)			
P-15	APD Crime Scene Photo (COA 1834)			
P-16	APD Crime Scene Photo (COA 1835)			
P-17	APD Crime Scene Photo (COA 1836)			
P-18	APD Crime Scene Photo (COA1837)			
P-19	APD Crime Scene Photo (COA 1845)			
P-20	APD Crime Scene Photo (COA 1846)			
P-21	APD Crime Scene Photo (COA 1847)			
P-22	APD Crime Scene Photo (COA 1848)			
P-23	APD Crime Scene Photo (COA 1849)			
P-24	APD Crime Scene Photo (COA 1850)			
P-25	APD Crime Scene Photo (COA 1851)			
P-26	APD Crime Scene Photo (COA 1852)			
P-27	APD Crime Scene Photo (COA 1853)			

P-28	APD Crime Scene Photo (COA 1854)			
P-29	APD Crime Scene Photo (COA 1861)			
P-30	APD Crime Scene Photo (COA 1884)			
P-31	APD Crime Scene Photo (COA 1885)			
P-32	APD Crime Scene Photo (COA 1896)			
P-33	APD Crime Scene Photo (COA 1905)			
P-34	APD Crime Scene Photo (COA 1906)			
P-35	APD Crime Scene Photo (COA 1910)			
P-36	APD Crime Scene Photo (COA 1972)			
P-37	APD Crime Scene Photo (COA 1973)			
P-38	APD Crime Scene Photo (COA 1974)			
P-39	APD Crime Scene Photo (COA 1976)			
P-40	APD Crime Scene Photo (COA 1983)			
P-41	APD Crime Scene Photo (COA 1868)			
P-42	APD Crime Scene Photo (COA 2181)			
P-43	ME Autopsy Photo of Landon Nobles (COA 2221)			
P-44	Medical Examiner Photo of Landon Nobles-Body (COA 2267)			
P-45	Medical Examiner Photo of Landon Nobles-Body (COA 2308)			
P-46	Medical Examiner Photo of Landon Nobles-Arm (COA 2343)			
P-47	Medical Examiner Photo of Landon Nobles-Body (COA 2345)			
P-48	APD Property Receipt (COA 2463)			
P-49	Photo of Landon Nobles-hand (COA 2280)			

P-50	Photo of Landon Nobles-hand ring (COA 2272)			
P-51	Photo of Landon Nobles- ring (COA 2270)			
P-52	Photo of Landon Nobles-body (COA 2267)			
P-53	Julian Reyes- Photo of Richard Egal on 6th Street			
P-54	Julian Reyes-Video Footage May 7 2017			
P-55	Julian Reyes-Video Footage May 7 2017			
P-56	Chris Futrell Video Footage			
P-57	Chris Futrell Video Footage			
P-58	APD Crime Scene Photo (COA 1796)			
P-59	APD Crime Scene Photo (COA 1884)			
P-60	APD Crime Scene Photo (COA 1885)			
P-61	Joshua Kalu Video (COA 2674)			
P-62	Steve Pena Photo (COA 1622)			
P-63	Steve Pena Photo (COA 1624)			
P-64	Steve Pena Photo (COA 1625)			
P-65	Steve Pena Photo of Hand (COA 1625)			
P-66	Steve Pena Photo of Hand (COA 1629)			
P-67	Steve Pena Photo of Hand (COA 1632)			
P-68	Steve Pena Photo of Hand (COA 1633)			
P-69	Steve Pena Photo of Hand (COA 1634)			
P-70	Steve Pena Photo of Hand (COA 1637)			
P-71	Steve Pena Photo of Hand (COA 1655)			

P-72	Steve Pena Photo of Hand holding bullet (COA 1658)			
P-73	Photo of Gun (COA 1647)			
P-74	Photo of Gun (COA 1648)			
P-75	Photo of Gun (COA 1649)			
P-76	Photo of Gun (COA 1650)			
P-77	Photo of Gun (COA 1651)			
P-78	Photo of Gun (COA 1652)			
P-79	Photo of Gun (COA 1653)			
P-80	Photo of Gun (COA 1654)			
P-81	Photo of Bike (COA 1813)			
P-82	Photo of Bike (COA 1814)			
P-83	Photo of Bike (COA 1815)			
P-84	Photo of Bike (COA 1816)			
P-85	Photo of Bike Tire (COA 1818)			
P-86	Photo of Bike Tire (COA 1819)			
P-87	Photo of Bike Tire (COA 1820)			
P-88	Photo of Bike Tire (COA 1821)			
P-89	Photo of Bullet Casing (COA 1822)			
P-90	Keith Howse-CV			
P-91	Richard Ernest-CV			
P-92	Landon Nobles Shorts (COA 1976)			
P-93	Landon Nobles Phone (COA 1977)			

P-94	Landon Nobles Phone (COA 1978)			
P-95	Landon Nobles Phone (COA 1979)			
P-96	Landon Nobles Phone (COA 1980)			
P-97	Landon Nobles Phone (COA 1981)			
P-98	Landon Nobles Phone (COA 1982)			
P-99	Landon Nobles Phone (COA 1983)			

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 7th day of December, 2021, I served a copy of Plaintiffs' Third Amended Exhibit List on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Trial - Held
Date: Wednesday, December 8, 2021 9:30:33 AM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/8/2021 at 9:30 AM CST and filed on 12/7/2021
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 57

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Jury Trial held on 12/7/2021. COURT RECESSES UNTIL December 8, 2021 at 8:30am (Minute entry documents are not available electronically) (Court Reporter Arlinda Rodriguez) (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/8/2021] [FileNumber=25954908-0] [40b4eea5e614ee981783afedb12c31fa84f1ff8624ddebbfa812226fc3c08560c34d5c84903db7e749752e7093e426e6a148415d59faf88629615c428b446180]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From:	TXW_USDC_Notice@txwd.uscourts.gov
To:	cmecf_notices@txwd.uscourts.gov
Subject:	Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Trial - Held
Date:	Wednesday, December 8, 2021 4:55:16 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/8/2021 at 4:54 PM CST and filed on 12/8/2021
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 58

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Jury Trial held on 12/8/2021. COURT RECESSES UNTIL December 9, 2021 at 8:30am (Minute entry documents are not available electronically) (Court Reporter Arlinda Rodriguez) (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/8/2021] [FileNumber=25959386-0] [4396f8b4eba91bbc780012c701312c69684a2e152b1cb12c8ce3374c9217afe31ae63c49ad48efe82a5dac7a38063c88b6756460b99d11766566375464862ad2]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN,	§	
Defendants.	§	

DEFENDANT'S AMENDED EXHIBIT LIST

TO THE HONORABLE MARK LANE, UNITED STATES DISTRICT JUDGE:

Defendants Richard Egal and Maxwell Johnson ("Defendants") file this amended exhibit list pursuant to Local Rule CV-16(e) and the scheduling order in this case:

Defendants' Amended Exhibit List

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
D-1.	APD General Offense Reports (COA001-188)			
D-2.	APD Crime Scene Video (COA2634)			
D-3.	APD SIU George Radio (COA2649)			
D-4.	APD SIU Radio MET7 (COA2650)			
D-5.	SIU HALO Video (COA2651)			
D-6.	SIU HALO Video (COA2652)			
D-7.	SIU HALO Video (COA2653)			
D-8.	SIU HALO Video (COA2654)			
D-9.	SIU HALO Video (COA2655)			
D-10.	SIU HALO Video (COA2656)			

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
D-11.	SIU Video—Gun Fired (COA2670)			
D-12.	SIU Video—YouTube (COA2671)			
D-13.	SIU Internet Video—Larry Goodman (COA2672)			
D-14.	SIU Video—Fight (COA2673)			
D-15.	SIU Video—Kalu (COA2674)			
D-16.	SIU Video—Surber (COA2675)			
D-17.	APD Incident Detail Report (COA1024-1043)			
D-18.	Photo of Nobles (COA1433)			
D-19.	Photo of Nobles (COA1434)			
D-20.	Satellite Photo of Incident Area (COA1579)			
D-21.	HALO Still Image (COA1595)			
D-22.	HALO Still Image (COA1596)			
D-23.	Photo of Nobles (COA1606)			
D-24.	Photo of Gun (COA1647)			
D-25.	Photo of Gun (COA1651)			
D-26.	Photo of Gun (COA 1654)			
D-27.	Photo of Magazine (COA 1656)			
D-28.	Photo of Bullet (COA1658)			
D-29.	Photo of Bullet (COA1659)			
D-30.	APD Crime Scene Photos (COA1764-2135)			
D-31.	Satellite Photo of Incident Area (COA2475)			
D-32.	APD Firearm Report (COA 3128-3135)			
D-33.	APD Firearm Report (COA 3117)			
D-34.	APD Forensic Science Laboratory Report (COA3119-3124)			
D-35.	APD Forensic Science Laboratory Report (COA3125-3127)			
D-36.	APD Forensic Science Laboratory Report (COA3091-3093)			
D-37.	C.V. of Albert Rodriguez			
D-38.	C.V. of Greg Karim			
D-39.	C.V. of Steven Aston			
D-40.	Guy in Background 175018795 (COA 1598)			
D-41.	Guy in Background 175018795 (COA 1599)			

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
D-42.	Guy in Background 175018795 (COA 1600)			
D-43.	Guy in Background 175018795 (COA 1601)			
D-44.	Guy in Background 175018795 (COA 1602)			
D-45.	Guy in Background 175018795 (COA 1603)			

Defendants reserve the right to introduce or utilize any exhibit listed by the Plaintiff.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. Gray Laird III
Assistant City Attorney
State Bar No. 24087054
Gray.laird@austintexas.gov
Monte Barton
Assistant City Attorney
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1358
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing *Defendants' Amended Pretrial Order*, in compliance with the Federal Rules of Civil Procedure, on this 9th day of December, 2021, as follows:

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Trial - Held
Date: Friday, December 10, 2021 8:33:31 AM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/10/2021 at 8:33 AM CST and filed on 12/9/2021
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 60

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Jury Trial held on 12/9/2021. Court recesses until Monday, December 13, 2021. (Minute entry documents are not available electronically.). (Court Reporter Arlinda Rodriguez.)(dm)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/10/2021] [FileNumber=25972188
-0] [3eea36dd8546c2bd93e9d73b8954379fa6fd6213ae818816380bf92bcbdb38dd6
38800752e7bd85d2ec9264d4e6616fbeb5d5c63a101687bb2980508ddc3c946]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants		

PLAINTIFFS' SUPPLEMENTAL MOTION IN LIMINE

TO THE HONORABLE MAGISTRATE JUDGE MARK LANE:

COMES NOW Plaintiffs in this case and they move the court to grant this Motion in Limine serving to limit the following testimony and evidence at trial:

Any further reference to the investigation into the criminal matter by the Civil Rights Division of the Travis County District Attorney, and any conclusions made by the District Attorney as far as justification for shooting Landon Nobles. Any further reference to the investigation is not only not relevant under Rules 401 and 402 of Federal Rules of Evidence, it is problematic under FRE 403. Specifically, the Travis County District Attorney investigation was guided by Texas criminal law, not the Federal civil rules under which this case is prosecuted by the Plaintiffs. And in the final analysis, any reference to the findings therein should be barred under Federal Rule if Evidence 403, which reads:

> "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

The court should not allow the Defendants to further make reference to the Travis County District Attorney investigation report, because it will most assuredly lead to the confusion of the issues by the jury, and it invites the jury to mistakenly conclude that this matter is already investigated, findings were made, the case is closed, and that the jury is somehow bound to follow the conclusions of that District Attorney investigation. In addition to confusion of the issues, the prejudicial conclusions in the Travis County DA investigation report substantially outweighs any probative value of the report as regards this civil lawsuit.

PRAYER

Plaintiff prays that this venerable court approve and adopt this Motion in Limine for the remainder of the trial, and give an instruction to the jury to cure any prior misapprehension on the part of the jurors.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701

Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 12th day of December, 2021, I served a copy of *Plaintiffs' Supplemental Motion in Limine* on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

From:	TXW_USDC_Notice@txwd.uscourts.gov
To:	cmecf_notices@txwd.uscourts.gov
Subject:	Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Trial - Begun
Date:	Monday, December 13, 2021 5:05:53 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/13/2021 at 5:05 PM CST and filed on 12/13/2021

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 62

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Jury Trial begun on 12/13/2021. COURT RECESSES UNTIL December 14, 2021 at 8:30 am (Minute entry documents are not available electronically) (Court Reporter Lily Reznik) (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/13/2021] [FileNumber=25982248
-0] [470e08e5abcbd4ac0607536f379d841f133ce85e9d60cd60f74e454becdf3db96
64f322a766b8afd42440b3a01c7fab553e31f566b793b84c002359de4c2bbcc]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES	§	CIVIL ACTION. 1:19-CV-00389-ML
PLAINTIFFS	§	
	§	
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants		

PLAINTIFFS' FOURTH AMENDED EXHIBIT LIST

Plaintiffs expect to offer the following exhibits:

NO.	DESCRIPTION	OFFERED (Y/N)	OBJECTION (Y/N)	ADMITTED (Y/N)
P-1	Embalmers Report			
P-2	GOOGLE Map of Scene			
P-3	HALO Still Image from DA report (COA 986)-Without Label			
P-3A	HALO Still Image from DA report (COA 986)-Without Label			
P-4	HALO Still Image from DA report (COA 987)-Without Label			
P-4A	HALO Still Image from DA report (COA 987)-Without Label			
P-5	HALO Still Image from DA report (COA 988)-Without Label			
P-5A	HALO Still Image from DA report (COA 988)-Without Label			

P-6 P-6A	HALO Still Image from DA report (COA 989)-Without Label HALO Still Image from DA report (COA 989)-Without Label			
P-7	APD Crime Scene Photo (COA 1792)			
P-8	APD Crime Scene Photo (COA 1797)			
P-9	APD Crime Scene Photo (COA 1798)			
P-9A	APD Crime Scene Photo (COA 1798) Chris Furtrell in Court Marking of Exhibit			
P-10	APD Crime Scene Photo (COA 1800)			
P-11	APD Crime Scene Photo (COA 1802)			
P-11A	APD Crime Scene Photo (COA 1802) Chris Furtrell in Court Marking of Exhibit			
P-12	APD Crime Scene Photo (COA 1813)			
P-12A	APD Crime Scene Photo (COA 1813) Chris Furtrell in Court Marking of Exhibit			
P-13	APD Crime Scene Photo (COA 1827)			
P-14	APD Crime Scene Photo (COA 1833)			
P-15	APD Crime Scene Photo (COA 1834)			
P-16	APD Crime Scene Photo (COA 1835)			
P-17	APD Crime Scene Photo (COA 1836)			
P-18	APD Crime Scene Photo (COA1837)			
P-19	APD Crime Scene Photo (COA 1845)			
P-20	APD Crime Scene Photo (COA 1846)			
P-21	APD Crime Scene Photo (COA 1847)			
P-22	APD Crime Scene Photo (COA 1848)			
P-23	APD Crime Scene Photo (COA 1849)			
P-24	APD Crime Scene Photo (COA 1850)			
P-25	APD Crime Scene Photo (COA 1851)			

P-26	APD Crime Scene Photo (COA 1852)			
P-27	APD Crime Scene Photo (COA 1853)			
P-28	APD Crime Scene Photo (COA 1854)			
P-29	APD Crime Scene Photo (COA 1861)			
P-29A	APD Crime Scene Photo (COA 1861) Chris Furtrell in Court Marking of Exhibit			
P-30	APD Crime Scene Photo (COA 1884)			
P-30A	APD Crime Scene Photo (COA 1884) Chris Furtrell in Court Marking of Exhibit			
P-31	APD Crime Scene Photo (COA 1885)			
P-32	APD Crime Scene Photo (COA 1896)			
P-33	APD Crime Scene Photo (COA 1905)			
P-34	APD Crime Scene Photo (COA 1906)			
P-35	APD Crime Scene Photo (COA 1910)			
P-36	APD Crime Scene Photo (COA 1972)			
P-37	APD Crime Scene Photo (COA 1973)			
P-38	APD Crime Scene Photo (COA 1974)			
P-39	APD Crime Scene Photo (COA 1976)			
P-40	APD Crime Scene Photo (COA 1983)			
P-41	APD Crime Scene Photo (COA 1868)			
P-42	APD Crime Scene Photo (COA 2181)			
P-43	ME Autopsy Photo of Landon Nobles (COA 2221)			
P-44	Medical Examiner Photo of Landon Nobles-Body (COA 2267)			

P-45	Medical Examiner Photo of Landon Nobles-Body (COA 2308)			
P-46	Medical Examiner Photo of Landon Nobles-Arm (COA 2343)			
P-47	Medical Examiner Photo of Landon Nobles-Body (COA 2345)			
P-48	APD Property Receipt (COA 2463)			
P-49	Photo of Landon Nobles-hand (COA 2280)			
P-50	Photo of Landon Nobles-hand ring (COA 2272)			
P-51	Photo of Landon Nobles- ring (COA 2270)			
P-52	Photo of Landon Nobles-body (COA 2267)			
P-53	Julian Reyes- Photo of Richard Egal on 6th Street			
P-54	Julian Reyes-Video Footage May 7 2017			
P-55	Julian Reyes-Video Footage May 7 2017			
P-56	Chris Futrell Video Footage			
P-57	Chris Futrell Video Footage			
P-58	APD Crime Scene Photo (COA 1796)			
P-59	APD Crime Scene Photo (COA 1884)			
P-60	APD Crime Scene Photo (COA 1885)			
P-61	Joshua Kalu Video (COA 2674)			
P-62	Steve Pena Photo (COA 1622)			
P-63	Steve Pena Photo (COA 1624)			
P-64	Steve Pena Photo (COA 1625)			
P-65	Steve Pena Photo of Hand (COA 1625)			
P-66	Steve Pena Photo of Hand (COA 1629)			

P-67	Steve Pena Photo of Hand (COA 1632)			
P-68	Steve Pena Photo of Hand (COA 1633)			
P-69	Steve Pena Photo of Hand (COA 1634)			
P-70	Steve Pena Photo of Hand (COA 1637)			
P-71	Steve Pena Photo of Hand (COA 1655)			
P-72	Steve Pena Photo of Hand holding bullet (COA 1658)			
P-73	Photo of Gun (COA 1647)			
P-74	Photo of Gun (COA 1648)			
P-75	Photo of Gun (COA 1649)			
P-76	Photo of Gun (COA 1650)			
P-77	Photo of Gun (COA 1651)			
P-78	Photo of Gun (COA 1652)			
P-79	Photo of Gun (COA 1653)			
P-80	Photo of Gun (COA 1654)			
P-81	Photo of Bike (COA 1813)			
P-82	Photo of Bike (COA 1814)			
P-83	Photo of Bike (COA 1815)			
P-84	Photo of Bike (COA 1816)			
P-85	Photo of Bike Tire (COA 1818)			
P-86	Photo of Bike Tire (COA 1819)			
P-87	Photo of Bike Tire (COA 1820)			

P-88	Photo of Bike Tire (COA 1821)			
P-89	Photo of Bullet Casing (COA 1822)			
P-90	Keith Howse-CV			
P-91	Richard Ernest-CV			
P-92	Landon Nobles Shorts (COA 1976)			
P-93	Landon Nobles Phone (COA 1977)			
P-94	Landon Nobles Phone (COA 1978)			
P-95	Landon Nobles Phone (COA 1979)			
P-96	Landon Nobles Phone (COA 1980)			
P-97	Landon Nobles Phone (COA 1981)			
P-98	Landon Nobles Phone (COA 1982)			
P-99	Landon Nobles Phone (COA 1983)			
P-100	Photo of Landon Nobles with Family			
P-101	Photo of Landon Nobles with Son			
P-102	Photo of Landon Nobles with Son			
P-103	Photo of Landon Nobles with Son			
P-104	Photo of Landon Nobles with Son			
P-105	Greg Karim City of Austin Memo			
P-106	Albert Rodriguez-Texas Observer Article			

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 14th day of December, 2021, I served a copy of Plaintiffs' Fourth Amended Exhibit List on all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

From:	TXW_USDC_Notice@txwd.uscourts.gov
To:	cmecf_notices@txwd.uscourts.gov
Subject:	Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Trial - Held
Date:	Tuesday, December 14, 2021 4:58:19 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/14/2021 at 4:58 PM CST and filed on 12/14/2021

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 64

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Jury Trial held on 12/14/2021. JURY RECESSES, RETURNING December 15, 2021 at 9:00am (Minute entry documents are not available electronically) (Court Reporter Patrick Stephens)(cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/14/2021] [FileNumber=25988435
-0] [29602fe32e1e3e038f1a2ee96a4d6826f6cdd7a3bc38a3ea2eb3bc111b9122abc
c84d146bcc622f06b253101bc5ab413ddcb0afe89d238a11c5b2107b9a3fb65]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Note (Sealed)
Date: Wednesday, December 15, 2021 4:26:58 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/15/2021 at 4:26 PM CST and filed on 12/15/2021

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 65

Docket Text:
JURY NOTE 1 SEALED pursuant to E-Government Act of 2002. (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/15/2021] [FileNumber=25993816
-0] [0125dd7fbc7cd5c45430748d1b6e2739ac662a204814e61cf044986f082d625a9
35cbf95e46e0aa4f5b81052a4cf52d29ea5a42f896f963f7b356eef890eab18]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Note (Sealed)
Date: Wednesday, December 15, 2021 4:27:45 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/15/2021 at 4:27 PM CST and filed on 12/15/2021

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 66

Docket Text:
JURY NOTE 2 SEALED pursuant to E-Government Act of 2002. (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/15/2021] [FileNumber=25993833
-0] [744556e29432010ed724f0238abe7af7f7eef3dc29141ecfefadd3c24516fe71c
d284958aa04d828fa1435e89ca9fd4557e271a2d992fa4480713ae0b7dac3f9]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Note (Sealed)
Date: Wednesday, December 15, 2021 4:28:24 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/15/2021 at 4:27 PM CST and filed on 12/15/2021

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 67

Docket Text:
JURY NOTE 3 SEALED pursuant to E-Government Act of 2002. (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/15/2021] [FileNumber=25993845
-0] [883cd5e777ed53a8fc252e23d030cf65b90e615ed35d18c1118289119854800b4
9733ba1211ec53a57998ecaf8975d7209bec6f95e47469e4c27e4ddb2afb02a]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From:	TXW_USDC_Notice@txwd.uscourts.gov
To:	cmecf_notices@txwd.uscourts.gov
Subject:	Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Jury Trial - Completed
Date:	Wednesday, December 15, 2021 4:29:51 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 12/15/2021 at 4:29 PM CST and filed on 12/15/2021

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
Document Number: 68

Docket Text:
Minute Entry for proceedings held before Judge Mark Lane: Jury Trial completed on 12/15/2021. (Minute entry documents are not available electronically) (Court Reporter Patrick Stephens)(cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=12/15/2021] [FileNumber=25993890
-0] [7ed4bb73c6e9f432ff0d8bc0950d89066b8ca188c3161e814e9701e037df821a9
16e1066c2041fb306303aee829151f1ec022398b127c298a0f2beddaa6f6236]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Ida Renae Nobles, Kadeidra Bell, Michelle Dashaun Smith	§	
	§	
	§	**NO: AU:19-CV-00389-ML**
vs.	§	
	§	
Richard Egal, Maxwell Johnson	§	

LIST OF WITNESSES

FOR PLAINTIFF	FOR DEFENDANT
1. Christopher Futrell	1. Brian Huckaby
2. Nicholas Henderson	2. Steven Pena
3. Royie Nobles	3. Uri Tamez
4. Elvis Ingram	4. Steve Boline
5. Andre Anderson	5. Greg Karim
6. Anthony Allegretti	6. Albert Rodriguez
7. Julian Reyes	7. Max Johnson
8. Keith Howse	8. Richard Egal
9. Ida Nobles	9.
10. Kadeidra Bell	10.
11.	11.
12.	12.
13.	13.
14.	14.
15.	15.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
DEC 15 2021
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

IDA RENAE NOBLES INDIVIDUALLY, K.N. MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN, MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, Plaintiffs,	§	A-19-CV-389-ML
V.	§	
SERGEANT RICHARD EGAL AND CORPORAL MAXWELL JOHNSON, Defendants.	§	

VERDICT FORM

QUESTION ONE

Please answer "Yes" or "No" to each subpart.

1a. Did Richard Egal violate Landon Nobles's Fourth Amendment right to be protected from excessive force by using excessive force during the course of Mr. Nobles's shooting?

Answer: Yes

1b. Did Maxwell Johnson violate Landon Nobles's Fourth Amendment right to be protected from excessive force by using excessive force during the course of Mr. Nobles's shooting?

Answer: Yes

If you answered "Yes" to Question 1a, or 1b, please proceed to Question 2.

If you answered "No" to both Question 1a and 1b, do not answer any more questions, and please proceed to the last page and sign your Verdict Form.

QUESTION TWO

Please answer only as to the Defendant or Defendants for whom you answered "Yes" in Question 1. Please answer "Yes" or "No."

2a. Do you find that Richard Egal's actions during the shooting of Landon Nobles were objectively unreasonable in light of the clearly established law at the time, such that no reasonable officer could have believed that the shooting was lawful?

Answer: Yes

2b. Do you find that Maxwell Johnson's actions during the shooting of Landon Nobles were objectively unreasonable in light of the clearly established law at the time, such that no reasonable officer could have believed that the shooting was lawful?

Answer: Yes

If you answered "Yes" to Question 2a or 2b, then proceed to answer Questions 3, 4, 5, 6, and 7.

If you answered "No" to both Question 2a and 2b, do not answer any more questions, and please proceed to the last page and sign your Verdict Form.

QUESTION THREE

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiffs for their damages, if any, that they experienced as a result of Landon Nobles's injuries?

Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer in dollars and cents, for damages, if any.

3. Physical pain and mental anguish experienced by Landon Nobles.

ANSWER: $ 3.67 million
(3,670,000)

Please proceed to Question 4.

QUESTION FOUR

What sum of money, if paid now in cash, would fairly and reasonably compensate Ida Renae Nobles for her damages, if any, resulting from the death of her son, Landon Nobles?

Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer separately, in dollars and cents, for damages, if any.

4a. Loss of companionship and society.

"Companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Ida Renae Nobles, in reasonable probability, would have received from Landon Nobles had he lived.

Were sustained in the past:

ANSWER: $ 2 million (2,000,000)

In reasonable probability will be sustained in the future:

ANSWER: $ 4.3 million (4,300,000)

4b. Mental anguish.

Were sustained in the past:

ANSWER: $ 3.5 million (3,500,000)

In reasonable probability will be sustained in the future:

ANSWER: $ 7 million (7,000,000)

Please proceed to Question 5.

QUESTION FIVE

What sum of money, if paid now in cash, would fairly and reasonably compensate Kadeidra Bell, as Next Friend of K.N., for K.N's damages, if any, resulting from the death of K.N.'s father, Landon Nobles?

Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer separately, in dollars and cents, for damages, if any.

5a. Loss of companionship and society.

"Companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society that K.N., in reasonable probability, would have received from Landon Nobles had he lived.

Were sustained in the past:

ANSWER: $ 500,000

In reasonable probability will be sustained in the future:

ANSWER: $ 11.2 million (11,200,000)

5b. Mental anguish.

Were sustained in the past:

ANSWER: $ 250,000

In reasonable probability will be sustained in the future:

ANSWER: $ 11.2 million (11,200,000)

Please proceed to Question 6.

QUESTION SIX

What sum of money, if paid now in cash, would fairly and reasonably compensate Michelle Dashaun Smith, as Next Friend of L.N., for L.N's damages, if any, resulting from the death of L.N.'s father, Landon Nobles?

Consider the elements of damages listed below, and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find. Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer separately, in dollars and cents, for damages, if any.

6a. Loss of companionship and society.

"Companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society that L.N., in reasonable probability, would have received from Landon Nobles had he lived.

Were sustained in the past:

ANSWER: $ 500,000

In reasonable probability will be sustained in the future:

ANSWER: $ 11.2 million (11,200,000)

6b. Mental anguish.

Were sustained in the past:

ANSWER: $ 250,000

In reasonable probability will be sustained in the future:

ANSWER: $ 11.2 million (11,200,000)

Please proceed to Question 7.

QUESTION SEVEN

If you have answered with any amount to any part of Question 3, 4, 5, or 6, and you find that Defendant Egal and/or Defendant Johnson acted willfully, or with callous and reckless indifference to the safety or rights of others, you may, but are not required to, exercise your discretion to award exemplary damages, also known as punitive damages. If you decide to award exemplary damages, you must use sound reason in setting the amount of damages.

Answer separately, in dollars and cents, for damages, if any.

7a. What sum of money, if paid now in cash, should be assessed against Defendant Richard Egal and awarded to Plaintiffs as exemplary damages, if any, for his actions?

ANSWER: $ 187,500

7b. What sum of money, if paid now in cash, should be assessed against Defendant Maxwell Johnson and awarded to Plaintiffs as exemplary damages, if any, for his actions?

ANSWER: $ 150,000

This is the end of the questions. Please proceed to the last page and sign your Verdict Form.

VERDICT OF THE JURY

We, the jury, unanimously answered the preceding questions by a preponderance of the evidence as instructed.

Submitted this 15th day of December, 2021 at 1:30 o'clock p .m.

ORIGINAL SIGNATURE
REDACTED PURSUANT TO
E-GOVERNMENT ACT OF 2002

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES *PLAINTIFFS* v. **SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,** *Defendants*	§ § § § § § § § § § § §	CIVIL ACTION. 1:19-CV-00389-ML

PLAINTIFFS' FOURTH AMENDED EXHIBIT LIST

Plaintiffs expect to offer the following exhibits:

NO.	DESCRIPTION	OFFERED	OBJECTION	ADMITTED	NOT ADMITTED
P-1	Embalmers Report	12/8/2021	N	12/8/2021	
P-2	GOOGLE Map of Scene	12/6/2021	N	12/6/2021	
P-3	HALO Still Image from DA report (COA 986)-Without Label	12/6/2021	N	12/6/2021	
P-3A	HALO Still Image from DA report (COA 986)-Without Label	N			
P-4	HALO Still Image from DA report (COA 987)-Without Label	12/6/2021	N	12/6/2021	
P-4A	HALO Still Image from DA report (COA 987)-Without Label	N			
P-5	HALO Still Image from DA report (COA 988)-Without Label	12/7/2021	N	12/7/2021	
P-5A	HALO Still Image from DA report (COA 988)-Without Label	N			

P-6	HALO Still Image from DA report (COA 989)-Without Label	12/6/2021	N	12/6/2021	
P-6A	HALO Still Image from DA report (COA 989)-Without Label	N			
P-7	APD Crime Scene Photo (COA 1792)	12/6/2021	N	12/6/2021	
P-8	APD Crime Scene Photo (COA 1797)	12/6/2021	N	12/6/2021	
P-9	APD Crime Scene Photo (COA 1798)	12/6/2021	N	12/6/2021	
P-9A	APD Crime Scene Photo (COA 1798) Chris Furtrell in Court Marking of Exhibit	12/14/2021	N	12/14/2021	
P-10	APD Crime Scene Photo (COA 1800)	12/7/2021	N	12/7/2021	
P-11	APD Crime Scene Photo (COA 1802)	12/6/2021	N	12/6/2021	
P-11A	APD Crime Scene Photo (COA 1802) Chris Furtrell in Court Marking of Exhibit	12/14/2021	N	12/14/2021	
P-12	APD Crime Scene Photo (COA 1813)	12/6/2021	N	12/6/2021	
P-12A	APD Crime Scene Photo (COA 1813) Chris Furtrell in Court Marking of Exhibit	12/14/2021	N	12/14/2021	
P-13	APD Crime Scene Photo (COA 1827)	12/7/2021	N	12/7/2021	
P-14	APD Crime Scene Photo (COA 1833)	12/7/2021	N	12/7/2021	
P-15	APD Crime Scene Photo (COA 1834)	12/7/2021	N	12/7/2021	
P-16	APD Crime Scene Photo (COA 1835)	12/7/2021	N	12/7/2021	
P-17	APD Crime Scene Photo (COA 1836)	12/7/2021	N	12/7/2021	
P-18	APD Crime Scene Photo (COA1837)	12/7/2021	N	12/7/2021	
P-19	APD Crime Scene Photo (COA 1845)	12/7/2021	N	12/7/2021	
P-20	APD Crime Scene Photo (COA 1846)	12/7/2021	N	12/7/2021	
P-21	APD Crime Scene Photo (COA 1847)	12/7/2021	N	12/7/2021	
P-22	APD Crime Scene Photo (COA 1848)	12/7/2021	N	12/7/2021	
P-23	APD Crime Scene Photo (COA 1849)	12/7/2021	N	12/7/2021	
P-24	APD Crime Scene Photo (COA 1850)	12/7/2021	N	12/7/2021	
P-25	APD Crime Scene Photo (COA 1851)	12/7/2021	N	12/7/2021	
P-26	APD Crime Scene Photo (COA 1852)	12/7/2021	N	12/7/2021	
P-27	APD Crime Scene Photo (COA 1853)	12/7/2021	N	12/7/2021	
P-28	APD Crime Scene Photo (COA 1854)	12/7/2021	N	12/7/2021	
P-29	APD Crime Scene Photo (COA 1861)	12/6/2021	N	12/6/2021	
P-29A	APD Crime Scene Photo (COA 1861) Chris Furtrell in Court Marking of Exhibit	12/14/2021	N	12/14/2021	
P-30	APD Crime Scene Photo (COA 1884)	12/6/2021	N	12/6/2021	
P-30A	APD Crime Scene Photo (COA 1884) Chris Furtrell in Court Marking of Exhibit	12/14/2021	N	12/14/2021	
P-31	APD Crime Scene Photo (COA 1885)	12/7/2021	N	12/7/2021	
P-32	APD Crime Scene Photo (COA 1896)	12/7/2021	N	12/7/2021	

P-33	APD Crime Scene Photo (COA 1905)	12/7/2021	N	12/7/2021	
P-34	APD Crime Scene Photo (COA 1906)	12/7/2021	N	12/7/2021	
P-35	APD Crime Scene Photo (COA 1910)	12/7/2021	N	12/7/2021	
P-36	APD Crime Scene Photo (COA 1972)	12/7/2021	N	12/7/2021	
P-37	APD Crime Scene Photo (COA 1973)	12/7/2021	N	12/7/2021	
P-38	APD Crime Scene Photo (COA 1974)	12/7/2021	N	12/7/2021	
P-39	APD Crime Scene Photo (COA 1976)	12/7/2021	N	12/7/2021	
P-40	APD Crime Scene Photo (COA 1983)	12/7/2021	N	12/7/2021	
P-41	APD Crime Scene Photo (COA 1868)	12/7/2021	N	12/7/2021	
P-42	APD Crime Scene Photo (COA 2181)	12/7/2021	N	12/7/2021	
P-43	ME Autopsy Photo of Landon Nobles (COA 2221)	N			
P-44	Medical Examiner Photo of Landon Nobles-Body (COA 2267)	N			
P-45	Medical Examiner Photo of Landon Nobles-Body (COA 2308)	N			
P-46	Medical Examiner Photo of Landon Nobles-Arm (COA 2343)	N			
P-47	Medical Examiner Photo of Landon Nobles-Body (COA 2345)	12/8/2021	N	12/8/2021	
P-48	APD Property Receipt (COA 2463)	12/7/2021	12/7/2021		12/7/2021
P-49	Photo of Landon Nobles-hand (COA 2280)	12/7/2021	12/7/2021		12/7/2021
P-50	Photo of Landon Nobles-hand ring (COA 2272)	12/7/2021	12/7/2021		12/7/2021
P-51	Photo of Landon Nobles- ring (COA 2270)	12/7/2021	12/7/2021		12/7/2021
P-52	Photo of Landon Nobles-body (COA 2267)	N			
P-53	Julian Reyes- Photo of Richard Egal on 6th Street	N			
P-54	Julian Reyes-Video Footage May 7 2017	12/7/2021	12/7/2021		12/7/2021
P-54A	Julian Reyes-Video Footage May 7 2017 – NO AUDIO	12/7/2021	12/7/2021	12/7/2021	
P-55	Julian Reyes-Video Footage May 7 2017	N			
P-56	Chris Futrell Video Footage	12/6/2021	12/6/2021		12/6/2021
P-57	Chris Futrell Video Footage	12/6/2021	12/6/2021		12/6/2021
P-58	APD Crime Scene Photo (COA 1796)	12/7/2021	N	12/7/2021	
P-59	APD Crime Scene Photo (COA 1884)	12/7/2021	N	12/7/2021	
P-60	APD Crime Scene Photo (COA 1885)	12/7/2021	N	12/7/2021	
P-61	Joshua Kalu Video (COA 2674)				
P-62	Steve Pena Photo (COA 1622)	12/7/2021	N	12/7/2021	
P-63	Steve Pena Photo (COA 1624)	12/7/2021	N	12/7/2021	

P-64	Steve Pena Photo (COA 1625)	12/7/2021	N	12/7/2021	
P-65	Steve Pena Photo of Hand (COA 1625)	12/7/2021	N	12/7/2021	
P-66	Steve Pena Photo of Hand (COA 1629)	12/7/2021	N	12/7/2021	
P-67	Steve Pena Photo of Hand (COA 1632)	12/7/2021	N	12/7/2021	
P-68	Steve Pena Photo of Hand (COA 1633)	12/7/2021	N	12/7/2021	
P-69	Steve Pena Photo of Hand (COA 1634)	12/7/2021	N	12/7/2021	
P-70	Steve Pena Photo of Hand (COA 1637)	12/7/2021	N	12/7/2021	
P-71	Steve Pena Photo of Hand (COA 1655)	12/7/2021	N	12/7/2021	
P-72	Steve Pena Photo of Hand holding bullet (COA 1658)	12/7/2021	N	12/7/2021	
P-73	Photo of Gun (COA 1647)	12/7/2021	N	12/7/2021	
P-74	Photo of Gun (COA 1648)	12/7/2021	N	12/7/2021	
P-75	Photo of Gun (COA 1649)	12/7/2021	N	12/7/2021	
P-76	Photo of Gun (COA 1650)	12/7/2021	N	12/7/2021	
P-77	Photo of Gun (COA 1651)	12/7/2021	N	12/7/2021	
P-78	Photo of Gun (COA 1652)	12/7/2021	N	12/7/2021	
P-79	Photo of Gun (COA 1653)	12/7/2021	N	12/7/2021	
P-80	Photo of Gun (COA 1654)	12/7/2021	N	12/7/2021	
P-81	Photo of Bike (COA 1813)	12/7/2021	N	12/7/2021	
P-82	Photo of Bike (COA 1814)	12/7/2021	N	12/7/2021	
P-83	Photo of Bike (COA 1815)	12/7/2021	N	12/7/2021	
P-84	Photo of Bike (COA 1816)	12/7/2021	N	12/7/2021	
P-85	Photo of Bike Tire (COA 1818)	12/7/2021	N	12/7/2021	
P-86	Photo of Bike Tire (COA 1819)	12/7/2021	N	12/7/2021	
P-87	Photo of Bike Tire (COA 1820)	12/7/2021	N	12/7/2021	
P-88	Photo of Bike Tire (COA 1821)	12/7/2021	N	12/7/2021	
P-89	Photo of Bullet Casing (COA 1822)	12/7/2021	N	12/7/2021	
P-90	Keith Howse-CV	12/8/2021	N	12/8/2021	
P-91	Richard Ernest-CV	N			
P-92	Landon Nobles Shorts (COA 1976)	12/7/2021	N	12/7/2021	
P-93	Landon Nobles Phone (COA 1977)	12/7/2021	N	12/7/2021	
P-94	Landon Nobles Phone (COA 1978)	12/7/2021	N	12/7/2021	
P-95	Landon Nobles Phone (COA 1979)	12/7/2021	N	12/7/2021	
P-96	Landon Nobles Phone (COA 1980)	N			
P-97	Landon Nobles Phone (COA 1981)	N			
P-98	Landon Nobles Phone (COA 1982)	12/7/2021	N	12/7/2021	
P-99	Landon Nobles Phone (COA 1983)	N			
P-100	Photo of Landon Nobles with Family	12/8/2021	N	12/8/2021	
P-101	Photo of Landon Nobles with Son	12/8/2021	N	12/8/2021	
P-102	Photo of Landon Nobles with Son	12/8/2021	N	12/8/2021	
P-103	Photo of Landon Nobles with Son	12/8/2021	N	12/8/2021	
P-104	Photo of Landon Nobles with Son	12/8/2021	N	12/8/2021	
P-105	Greg Karim City of Austin Memo	12/9/2021	12/9/2021		12/9/2021
P-106	Albert Rodriguez-Texas Observer Article	12/13/2021	12/13/2021		12/13/2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN, **Defendants.**	§	

DEFENDANT'S EXHIBIT LIST

NO.	DESCRIPTION	OFFERED	OBJECTION	ADMITTED	NOT ADMITTED
D-1.	APD General Offense Reports (COA001-188)	N			
D-2.	APD Crime Scene Video (COA2634)	12/9/2021	N	12/9/2021	
D-3.	APD SIU George Radio (COA2649)	N			
D-4.	APD SIU Radio MET7 (COA2650)	12/8/2021	N	12/8/2021	
D-5.	SIU HALO Video (COA2651)	12/9/2021	N	12/9/2021	
D-6.	SIU HALO Video (COA2652)	12/9/2021	N	12/9/2021	
D-7.	SIU HALO Video (COA2653)	N			
D-8.	SIU HALO Video (COA2654)	N			
D-9.	SIU HALO Video (COA2655)	N			
D-10.	SIU HALO Video (COA2656)	12/9/2021	N	12/9/2021	
D-11.	SIU Video—Gun Fired (COA2670)	12/9/2021	12/9/2021		12/9/2021
D-12.	SIU Video—YouTube (COA2671)	12/9/2021	12/9/2021		12/9/2021
D-13.	SIU Internet Video—Larry Goodman (COA2672)	N			
D-14.	SIU Video—Fight (COA2673)	N			
D-15.	SIU Video—Kalu (COA2674)	N			
D-16.	SIU Video—Surber (COA2675)	N			
D-17.	APD Incident Detail Report (COA1024-1043)	N			

NO.	DESCRIPTION	OFFERED	OBJECTION	ADMITTED	NOT ADMITTED
D-18.	Photo of Nobles (COA1433)	12/6/2021	N	12/6/2021	
D-19.	Photo of Nobles (COA1434)	12/6/2021	N	12/6/2021	
D-20.	Satellite Photo of Incident Area (COA1579)	12/9/2021	N	12/9/2021	
D-21.	HALO Still Image (COA1595)	12/9/2021	N	12/9/2021	
D-22.	HALO Still Image (COA1596)	N			
D-23.	Photo of Nobles (COA1606)	12/9/2021	N	12/9/2021	
D-24.	Photo of Gun (COA1647)	12/9/2012	N	12/9/2021	
D-25.	Photo of Gun (COA1651)	12/9/2021	N	12/9/2021	
D-26.	Photo of Gun (COA 1654)	12/9/2021	N	12/9/2021	
D-27.	Photo of Magazine (COA 1656)	12/9/2021	N	12/9/2021	
D-28.	Photo of Bullet (COA1658)	12/9/2021	N	12/9/2021	
D-29.	Photo of Bullet (COA1659)	12/9/2021	N	12/9/2021	
D-30.	APD Crime Scene Photos (COA1764-2135)	12/9/2021	N	12/9/2021	
D-31.	Satellite Photo of Incident Area (COA2475)	12/9/2021	N	12/9/2021	
D-32.	APD Firearm Report (COA 3128-3135)	N			
D-33.	APD Firearm Report (COA 3117)	N			
D-34.	APD Forensic Science Laboratory Report (COA3119-3124)	12/9/2021	Withdrawn	12/9/2021	
D-35.	APD Forensic Science Laboratory Report (COA3125-3127)	12/9/2021	Withdrawn	12/9/2021	
D-36.	APD Forensic Science Laboratory Report (COA3091-3093)	N			
D-37.	C.V. of Albert Rodriguez	12/13/2021	N	12/13/2021	
D-38.	C.V. of Greg Karim	12/9/2021	N	12/9/2021	
D-39.	C.V. of Steven Aston	N			
D-40.	Guy in Background 175018795 (COA 1598)	12/9/2021	12/9/2021	12/9/2021	
D-41.	Guy in Background 175018795 (COA 1599)	12/9/2021	12/9/2021	12/9/2021	
D-42.	Guy in Background 175018795 (COA 1600)	12/9/2021	12/9/2021	12/9/2021	
D-43.	Guy in Background 175018795 (COA 1601)	12/9/2021	12/9/2021	12/9/2021	
D-44.	Guy in Background 175018795 (COA 1602)	12/9/2021	12/9/2021	12/9/2021	
D-45.	Guy in Background 175018795 (COA 1603)	12/9/2021	12/9/2021	12/9/2021	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES INDIVIDUALLY, K.N. MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN, MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, Plaintiff	§	A-19-CV-389-ML
V.	§	
SERGEANT RICHARD EGAL AND CORPORAL MAXWELL JOHNSON, Defendants.	§	

FINAL JUDGMENT

Before the court is the above-styled and numbered action. The parties consented to this court's jurisdiction, and the case was assigned to this court's docket for all purposes on February 25, 2021 (Dkt. #16).

On December 6, 2021, the court called the above-styled and numbered cause for trial on all claims alleged by Plaintiffs against Defendants Sergeant Richard Egal and Corporal Maxwell Johnson and the case proceeded with a jury of eight legally qualified jurors.

On December 15, 2021, the jury returned its verdict in favor of Plaintiffs. Accordingly, the court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that judgment is entered in favor of Plaintiffs Ida Renae Nobles, individually, K.N., minor, by and through his guardian Kadeidra Bell & L.N., minor, by and through his guardian Michelle Dashaun Smith as heirs at law to the estate of Landon Nobles.

Plaintiffs are entitled to recover the following compensatory damages, awarded by the jury in their verdict, jointly and severally from Defendants:

1. Physical pain and mental anguish experienced by Landon Nobles - $3,670,000.00

Plaintiff Ida Renae Nobles is entitled to recover the following compensatory damages, awarded by the jury in their verdict, jointly and severally from Defendants:

1. Loss of companionship and society sustained in the past - $2,000,000.00
2. Loss of companionship and society in reasonable probability will be sustained in the future - $4,300,000.00
3. Mental anguish sustained in the past - $3,500,000.00
4. Mental anguish in reasonable probability will be sustained in the future - $7,000,000.00

Plaintiff K.N., minor, by and through his guardian Kadeidra Bell, is entitled to recover the following compensatory damages, awarded by the jury in their verdict, from jointly and severally Defendants:

1. Loss of companionship and society sustained in the past - $500,000.00
2. Loss of companionship and society in reasonable probability will be sustained in the future - $11,200,000.00
3. Mental anguish sustained in the past - $250,000.00
4. Mental anguish in reasonable probability will be sustained in the future - $11,200,000.00

Plaintiff L.N., minor, by and through his guardian Michelle Dashaun Smith, is entitled to recover the following compensatory damages, awarded by the jury in their verdict, jointly and severally from Defendants:

1. Loss of companionship and society sustained in the past - $500,000.00
2. Loss of companionship and society in reasonable probability will be sustained in the future - $11,200,000.00
3. Mental anguish sustained in the past - $250,000.00

4. Mental anguish in reasonable probability will be sustained in the future - $11,200,000.00

Plaintiffs are entitled to recover the following punitive damages, awarded by the jury in their verdict, from these defendants:

Defendant Egal - $187,500.00

Defendant Johnson - $150,000.00

IT IS FURTHER ORDERED that any pending motions are hereby **TERMINATED**.

IT IS FURTHER ORDERED that Plaintiffs may file a motion for reasonable attorneys' fees and a bill of costs, with supporting documentation, no later than **fourteen days** after the entry of final judgment, pursuant to Local Rules CV-7 and CV-54.

IT IS FURTHER ORDERED that all relief not expressly granted is hereby **DENIED**.

IT IS FINALLY ORDERED that the case is hereby **CLOSED.**

SIGNED January 5, 2022.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS' PROPOSED BILL OF COST

TO THE HONORABLE JUDGE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Under FCRP 54(d), and 28 U.S.C. § 1920, Plaintiffs' submits their Bill of Costs as follows:

Date Incurred	Item	Costs
04/05/2019	Fee for Nobles et al Original Complaint	$400.00
4/12/2019	Process Service fee: Richard Egal	$105.00
4/16/2019	Process Service fee: Maxwell Johnson	$150.00
10/19/2020	Court Reporting: Oral Deposition of Chris Futrell& Julian Reyes/Exhibits	$1,665.15
12/21/2020	Court Reporting Oral Deposition: Andre Anderson	$1,011.00
12/21/2020	Court Reporting Oral Deposition: Elvis Ingram	$800.55
Total Cost:		$4,131.70

These items are correct and were necessarily incurred in this case and the services for which the fees have been charged were actually and necessarily performed. As prevailing parties Ida Renae Nobles, Kadeidra Bell, and Michelle Dashaun Smith respectfully ask the court to grant their bill of costs in the amount requested.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

I certify that on January 21st, 2022, I conferred with Monte Barton of the City of Austin Law Department, and he opposes the filing of this PLAINTIFFS'PROPOSED BILL OF COST.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

CERTIFICATE OF SERVICE

I certify that on the 21st day of January, 2022, I served a copy of PLAINTIFFS' BILL OF COST all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

AO 133 (Rev. 12/09) Bill of Costs

UNITED STATES DISTRICT COURT

for the

Western District of Texas

NOBLES et al

v.

SERGEANT RICHARD EGAL & CORPORAL MAXWELL JOHNSON

Case No.:1:19-cv-00389

BILL OF COSTS

Judgment having been entered in the above entitled action on 01/21/2022 (*Date*) against DEFENDANTS ,

the Clerk is requested to tax the following as costs:

Fees of the Clerk	$ 400.00
Fees for service of summons and subpoena	255.00
Fees for printed or electronically recorded transcripts necessarily obtained for use in the case	3,476.70
Fees and disbursements for printing	
Fees for witnesses *(itemize on page two)*	0.00
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case.	
Docket fees under 28 U.S.C. 1923	
Costs as shown on Mandate of Court of Appeals	
Compensation of court-appointed experts	
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	
Other costs *(please itemize)*	
TOTAL	$ 4,131.70

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

Declaration

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

☑ Electronic service ☐ First class mail, postage prepaid

☐ Other:

s/ Attorney: Edmund Davis & Charles Medearis

Name of Attorney: Edmund Davis & Charles Medearis

For: Plaintiffs: Ida Renae Nobles, Kadeidra Bell, & Michelle Dashaun Smith (*Name of Claiming Party*) Date: 01/21/2022

Taxation of Costs

Costs are taxed in the amount of _____ and included in the judgment.

_____ By: _____ _____

Clerk of Court *Deputy Clerk* *Date*

AO 133 (Rev. 12/09) Bill of Costs

UNITED STATES DISTRICT COURT

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)

NAME , CITY AND STATE OF RESIDENCE	ATTENDANCE Days	ATTENDANCE Total Cost	SUBSISTENCE Days	SUBSISTENCE Total Cost	MILEAGE Miles	MILEAGE Total Cost	Total Cost Each Witness
							$0.00
							$0.00
							$0.00
							$0.00
							$0.00
							$0.00
					TOTAL		$0.00

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:
"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:
RULE 54(d)(1)

Costs Other than Attorneys' Fees.

Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 day's notice. On motion served within the next 7 days, the court may review the clerk's action.

RULE 6

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

RULE 58(e)

Cost or Fee Awards:

Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

Austin Process LLC

INVOICE

Invoice #MST-2019004555
4/15/2019

Send Payments To:
Austin Process LLC
809 Nueces
Austin, TX 78701
Phone: (512) 480-8071
Fax: (512) 480-8072

Charles Medearis
710 W. 14th St.
Ste. C
Austin, TX 78701

NOTICE!
THIS HAS NOT BEEN FILED WITH THE COURT

Reference Number: Ida Nobles v. Sgt. Richard Egal, et al.

Case Number: Western 1:19-CV-00389

Plaintiff:
Ida Renae Nobles, individually, K.N., minor, by and through his Guardian Kadeidra Bell, & L.N., minor, by and through his Guardian Michelle Dashaun Smith as Heirs at law to the Estate of Landon Nobles

Defendant:
Sergeant Richard Egal, Corporal Maxwell Johnson, and the City of Austin

Received: 4/8/2019 Served: 4/12/2019 9:07 pm INDIVIDUAL/PERSONAL
To be served on: Richard Egal

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Process Service: Austin, TX	1.00	75.00	75.00
RUSH Service	1.00	30.00	30.00
TOTAL CHARGED:			$105.00
BALANCE DUE:			**$105.00**

NOTICE!
THIS HAS NOT BEEN FILED WITH THE COURT

Thank you for your business! Make Payments online through PayPal at At WWW.AUSTINPROCESS.COM
Tax Id: 26-4330588
Please write invoice number on your check or enclose a copy of this invoice with your payment. Payments not received within thirty days will be assesed a $10.00 late fee.

Copyright © 1992-2019 Database Services, Inc. - Process Server's Toolbox V8.0g

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
Western District of Texas

Case Number: 1:19-CV-00389

Plaintiff:
Ida Renae Nobles, individually, K.N., minor, by and through his Guardian Kadeidra Bell, & L.N., minor, by and through his Guardian Michelle Dashaun Smith as Heirs at law to the Estate of Landon Nobles

vs.

Defendant:
Sergeant Richard Egal, Corporal Maxwell Johnson, and the City of Austin

For:
Charles Medearis
710 W. 14th St.
Ste. C
Austin, TX 78701

Received by Austin Process LLC on the 8th day of April, 2019 at 4:40 pm to be served on **Richard Egal, Austin Police Department, 715 E. 8th Street, Austin, Travis County, TX 78701**.

I, Vivian Smith, being duly sworn, depose and say that on the **12th day of April, 2019** at **9:07 pm, I:**

INDIVIDUALLY/PERSONALLY delivered a true and correct copy of the **Summons in a Civil Action and Plaintiffs' Original Complaint** with the date of service endorsed thereon by me, to: **Richard Egal** at the address of: **Austin Police Department, 715 E. 8th Street, Austin, Travis County, TX 78701**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, of sound mind, have no interest in the above action. The facts stated in this affidavit are within my personal knowledge and are true and correct.

Subscribed and Sworn to before me on the 15th day of April, 2019 by the affiant who is personally known to me.

NOTARY PUBLIC

NICOLE M. HYBNER
My Notary ID # 129086987
Expires August 9, 2020

Vivian Smith
PSC-12617, Exp 05/31/2020

Austin Process LLC
809 Nueces
Austin, TX 78701
(512) 480-8071

Our Job Serial Number: MST-2019004555
Ref: Ida Nobles v. Sgt. Richard Egal, et al.

Copyright © 1992-2019 Database Services, Inc. - Process Server's Toolbox V8.0g

Austin Process LLC

INVOICE

Invoice #MST-2019004554
4/16/2019

Send Payments To:
Austin Process LLC
809 Nueces
Austin, TX 78701
Phone: (512) 480-8071
Fax: (512) 480-8072

Charles Medearis
710 W. 14th St.
Ste. C
Austin, TX 78701

Reference Number: Ida Nobles v. Sgt. Richard Egal, et al.

Case Number: Western 1:19-CV-00389

NOTICE!
THIS HAS NOT BEEN FILED WITH THE COURT

Plaintiff:
Ida Renae Nobles, individually, K.N., minor, by and through his Guardian Kadeidra Bell, & L.N., minor, by and through his Guardian Michelle Dashaun Smith as Heirs at law to the Estate of Landon Nobles

Defendant:
Sergeant Richard Egal, Corporal Maxwell Johnson, and the City of Austin

Received: 4/8/2019 Served: 4/16/2019 7:00 am INDIVIDUAL/PERSONAL
To be served on: Maxwell Johnson

ITEMIZED LISTING

Line Item	Quantity	Price	Amount
Process Service: Austin, TX	1.00	75.00	75.00
RUSH Service	1.00	30.00	30.00
Additional Addresses - Manor	1.00	45.00	45.00
TOTAL CHARGED:			$150.00

BALANCE DUE: **$150.00**

NOTICE!
THIS HAS NOT BEEN FILED WITH THE COURT

Thank you for your business! Make Payments online through PayPal at At WWW.AUSTINPROCESS.COM
Tax Id: 26-4330588
Please write invoice number on your check or enclose a copy of this invoice with your payment. Payments not received within thirty days will be assesed a $10.00 late fee.

Copyright © 1992-2019 Database Services, Inc. - Process Server's Toolbox V8.0g

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
Western District of Texas

Case Number: 1:19-CV-00389

Plaintiff:
Ida Renae Nobles, individually, K.N., minor, by and through his Guardian Kadeidra Bell, & L.N., minor, by and through his Guardian Michelle Dashaun Smith as Heirs at law to the Estate of Landon Nobles

vs.

Defendant:
Sergeant Richard Egal, Corporal Maxwell Johnson, and the City of Austin

For:
Charles Medearis
710 W. 14th St.
Ste. C
Austin, TX 78701

Received by Austin Process LLC on the 8th day of April, 2019 at 4:40 pm to be served on **Maxwell Johnson, Austin Police Department, 715 E. 8th Street, Austin, Travis County, TX 78701**.

I, Vivian Smith, being duly sworn, depose and say that on the **16th day of April, 2019** at **7:00 am, I:**

INDIVIDUALLY/PERSONALLY delivered a true and correct copy of the **Summons in a Civil Action and Plaintiffs' Original Complaint** with the date of service endorsed thereon by me, to: **Maxwell Johnson** at the address of: **Austin Mounted Patrol, 8011 E. Parmer Ln., Manor, Travis County, TX 78653**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, of sound mind, have no interest in the above action. The facts stated in this affidavit are within my personal knowledge and are true and correct.

Subscribed and Sworn to before me on the 16th day of April, 2019 by the affiant who is personally known to me.

NOTARY PUBLIC

NICOLE M. HYBNER
My Notary ID # 129086987
Expires August 9, 2020

Vivian Smith
PSC-12617, Exp 05/31/2020

Austin Process LLC
809 Nueces
Austin, TX 78701
(512) 480-8071

Our Job Serial Number: MST-2019004554
Ref: Ida Nobles v. Sgt. Richard Egal, et al.

Copyright © 1992-2019 Database Services, Inc. - Process Server's Toolbox V8.0g

Creating Solutions, One Word at a Time
Ken Owen & Associates, L.P.
Certified Court Reporters

Ken Owen & Associates, L.P.
801 West Avenue
Austin, Texas 78701
www.kenowen.com
(512) 472-0880 (800) 829-6936

INVOICE

Edmund "Skip" Davis
ATTN: Edmund Skip Davis
Law Office of Edmund "Skip" Davis
P.O. Box 201123
Austin , TX 78720-1123

Invoice Number: **109627**
Invoice Date: 11/12/2020

In Re: IDA Renae Nobles, et al vs. City of Austin, et al
Witness(s): Chris Futrell / Julian Reyes
Attendance Date: 10/19/2020, 9:00 a.m.
Reporter: Annette E. Escobar
Location: Zoom

Description	Amount
Deposition - Chris Futrell	
Original - 130 pgs. @ $5.80	754.00
Administrative Fee	77.00
Zoom Services	175.00
Exhibits	34.70
E-Transcript & PDF	30.00
Deposition - Julian Reyes	
Original - 71 pgs. @ $5.80	411.80
Administrative Fee	77.00
Zoom Services	50.00
Exhibits	25.65
E-Transcript & PDF	30.00
Invoice Total:	1665.15
Payments:	1665.15
Total Amount Due:	0.00

We Appreciate Your Business

PAYMENT DUE UPON RECEIPT

Tax ID: 20-2085944

MasterCard - Visa

Please detach bottom portion and return with payment

Invoice Number: 109627
Invoice Date: 11/12/2020
Amount Due: **$0.00**
Amount Enclosed: $_____
CREDIT CARDS ACCEPTED

Cardholder`s Name:
Card Number:
Exp. Date: Phone:
Billing Address:
Zip: Security Code:

INVOICE

THE LEGAL CONNECTION INC.
Corporate Office: 512.892.5700

Invoice No.	Invoice Date	Payment Terms
132502	1/7/2021	Net 15
Order No.	**Order Date**	**Case No.**
36203.001	12/14/2020	1:19-CV-00389-LY

Case Name

IDA RENAE NOBLES, ET AL VS. CITY OF AUSTIN, ET AL

Records Pertaining To

ANDRE ANDERSON (ZOOM Oral Deposition Scheduled 12/21/2020)

Charles Medearis
LAW OFFICES OF CHARLES MEDEARIS
710 W. 14th Street, Suite C
Austin, TX 78701

Records From	Ordered By	Reference Info.
ORAL DEPOSITION ,	Charles Medearis LAW OFFICES OF CHARLES MEDEARIS 710 W. 14th Street, Suite C Austin, TX 78701	Client Matter No.: Claim No.: Insured: D/O/L:

ANDRE ANDERSON (ZOOM Oral Deposition Scheduled 12/21/2020) 1,011.00
(ORAL DEPOSITION)
(TAXABLE $1,011.00)

TOTAL DUE >>> **$1,011.00**
AFTER 3/8/2021 PAY $1,112.10

Thank you for your business! For questions or a list of other services, please go to www.TLC-Texas.com or call 512.892.5700.

Tax ID: 26-4693089

Please detach bottom portion and return with payment.

Charles Medearis
LAW OFFICES OF CHARLES MEDEARIS
710 W. 14th Street, Suite C
Austin, TX 78701

Invoice No. : 132502
Invoice Date : 1/7/2021
Total Due : $1,011.00
AFTER 3/8/2021 PAY $1,112.10

Remit To: **THE LEGAL CONNECTION, INC.**
8656 W Hwy 71, Bldg F, Suite 200
Austin, TX 78735

Order No. : 36203.001
BU ID : MAIN
Case No. : 1:19-CV-00389-LY
Case Name : IDA RENAE NOBLES, ET AL VS. CITY OF AUSTIN, ET AL

INVOICE

THE LEGAL CONNECTION INC.
Corporate Office: 512.892.5700

Invoice No.	Invoice Date	Payment Terms
132821	1/13/2021	Net 15
Order No.	**Order Date**	**Case No.**
36348.001	12/21/2020	1:19-CV-00389-LY

Case Name

IDA RENAE NOBLES, ET AL VS. CITY OF AUSTIN, ET AL

Records Pertaining To

ELVIS INGRAM (ZOOM Oral Deposition Scheduled 12/22/2020)

Charles Medearis
LAW OFFICES OF CHARLES MEDEARIS
710 W. 14th Street, Suite C
Austin, TX 78701

Records From	Ordered By	Reference Info.
ORAL DEPOSITION ,	Charles Medearis LAW OFFICES OF CHARLES MEDEARIS 710 W. 14th Street, Suite C Austin, TX 78701	Client Matter No.: Claim No.: Insured: D/O/L:

ELVIS INGRAM (ZOOM Oral Deposition Scheduled 12/22/2020) (ORAL DEPOSITION)	800.55
TOTAL DUE >>>	**$800.55**
AFTER 3/14/2021 PAY	$880.61

Thank you for your business! For questions or a list of other services, please go to www.TLC-Texas.com or call 512.892.5700.

Tax ID: 26-4693089

Please detach bottom portion and return with payment.

Charles Medearis
LAW OFFICES OF CHARLES MEDEARIS
710 W. 14th Street, Suite C
Austin, TX 78701

Invoice No. : 132821
Invoice Date : 1/13/2021
Total Due : $800.55
AFTER 3/14/2021 PAY $880.61

Remit To: **THE LEGAL CONNECTION, INC.**
8656 W Hwy 71, Bldg F, Suite 200
Austin, TX 78735

Order No. : 36348.001
BU ID : MAIN
Case No. : 1:19-CV-00389-LY
Case Name : IDA RENAE NOBLES, ET AL VS. CITY OF AUSTIN, ET AL

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS' MOTION FOR & MEMORANDUM IN SUPPORT OF ATTORNEY FEES

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

COMES NOW, Plaintiffs Ida Renae Nobles, individually, K.N., Minor, By And Through His Guardian Kadeidra Bell, & L.N., Minor, By And Through His Guardian Michelle Dashaun Smith As Heirs At Law To The Estate Of Landon Nobles (hereinafter referred to as "Plaintiffs") and they file this motion pursuant to 42 USC §1983, and 42 USC §1988, and FRCP 54(d)(2). Plaintiffs request that this Court to award attorney fees identified in the exhibits attached and as supported by authorities in this Motion as follows:

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. Landon Nobles was shot and killed on May 7th, 2017 by Austin Police Officers Sergeant Richard Egal, Corporal Maxwell Johnson.
2. Plaintiffs retained Edmund "Skip" Davis and Charles Medearis to investigate and prosecute

their claims in May 2018. *See Exhibit 1 and 2,* Affidavits of Edmund "Skip" Davis and Charles Medearis, respectively.

3. Plaintiffs filed suit against Sergeant Richard Egal, Corporal Maxwell Johnson, and the City of Austin for violations of Landon Nobles' constitutional rights pursuant to 42 U.S.C. §1983 on April 5th, 2019.

4. The City of Austin filed a Motion for Summary Judgement and Plaintiffs dismissed the City of Austin from this lawsuit on July 15, 2021. (Doc. 36)

5. The case was called to trial on December 6th, 2021, and the jury rendered a verdict in favor of Plaintiffs on December 15th, 2021.

6. The jury found for the Plaintiffs on the §1983 claims and awarded Plaintiffs a total of $67,107,500. The acts of both Officers, Egal and Johnson specifically, and the actions of others in the Austin Police Department in general, were closely entwined with and implicated in the same legal and factual issues throughout the case. Those other officers, though not named parties in the lawsuit in some manner participated in the incident and were subjects of thorough investigation by Plaintiffs in preparation of filing the lawsuit, during the review of evidence produced by Defendants during the discovery process, and ultimately developed as information for use during the actual trial.

7. On January 5th, 2022, Judge Mark Lane signed the Final Judgement for Plaintiffs. The Final Judgement was entered on January 7th, 2022.

II. ARGUMENT AND AUTHORITIES

8. Plaintiffs are entitled to all necessary and reasonable attorneys' fee, litigation expenses, and cost because they are the prevailing parties in a suit brought under the Civil Rights Act. 42 U.S.C. §1988 (b). The statute 42 USC §1988 provides authority for the court to grant

reasonable attorney fees to the prevailing party in any action or proceeding to enforce a claim under 42 USC §1983. Plaintiffs' claims were brought as a private enforcement action under 42 USC §1983. Plaintiffs were the prevailing party in this lawsuit.

9. For a party to recover attorney fees, that party must be determined to be the prevailing party. The prevailing party is the party that succeeds on any significant issue in the litigation, and when the success provides some benefit that had been sought by the party. *Hensley v. Eckerhart,* 461 U.S. 424, 433 (1983); see *Lefemine v. Wideman*, 133 S. Ct. 9, 11 (2012). In this case, Plaintiffs are the prevailing party because jury returned a verdict for the Plaintiffs on the issue of Officer Egal's and Officer Johnson's liability for the violations of Plaintiff's constitutional rights under §1983, and also because Plaintiff was awarded money damages as a result of their success on the issue of liability.

10. The amount of attorneys' fees a prevailing party is entitled to recover is determined by calculating "the reasonable number of hours expended on the litigation multiplied by a reasonable hourly rate." *Blanchard v. Bergeron,* 489 U.S. 87, 89 (1988).

11. A reasonable hourly rate is generally based on the "prevailing market rates in the relevant community." *Blum v. Stenson,* 465 U.S. 886, 895 (1984).

12. Reasonableness and necessity is supported by the affidavits of attorneys Edmund "Skip" Davis and Charles Medearis both of which are filed along with this Motion.

    (a) Edmund "Skip" Davis spent 206 hours and charged the prevailing rate of $400.00 per hour. Edmund "Skip" Davis is the primary attorney at the Law Offices of Edmund "Skip" Davis, totaling $82,400. (Exhibit # 1).

(b) Charles Medearis spent 284 hours and charged the prevailing rate of $300.00 per hour. Charles Medearis is the primary attorney at the Law Offices of Charles Medearis, totaling $85,200. (Exhibit # 2).

13. Plaintiffs paid close attention to avoid billing where the work performed by the lawyers was duplicative. On occasion both attorneys worked on a particular action or issue, but each attorney worked on different aspects of the issue, so that billing by two lawyers is not duplicative, but rather where both attorneys attended to a particular task each billed for his particular aspect of the action. Additionally, Plaintiffs charged only for the actual time spent on phone calls and emails themselves and only where those efforts exceeded five minutes or were critical to either investigation and/ or trial strategies, the pleading, trial performance, or future appellate issues. Neither the Law Offices of Edmund "Skip" Davis nor the law Office of Charles Medearis charges for phone or email services themselves, but bills only for the attorney time required while using those services.

14. Plaintiffs request that the Court consider using a "lodestar calculation" because the lodestar calculation provides a simple and objective measure of calculating attorney's fees. The U.S. Supreme Court "adopted the lodestar approach as the centerpiece of attorney's fee awards." *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989). Under this approach, the Court would assess the amount of attorney fees by looking at "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart,* 461 U.S. 424, 433 (1983).

15. The primary Texas formula for considering and awarding attorney's fees are laid out as the *Andersen* factors:

(1) The time and labor required,

(2) The novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;

(3) The likelihood . . . that the acceptance of the particular employment will preclude other employment by the lawyer;

(4) The fee customarily charged in the locality for similar legal services;

(5) The amount involved and the results obtained;

(6) The time limitations imposed by the client or by the circumstances of the lawsuit itself;

(7) The nature and length of the professional relationship with the client;

(8) The experience, reputation, and ability of the lawyer performing the services; and

(9) Whether the fee is fixed or is contingent on results obtained or based on the uncertainty of collection before the legal services have been rendered.

Arthur Andersen & Co. v. Perry Equip. Corp., 945 S.W.2d 812, 818-19 (Tex. 1997); see also: Texas Disciplinary Rules of Professional Conduct 1.04.

16. In determining the reasonableness of the attorney fee, the Court may adjust the lodestar calculation on the basis of the *Johnson* factors :

(1) The time and labor required;

(2) The novelty and difficulty of the questions;

(3) The level of skill required;

(4) The effect on other employment by the attorney;

(5) The customary fee;

(6) Whether the fee is fixed or contingent;

(7) Time limitations imposed by the client or the circumstances;

(8) The amount involved and the results obtained;

(9) The experience, reputation, and ability of the attorneys;

(10) The "undesirability" of the case;

(11) The nature and length of the professional relationship with the client; and

(12) Awards in similar cases.

Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974).

CONCLUSION

Plaintiffs Ida Rene Nobles (individually), and also K.N., a minor by and through his Guardian Kadiedre Bell, and also L.N., a minor by and through his Guardian Michelle Dashaun Smith, each as heirs to the estate of Landon Nobles are the prevailing parties in this §1983 claim against Officers Egal and Johnson. Under §1988, Plaintiffs may therefore claim reasonable attorney fees. For these reasons and all the other reasons and authorities cited heretofore, the Plaintiffs humbly ask that the Court award those attorney fees to them.

Plaintiffs are the prevailing plaintiffs in their §1983 claims against Sergeant Richard Egal and Corporal Maxwell Johnson. Under §1988, Plaintiffs therefore claim reasonable attorney fees. For these reasons, Plaintiffs respectfully ask this Court for an award of reasonable attorneys' fees in the amount of $82,400 for Edmund "Skip" Davis and $85,200 for Charles Medearis.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

I certify that on January 21st, 2022, I conferred with Monte Barton of the City of Austin Law Department, and he opposes the filing of this *Plaintiff's Motion For Attorney Fees*.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

CERTIFICATE OF SERVICE

I certify that on the 21st day of January, 2022, I served a copy of *Plaintiff's Motion For Attorney Fees* to all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF
TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, Plaintiffs, v. SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON Defendants.	§ § § § § § § § § § § § § § §	CIVIL ACTION NO. 1:19-cv-00389-ML

AFFIDAVIT OF EDMUND M. "SKIP" DAVIS IN SUPPORT OF MOTION FOR ATTORNEY FEES & EXPENSES

Before me, the undersigned notary, on this day personally appeared Edmund M. Skip Davis, the affiant, a person whose identity is known to me. After I administered an oath, affiant testified as follows:

1. "My name is Edmund M. "Skip" Davis. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I affirm that the facts stated in the Plaintiff's Motion for & Memorandum in Support of Attorney Fees & Expenses, filed 21 January, 2022 with this Court, are within my personal knowledge and are true and correct.

3. I am an attorney licensed to practice law in the State of Texas and in the US Courts for the Western District of Texas, Austin Division. I have been practicing in the State of Texas for 21 years, and in that time I have tried several complicated jury trials. I am in good standing with the State Bar of Texas, and I enjoy a good reputation as a litigation attorney. I have been a member of Texas Criminal Defense Lawyers Association for 21 years, and also with several

other professional associations, including the Travis County /Austin Bar, Capital Area Trial Lawyers Association. I have tried several cases to a jury of similar difficulty and legal complexity and involving similar fact and similar legal issues as were presented in this case.

4. This case was extraordinarily complicated, more so than most, in my experience. Due to the difficult and complex legal questions involved in §1983 cases similar to and including this case, myself, and the other lawyer representing the Plaintiffs, Mr. Charles Medearis, and my legal staff were required to spend many, many hours on the case. This case took up many more hours than most similar cases due in large part to the sheer volume of digital evidence. The case also required us to research and prepare to litigate by devising trial strategy for such challenging and complicated legal issues such as "qualified immunity" and 4th Amendment seizure law involving the use of deadly force by government actors (with a keen eye for the preserving the record for appellate review in the event that Plaintiffs did not prevail at trial).

5. I am a solo practitioner and I lost other employment opportunities due to this litigation. I had to forego other lucrative opportunities and other new cases to attend to this case because of enormous amount of time required of this case, along with the novelty and difficulty of this case.

- The details of the time spent and type of work performed by each attorney and staff member, and total amount for each are reflected in the time records attached to Plaintiff's Motion for & Memorandum in Support of Attorney Fees & Expenses:

Ex. #	Time Record Of:	Amount (Hours)	Amount ($)
1	Affiant, Edmund M. "Skip" Davis	206.00	82,400
2	Attorney Charles Medearis	284.00	85,200
	Total	494.00	167,600

7. I am familiar with the factors that may be considered in determining the reasonableness of an attorney's fee set forth in Rule 1.04(b) of the Texas Disciplinary Rules of Professional Conduct.

8. This venerable court needs no expert to opine that these attorney fees are reasonable for the services performed, and these services were necessary for the proper representation of the Plaintiffs Ida Renae Nobles, Kadeidra Bell, and Michelle Smith in this case.

SIGNED this 21st day of January 2022.

EDMUND M. DAVIS, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 21st

day of January, 2022.

Michelle Batiste

Notary Public, State of Texas

Printed Name: MICHELLE BATISTE

My Commission Expires: DECEMBER 18, 2023

DATE	DESCRIPTION	TIME	AMOUNT
6/21/2017	Interview Desirey Simpson who did not testify but was witness and made a video that was used extensively for deposition and was prepared at trial to be used to impeach D witnesses FRE 805	1.25	$ 500.00
5/12/2017	Email with investigator Joseph Martinez	0.25	$ 100.00
5/12/2017	Meet with investigator Joseph Martinez to develop investigation strategy	2.5	$ 1,000.00
5/12/2017	Canvass for witnesses	2	$ 800.00
5/13/2017	Visit Scene w Investigator and Medearis	3	$ 1,200.00
5/17/2017	Interview witnesses some of whom declined to participate	3	$ 1,200.00
5/23/2017	Sign initial letter of intent and contract w Reneae Nobles, et al.	3	$ 1,200.00
5/28/2017	Interview Darrell Daniels	3	$ 1,200.00
5/30/2017	Interview Chris Futrell	2	$ 800.00
6/13/2017	Meet w LN women whose Bday witnesses at Iron Cactus, who did not testify but were prepared to testify, and gave important information used at trial for impeachment against police witnesses.Belinda Nobles sister, Nesce friend, and Ashley.	2	$ 800.00
6/16/2017	Meet w LeeAnn Lopez	2	$ 800.00
6/17/2017	Review w LeeAnn Lopez FB videos and other internet- not discovery	3	$ 1,200.00
6/23/2017	Meet w Clients to dscuss case	2	$ 800.00
6/28/2017	Draft Discovery Request	1	$ 400.00
7/12/2017	Assemble discovery for Defendants	10	$ 4,000.00
7/27/2017	Review Discovery from Defendants and City	10	$ 4,000.00
8/23/2017	Discovery Review	2	$ 800.00
9/8/2017	Meeting 1 w Travis DA	2	$ 800.00
3/20/2018	Deposition Elvis Ingram	3	$ 1,200.00
5/15/2018	Meet w Family LN children; LN Mother	3	$ 1,200.00
3/20/2019	Review 1st draft, correct and redraft Lawsuit Complaint	3	$ 1,200.00
4/3/2019	Review final draft Original Complaint	1.25	$ 500.00
5/3/2019	Read and review Defendants Answer	1	$ 400.00
6/30/2019	Draft and review and confer and exchange proposed scheduling Order	1	
7/30/2019	Scheduling Order Hearing (in chambers)	0.75	$ 300.00
2/28/2020	Confer CM re Discovery Schedule	1	$ 400.00
5/27/2020	Meeting 2 w Travis DA	2.25	$ 900.00
5/30/2020	Confer w CM re Witness list for depos	2	$ 800.00
7/1/2020	Review videos discovery from Defendants and city	2	$ 800.00
8/31/2020	Confer CM email witness depos	1	$ 400.00
10/17/2020	Prep for deposition Chris Futrell and Julian Reyes	3	$ 1,200.00
10/19/2020	Deposition Chris Futrell	4	$ 1,600.00
10/19/2020	Deposition Julian Reyes	2	$ 800.00

12/18/2020	Prep Andre Anderson depo	0.5	$	200.00
12/21/2020	Deposition Andre Anderson	2	$	800.00
2/8/2021	Confer CM discovery	2	$	800.00
2/12/2021	Review MSJ for City of Austïn	2	$	800.00
2/24/2021	Agreed Motion to refer to Magistrate	1	$	400.00
2/24/2021	Draft Agreed Proposed amended Scheduling Order	1.5	$	600.00
2/24/2021	Confer CM re consent to magistrate	1	$	400.00
2/26/2021	Review Discovery for evidence to support Monell liability	5.75	$	2,300.00
2/26/2021	Read and Analyze case caselaw for MSJ	3.5	$	1,400.00
2/27/2021	Draft and review P Motion to dismiss City of Austin	2	$	800.00
3/29/2021	Consult w Richard Ernest Ballistics expert	1.25	$	500.00
5/15/2021	Review Defendant Motion to Strike Police Practices expert Keith Howse. Meet w CM	1	$	400.00
5/18/2021	Draft 2 of P response to D Motion to strike Police Practices expert Keith Howse	3.5	$	1,400.00
5/20/2021	Confer CM re plaintiff response to MT exclude	1	$	400.00
5/29/2021	Draft Motion to Compel production of Gun etc	2.5	$	1,000.00
6/9/2021	Draft proposed Agreed Order to Produce Evidence to P Ballistics Expert	1.5	$	600.00
7/8/2021	Hearing Motion to Strike Police Practices expert Keith Howse	1	$	400.00
7/8/2021	Coordinate w Expert Keith Howse re Judge Lane's order to supplement the Expert report	3	$	1,200.00
11/27/2021	Review and consult w Richard Ernest re Ballistics Report	2	$	800.00
11/29/2021	Review Defendants' Motion to Strike Plaintiff Ballistics Expert	0.5	$	200.00
11/29/2021	Phone call w Joshua Kalu (eyewitness)	0.5	$	200.00
12/1/2021	Prepare Plaitiff Motion to testify via zoom to D Ballistics Expert	0.75	$	300.00
12/2/2021	Final Pre-trial hearing	1	$	400.00
12/5/2021	Prep for Jury Selection and Opening Stmt.	4	$	1,600.00
12/6/2021	Jury selection and opening statements	8	$	3,200.00
12/7/2021	Meet w Keith Howse (Police Practices Expert)	2.5	$	1,000.00
12/7/2021	Jury Trial Day 2	9	$	3,600.00
12/7/2021	Prep for Jury Trial Day 3	2	$	800.00
12/7/2021	Prep witness Julian Reyes	1	$	400.00
12/8/2021	Jury Trial Day 3	8	$	3,200.00
12/8/2021	Prep Jury Trial Day 4	3	$	1,200.00
12/9/2021	Jury Trial day 4	8	$	3,200.00
12/9/2021	Prep Jury Trial Day 5	3	$	1,200.00
12/13/2021	Prep for closing arguments	4	$	1,600.00
12/13/2021	Prep Jury Trial Day 6	3	$	1,200.00
12/13/2021	Jury Trial Day 5	8	$	3,200.00
12/14/2021	Jury Trial Day 7	8	$	3,200.00
12/14/2021	Charge Conference and Closing Arguments	5	$	2,000.00
12/14/2021	Awaiting verdict Jury trial Day 6	4	$	1,600.00
12/15/2021	Jury verdict	0.5	$	200.00
	Subtotal	206	$	82,400.00
	Other			
			$	-
	Total as 12/15/2021		$	82,400.00

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

AFFIDAVIT OF CHARLES MEDEARIS IN SUPPORT OF MOTION FOR ATTORNEY FEES

Before me, the undersigned notary, on this day personally appeared Charles Medearis, the affiant, a person whose identity is known to me. After I administered an oath, affiant testified as follows:

I. My name is Charles Medearis. I am competent to make this affidavit. I have never been convicted of a felony or any crime involving moral turpitude. I affirm that the facts stated in the Plaintiff's Motion for & Memorandum in Support of Attorney Fees, filed January 21st, 2022 with this Court, are within my personal knowledge and are true and correct.

2. I am an attorney licensed to practice in the State of Texas and the Western District of Texas, Austin Division. I have been licensed and in good standing since 2009.

3. Ida Renae Nobles, Kadeidra Bell, and Michelle Dashaun Smith retained Edmund Davis and I on June 23rd, 2017 to represent them as their attorney in this suit for recovery of damages pursuant

to 42 U.S.C. §1983 for the violation of Landon Nobles constitutional rights that resulted in his death against Austin Police Department officers Sergeant Richard Egal, Corporal Maxwell Johnson, and the City of Austin.

4. The rate claimed by myself is $300 per hour. The rate claimed by my co-counsel Edmund Davis is $400 per hour.

5. This case required Edmund Davis and I to devote countless hours to analyze and address challenging legal issues in the context of qualified immunity.

6. I am a solo practitioner and lost other employment opportunities due to this litigation.

7. I am familiar with the factors that may be considered in determining the reasonableness of an attorney's fee set forth in Rule 1.04(b) of the Texas Disciplinary Rules of Professional Conduct.

8. The result achieved in this case is extraordinary. I am personally unaware of any officer involved shooting cases resulting in a verdict of this magnitude.

9. The details of the time spent and type of work performed by each attorney and total amount for each are reflected in the time records attached to Plaintiff's Motion for & Memorandum in Support of Attorney Fees & Expenses:

Ex. #	**Time Record Of:**	**Amount (Hours)**	**Amount ($)**
1	Affiant, Charles Medearis	284	$85,200.00
2	Co-Counsel Edmund Davis	206	$82,400.00
	TOTAL	490	$167,600.00

10. These fees were reasonable and for the services performed, and these services were necessary for the proper representation of Ida Renae Nobles, Kadeidra Bell, and Michelle Dashaun Smith in this case.

SIGNED this 21st day of January, 2022.

CHARLES MEDEARIS

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 21st day of January, 2022.

CRISTINA VASQUEZ
Notary Public, State of Texas
Comm. Expires 09-20-2023
Notary ID 132183466

Notary Public, State of Texas

CHARLES MEDEARIS
ATTORNEY HOURLY RECORD
NOBLES et al v. SERGEANT RICHARD EGAL &
CORPORAL MAXWELL JOHNSON
1:19-cv-00389

Date	HOURS	Description
5/23/17	3	Meeting with Nobles family, Ida Nobles, Kadeidra Bell, and Michelle Smith to discuss events from Landon Nobles death that occurred on May 7th, 2017
9/5/17	.25	Reviewed letter from Travis County Attorney's Office requesting a ruling from Attorney General of Texas to withhold Landon Nobles autopsy report
9/7/17	.50	Requested Embalmers report from A Life Celebration Funeral Home. Reviewed the Embalmers Report
9/12/17	.50	Reviewed letter from Attorney General of Texas Office regarding request for Landon Nobles' autopsy report
11/27/18	1	Reviewed Travis County District Attorney's Report Declining Prosecution of Ricard Egal and Maxwell Johnson
5/15/18	2	Meeting with Ida Nobles, Kadeidra Bell, and Michelle Smith to discuss lawsuit
3/19/19	3	Drafted Plaintiffs' Original Complaint
4/3/19	4	Revise and edit Plaintiffs' Original Complaint
4/8/19	.25	Drafted Summons for Richard Egal, Maxwell Johnson, City of Austin
5/3/19	.50	Phone call and Email Correspondence with ATX Process to serve Complaint
5/3/19	1	Reviewed Defendants' Answer to Plaintiffs' Original Complaint
6/30/19	.5	Drafted Proposed Scheduling Order
6/30/19	1	Conferred with Edmund Davis about potential scheduling conflicts and pretrial strategy
10/29/19	2	Reviewed Defendant's Initial Disclosures and corresponding documents
11/1/19	2	Reviewed Defendants' Request for Production and Interrogatories
1/13/20	1	Initial Pretrial Conference at Courthouse
2/28/20	1	Conferred with Edmund Davis about Discovery Schedule
5/14/20	3	Drafted Plaintiffs' Initial Disclosure Reponses
5/18/20	2	Drafted Plaintiffs' Request for Production to City of Austin, Richard Egal, and Maxwell Johnson

5/25/20	3	Drafted Plaintiffs' responses Defendants' Interrogatories
5/26/20	3	Revise Plaintiffs' Request for Production to City of Austin, Richard Egal, and Maxwell Johnson. Reviewed Videos and Documents requested in Defendants' Request for Production.
5/26/20	1	Reviewed and Revised Edmund Davis' edits Plaintiffs' Responses to Defendants' Interrogatories.
5/27/20	4	Reviewed and Revised Plaintiffs' Responses to Defendants' Request for Production, Defendant's Interrogatories, and Plaintiffs' Initial Disclosures.
5/28/20	1	Conference with Client Ida Renae Nobles regarding Defendants' Interrogatories and Request for Production.
5/28/20	1	Conference with Client Kadeidra Bell regarding Defendants' Interrogatories and Request for Production
5/28/20	3	Reviewed Videos and Documents requested in Defendants' Request for Production
5/29/20	2	Final edits to Plaintiffs' Responses to Defendants' Request for Production, Defendant's Interrogatories, and Plaintiffs' Initial Disclosures.
5/30/20	2	Conferred with Co-Counsel Edmund Davis about Witness List and Witnesses to Notice for Depositions
6/1/20	1	Reviewed and Revised Plaintiffs' First Request for Production to Defendants.
6/8/20	1	Reviewed Defendants Motion For Protective Order.
7/1/20	3	Reviewed Defendants' Responses To Plaintiffs' First Request For Production.
8/31/20	1	Conferred with Co-Counsel Edmund Davis and reviewed Email correspondence in regards to scheduling witness Depositions.
10/14/20	.50	Drafted Deposition Notices for Chris Futrell, Julian Reyes, Elvis Ingram, and Andre Anderson October Depositions.
10/15/20	1	Prepared and reviewed Deposition Exhibits.
10/19/20	4	Assisted Co-Counsel with Oral Deposition of Chris Futrell via ZOOM. Organized and offered exhibits during deposition.
10/19/20	2	Assisted Co-Counsel with Oral Deposition of Julian Reyes via ZOOM. Organized and offered exhibits during deposition
10/19/20	.50	Provided Deposition Exhibits to Ken Owen & Associates, L.P. Court Reporter.
12/10/20	1	Reviewed Chris Futrell's October 19th, 2020 deposition transcript.
12/11/20	1	Reviewed Julian Reyes' October 19th, 2020 deposition transcript.
12/19/20	2	Prepared for Deposition of Andre Anderson
12/20/20	2	Prepared for Deposition of Andre Anderson
12/21/20	2	Conducted Oral Deposition of Andre Anderson via ZOOM
12/22/20	2	Assisted Co-Counsel with Oral Deposition of Elvis Ingram via

		ZOOM. Organized and offered exhibits during deposition.
2/8/21	2	Conferred with Edmund Davis about Discovery.
2/13/21	2	Reviewed Defendant's City of Austin Motion For Summary Judgment.
2/24/21	2	Reviewed and Revised Motion To Continue Trial Date and Amend Scheduling Order.
2/24/21	1	Conferred with Edmund Davis about consenting to Magistrate.
2/24/21	.50	Drafted Plaintiffs' Consent to Trial by Magistrate
2/25/21	1	Conferred with Edmund Davis about Motion To Continue Trial Date and Amend Scheduling Order.
2/25/21	2	Reviewed and Revised Plaintiffs' Motion To Extend Deadline To Respond to City of Austin's Motion For Summary Judgment
3/3/21	2	Meeting Ida Nobles regarding case update.
3/9/21	1	Status Conference via ZOOM
3/24/21	5	Reviewed Discovery provided from Defendants'
3/25/21	1	Drafted email for potential expert witnesses
3/27/21	.25	Drafted email to Expert Witness Keith Howse.
3/28/21	.25	Reviewed Keith Howse CV and Fee Schedule
3/30/21	.50	Email to Ballistic Expert Richard Ernest regarding Ballistic Evidence
3/31/21	1	Conferenced with Expert Richard Ernest regarding Ballistic Evidence
4/28/21	2	Reviewed Expert Report of Keith Howse.
4/29/21	2.5	Drafted Plaintiffs' Designation of Potential Witnesses, Testifying Expert Witnesses and Proposed
4/30/21	1	Revised Plaintiffs' Designation of Potential Witnesses, Testifying Expert Witnesses and Proposed
5/14/21	2.5	Reviewed Defendant's Motion to Exclude Plaintiffs' Expert and Caselaw
5/17/21	2	Drafted Plaintiffs' Response in Opposition to Defendant's Motion to Exclude Expert
5/18/21	2	Reviewed Caselaw for Plaintiffs' Response in Opposition to Defendant's Motion to Exclude Expert
5/19/21	2	Revised Plaintiffs' Response in Opposition to Defendant's Motion to Exclude Expert
5/20/21	2	Revised Plaintiffs' Response in Opposition to Defendant's Motion to Exclude Expert
5/20/21	1	Conferenced with Edmund Davis regarding Revised Plaintiffs' Response in Opposition to Defendant's Motion to Exclude Expert
5/21/21	3.5	Revised Final Draft of Plaintiffs' Response in Opposition to Defendant's Motion to Exclude Expert and conferenced with Edmund Davis about our Response
5/27/21	.5	Reviewed Defendants' Reply to Plaintiffs' Response in Opposition to Defendant's Motion to Exclude Expert
5/27/21	.5	Reviewed and Organized Exhibits for Plaintiffs' Motion To

		Compel Release of Evidence to Expert
5/28/21	1	Revised Plaintiffs' Motion To Compel Release of Evidence to Expert
5/28/21	1	Reviewed Caselaw in Plaintiffs' Motion To Compel Release of Evidence to Expert
6/7/21	.50	Reviewed Joint Advisory to the Court proposed by Defense Counsel
6/8/21	.50	Conferenced with Edmund Davis about Joint Advisory to the Court regarding Plaintiffs' Motion to Compel
6/9/21	2	Reviewed and Revised Order to Compel Discovery and Release of Evidence to Plaintiffs' Expert For Inspection and Testing
6/17/21	2	Reviewed Defendants' Expert Report of Albert Rodriguez
6/17/21	1	Conferenced with Edmund Davis regarding Expert Report of Albert Rodriguez
6/24/21	.50	Reviewed Defendants' Witness Exhibit and Expert List
6/25/21	.25	Reviewed Proposed Order to Transfer Evidence
7/7/21	2	Prepare for Hearing on Defendants' Motion to Exclude Plaintiff's Expert Keith Howse
7/8/21	1	Conference with Keith Howse regarding Motion to Exclude Plaintiff's Expert
7/8/21	1	Hearing at Courthouse for Motion to Exclude Plaintiff's Expert Keith Howse
7/8/21	3	Conference with Keith Howse and Edmund Davis regarding supplementing Expert Report
7/12/21	1	Drafted and Researched Joint Stipulation and Order Dismissing Defendant City of Austin
8/3/21	1	Reviewed Expert Keith Howse's Supplemental Report
8/4/21	2	Conferenced with Edmund Davis regarding Expert Supplemental Report and trial strategy
10/14/21	3	Drafted Voir Dire Questions
11/2/21	2	Prepared Pre-Mediation Report
11/3/21	2	Revised Pre-Mediation Report
11/4/21	6	Mediation with Defense Counsel
11/15/21	6	Reviewed Nobles file for Trial Exhibits, Videos, Witness Statements for Pre-Trial Submission
11/16/21	6	Drafted Plaintiffs' Pre-trial Submission
11/18/21	1	Revised Motion In Limine
11/18/21	1	Revised Statement of Facts
11/19/21	2	Review Defendants' Pretrial Memorandum
11/29/21	2	Reviewed Richard Ernest Ballistics Report
11/29/21	1	Reviewed Defendants' Motion to Exclude Expert Ricard Ernest
11/29/21	2	Interview with Trial Witness Royie Nobles
12/1/21	1	Conferenced with Keith Howse and Edmund Davis regarding Trial Preparation
12/1/21	.25	Reviewed Motion For Witness Richard Ernest to Testify Remotely

12/2/21	1	Final Pretrial Conference at the Courthouse.
12/2/21	2	Reviewed Photos for Trial Exhibits
12/3/21	.50	Revised Statement of Claims
12/4/21	12	Trial Preparation-reviewed Plaintiffs' and Defendant's Exhibits; assisted Edmund Davis with Opening Statement Outline; Organized Deposition Transcripts of Witnesses;
12/4/21	2	Interview with Trial Witness Nicholas Henderson
12/6/21	12	Prepared for and attended Jury Trial. Reviewed Jury lists and assisted with Jury selection issues; Organized Trial Exhibits; Coordinated and conferenced with testifying witnesses; Direct Examination of Testifying Witness;
12/6/21	.50	Conference with Clients and Edmund Davis
12/6/21	4	Prepared for Trial by reviewing Trial Exhibits; Testifying Witness Outlines; Drafted Motion to Exclude Defendants' Expert Witness; Conferenced with Investigators about witness contact and subpoenas; Conferenced with Testifying Expert Witness Keith Howse and Edmund Davis;
12/7/21	8	Revised Plaintiffs' Exhibit List; Organized Trial Exhibits; Coordinated and conferenced with testifying witnesses; Direct Examination of Testifying Witness; Reviewed Defendants' Response to Motion to Exclude;
12/7/21	2	Conferenced with Testifying Expert Witness Keith Howse and Edmund Davis;
12/7/21	12	Revised Plaintiffs' Exhibit List; Attended Trial and actively participated in coordinating testifying witnesses, organizing Trial Exhibits;
12/8/21	12	Prepared for Trial by reviewing Trial Exhibits; Testifying Witness Outlines; Attended Trial and actively participated in coordinating testifying witnesses and organizing Trial Exhibits; Direct Examination of Testifying Witnesses;
12/9/21	12	Attended Trial and actively participated in coordinating testifying witnesses and organizing Trial Exhibits;
12/10/21	4	Conferenced with Edmund Davis; Prepared for Trial by reviewing Trial Exhibits; Reviewed Defendants' Witness Statements;
12/11/21	4	Conferenced with Edmund Davis; Prepared for Trial by reviewing Trial Exhibits; Reviewed Defendants' Witness Statements;
12/12/21	4	Conferenced with Edmund Davis; Prepared for Trial by reviewing Trial Exhibits; Reviewed Defense Expert Report; Reviewed and Revised Plaintiffs' Supplemental Motion In Limine.
12/13/21	8	Attended Trial and actively participated by organizing Trial Exhibits;
12/14/21	4	Attended Trial and actively participated by organizing Trial Exhibits; Jury Charge Conference; Revised Plaintiffs' Exhibit List; Assisted Edmund Davis with closing argument;

12/15/21	1	Present at Courthouse when verdict is read; Conferenced with Clients and Edmund Davis regarding verdict;
12/15/21	.25	Reviewed Verdict Form
12/21/21	3	Meeting with Clients and Edmund Davis regarding Verdict
1/7/22	.50	Reviewed Final Judgment and conferenced with Edmund Davis
1/8/22	1	Legal Research for Motion for Attorneys' Fees
1/10/22	2	Drafted Motion for Attorneys' Fees
1/16/22	2	Reviewed Caselaw for Motion For Attorneys' Fees
1/11/22	1	Revised Motion For Attorney Fees
1/18/22	.50	Reviewed Motion For Extension of a time for Attorneys' Fees
1/20/22	2	Review, Revised, and Analyzed Motion For Attorneys' Fees for Presentation to Court

Total Hours: 284
Total Attorney Fees: 85,200

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Monday, January 31, 2022 1:24:26 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 1/31/2022 at 1:23 PM CST and filed on 1/31/2022
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 78

Docket Text:
Transcript filed of Proceedings held on 12/06/2021, Proceedings Transcribed: Jury Trial Volume 1. Court Reporter/Transcriber: Arlinda Rodriguez, Telephone number: 512-391-8791. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 2/22/2022, Redacted Transcript Deadline set for 3/3/2022, Release of Transcript Restriction set for 5/2/2022, (alr)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=1/31/2022] [FileNumber=26168287-0] [5bd98c805708e91ed7a10b3302f1d0685c4fa98becc0beae86f88343c4599d7db550716d1cbccf505bbdc6373d5f33da10cc122d9cea3308ccc56764850ba68f]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Monday, January 31, 2022 1:25:56 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 1/31/2022 at 1:25 PM CST and filed on 1/31/2022
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 79

Docket Text:
Transcript filed of Proceedings held on December 7, 2021, Proceedings Transcribed: Jury Trial Volume 2. Court Reporter/Transcriber: Arlinda Rodriguez, Telephone number: 512-391-8791. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 2/22/2022, Redacted Transcript Deadline set for 3/3/2022, Release of Transcript Restriction set for 5/2/2022, (alr)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=1/31/2022] [FileNumber=26168296-0] [87e785ec19e515417f0f2e80f11cc4c020fc479308c32315c164f93722a34a01d540e193254d405d00693d47a7a9e1cdd89a34095114599df123577c2f36353e]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Monday, January 31, 2022 1:27:24 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 1/31/2022 at 1:26 PM CST and filed on 1/31/2022
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 80

Docket Text:
Transcript filed of Proceedings held on December 8, 2021, Proceedings Transcribed: Jury Trial Volume 3. Court Reporter/Transcriber: Arlinda Rodriguez, Telephone number: 512-391-8791. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 2/22/2022, Redacted Transcript Deadline set for 3/3/2022, Release of Transcript Restriction set for 5/2/2022, (alr)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=1/31/2022] [FileNumber=26168311-0] [51faab909b3e5c55684ce4736b55a39383b42298c793a2e96865a236ccca05f36845033c36d3ad17e74ffd225fb6327c5a4b1b0436298320dad9b212aba95c65]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Monday, January 31, 2022 1:28:06 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 1/31/2022 at 1:27 PM CST and filed on 1/31/2022
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 81

Docket Text:
Transcript filed of Proceedings held on December 9, 2021, Proceedings Transcribed: Jury Trial Volume 4. Court Reporter/Transcriber: Arlinda Rodriguez, Telephone number: 512-391-8791. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 2/22/2022, Redacted Transcript Deadline set for 3/3/2022, Release of Transcript Restriction set for 5/2/2022, (alr)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=1/31/2022] [FileNumber=26168316-0] [418fa2adfe760c72d44fa473d2631a4dd7461552ef45db0b18ee812692290fc359fbfd2e9e326147f13aee9eb80e35e85cefbbab76c93ce78fefd46958c24d2d]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Tuesday, February 1, 2022 8:28:45 AM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 2/1/2022 at 8:27 AM CST and filed on 1/31/2022
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 82

Docket Text:
Transcript filed of Proceedings held on 12/14/21, Court Reporter/Transcriber Patrick Stevens. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 2/22/2022, Redacted Transcript Deadline set for 3/3/2022, Release of Transcript Restriction set for 5/2/2022, (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=2/1/2022] [FileNumber=26171374-0] [a30115500099380f162fb36bba60dcc5d58df559b91503b9ba88a3b6ad7b2f5fcfb 5fdfb525950c3483491c55b87e43295b5122c9e48554204e9632dba9d69a0]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From:	TXW_USDC_Notice@txwd.uscourts.gov
To:	cmecf_notices@txwd.uscourts.gov
Subject:	Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date:	Tuesday, February 1, 2022 8:30:12 AM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 2/1/2022 at 8:28 AM CST and filed on 1/31/2022
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 83

Docket Text:
Transcript filed of Proceedings held on 12/14/21, Court Reporter/Transcriber Patrick Stevens. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 2/22/2022, Redacted Transcript Deadline set for 3/3/2022, Release of Transcript Restriction set for 5/2/2022, (cc3)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=2/1/2022] [FileNumber=26171383-0
] [8997669bb56fb7da05f177dbba3ba5ca0d7de5eb6fc2127f95d6c275a57b9653ff7
2cd84f99bea38ff582a0acf1c65611717c781c76354abaf3a29a877504b71]]
CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN, **Defendants.**	§	

ADVISORY TO THE COURT

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell Johnson file this Advisory to the Court regarding their Motion for Leave to Extend Page Limit regarding Defendants' Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur (Doc. 84) as follows:

The Defendants advise the Court that counsel for Defendants and Plaintiffs have conferred and the Motion for Leave to Extend Page Limit (Doc. 84) is unopposed.

RESPECTFULLY SUBMITTED,

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
City of Austin Law Department
P.O. Box 1546

Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 4th day of February, 2022, I served a copy of the foregoing document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, **Defendants.**	§	

DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW AND, IN THE ALTERNATIVE, FOR NEW TRIAL OR REMITTITUR

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

INTRODUCTION

On December 15, 2021, the jury rendered a verdict finding that Defendants Richard Egal and Maxwell Johnson were liable to Plaintiffs for the use of excessive force on Landon Nobles. (Doc. No. 70) The verdict finding against Egal and Johnson should be overturned because it is not supported by any evidence and was against the great weight of the evidence. Barring that outcome, this court should award a new trial due to a number of errors during the trial including improper appeals to the jury by Plaintiffs' counsel during opening statement and closing argument which affected the verdict on liability and the clearly excessive amount of the verdict. Alternatively, the Court should enter a remittitur which significantly reduces the verdict.

STANDARD OF REVIEW

I. Renewed Motion for Judgment as a Matter of Law

Pursuant to Federal Rule of Civil Procedure 50(b), if the court denies a judgment as a matter of law made under Rule 50(a), then the movant may file a renewed motion after the jury renders its verdict. The court should grant a motion under Rule 50(b) if the evidence points only one way and no reasonable inferences could be drawn that may support the opposing party's position. *See Logan v. Burgers Ozark Country Cured Hams Inc.*, 263 F.3d 447, 455 (5th Cir. 2001).

Ordinarily, a Rule 50(b) motion includes only the grounds for dismissal contained in a Rule 50(a) motion. A court may consider additional grounds not raised in a Rule 50(a) motion, however, and review those additional grounds using a "plain error" standard. *U.S. for use of Wallace v. Flintco, Inc.*, 143 F.3d 955, 963 (5th Cir. 1998). To establish plain error, a litigant must show: "(1) that an error occurred; (2) that the error was plain, which means clear or obvious; (3) the plain error must affect substantial rights; and (4) not correcting the error would seriously impact the fairness, integrity, or public reputation of judicial proceedings." *Septimus v. Univ. of Houston*, 399 F.3d 601, 607 (5th Cir. 2005).

II. Motion for New Trial and Remittitur

Under Federal Rule of Civil Procedure 59, a new trial may be granted to any party to a jury trial on any or all issues "for any reason for which a new trial has heretofore been granted in an action at law in federal court." *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612–13 (5th Cir. 1985). "A new trial may be granted, for example, if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course." *Id.* The Court is required to view the evidence "in a light most favorable to the jury's verdict, but the verdict should be rejected if the evidence points so strongly

and overwhelmingly in favor of the moving party that the court believes that reasonable persons could not arrive at a contrary conclusion. *Dawson v. Wal–Mart Stores, Inc.*, 978 F.2d 205, 208 (5th Cir. 1992).

If a reviewing court finds that a verdict was motivated by passion or prejudice, then a new trial is the only appropriate remedy. If, however, a court finds that an excessive damages award resulted from some other factor, it may remit the damages to the maximum amount it believes the jury could have awarded given the evidence. *Guajardo v. GC Services, LP*, 498 Fed. Appx. 379, 386-87 (5th Cir. 2012) (per curiam).

ARGUMENT & AUTHORITIES

III. There was Insufficient Evidence to Support the Jury's Finding that Egal and Johnson Violated Landon Nobles' Constitutional Rights by Using Excessive Force; Egal and Johnson are Entitled to Qualified Immunity.

No reasonable jury, not influenced by improper appeals to passion, prejudice and emotion, could have found that Egal and Johnson used excessive force and are not entitled to qualified immunity based on the evidence presented at trial. The overwhelming evidence at trial demonstrated that Egal and Johnson had reason to believe that Nobles posed a threat of serious harm when he turned toward the officers while holding a gun in his right hand and fired a shot. This threat of serious harm was established not only by the testimony of Egal and Johnson but also the testimony of the other officers at the scene and the testimony of Andre Anderson and Elvis Ingram who heard the sound of a small caliber handgun come from Nobles' direction. Moreover, the physical evidence at the scene established that Nobles had a handgun and fired a round. Plaintiffs offered no explanation, and certainly no competent evidence, of how the handgun and holster arrived at Nobles' feet after the shooting.

A. Qualified Immunity Standard

"The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known." *Modica v. Taylor*, 456 F.3d 174, 179 (5th Cir. 2006). Whether an individual is entitled to qualified immunity is determined by following a two-part analysis. First, the court must determine whether the facts, taken in the light most favorable to the party asserting the injury, show that the official violated a "clearly established" constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5th Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003). Second, the court must determine whether the official's conduct was objectively reasonable in light of the clearly established law. *Saucier v. Katz*, 533 U.S. 194, 202 (2001). In other words, courts look to whether "it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted." *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). When a defendant asserts qualified immunity, the burden is on the plaintiff to produce evidence to pierce that immunity. *Atteberry v. Nocona General Hospital*, 430 F.3d 245, 253 (5th Cir. 2005).

Claims of excessive force are analyzed under the Fourth Amendment. *Graham v. Connor*, 490 U.S. 386, 388 (1989). To succeed on an excessive force claim under 42 U.S.C. §1983 and overcome qualified immunity, a plaintiff bears the burden of showing "(1) an injury (2) which resulted directly and only from the use of force that was excessive to the need and (3) the excessiveness of which was clearly unreasonable." *Manis v. Lawson*, 585 F.3d 835, 843 (5th Cir.

2009). "In gauging the objective reasonableness of the force used," the court "must balance the amount of force used against the need for the force." *Ikerd v. Blair*, 101 F.3d 430, 434 (5th Cir. 1996). It is not unreasonable to use deadly force when an officer has reason to believe that the suspect poses a threat of serious harm to the officer or others. *Tennessee v. Garner,* 471 U.S. 1, 10, 105 S. Ct. 1694, (1985) Whether a particular use of force is reasonable "must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight." *Ikerd,* 101 F.3d at 434. Courts should also recognize that officers must make split-second decisions in stressful and unpredictable circumstances. *Id.*

B. Richard Egal and Maxwell Johnson reasonably believed that Landon Nobles' actions presented an imminent threat of serious injury to themselves and others.

The question in this case is whether no reasonable officer could have believed that the shooting of Nobles was lawful. In answering this question, the focus of the inquiry is "the act that led [the officer] to discharge his weapon." *Manis v. Lawson,* 585 F.3d 839, 845 (5th Cir. 2009). The testimony of every witness who was in a position to see Nobles' right hand established that Nobles was holding a handgun just before Egal and Johnson fired their weapons. The testimony and physical evidence also established that Nobles' gun fired shortly after Nobles collided with Egal's bicycle.

Johnson testified that the act that led Johnson to discharge his weapon was Nobles' act of holding the gun in his right hand and actually firing the gun in the direction of Johnson and other officers. Officer Uri Tamez testified that as he chased Nobles north on Trinity Street, he saw the gun in Nobles' right hand and saw Nobles turn and fire the gun. The testimony of security guards Andre Anderson and Elvis Ingram also supports the conclusion that Nobles discharged the gun shortly before Egal and Johnson discharged their weapons. Both Anderson and Ingram testified that after Nobles collided with Egal's bicycle, they heard the distinct sound of a small caliber

handgun come from Nobles' direction. Anderson and Ingram, who both are familiar with guns and the sounds of guns, testified that the sound they heard was not the sound of a 9 millimeter firearm like those carried by the officers, but instead was the sound of a small caliber firearm. Anderson testified that the officers had not drawn their guns at the time Anderson heard the sound of the small caliber firearm. Neither Anderson nor Ingram saw Nobles' hands, or whether anything was in his hands, prior to the officers discharging their firearms.

Egal testified that the act that led Egal to discharge his firearm at Nobles was Nobles holding the gun in his right hand and then turning the right side of his body in the direction of Egal and other officers. Officer Steven Pena testified that he also saw the gun in Nobles' right hand and saw Nobles turn in the officers' direction. Anderson as well testified that he saw Nobles turn in the officers' direction before Egal and Johnson discharged their firearms. Officers Pena and Tamez were in the process of drawing their firearms toward Nobles when Johnson and Egal, who were closer to Nobles, fired their firearms at Nobles. All of the officers who were at the scene and saw Nobles' actions testified that they believed that Nobles' actions constituted an imminent threat of serious bodily injury to the officers and others.

Nobles' possession of the gun is also supported by the physical evidence at the scene. The officers testified that when they approached Nobles after he fell to the ground, they immediately saw a handgun near Nobles' feet and Pena secured it. The gun was identified as a 32 caliber automatic pistol manufactured by Crvena Zastava. APD crime scene specialists later secured other evidence, including two 32 caliber spent shell casings, one located in front of the Mooseknuckle Pub where a firearm had earlier been discharged, and another near Egal's bicycle on Trinity Street. APD firearms examiner Greg Karim test-fired the 32 caliber pistol found at Nobles' feet and microscopically examined the spent casings found at the scene and the test-fired casings and

concluded that the spent casings found at the scene were fired from the 32 caliber pistol found at Nobles' feet. The fact that the two spent shell casings matched the 32 caliber handgun is undisputed. Plaintiffs offered no evidence to dispute these conclusions.

Plaintiffs offered no actual evidence to dispute the physical evidence found at the scene that leads to no other conclusion than Nobles fired the handgun shortly after the collision with the bicycle. Plaintiffs also offered no actual evidence to dispute the video from the HALO camera, Ex. D-5, which demonstrated that Nobles fired the initial shot in the air in front of the Mooseknuckle Pub. Moreover, Plaintiffs offered no evidence whatsoever that the integrity of APD's investigation of this incident was compromised in any way. Plaintiffs' counsel's unsupported and improper statements in closing argument, see *infra*, that insinuated that APD personnel conspired to plant the evidence is pure fantasy and not supported by any testimony or other evidence. This "thin blue line" conspiracy theory does not even rise to the level of speculation and guesswork and is completely insufficient to meet the Plaintiffs' burden of overcoming qualified immunity.

Egal's and Johnson's actions fall within the objective reasonableness standard established by the United States Supreme Court and the Court of Appeals for the Fifth Circuit. In fact, the risk posed by Nobles in this case was far greater than the risk posed in *Kisela v. Hughes,* 138 S. Ct. 1148 (2018) where the Supreme Court found that a police officer was entitled to qualified immunity when he shot a person holding a knife who was standing at least six feet from the person police believed was threatened. Obviously, a gun such as the one Nobles had in this incident is deadly from a much greater distance than a knife, and courts have made clear that the law does not require officers to wait until a suspect actually uses a deadly weapon before the officers can act to stop the suspect. *Garza v. Briones,* 943 F.3d 740, 748 (5th Cir. 2019).

The risk posed by Nobles' actions are also similar, if not greater, than many other cases in which the Fifth Circuit has held that qualified immunity attached to the officers' conduct. In *Ballard v. Burton,* 444 F.3d 391, 403 (5th Cir. 2006), the Fifth Circuit held that where police shot an emotionally unstable man after he fired a rifle into the air and then aimed it in the general direction of multiple police officers, qualified immunity existed. In *Hudspeth v. City of Shreveport,* 270 Fed. Appx. 332, 337 (5th Cir. 2008) police shot a suspect who pointed a cellphone which police believed to be a gun at officers and who ignored orders to get on the ground. The Fifth Circuit affirmed a finding of qualified immunity and also held that the fact the suspect had his back to the officers at the instant deadly force was used was not relevant to whether the officers could reasonably perceive the suspect to be a threat of serious bodily harm. *Id.*

In *Ramirez v. Knoulton,* 542 F.3d 124 (5th Cir. 2008), the Fifth Circuit held that an officer was entitled to qualified immunity when he shot a suicidal suspect armed with a handgun who failed to comply with officers' orders to drop the gun. The Fifth Circuit emphasized that the reasonableness of the use of force is to be judged from the perspective of a reasonable officer at the scene, particularly whether the suspect poses an immediate threat to the safety of the officers or others. *Id.* at 129. In *Valderas v. City of Lubbock,* 937 F.3d 384 (5th Cir. 2019), the Fifth Circuit addressed a plaintiff's argument that an officer's use of deadly force was unreasonable since the plaintiff had discarded a firearm, put his hands up and turned to flee at the time the officer discharged his weapon. The Fifth Circuit affirmed the grant of qualified immunity to the officer, noting that the events took place in a matter of seconds leaving the officer with little time to realize that the plaintiff was no longer armed before making the decision to open fire. *Valderas,* 937 F.3d at 390. The Court held that considering the totality of the circumstances, a reasonable officer in

the officer's position would have reasonably perceived that the plaintiff's actions posed an imminent threat. *Id.*

Similarly, the Fifth Circuit in *Garza v. Briones,* 943 F.3d 740 (5th Cir. 2019), held that officers had qualified immunity when they shot a man armed with a BB gun who refused to comply with the officers' orders. The plaintiff in *Garza* argued that the officers gave inconsistent versions of the incident and that an eyewitness security guard declared that the suspect never pointed the gun at the officers. The Fifth Circuit noted that it made sense that the officers' versions would differ slightly since they each had different perspectives of the scene and arrived at different points of the encounter. *Id.* at 747. The Court emphasized that the plaintiff's arguments "fail[ed] to provide adequate deference to defendants' snap judgment, in the heat of a perilous and rapidly evolving situation, about the danger [the suspect] posed." *Id.* at 748.[1] The Court ultimately concluded that a reasonable officer in the defendants' shoes would have believed that the suspect posed a serious threat regardless of the direction that the suspect was pointing the BB gun just before he was shot. *Id.*

In this case, Egal and Johnson did not violate clearly established law but were in fact following clearly established law. The overwhelming weight of the evidence established that Egal and Johnson are entitled to qualified immunity. When viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, it was reasonable for Egal and Johnson to believe that Nobles posed an imminent threat of serious bodily harm to Egal, Johnson and others near the scene. The video evidence and physical evidence established that Nobles was armed.

[1] The opinion in *Garza* also dispels Plaintiffs' argument at trial that the initial "shots fired" call was only a potential misdemeanor and thus not a serious offense. In *Garza,* the Fifth Circuit noted that one cannot equate "misdemeanor" with "not serious" since it had previously held that a DUI, also a misdemeanor, is a "serious offense" for purposes of evaluating an officer's use of force. *Garza,* 943 F.3d 740, n. 4. The Court noted that if DUI is a serious offense, then unlawfully carrying a firearm is as well. *Id.* Likewise, shooting a firearm into the air in a crowded area is a serious offense.

Plaintiffs' counsel's effort to distract the jury from the evidence with wild and unsupported claims of police conspiracies should not be condoned. Accordingly, Defendants Richard Egal and Maxwell Johnson respectfully request that the Court enter judgment as a matter of law in their favor and dismiss the Plaintiffs' claims. Alternatively, Egal and Johnson are entitled to a new trial for these same reasons because the jury's verdict was against the great weight of the evidence.

IV. The Court erred in submitting the punitive damages instruction to the jury.

The Court submitted a punitive damages instruction to the jury and the jury awarded punitive damages in the amount of $187,500.00 against Sergeant Egal and $150,000.00 against Corporal Johnson. There was insufficient evidence to support a punitive damages instruction.

"A jury may assess punitive damages in a §1983 suit 'when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.'" *Heaney v. Roberts,* 846 F.3d 795, 803 (5th Cir. 2017)(citing *Smith v. Wade,*461 U.S. 30, 56 (1983). Reckless indifference is a "subjective consciousness of a risk of injury or illegality and a criminal indifference to civil obligations." *Id.*

Defendants respectfully submit that the Court erred in submitting the punitive damages instruction. There was no evidence that Egal and Johnson had an evil motive or intent when they acted on the night of the incident. There also was no evidence to support a conclusion that Egal and Johnson acted with a subjective consciousness of a risk of injury or illegality and a criminal indifference to civil obligations. Instead, as discussed fully above, the overwhelming weight of the evidence demonstrated that Egal and Johnson's actions were taken only because they had an objectively reasonable belief that Nobles presented an imminent threat of serious bodily injury or death to themselves and others. There was no evidence from which a reasonable jury could find the necessary level of evil intent or recklessness necessary to support the punitive damages claim.

As a result, the Court should enter judgment in favor of Egal and Johnson on the punitive damages claim and dismiss those claims with prejudice.

V. Plaintiffs' Counsel's blatantly prejudicial and inflammatory remarks during opening statement and closing argument warrant a new trial on liability and damages.

Jury verdicts on damages may be overturned upon a clear showing of excessiveness or upon a showing that they were influenced by passion or prejudice. *Westbrook v. General Tire and Rubber Co.,* 754 F.2d 1233, 1241 (5th Cir. 1985). When a jury verdict results from passion or prejudice, a new trial is the proper remedy. *Id.* If passion, prejudice, caprice, or undue sympathy affected both the liability and damages issues, then a new trial as to both issues must be ordered. *Evers v. Equifax,* 650 F.2d 793, 798 (5th Cir. 1981); *Edwards v. Sears, Roebuck and Co.,* 512 F.2d 276, 283 (5th Cir. 1975).

The Fifth Circuit has noted that while closing arguments must be forceful and, generally, counsel are allowed a "reasonable latitude" in making them, it must reverse in order to preserve substantial justice when improper remarks by counsel cause a jury verdict to be influenced by passion and prejudice. *Whitehead v. Food Max of Mississippi, Inc.,* 163 F.3d 265, 275-76 (5th Cir. 1998); *Hall v. Freeze,* 735 F.2d 956, 962 (5th Cir. 1984); *Westbrook,* 754 F.2d at 1241; *Edwards,* 512 F.2d at 286

Plaintiffs' counsel made a deliberate effort throughout the trial to inflame the jury and appeal to passion and prejudice by making a number of improper statements during opening statement and closing argument. These statements include the following:

Opening Statement:

- "His kinfolk that were down there with him for the birthday celebration that they were going to participate in, they watched him die. They didn't even get a chance to hold him while he died or console him while he was in his pain. He bled out like a dog on the street. They didn't get to say goodbye to him." (Trial Transcript, Vol. 1, p. 132)

- "And they're also going to say that Landon Nobles posed an imminent threat of serious bodily injury to the officers and others even though he was running away. So we call BS. You know that old game. We're calling their bluff. But we're only here and able to call their bluff because several brave people came forward to tell what they saw that night. They're going to ask you to assume that their cockamamy story is completely true." (Trial Transcript, Vol. 1, p. 133)
- "There were several, several [witnesses] who didn't even come here and aren't going to participate. But you're going to meet the ones who have elected to participate, and you're going to see that they're just regular folks." (Trial Transcript, Vol. 1, p. 134)

Closing Argument:

- "[W]e have to confront this issue head-on because something has to be resolved within the community. Someone has to speak to when the use of force is appropriate." (Trial Transcript, Vol. 6, p. 106)
- "…[W]e've seen a lot of these kinds of circumstances. We've seen a lot of these kinds of incidents in recent history. We can go all the way back four or five years and we've had officer-involved shootings. We can fast-forward and think that we've evolved into better homo sapiens, and yet, guess what? We're still having officer-involved shootings. Nothing's really changed." (Trial Transcript, Vol. 6, p. 107)
- "This time we have civilian witnesses, witnesses who are not encumbered by their personal baggage, witnesses, as I like to say from West Texas, although I've been living here for 25 years, they don't have a dog in the hunt. These witnesses are the honest brokers of what we know is self-serving testimony provided in every case by police officers when they render a shooting." (Trial Transcript, Vol. 6, p. 107)
- "Let's take, for instance, George Floyd. Were it not for a bystander, they would have gotten away with that. We have a similar situation here." (Trial Transcript, Vol. 6, p. 107)
- "…[The bystanders] still mustered the intestinal fortitude to come here and tell you what they saw and some of those people did so in great fear." (Trial Transcript, Vol. 6, p. 107-108)
- "The plaintiffs [sic] set out with a pernicious plan to dehumanize Landon Nobles, to demonize Landon Nobles. They called him suspect, the subject, they never called him by his name, not one time. That's disturbing. But I'll say it. Landon Nobles is the son of Ida Renae Nobles, and may he rest in peace." (Trial Transcript, Vol. 6, p. 111)
- "Mr. Laird is a lawyer for the City, and it's the City of Austin who's defending the cops in this action." (Trial Transcript, Vol. 6, p. 111)
- "…a class A misdemeanor does not merit a death penalty, does not." (Trial Transcript, Vol. 6, p. 117)
- "…Detective Boline was lazy, frankly. He's got the power and the weight of the entire Austin Police Department and the judiciary to go out and get Elvis [Ingram] and bring him in to give a clarification if he needs a clarification…" (Trial Transcript, Vol. 6, p. 120)
- "Detective Boline, I'd like to say he reminds of the Cheshire cat when he sat up there, kind of Alice in Wonderland, Through the Looking Glass, when up is down is up, just completely ignored the civilian witnesses." (Trial Transcript, Vol. 6, p. 122)
- "And it's hard to sit in judgment of nice guys, but you're not sitting in judgment where they're going to lose their jobs or they're going to prison. You're sitting in judgment on

whether or not the City is going to pay out for their mistakes when they were their agents." (Trial Transcript, Vol. 6, p. 123)

- "There were rules that govern when and where and whether they can do this or that as a police officer just like a soldier is governed by the rules of the Geneva Convention, and when the use of deadly force occurs, unfortunately in this country, and certainly in this city, your work is going to get graded. Because it's in those cases like that where we, the people, through you, the jury, grade those papers." (Trial Transcript, Vol. 6, p. 124)
- "Cops are rarely held—police officers are rarely held accountable these days, but they always seem to help each other out, cover each other's back. Why does this keep happening?" (Trial Transcript, Vol. 6, p. 139)
- "Well, I want you to think about, you, the people, is that five years from now, 10 years from now, 20 years from now, your decision in this case is going to live with you for the rest of your life and it's going to color how police officers engage with citizens. This is a very important thing that you're here to do. You will remember this deliberation for the rest of your lives. You're going to look back on it and you're going to see exactly, in many years, what your role was and what role you played in it, and I'll tell you that the buck stops right here with you, the people. The buck stops here." (Trial Transcript, Vol. 6, p. 139-140)
- "You need to condemn the police for shooting this guy in the back. Now, why did they do that? Well, there's a thin blue line." (Trial Transcript, Vol. 6, p. 140)
- "Sometimes the only way to get a city to change its behavior is by socking them in the pocketbook." (Trial Transcript, Vol. 6, p. 141)
- "This was a terrible experience and it did not have to be. You must make the City pay for that; otherwise, we're going to go into the future with more George Floyd style incidents, more Landon Nobles style incidents and that poses a very grave danger…" (Trial Transcript, Vol. 6, p. 141-142)

a. George Floyd incident and community conscience argument

First, Plaintiffs' counsel's references to the nationally-known George Floyd incident in Minnesota were highly improper and designed solely to inflame the jury. The Nobles incident and the George Floyd incident are not remotely similar to each other, and no evidence was presented at trial which made any connection between the two incidents. The statements made during closing argument that "something has to be resolved within the community" and that more incidents like the George Floyd incident will occur unless the jury makes the City pay in this case served no proper purpose and were made solely to inflame the jury. These statements, along with many others

outlined above, constitute improper conscience of the community arguments which have long been condemned by the Fifth Circuit and other courts.

In *Westbrook v. General Tire and Rubber Co.,* 754 F.2d 1233, 1238 (5th Cir. 1985), the Fifth Circuit held that it was reversible error for Plaintiff's counsel to argue to the jury in closing: "You are going to be the conscience of the community with this verdict." The Court stated that its condemnation of a "community conscience" argument is not limited to the use of those specific words. *Id. at 1238-39.* Instead, it extends to all "impassioned and prejudicial pleas intended to evoke a sense of community loyalty, duty and expectation." *Id.* at 1239. Similarly, the Fifth Circuit in *Whitehead v. Food Max of Mississippi, Inc.,*163 F.3d 265, 277 (5th Cir. 1998) stated: "Arguments which invite a jury to act on behalf of a litigant become improper 'conscience of the community' arguments when the parties' relative popular appeal, identities, or geographical locations are invoked to prejudice the viewpoint of the jurors." *Id.,* quoting *Guaranty Service Corp. v. American Employers' Ins. Co.,* 893 F.2d 725, 729 (5th Cir. 1990).

Here, Plaintiff's counsel engaged in similar behavior as counsel in *Westbrook* and *Whitehead*. Plaintiff's counsel's statements during closing arguments that "we've seen a lot of these kinds of incidents in recent history" and "five years from now, 10 years from now, 20 years from now, your decision in this case is going to live with you for the rest of your life and it's going to color how police officers engage with citizens" serve no purpose other than to inflame the jury and, in effect, place a responsibility on the jury to affect change in the interaction between police and citizens. Plaintiff's counsel continued this improper argument by stating: "You're going to look back on it and you're going to see exactly, in many years, what your role was and what role you played in it, and I'll tell you that the buck stops right here with you, the people. The buck stops here." (Trial Transcript, Vol. 6, p. 139-140) He then doubled-down and argued: "[y]ou must

make the City pay for that; otherwise, we're going to go into the future with more George Floyd style incidents, more Landon Nobles style incidents and that poses a very grave danger…" (Trial Transcript, Vol. 6, p. 141-142) These arguments are not close to being fair comments on the evidence. Instead, they are appeals to the jury's conscience intended to place a duty and responsibility on the jury to affect the future actions not only of the parties in this case, but other police officers as well. As such, they are improper arguments and warrant a new trial.

Plaintiff's counsel's arguments in this case are similar to arguments made in *Brownlee v. United Fidelity Life Ins. Co.,* 117 F.R.D. 383 (S.D. Miss. 1987), where the district court ordered a new trial on liability and damages based on highly prejudicial arguments by plaintiff's counsel. There, plaintiff's counsel's closing argument included statements such as: "You are going to tell them what they are going to do. You are going to send them a message…" and "[w]e want you to tell this insurance industry, 'Change directions'" *Id.* at 386-87. Counsel in *Brownlee* continued: "But anyway, I am going to ask you to bring back enough money, at your sole discretion, to get the attention of this company to encourage it not to do these kind of things, but to get the attention of the entire insurance industry…" *Id.* at 388. The district court held that this argument was improper and "[b]ecause [plaintiff's counsel] chose to inflame the jury, rather than inform it, a complete new trial is the only adequate remedy." *Id.* at 390. The improper arguments in *Brownlee, Whitehead* and *Westbrook* are no different than the improper arguments made in this case, and thus a new trial is required.

b. Appeals to Emotion and Passion

The Fifth Circuit in *Whitehead*, 163 F.3d at 276, noted that "awards influenced by passion and prejudice are the antithesis of a fair trial." The Court noted that particularly in emotional cases which involve emotional distress damages, "counsel must be unusually vigilant and take the

greatest care to avoid and prevent such appeals [to emotion], in order to keep the verdict from being infected by passion and prejudice." *Id.* The Fifth Circuit in *Whitehead* found that plaintiff's counsel improperly appealed to the jury's emotion and argued outside the evidence when he told the jury that the plaintiffs stayed outside of the courtroom throughout the trial other than to testify since it was too painful for them to listen to the "horrors and events of what happened in the liability testimony" and that one of the plaintiff's last thought before death would be of the rapists. *Id.* at 277. Similarly, the Fifth Circuit in *Edwards*, 512 F.2d at 285-86, reversed a jury verdict where, during closing argument during a wrongful death case, plaintiff's counsel invoked images of the decedent's children crying at the grave and waiting for their father on the porch steps. *See also Schleunes v. American Cas. Co. of Reading, Pa.,* 528 F.2d 634, 638 (5th Cir. 1976).

Here, Plaintiff's counsel began his appeal to emotion and passion in the opening statement when he stated: "[h]is kinfolk that were down there with him for the birthday celebration that they were going to participate in, they watched him die. They didn't even get a chance to hold him while he died or console him while he was in his pain. He bled out like a dog on the street. They didn't get to say goodbye to him." (Trial Transcript, Vol. 1, p. 132) Plaintiff's counsel continued his efforts to appeal to emotion in his closing argument, stating: "The plaintiffs [sic] set out with a pernicious plan to dehumanize Landon Nobles, to demonize Landon Nobles. They called him suspect, the subject, they never called him by his name, not one time. That's disturbing. But I'll say it. Landon Nobles is the son of Ida Renae Nobles, and may he rest in peace." (Trial Transcript, Vol. 6, p. 111) Counsel also stated that Nobles' estate should be awarded pain and suffering damages when "he laid there looking at the police officers asking them, 'Why did you shoot me? Stop shooting me.'" (Trial Transcript, Vol. 6, p. 140) These statements serve no purpose other than

to appeal to emotion and passion and lead to the conclusion that these emotional appeals had an influential impact on the jury's decision.

c. References to "facts" not in evidence

Plaintiff's counsel also made several statements in his closing argument regarding facts not in evidence which cannot be considered fair comment on the evidence. This practice has resulted in remand for new trials by the Fifth Circuit and grants of new trials by district courts. *See Whitehead,* 163 F.3d at 277-78; *Edwards,* 512 F.2d at 284; *Jones v. City of Atlanta,* 647 F.2d 580, 586 (5th Cir. 1981); *see also Alexander v. City of Jackson, MS, 2008 WL 907658 *5, S.D. Miss. March 31, 2008 (not reported in F.Supp.2d).*

Here, Plaintiff's counsel on several occasions during closing arguments referenced matters outside the evidence, all of which were prejudicial. For example, counsel argued: "We've seen a lot of these kinds of incidents in recent history. We can go all the way back four or five years and we've had officer-involved shootings." (Trial Transcript, Vol. 6, p. 107) Similarly, counsel argued: "…what we know is self-serving testimony provided in every case by police officers when they render a shooting." (Trial Transcript, Vol. 6, p. 107) He also argued: "Cops are rarely held—police officers are rarely held accountable these days…" (Trial Transcript, Vol. 6, p. 139) Simply put, there is no evidence in the record to support any of these statements and their obvious purpose was to insert extrajudicial information into the jury's deliberations and further inflame the jury.

Counsel also stated that witnesses were afraid to come forward and testify because they were in fear for their safety. He started this tactic in opening statements (Trial Transcript, Vol. 1, pp. 129; 134) and then in closing arguments continued: "…[The bystanders] still mustered the intestinal fortitude to come here and tell you what they saw and some of those people did so in

great fear." (Trial Transcript, Vol. 6, p. 107-108) No evidence supports these statements, and they serve no purpose other than to imply that the witnesses somehow were intimidated by the police.

d. Improper references to the City of Austin defending and indemnifying the officers

Even though the Plaintiffs' claims against the City of Austin were dismissed long before trial, Plaintiffs' counsel made several arguments explicitly stating that the City was defending the case and that the jury needed to make the City pay. Counsel argued: "it's the City of Austin who's defending the cops in this action." (Trial Transcript, Vol. 6, p. 111) He later argued: "[y]ou're sitting in judgment on whether or not the City is going to pay out for their mistakes when they were their agents." (Trial Transcript, Vol. 6, p. 123) Not satisfied, Plaintiffs' counsel continued: "Sometimes the only way to get a city to change its behavior is by socking them in the pocketbook," and "this was a terrible experience and it did not have to be. You must make the City pay for that…" (Trial Transcript, Vol. 6, p. 141-142)

Such statements are akin to arguing that a defendant has liability insurance, which is both inadmissible as evidence and improper argument. *Fed.R. Evid. 411.* Additionally, this argument is improper because it in essence is claiming that the City should be punished in order to get the City to change its behavior. Again, Plaintiffs were not asserting a claim against the City at trial and this argument was simply an attempt to inject the City's financial responsibility into the trial.

The Ninth Circuit held that a new trial was required when counsel stated in closing argument that the City of Los Angeles was indemnifying a police officer in a §1983 action for wrongful detention and responsible for damages awarded. *Larez v. Holcomb,* 16 F.3d 1513, 1520-21 (9th Cir. 1994). There, the Court stated: "[i]n this case, having been told that [the officer] would not bear the burden of a damages award, the jury might have been tempted, out of sympathy for [the plaintiff], to inflate the award beyond the amount necessary to compensate her." *Id.* at 1519.

Likewise, the statements made by counsel in this case regarding the City's financial responsibility were improper and served no purpose other than to inflame the jury to award an inflated verdict.

e. The improper statements require a new trial on liability and damages.

Impropriety of closing arguments may be inferred from the excessiveness or inadequacy of the verdict amount. *Evers v. Equifax,* 650 F.2d 793, 798 (5th Cir. 1981). In *Whitehead,* the Fifth Circuit stated: "[t]hat the awards were improperly influenced by passion and prejudice is indicated by their size…This large verdict, when accompanied by counsel's improper arguments, further indicates that the jury was influenced by the prejudicial statements." *Whitehead,* 163 F.3d at 278; *see also Westbrook,* 754 F.2d at 1241. Likewise, here, the size of the jury's verdict clearly indicates that the numerous improper statements and arguments of counsel influenced the jury.

If passion, prejudice, caprice, or undue sympathy affected both the liability and damages issues, then a new trial as to both issues must be ordered. *Evers v. Equifax,* 650 F.2d 793, 798 (5th Cir. 1981); *Edwards v. Sears, Roebuck and Co.,* 512 F.2d 276, 283 (5th Cir. 1975). In this case, the passion and prejudice caused by the improper arguments affected both liability and damages. Liability was far from clear in this case, and it is not difficult to understand how the improper references to the George Floyd incident, among others, could influence the jury on the liability issue. An argument that the City must pay in order to prevent more George Floyd incidents without doubt influenced the jury's liability decision as well as its decision on damages. As a result, the Court should grant a complete new trial.

VI. The Damages Award was Excessive, Unjust, and Not Supported by the Evidence.

Damages awarded by the fact finder that are "clearly erroneous or so gross or inadequate as to be contrary to right reason" should be overturned or reduced. *Thompkins v. Belt*, 828 F.2d 298, 301 (5th Cir. 1987); *see also Polanco v. City of Austin, Tex.*, 78 F.3d 968, 981 (5th Cir. 1996).

Although a court generally should defer to a jury's verdict on damages, that deference must be abandoned when the court is convinced that the damages were clearly excessive. *Eiland v. Westinghouse Elec. Corp.*, 58 F.3d 176, 183 (5th Cir. 1995). While a court generally has discretion whether to grant a new trial or remit the damages when faced with an excessive verdict, a new trial should be awarded (rather than remittitur) when an excessive damages award results from passion or prejudice. *Westbrook v. General Tire and Rubber Co.*, 754 F.2d 1233, 1241 (5th Cir. 1985); *Polanco*, 78 F.3d at 981 (citing *Lowe v. General Motors Corp.*, 624 F.2d 1373, 1383 (5th Cir. 1980)).

Compensatory damages awarded pursuant to §1983 are governed by common law tort principles. *Keyes v. Lauga*, 635 F.2d 330, 336 (5th Cir. 1981). "[T]he abstract value of a constitutional right may not form the basis for §1983 damages." *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 308 (1986). Compensatory damages under §1983 are therefore designed to *compensate* someone based on their actual losses. Any damages awarded beyond that—whether based on punishment, the value of the constitutional right, or the notion of "sending a message"—are excessive. *Id.*

Even within these bounds, a jury award "is excessive if it is contrary to right reason or entirely disproportionate to the injury sustained." *Eiland*, 58 F.3d at 183 (internal quotes and citation omitted). "While pain and suffering is, to a large degree, not susceptible to monetary quantification, and the jury thus necessarily has especially broad leeway, nevertheless, the sky is simply not the limit." *Simeon v. T. Smith & Son, Inc.*, 852 F.2d 1421, 1428 (5th Cir. 1988) (internal punctuation and citation omitted). Similarly, jury awards for mental anguish damages, although largely based on the subjective experience of the plaintiff, may be remitted or overturned entirely

when they are excessive based on the evidence presented. *See Giles v. General Electric Co.*, 245 F.3d 474, 488 (5th Cir. 2001).

In this case, the jury awarded damages to the Plaintiffs as follows:

Landon Nobles
- $3,670,000.00 for physical pain and mental anguish experienced by Landon Nobles

Plaintiff Ida Renae Nobles
- $2,000,000.00 for past loss of companionship and society
- $4,300,000.00 for future loss of companionship and society
- $3,500,000.00 for past mental anguish
- $7,000,000.00 for future mental anguish

Plaintiff K.N., a minor, by and through his guardian Kadeidra Bell
- $500,000.00 for past loss of companionship and society
- $11,200,000.00 for future loss of companionship and society
- $250,000.00 for past mental anguish
- $11,200,000.00 for future mental anguish

Plaintiff L.N., a minor, by and through his guardian Michelle Dashaun Smith
- $500,000.00 for past loss of companionship and society
- $11,200,000.00 for future loss of companionship and society
- $250,000.00 for past mental anguish
- $11,200,000.00 for future mental anguish

These awards are clearly excessive and were the result of improper passion and prejudice. Thus, a new trial should be ordered. Alternatively, the Court should substantially remit the damages.

A. Landon Nobles

First, the award of $3,670,000.00 for physical pain and mental anguish of Landon Nobles prior to his death is clearly excessive and not supported by the evidence. No evidence was presented at trial regarding how long Nobles survived after the shooting. Sergeant Egal heard Nobles make one statement when he approached Nobles after the shooting and then within seconds, Officer Pena and other officers began performing CPR on Nobles after he lost consciousness. There is no evidence that Nobles regained consciousness after the officers began

life-saving measures. A damages award for pre-death mental anguish cannot stand when the only evidence to support it is speculative or purely conjectural. *In re Dearborn Marine Service, Inc.,* 499 F.2d 263, 288 (5th Cir. 1974); *Calderera v. Eastern Air Lines,* 529 F. Supp. 634, 640 (W.D. La. 1982); *see also Vogler v. Blackmore,* 352 F.3d 150, 160 (5th Cir. 2003)(award of $200,000 to estate of deceased for pain and suffering and mental anguish prior to death excessive).

B. Damages awarded to Ida Renae Nobles

The jury's awards to Landon Nobles' mother, Ida Renae Nobles, for past and future loss of companionship and society are clearly excessive and suggest that the awards were the result of bias, passion and prejudice. Ms. Nobles testified at trial, and although she was a sympathetic witness and misses her son, the evidence presented at trial does not support awards totaling $6,300,000.00 for past and future loss of companionship and society. Ms. Nobles testified that she and Landon Nobles lived with her parents, and Landon Nobles would occasionally help out with household expenses. (Trial Transcript, Vol. 3, p. 88) He also helped take out the trash and performed yard work. (Trial Transcript, Vol. 3, p. 87) Ms. Nobles also testified that she misses her son and that the family does not gather together as much at holidays. (Trial Transcript, Vol. 3, p. 85)

The Fifth Circuit and other courts have found lesser awards to parents for the loss of companionship and society of their children to be excessive. In *Haley v. Pan American World Airways, Inc.,* 746 F.2d 311, 318-319 (5th Cir. 1984), the Fifth Circuit held that awards of $350,000 each to parents for the loss of companionship and society of their 25 year old son were excessive. The Fifth Circuit has also affirmed awards for parents for the loss of companionship and society of a child that were higher than the award in *Haley* but still much lower than the award in this case. In *Vogler v. Blackmore,* 352 F.3d 150 (5th Cir. 2003), the plaintiff's wife and 3 year old daughter

were killed in a motor vehicle accident. The Fifth Circuit affirmed an award of $200,000 for past loss of companionship and mental anguish and $1,300,000.00 for future loss of companionship and mental anguish for the loss of plaintiff's daughter. *Id.* at 157-58; *see also Grandstaff v. City of Borger, Tex.,* 767 F.2d 161, 172 (5th Cir. 1985)(father of adult son shot by police awarded $200,000 for loss of companionship and mental anguish). The $6.3 million award to Ms. Nobles solely for loss of companionship and society is excessive and reflects passion and prejudice. As a result, a new trial should be granted.

Likewise, the awards to Ms. Nobles of $3,500,000.00 for past mental anguish and $7,000,000.00 for future mental anguish are clearly excessive. Ms. Nobles trial testimony, while certainly sympathetic, does not support an award of $10,500,000.00 for mental anguish, and like the other awards, strongly indicates that the jury was influenced by passion and prejudice. The mental anguish award for Ms. Nobles in this case is much higher than the award approved in *Vogler* which included both mental anguish and loss of companionship and society.

Ms. Nobles' total award of $16,800,000.00 also greatly exceeds the post-remittitur amount awarded to two parents who lost their 18 year old daughter in a motor vehicle accident in *Frazier v. Honeywell Intern., Inc.,* 518 F.Supp.2d 831 (E.D. Tex. 2007). In *Frazier,* the jury awarded both parents a total of $24,000,000.00 for their past and future loss of companionship and mental anguish. *Id.* at 835. The district court's opinion on the defendant's post-trial motions described the father's testimony as being "as compelling and moving as any this judge has heard in over 30 years as a civil trial attorney and judge." *Id.* at 844. The district court nonetheless granted a remittitur to a total recovery of $9.75 million ($4,875,000 to each parent for past and future loss of companionship and mental anguish). *Id.* The jury's award to Ms. Nobles is excessive and clearly indicates that the jury was guided not by the evidence but instead by passion and prejudice.

Accordingly, the Court should grant a complete new trial, or alternatively, substantially remit the damages.

C. Damages awarded to Landon Nobles' minor children

The jury in this case awarded identical $23,150,000.00 awards to Nobles' minor sons. These awards are clearly excessive, not supported by the evidence and demonstrate that the jury was inflamed by passion and prejudice. The testimony at trial revealed that Nobles' sons, K.N. and L.N. were both two years old at the time of Landon Nobles' death and at the time of trial were six years old. (Trial Transcript, Vol. 3, p. 85; 100) Kadeidra Bell, K.N.'s mother, testified that Nobles was a good father and spent time with K.N. (Trial Transcript, Vol. 3, p. 100-101) She also testified that Nobles contributed by helping her with diapers. (Trial Transcript, Vol. 3, p. 104) Ida Renae Nobles testified that both boys know that their father loved them. (Trial Transcript, Vol. 3, p. 95) According to Bell, a step-father has assumed a father-figure role for K.N. and he and K.N are very close. (Trial Transcript, Vol. 3, p. 102) Plaintiff Michelle Dashaun Smith, the mother of L.N., did not testify at trial so the only testimony regarding Landon Nobles' relationship to L.N. was the testimony of Ida Renea Nobles and Kadeidra Bell.

The testimony of Ida Renea Nobles and Kadeidra Bell regarding Landon Nobles' relationships with his sons does not support awards of over $23 million to each son and these awards are clear evidence that the jury decided the case based on passion and prejudice. To recover damages for future mental anguish, a plaintiff must present evidence demonstrating a reasonable probability that the plaintiff will suffer mental pain and distress in the future that is more than mere worry, anxiety, vexation, embarrassment, or anger. *Wackman v. Rubsamen,* 602 F.3d 391, 408 (5th Cir. 2010), citing *Adams v. YMCA of San Antonio,* 265 S.W.3d 915, 916-17 (Tex. 2008). Plaintiffs here produced no evidence at trial sufficient to meet this standard.

The Fifth Circuit has reversed a number of cases awarding damages to children for the loss of a parent which were far less than the damages awarded to K.N. and L.N. in this case. For example, the Court in *Caldarera v. Eastern Airlines, Inc.,* 705 F.2d 778, 785 (5th Cir. 1983) found that an award of $400,000 to a four year old child for the death of his mother was excessive and remitted the award to $300,000.

Similarly, the Fifth Circuit in *Douglass v. Delta Air Lines, Inc.,* 897 F.2d 1336, 1345 (5th Cir. 1990), affirmed recoveries ranging from $50,000 to $100,000 for mental anguish of three minor children for the sudden death of a parent which they did not witness but found that each child's recovery for the loss of companionship of the parent could not far exceed $200,000 so the aggregate sum for each child would not exceed $300,000. *See also Grandstaff,* 846 F.2d 1016 (5th Cir. 1988)(minor child recovered $250,000 total for loss of society and mental anguish when her father was killed by police).

In *Wackman,* 602 F.3d at 408, the Fifth Circuit reversed awards of $75,000 to one daughter and $50,000 each to two other daughters in a wrongful death case when there was insufficient evidence of future mental anguish. Similarly, in this case, there was no evidence at trial to support awards of over $11 million to both K.N. and L.N. for future mental anguish. A review of the trial testimony of Ida Renae Nobles and Kadeidra Bell reveals that there was no evidence that the jury could base the extremely high awards for future mental anguish and future loss of companionship and society on and that these awards are excessive and the result of passion and prejudice. As a result, the Court should grant a complete new trial, or alternatively, substantially remit the damages.

VII. The Court erred in admitting impeachment testimony concerning Defendants' firearms expert.

At trial, Plaintiffs attempted to cross examine Defendants' firearms expert, Greg Karim, regarding an Austin Police Department disciplinary proceeding which occurred in July 2018, over one year after he performed the firearms testing and examination for this incident. The disciplinary proceedings involved alleged dishonesty in a personnel matter and had nothing to do with Karim's firearms investigations, collection of evidence or dishonesty in testimony regarding firearms examinations. While the Court correctly determined that in-depth questioning and extrinsic evidence of the disciplinary proceeding was inadmissible under Fed. R. Evid. 403, the Court permitted Plaintiffs to ask Karim: "Now isn't it true, Mr. Karim, that you resigned from your duties in the Austin Police Department, and you resigned in lieu of discharge for being dishonest in relation to a personnel matter?" (Trial Transcript Vol. 4, p. 265) Karim responded: "Yes. That's true." (Trial Transcript Vol. 4, p. 265)

Defendants respectfully submit that the Court erred in admitting this testimony. This evidence was inadmissible under Fed. R. Evid. 402 since it had no relevance to Karim's testing and examination performed for this incident or his current or prior trial testimony. Any alleged probative value to Karim's credibility was substantially outweighed by the danger of unfair prejudice to Karim and the Defendants and the potential of misleading the jury and thus was inadmissible under Fed. R. Evid. 403. Plaintiffs did not dispute Karim's actual findings concerning his examination of the firearms evidence in this case, and this effort to impeach Karim about a collateral matter that occurred long after his examination of the evidence was solely designed to mislead the jury. As a result, this evidence should not have been admitted.

VIII. Plaintiffs did not meet their burden of demonstrating that the Defendants' peremptory strike of Juror Number 5 was based on the potential juror's race, and there was no finding of purposeful discrimination.

At the conclusion of jury selection, Plaintiffs asserted a *Batson* challenge to Defendants' use of a peremptory strike on Trial Juror Number 5, who at the time was Potential Juror Number 10. Plaintiffs argued that Potential Juror Number 10 was the only African-American on the jury panel and that the Defendants removed him because of his race. *Batson v. Kentucky*, 476 U.S. 79 (1986).

A *Batson* challenge involves three procedural steps: (1) the "[opponent of the strike] must make a prima facie showing that a peremptory challenge has been exercised on the basis of race"; (2) the [striking party] "must offer a race-neutral basis" for the strike; and (3) "the trial court must determine whether the [striking party] has shown purposeful discrimination." *Snyder v. Louisiana*, 552 U.S. 472, 476--477 (2008). This final step involves evaluating "the persuasiveness of the justification" proffered by the [striking party], but "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Purkett v. Elem*, 514 U.S. 765, 767-768 (1995) (per curiam); see *United States v. Bentley--Smith*, 2 F.3d 1368, 1373 (5th Cir. 1993).

During voir dire, two potential jurors -- Number 10 and Number 11-- sitting side by side, revealed that they had each previously been arrested. Potential Juror No. 10 stated that he had been arrested for possession of marijuana. Potential Juror No. 11 stated that he had also previously been arrested a long time ago and he could not remember the exact charges, but he thought resisting arrest was involved. Defendants used peremptory strikes on both of them. Plaintiffs did not object to the peremptory strike of Potential Juror No. 11, but they raised a *Batson* challenge with regard to Potential Juror No. 10. Defense counsel explained that he had

used a strike against Potential Juror No. 10 because he had previously been arrested, and because of his employment as a security guard. Two of the witnesses in the case were also security guards with expected testimony somewhat in conflict with the defendants. Defense counsel explained that both reasons were race-neutral, and for comparison he pointed out the exact same treatment of Potential Juror No. 11 who had also been arrested, and who was literally sitting side by side with Potential Juror No. 10. The Court denied the peremptory strike of Potential Juror No. 10, explaining that the Defendants' reasons for the strike were not sufficiently race-neutral. (Trial Transcript, Vol. 1, pp. 105-106).

"On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." *Snyder v. Louisiana*, 552 U.S. at 477; see *United States v. Kennedy*, 707 F.3d 558, 568 (5th Cir. 2013) (*Batson* rulings reviewed for "clear error"). The Fifth Circuit has held that it "must give great deference to the district court because findings in this context largely turn on an evaluation of the credibility or demeanor of the attorney who exercises the [peremptory] challenge." *Kennedy*, 707 F.3d at 568.

Respectfully, Defendants submit that the Court erred since there was no actual determination of purposeful discrimination by Defense counsel. Instead, the Court evaluated the reasons for the peremptory strike similarly to a challenge for cause, which is a higher standard than is proper for evaluating a party's decision to exercise a peremptory strike. Defendants submit that it is not at all unusual for individuals to come to different conclusions in evaluating potential jurors, and that the difference in impression of the potential juror between the Court and Defense counsel in this case does not indicate that the Defendants' reasons were pretextual. There was no finding that the Defendants peremptory challenge was exercised on the basis of race. The result was to relieve the Plaintiffs of their "ultimate burden of persuasion regarding

racial motivation" as the opponents of the peremptory strike. *Purkett v. Elem*, 514 U.S. 765, 767-768 (1995) (per curiam); see *United States v. Bentley--Smith*, 2 F.3d 1368, 1373 (5th Cir. 1993).

Indeed, Defendants respectfully submit that the record amply demonstrates a race-neutral basis for the exercise of this peremptory challenge. As noted above, only two potential jurors, Number 10 and Number 11 (not an African American), had previously been arrested and Defendants used peremptory strikes on both of them. Other than initially raising the Batson challenge as to Number 10, Plaintiff's counsel did not make any additional comments, and Plaintiffs did not offer any support or additional proof for their contention of purposeful discrimination.

In sum, the Plaintiffs did not meet their burden of demonstrating that the Defendants' attempted peremptory strike Potential Juror No. 10 (Trial Juror Number 5) was based on race. Consequently, it is clear that there was no finding of purposeful discrimination, and the Court's denial of Defendants request to excuse Potential Juror No. 10 was clearly erroneous.

CONCLUSION

For the reasons set forth above, Defendants Richard Egal and Maxwell Johnson respectfully request that the Court grant their motion for judgment as a matter of law and dismiss the Plaintiffs' claims against them with prejudice. Alternatively, Defendants respectfully request that the Court order a new trial on liability and damages or alternatively, remit the damages awarded by the jury to a reasonable damages award. Defendants further request any additional relief to which they may be entitled.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
Monte L. Barton
Assistant City Attorney
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 4th day of February 2022, I served a copy of this document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON **Defendants.**	§	

DEFENDANTS' MOTION TO STAY EXECUTION ON FINAL JUDGMENT PENDING DISPOSITION OF POST-TRIAL MOTIONS AND APPEAL

Defendants Richard Egal and Maxwell Johnson file this Motion to Stay Execution on the Final Judgment (Doc. 74) pending the final disposition of their Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur and any subsequent appeals pursuant to Rule 62 of the Federal Rules of Civil Procedure as follows:

1. On January 7, 2022, the Court entered Final Judgment in favor of the Plaintiffs against Defendants Richard Egal and Maxwell Johnson. (Doc. 74) On February 4, 2022, Defendants filed their Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur.

2. Rule 62(b) of the Federal Rules of Civil Procedure provides: "[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay

takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security."

3. On the date of the incident which is the subject of this lawsuit, Defendants Richard Egal and Maxwell Johnson were employees of the City of Austin, Texas and were acting within the course and scope of their employment with the City of Austin.

4. On April 9, 1987, the City of Austin adopted and entered Resolution 870409-02, attached as Exhibit A, which provides: "[t]hat the City Manager of the City of Austin is authorized to pay, on behalf of any City of Austin official, employee or volunteer, such sums which the official, employee or volunteer shall become legally obligated to pay by reason of the errors, omissions, negligent acts or violations of legal rights under color of law of said official, employee or volunteer" subject to certain limitations set forth in the resolution.

5. Rule 62(f) of the Federal Rules of Civil Procedure provides that "[i]f a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give." Under Texas state law, the City of Austin, as a municipality, may "institute and prosecute suits without giving security for costs and may appeal from judgment without giving supersedeas or cost bond." Tex. Civ. Prac. and Rem. Code §6.002.

6. In this case, the City of Austin would be entitled to a stay of judgment without having to post a supersedeas bond had this action been maintained in a state court in Texas rather than a federal court. The Fifth Circuit has held that a party is entitled to a stay of a district court's judgment pending appeal to the same extent that it would have received in state court. *Castillo v. Montelepre, Inc.,* 999 F.2d 931, 942 (5th Cir. 1993); *State Bank & Trust Co. v. Boat,* 926 F.2d

449, 451 (5th Cir. 1991). Courts in the Fifth Circuit have held that cities and other governmental entities were not required to post a supersedeas bond for post-trial proceedings. *See Decorte v. Jordan,* 2005 WL 3541124*1 (E.D. La. October 4, 2005)(unpublished)(holding that based on state law, school board was not required to post supersedeas bond in order to appeal); *U.S. ex rel. Garibaldi v. Orleans Parish Sch. Bd.,* 1998 WL 774172*1 (E.D. La. October 30, 1998)(unpublished)(school board not required to post supersedeas bond for post-trial proceedings); *Picou v. City of Jackson,* 153 F. Supp.2d 891, 892-93 (S.D. Miss. 2001)(city did not have to post bond pursuant to state law).

PRAYER

Accordingly, pursuant to the City of Austin's Resolution No. 870409-02, and the above authorities, Defendants request that the Court enter a stay of execution of the Final Judgment without the necessity of posting a supersedeas bond pending final disposition of Defendants' Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur and any subsequent appeals. Alternatively, Defendants request that the Court set a reasonable supersedeas bond.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov

Monte L. Barton
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I certify that on February 4, 2022, I conferred by email with counsel for the Plaintiffs regarding this motion and Plaintiffs oppose this motion.

/s/ H. Gray Laird III

CERTIFICATE OF SERVICE

I certify that, on the 4th day of February, 2022, I served a copy of the foregoing document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

Exhibit A

870409-02

RESOLUTION

WHEREAS, the City of Austin recognizes that City officials and employees need to have liability protection from damages resulting from errors, omissions or negligent acts committed in the performance of their duties; and,

WHEREAS, the City, in the past, has indemnified its employees in certain situations; and,

WHEREAS, it is the intention of the City Council to repeal its resolution of August 8, 1985, and replace that resolution with the current resolution extending the City's program of self-insurance for its employees; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager of the City of Austin is authorized to pay, on behalf of any City of Austin official, employee or volunteer, such sums which the official, employee or volunteer shall become legally obligated to pay by reason of the errors, omissions, negligent acts or violations of legal rights under color of law of said official, employee or volunteer, subject to the limitations herein below stated:

1. The City of Austin will pay only actual damages and court costs, including attorneys' fees adjudged against an official, employee or volunteer so covered by this resolution.

2. The damages assessed must be based on an act or omission of the official, employee or volunteer in the course and scope of his or her position or employment for the City of Austin.

3. No indemnity will be provided for an act or omission constituting gross negligence, or for official misconduct, or for an act or omission made in bad faith, or for acts constituting fraud, dishonesty, or a criminal act on the part of the employee seeking indemnity.

4. No official, employee or volunteer will be indemnified for any award of punitive damages against said official, employee or volunteer.

5. The City will not indemnify any official, employee or volunteer to the extent that claimants' damages are insured under a contract of insurance or under any other plan of self-insurance authorized by statute.

6. The City of Austin reserves the right to refuse such indemnification depending on the factual circumstances from which damages have arisen. The City Manager is authorized to recommend that indemnification not be made available. Absent City Council action to the contrary, indemnification will be provided.

The City Attorney shall provide the legal representation necessary to carry out this policy. If an official, employee or volunteer hires an attorney to represent him/her without the consent and approval of the City Attorney, the City shall not pay nor reimburse said official, employee or volunteer for the costs of the representation, and the City reserves the right to refuse indemnification under such circumstances. The foregoing shall not be construed to prevent such official, employee or volunteer to retain at his or her personal expense, an attorney

to associate with the City Attorney in defense of any claim.

This resolution does not in any way supersede, amend, repeal, or impair the operation of Section 7, Article XII of the Charter of the City of Austin concerning notice of claims.

ADOPTED: April 9, 1987. ATTEST: James E. Aldridge
James E. Aldridge
City Clerk

07APR87
BLK:rs

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

ORDER GRANTING DEFENDANTS' MOTION TO STAY EXECUTION ON FINAL JUDGMENT PENDING DISPOSITION OF POST-TRIAL MOTIONS AND APPEAL

This Court, having considered Defendants' Motion to Stay Execution of the Final Judgment Pending Disposition of Post-Trial Motions and Appeal, all other pleadings on file and all applicable law, hereby GRANTS the motion. Accordingly, the Court hereby enters a stay of execution of the Final Judgment (Doc. 74) pending final disposition of the Defendants' Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur and any subsequent appeals without the necessity of posting a supersedeas bond.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2022.

_____

Mark Lane, United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STAY EXECUTION ON FINAL JUDGEMENT PENDING DISPOSITION OF POST-TRIAL MOTIONS AND APPEAL

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

COMES NOW, Plaintiffs Ida Renae Nobles, individually, and K.N., minor, by and through his guardian Kadeidra Bell, and also L.N., a minor, by and through his guardian Michelle Dashaun Smith, each as heirs at law to the estate of Landon Nobles (hereinafter referred to as "Plaintiffs") and they file this Plaintiffs' Response in Opposition to Defendants' Motion To Stay Execution On Final Judgment Pending Disposition Of Post-Trial Motion And Appeal, and Plaintiffs insist that (1) the Defendants' Motion to Stay Execution should be denied, and (2) if Defendants want to proceed on appeal they each must be made to post a supersedeas bond under Rule 62. Plaintiffs aver for good cause that:

(1) Jury returned verdict award in the cumulative amount of US $67,107, 500.00 and this court entered judgement on the full amount (Doc. 74).

(2) Plaintiffs have made a demand and that demand has gone unrequited.

(3) Defendants seek for all intents and purposes to enjoin Plaintiffs from executing collections on the judgement against Defendants by invoking The 1987 City of Austin Resolution (hereinafter "the Indemnification Agreement") which indemnifies officials, employees and volunteers for injury caused by official acts of officials, employees and volunteers. (Exhibit A, paragraph 2).

(4) On 17 February 2022, The City of Austin authorized settlements of $10 million. Reports in the Austin American Statesman as recently as 17 February 2022 indicate that the City of Austin (hereinafter "the City) has resources to pay for acts or omissions that are from a fund that has a budget of $10.1 million for FY 2022. Accordingly, it appears that The City of Austin has expended its acts and omissions budget for the Fiscal Year (Exhibit B & Exhibit C). The City of Austin is out of cash money on that budget line, and has not communicated to Plaintiffs as judgement creditors any intent to replenish that budget line, nor have Defendants notified Plaintiffs as judgement creditors that the Defendant debtors or the City have taken any actions to refresh the fund. The Plaintiffs' claim resulting from a jury trial is a ripe claim and should be paid ahead of any out-of-court pre-trial settlements made in avoidance of trial, for acts or omissions that are not fully ripe by final judgement. By way of example of what Plaintiffs think ripeness looks like, using Plaintiffs own case, the Plaintiffs' injuries were duly acknowledged, assessed, and ascribed by a fact finder, the Jury who deliberated over a 2-day period and awarded compensatory damages in the amount of $67 million largely because of the egregiousness of the injury visited upon each Plaintiff by the Defendants' unlawful acts

against Landon Nobles. The law is that Plaintiffs are allowed pursuant to Federal Rules of Civil Procedure 69 to execute the judgement and seize property in satisfaction of the judgement. Were the court to stay execution without bond, the court would be made an unwitting participant in Defendants' scheme to avoid satisfying the judgement of the jury by paying other claims not yet ripe, instead of paying the judgement as is ordered by a Federal Court Judge entered as a final judgement affirming the jury verdict upon which Plaintiffs' claims become ripe immediately upon the entry of the judgement.

(5) Defendants essentially assert that the City of Austin is the real party in interest by way of the Indemnification Agreement, and that the City thereby steps into the shoes of the Defendant, and that municipalities are exempt from paying supersedeas bonds on appeal. However, Defendants offer no case law to support the existence of a legal procedure that substitutes the City as Defendants in lieu of the Defendants as Defendants, who are the ones actually appealing. Defendants also aver that there exists an exception for municipalities posting supersedeas bond to stay execution efforts, so therefore the Defendants themselves do not need to post a supersedeas bond because "the city is gonna pay it." This is fallacious. That indemnification agreement is an instrument between the Defendant Police Officers and the City regarding how <u>those</u> two parties will handle matters involving acts and omissions. Plaintiffs are not party to the Indemnification Agreement, nor should Plaintiffs' enforcement efforts be hamstrung by this third-party agreement. The City is not a party to the judgement. The judgement is against the Defendants Egal and Johnson. Defendants Egal and Johnson are the judgment debtors. They are the real parties in interest who must post a bond to arrest execution of the judgement while asserting their right to appeal the judgement, not the City of Austin. The City is not the judgement debtor, the Defendants are. Essentially it's like this: in

a car crash the Plaintiffs sues the Defendant, not the Insurance Company. The Insurance Company might be the payor, but the Insurance Company is not the Defendant. And likewise, the Insurance Company is not the Party who is appealing the jury award. Here, in the Nobles case, the City is not appealing the verdict. It is the Defendants who are appealing, and it's the Defendants who are responsible for posting the bond, not the City. The City is not appealing because the city is not a party to the Final Judgement. Therefore, it is the Defendants who are appealing the verdict who are the named parties who are subject to the supersedeas bond requirement to stay execution of the judgement, and it is the named parties, not their liability proxy, who must post the bond in the amount of $33,572,250.00 for Defendant Richard Egal and $33,535,250.00 for Maxwell Johnson. Defendants in their motion cited several cases in the 5th Circuit, but no Texas specific cases. All of the cases cited by Defendants are either Louisiana or Mississippi state law. There is no exception from the supersedeas bond requirement in Texas for municipal police officers. Tex. Civ. Prac. and Rem. Code 6.002 through 6.004.

(6) That said, at the barest minimum, the Defendants will need to post supersedeas bond on the punitive damages amounts assessed against each respectively, because the 1987 Resolution does not indemnify for punitive damages. (Exhibit A paragraph 4). The Jury award specifically assessed punitive damages in the amounts of $187,000.00 against Defendant Richard Egal, and $150,000.00 against Defendant Maxwell Johnson.

(7) Therefore, in the alternative, Defendants Richard Egal and Maxwell Johnson must post at the minimum a supersedeas bond each as the true party in interest per the rules at least in the amount that secures the punitive damage award, for which the City of Austin expressly will

not indemnify. As stated previously, there is no supersedeas bond exception for police officers under Texas law.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, the Plaintiffs ask that Defendants be made to post supersedeas bond in the cumulative amount of US $67,107,500.00 (33,535,250.00 for Defendant Maxwell Johnson and 33,572,250.00 for Defendant Richard Egal) in order to stay the execution of judgement while the Defendants proceed with the post-judgement appeal process. Alternatively, if the court determines that the City does in fact step in for the Defendants as the party in interest, and that the City is exempted from posting bond, then the Defendants Egal and Johnson nevertheless must post supersedeas bond in the amounts of $187,000.00 and $150,000.00 respectively to cover the punitive damages awards the Jury rendered, because punitive damages are not indemnified by the City of Austin per the 1987 Resolution.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 18th day of February, 2022, I served a copy of Plaintiffs' Response in Opposition to Defendants' Motion to Stay Execution on Final Judgment to all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure **via CM/ECF:**

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

Exhibit A

870409-02

RESOLUTION

WHEREAS, the City of Austin recognizes that City officials and employees need to have liability protection from damages resulting from errors, omissions or negligent acts committed in the performance of their duties; and,

WHEREAS, the City, in the past, has indemnified its employees in certain situations; and,

WHEREAS, it is the intention of the City Council to repeal its resolution of August 8, 1985, and replace that resolution with the current resolution extending the City's program of self-insurance for its employees; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager of the City of Austin is authorized to pay, on behalf of any City of Austin official, employee or volunteer, such sums which the official, employee or volunteer shall become legally obligated to pay by reason of the errors, omissions, negligent acts or violations of legal rights under color of law of said official, employee or volunteer, subject to the limitations herein below stated:

1. The City of Austin will pay only actual damages and court costs, including attorneys' fees adjudged against an official, employee or volunteer so covered by this resolution.

2. The damages assessed must be based on an act or omission of the official, employee or volunteer in the course and scope of his or her position or employment for the City of Austin.

3. No indemnity will be provided for an act or omission constituting gross negligence, or for official misconduct, or for an act or omission made in bad faith, or for acts constituting fraud, dishonesty, or a criminal act on the part of the employee seeking indemnity.

4. No official, employee or volunteer will be indemnified for any award of punitive damages against said official, employee or volunteer.

5. The City will not indemnify any official, employee or volunteer to the extent that claimants' damages are insured under a contract of insurance or under any other plan of self-insurance authorized by statute.

6. The City of Austin reserves the right to refuse such indemnification depending on the factual circumstances from which damages have arisen. The City Manager is authorized to recommend that indemnification not be made available. Absent City Council action to the contrary, indemnification will be provided.

The City Attorney shall provide the legal representation necessary to carry out this policy. If an official, employee or volunteer hires an attorney to represent him/her without the consent and approval of the City Attorney, the City shall not pay nor reimburse said official, employee or volunteer for the costs of the representation, and the City reserves the right to refuse indemnification under such circumstances. The foregoing shall not be construed to prevent such official, employee or volunteer to retain at his or her personal expense, an attorney

to associate with the City Attorney in defense of any claim.

This resolution does not in any way supersede, amend, repeal, or impair the operation of Section 7, Article XII of the Charter of the City of Austin concerning notice of claims.

ADOPTED: April 9, 1987. ATTEST: James E. Aldridge
James E. Aldridge
City Clerk

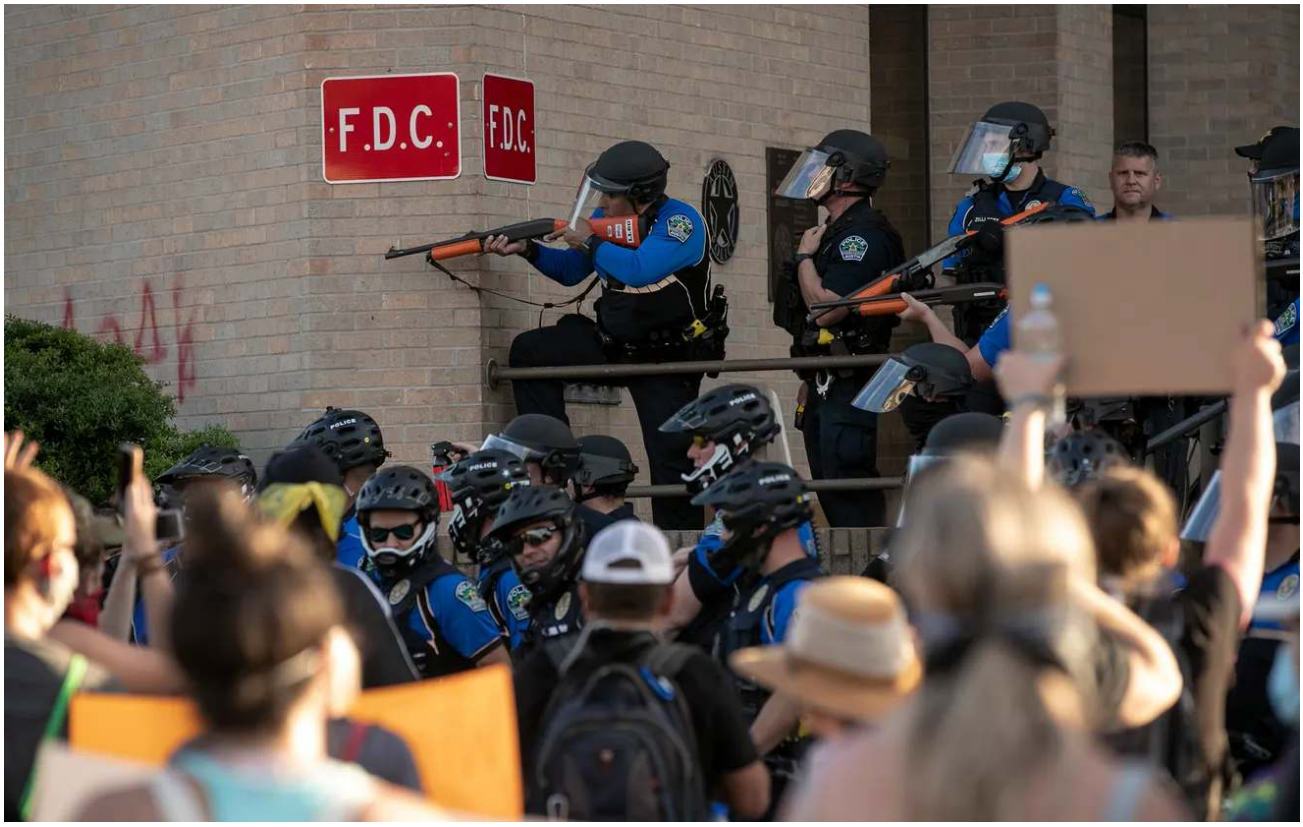
07APR87
BLK:rs

Austin's dilemma: Should the city settle with people injured by police during protests?

At a recent hearing in federal court in Austin, attorneys handling lawsuits filed against the city by people injured during the May 2020 social justice protests revealed that they had reached a stalemate and wanted the judge to break it.

The disagreement was over the number of times Mayor Steve Adler, City Manager Spencer Cronk and Council Member Greg Casar would have to sit for pretrial depositions. The plaintiffs' lawyers sought to interview them many times, arguing that because it was a chaotic episode, there was a lot of ground to cover. The city's lawyers said the request was overly burdensome.

More: A year after social justice protests, Austin policing reform has slowed amid GOP pushback



U.S. District Judge Robert Pitman reasoned that the squabble was not his to fix and directed the lawyers into a conference room. He told them they were not to leave until they worked it out.

The disagreement, played out in Pitman's courtroom Dec. 15, is probably a forerunner to more disputes as the city weighs whether to turn the page from an ugly protest response and award taxpayer money to victims instead of proceeding to trial.

Protests: Austin police probe whether issues with less-lethal rounds led to protesters' injuries

The first trial is scheduled for April but could be canceled if a settlement is reached or postponed to make time for more developments in the case, including on the criminal side. The Travis County district attorney's office has begun a grand jury presentation on the actions of officers who injured protesters and is likely to wrap up sometime this winter, District Attorney José Garza

said.

According to court records, 150 beanbag shots were fired throughout the weekend when thousands of people gathered in downtown Austin to protest the officer-involved deaths of George Floyd in Minneapolis and Michael Ramos in Austin. Floyd died after police officer Derek Chauvin knelt on the back of his neck for more than nine minutes. Chauvin was convicted of second-degree murder. Ramos was shot in Southeast Austin a month earlier, and officer Christopher Taylor is charged with murder in the case.

The grand jury will review incidents involving 10 injured protesters or protest attendees and 16 police officers.

More: How calls to 'defund the police' took Austin to a crossroads of police reform

There appears to be momentum on the City Council to settle the lawsuits sooner rather than later. At its final meeting of the year

Dec. 9, the council approved an amended legal services agreement with an outside law firm the city hired to handle two of the cases. The agreement came with a twist: It does not include payment for taking the case to trial, a signal from council members that they'd prefer to resolve the case through a settlement.

The plan would save the city $399,000 — an amount Casar suggested would be better spent by giving it to the plaintiffs than fighting them in court. The council can always reinstate the funding if settlements cannot be reached and trials are necessary.

The city's legal department is handling most of the cases.

All settlements of more than $66,000 need the approval of a majority of the 11-member council. In December, the council approved a $99,000 payout to a California man who sustained

injuries while being taken to the ground by an officer in 2018. In September, the council approved a $2.25 million payout to the parents of a suicidal man who was fatally shot by police in 2017.

In a recent interview with the American-Statesman, Adler said he supports settling the protest cases but that it takes both sides to reach an agreement.

"In a perfect world, the answer to that would be yes," he said. "But I think that depends on the positions that everybody's ultimately taking."

In a statement, the city said: "While we cannot discuss the specifics of settlement negotiations based upon confidentiality rules, the city routinely engages in settlement discussions and mediations in all lawsuits. We seek to resolve all disputes in an appropriate and timely manner."

Protest response: Austin doled out millions in overtime pay to police during last year's racial justice protests

Impact of recent Austin police violence jury verdict

The outcome of a case from December could reset the going rate to resolve police brutality cases. Unable to reach a settlement, the city went to trial in the death of Landon Nobles, a 24-year-old man who was killed by Austin police officers in 2017. A federal jury sided against the officers and awarded $67 million to Nobles' family, a game-changing number that easily topped the record $3.25 million the city awarded in the death of David Joseph, a naked, unarmed teenager who was having a mental breakdown when he was fatally shot by an officer in 2016.

The Nobles case is not related to the protests, but the verdict could speak to the community's growing impatience with police brutality and the mistreatment of people of color. A number of legal experts say they expect the payout to be reduced by a judge or on appeal, but the final amount still is likely to affect the city's negotiating leverage in the protest cases by recalibrating the starting point in discussions.

"To not factor that verdict in when assessing future acts of police misconduct would be malpractice on their part," said lawyer Jeff Edwards, who is representing nine people who were injured in the protests and has filed lawsuits on behalf of all of them.

Twelve lawsuits have been filed against the city and individual

officers. That number could increase with the potential filing of a lawsuit from Brad Ayala, a teenager who was in surgery for seven hours after he was shot in the head by a beanbag munition fired by a police officer. Lawyer Dicky Grigg, who represents Ayala, did not respond to a message seeking clarification of the status of Ayala's potential legal claim.

Ayala was among 19 protesters or protest attendees who were taken to hospitals with injuries from beanbag rounds on the final two days of May. The lawsuits make a range of allegations: that protesters weren't doing anything wrong when they were shot, that officers fired the munitions recklessly into crowds and beyond the 75-foot distance considered to be accurate, and that the munitions were especially dangerous because they were expired and defective, a concern made public by the Statesman in October 2020.

Story continues below

Austin police reforms followed social justice protests

Criticism of the Police Department's response led to a number of changes, including budget cuts and reallocations authorized by the council in 2020, the temporary closure of the police cadet training academy, revised training methods, and the discontinued use of beanbag rounds in crowded areas. It also led to an erosion of trust in then-Police Chief Brian Manley, who clung to his job through the end of the year before announcing he was stepping down in early 2021.

A motion is pending in federal court to delay proceedings in a civil case until the resolution of the related criminal case. The motion is from officer Kyle Felton, who is being sued for shooting Anthony

Evans with a beanbag round. Felton says he cannot adequately fight the civil case without providing testimony in a deposition that could be used against him in the criminal case.

Garza, who was elected in 2020 after promising to hold officers accountable for their actions, would not say why his office has been slow to present the protest cases to a grand jury but did say the presentation began this fall and should conclude in the winter.

It is unclear whether, when presenting the cases, Garza's prosecutors will consider what guidance or direction was given to the officers by their supervisors when assessing culpability for the injuries.

In a deposition in a civil case, Police Chief Joe Chacon acknowledged that the department was "unprepared" for the size of the protests, which he said led to a communication breakdown. Chacon, who was part of the Police Department's

leadership team at the time of the protests, was asked several times if officers shot "unarmed, innocent" protesters. He never said yes.

Court records show that in a separate deposition, Manley acknowledged receiving a text message from Casar on May 30 detailing the injuries to Ayala, the teenager who was struck in the head with a beanbag round, and to Nicole Underwood, who needed surgery after a beanbag round penetrated her chest.

Manley's deposition is not available publicly. Plaintiffs' lawyers say he testified that after receiving the text message, he continued to allow his officers to use the beanbag rounds until after the weekend was over.

If the city moves to settle the lawsuits, it will dip into a liability reserve fund of taxpayer money. Self-insurance is common among governments and provides the city more flexibility in handling cases as opposed to taking direction from an insurance company.

The fund is budgeted for $10.1 million in the current fiscal year.

APD IS RESPONSIBLE
FOR CRITICALLY INJURING
BRAD LEVI AYALA
&
JUSTIN HOWELL

Listen to Statesman News Network

Austin American-Statesman
SERVING OUR COMMUNITY SINCE 1871

NEWS

Austin to pay $10 million to two men injured by bean bag munitions in 2020 protests

Ryan Autullo
Austin American-Statesman

Published 9:00 a.m. CT Feb. 17, 2022 | **Updated 6:29 p.m. CT Feb. 17, 2022**

The city of Austin has agreed to pay a combined $10 million to settle federal lawsuits with two men who were badly wounded by police during the social justice protests in May 2020.

The settlements with Justin Howell and Anthony Evans, who both suffered head injuries from less-lethal bean bag rounds fired by Austin police officers, were approved in a unanimous vote by the City Council on Thursday.

Howell received $8 million — the most ever in an excessive force case settlement in Austin. The previous record was the $3.25 million that went to the family of David Joseph, a teenager who was naked and unarmed when police shot and killed him in 2015.

Evans received $2 million.

Referencing the sizable payouts, the city released a statement saying Howell and Evans will need ongoing and long-term care.

"We have reviewed the totality of the circumstances surrounding the protests, and we believe it is in the best interest of these plaintiffs and the city of Austin to resolve

these cases now," the statement read.

Howell issued a statement through his lawyer thanking the City Council and the city's law department.

"While I wish this never happened, I'm grateful that the city of Austin has taken responsibility for what happened to me and deeply relieved that I will have the resources I need to rebuild and maintain my health," the statement said.

Thursday's settlements came as Travis County grand jurors reviewed the police department's response to the protests and weighed potential indictments of as many as 21 individual officers. On Thursday, the grand jury returned nine indictments.

To this point, the city has been hit with 14 lawsuits from people injured during a chaotic weekend in Austin. Thousands of people gathered downtown to protest the officer-involved deaths of George Floyd in Minneapolis and Michael Ramos in Austin. Floyd died after police officer Derek Chauvin knelt on the back of his neck for more than nine minutes. Chauvin was convicted of second-degree murder. Ramos was shot in Southeast Austin a month earlier, and officer Christopher Taylor is charged with murder in that case. Ramos' mother has sued the city.

During the May 2020 protests, officers guarding the Austin Police Department's headquarters fired on protesters with bean bag rounds, resulting in injuries to roughly three dozen participants. Among accusations made in the lawsuits are that the munitions were shot at angles, which is known to be dangerous, and beyond the distance manufacturers say is accurate.

Following that weekend, and facing significant criticism from the community and city officials, the police department announced it no longer would fire bean bag munitions into crowds.

“I understand the council’s decision to settle these two cases now and our hearts go out to these two individuals who received serious injuries during the May 2020

protests," Austin Police Chief Joe Chacon said. "When APD responded that day, our goal was to protect people gathering to exercise their right to protest as we have safely done for many years. We planned for protests with crowds that would be similar to past protests. In hindsight, we were not prepared for the heightened frustration felt by so many community members, nor the size and scope of the crowds. As tensions escalated, APD instructed our officers to use tools that we thought would help manage the crowd for everyone's safety. However, we did not anticipate the injuries that occurred from the use of the less-lethal rounds. We now prohibit the use of less-lethal ammunition for crowd control."

More: At least 9 Austin police officers charged for handling of 2020 George Floyd protests

More: How calls to 'defund the police' took Austin to a crossroads of police reform

Evans and Howell are the second and third injured protest attendees to settle lawsuits with the city. Earlier this month, the council approved a payment of $150,000 to Arianna Chavez, who court records show suffered a concussion when she was shot in the back of the head with a bean bag round.

In a news conference soon after Howell's injuries, then-Police Chief Brian Manley said an officer was firing at a person who threw a water bottle but instead hit Howell. Video posted on social media at the time showed protesters carrying Howell to safety.

Howell, who was 20 at the time and a Texas State University student, was left in critical condition. His brother said that he suffered a fractured skull and brain damage.

Evans suffered a fractured jaw and needed emergency surgery.

In most of the lawsuits, the city is being defended by its own lawyers. But the Howell and Evans cases, due to their complexities, were handled by private law

firm Richards, Rodriguez & Skeith, which the city has committed to paying nearly $800,000.

Taxpayer money to settle the cases — and for the fees to the firm — comes from a liability reserve fund. This year, that fund is set at $10.1 million.

"These settlements remind us of a real difficult and painful moment in our city," Mayor Steve Adler said. "No one should be injured while exercising their constitutional right to protest."

Jeff Edwards, an attorney who represents Howell and Evans, said he hopes the settlements in the Howell and Evans cases "will lead to some serious self reflection on the part of the Austin Police Department and its leadership."

"What happened at the protests is as bad as it gets," Edwards said. "Not only did numerous officers attack innocent people in crowds with deadly weapons, the very highest level of the departments knew what was happening and did not stop it. If APD's leadership simply acknowledged this, then maybe the department could repair its image and improve its policing. But that, unfortunately, is not something a settlement can achieve. That comes from within."

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW AND IN THE ALTERNATIVE, FOR NEW TRIAL OR REMITTITUR

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

Plaintiffs Ida Renae Nobles, individually, K.N., Minor, By And Through His Guardian Kadeidra Bell, & L.N., Minor, By And Through His Guardian Michelle Dashaun Smith As Heirs At Law To The Estate Of Landon Nobles (hereinafter referred to as "Plaintiffs") files this response to Defendants' renewed motion for judgment as a matter of law, motion for new trial, and Defendants' request to remit the damages awarded by the jury. Plaintiffs' ask this court to deny the Defendants' motion and request in its entirety.

INTRODUCTION

On December 15th, 20221, the jury rendered a verdict finding that Defendants Richard Egal and Maxwell Johnson violated Landon Nobles constitutional rights by killing him on the night

of May 7th, 2017. (Doc. #70). On January 7th, 2022 this Court signed the final judgement (Doc. #74). After 6 days of trial and 8 hours of deliberation the jury awarded $67,107,500.00 for Plaintiffs in a unanimous verdict.

ARGUMENT & AUTHORITIES

I. LIABILITY AND QUALIFIED IMMUNITY

The Defendants complain that the jury erred in finding them each respectively responsible for the death of Landon Nobles and that the determination is somehow invalid because of inflammatory argument. They also allege that the liability determination is invalid because the evidence upon which liability is based is insufficient. However, a close look at the evidence proves that the evidence that the jury referred to in coming to that determination is indeed sufficient.

There is no dispute that Defendant Richard Egal and Maxwell Johnson killed Landon Nobles by shooting him in the back at close range. Several witnesses, including one police witness, testified that Landon Nobles did not have a gun in his hand when he was killed and did not point any gun at anybody. This account was contrary to two police witnesses that Landon Nobles engaged the police in a gunfight. The jury ultimately decided the controversy in the favor of Plaintiffs, thereby rejecting the Defense police officers theory of the case.

The only evidence presented that Landon Nobles was armed was the self-serving testimony of 4 police officers: Richard Egal, Maxwell Johnson, Uri Tamez, and Steven Pena. Controverting evidence that was presented to the jury was the testimony of Chris Futrell, the testimony of Elvis Ingram, the testimony of Andre Anderson, the testimony of Royie Nobles, and the testimony of Police Officer Anthony Allegeretti each of whom said he did not see a gun in Landon Nobles hands when Egal and Johnson shot Landon Nobles, and that Landon Nobles did not engage the Police in a gunfight.

Qualified Immunity

Defendants' theory of the case is that Landon Nobles must have fired a handgun at the Mooseknuckle Pub, and that Qualified Immunity flows from that event. Defendants offered through Detective Steve Boline, a grainy video that was clearly not helpful in determining whether Landon Nobles fired a handgun in the air at the Mooseknuckle Pub. Detective Steve Boline testimony was that this video clearly shows Landon Nobles raise his hand and fire a weapon, however it was not very clear at all. To the contrary, Royie Nobles and Nicholas Henderson, testified as the only witnesses who were there live at the Mooseknuckle at the time of the alleged shooting of the handgun in the air. Royie Nobles unflappably testified that Landon Nobles did not have any handgun on his person that night to his knowledge, and that Landon Nobles was standing adjacent to the him the entire time at the Mooseknuckle Pub, and even walked away from the Mooseknuckle Pub together, and most importantly that Landon Nobles did not fire a weapon into the air, or fire a weapon at all while at the Mooseknuckle Pub. Nicolas Henderson also testified that he never saw Landon Nobles with a gun. Nevertheless Defendant Counsel argues that Richard Egal heard the pop of gun when Landon Nobles impacted bike, and that the pop that Richard Egal heard coupled w the radio report that Landon Nobles was suspected of firing shots gives Richard Egal Qualified Immunity. But that is incorrect. In fact Richard Egal's testimony was as follows:

> Q. And when Mr. Nobles hit the ground, did you hear a pop or anything like that?
> A. I heard what sounded to me at the time like a clattering or clanking kind of sound, kind of like a hollow metal sound. (Vol. 6 Pg. 53:12-16).

Later during cross-examination Egal testified:

> Q. you did not hear Landon Nobles fire -- Landon Nobles' gun fire?
> A. I did not hear a shot from Landon Nobles.
> Q. You did not see Landon Nobles shoot a gun.
> A. I did not see Landon Nobles shoot a gun. (Vol. 6 pg. 79:02-07).

Defendants did not file a pre-trial Motion for Summary Judgment to dismiss under the doctrine of Qualified Immunity. Instead, Defendants put the question to the jury. The charge was comprehensive and Defendants did not object to the jury charge on that issue at the charge conference, or at any time subsequent to testimony. The charge was read to the jury prior to the jury retiring to deliberate:

> "If you find that the plaintiffs have proved by a preponderance of the evidence that the force used was objectively unreasonable, then Defendants Richard Egal and Maxwell Johnson violated Landon Nobles' Fourth Amendment protection from excessive force, and you must then consider whether the defendants are entitled to qualified immunity which is a bar to prosecution."

Seconds later the Court gave specific instruction to the jury about Qualified Immunity:

> "If you find -- now we're moving on to Question 2.
>
> If you find that plaintiffs have proved each essential element of their excessive force claim, you must consider whether Defendants Richard Egal and/or Maxwell Johnson are entitled to what the law calls qualified immunity.
>
> Qualified immunity bars a defendant's liability even if he violated a plaintiff's constitutional rights. Qualified immunity exists to give government officers breathing room to make reasonable but mistaken judgments about open legal questions. Qualified immunity provides protection from liability for all but the plainly incompetent government officers or those who knowingly violate the law. It is plaintiffs' burden to prove by a preponderance of the evidence that qualified immunity does not apply in this case.
>
> Qualified immunity applies if a reasonable officer could have believed that the use of force was lawful in light of clearly established law and the information Richard Egal and Maxwell Johnson each possessed. But Richard Egal and Maxwell Johnson are not entitled to qualified immunity if, at the time Richard Egal and Maxwell Johnson used force on Landon Nobles, a reasonable officer with the same information could not have believed that these actions were lawful.

> Law enforcement officers are presumed to know the clearly established constitutional rights of individuals they encounter. In this case, the clearly established law at the time was that the law enforcement officers may use deadly force when an officer could have reason to believe that a suspect poses an imminent threat of serious bodily harm to the officer or others.
>
> If, after considering the scope of discretion and responsibility generally given to police officers in performing their duties and after considering all of the circumstances of this case as they would have reasonably appeared to Richard Egal and/or Maxwell Johnson at the time of their respective uses of force, you find the plaintiffs failed to prove that no reasonable officer could have believed that the use of force was lawful, then Richard Egal and Maxwell Johnson are entitled to qualified immunity, and your verdict must be for Richard Egal and Maxwell Johnson. But if you find that Richard Egal and Maxwell Johnson violated Landon Nobles' constitutional rights and that Richard Egal and Maxwell Johnson are not entitled to qualified immunity, then your verdict must be for plaintiffs."
>
> (Vol 6 Pg. 94-97).

The jury resolved the jury question on the jury verdict form clearly in favor of Plaintiffs. The jury determined that the officers were objectively unreasonable in their use of force.

If there is a rule derived from this verdict regarding Qualified Immunity, it must be that the jury decided, based on the evidence and testimony presented, that "You don't get Qualified Immunity if you telling lies."

The jury didn't reach their liability conclusions lightly or based on the alleged inflammatory rhetoric / comment by Plaintiffs' counsel at opening statement or upon closing statement. In fact, the Court clearly and unequivocally instructed the jury that opening statement is not evidence:

> "Certain things are not evidence and must not be considered by you, and I will list them for you now: Statements, arguments, and questions by lawyers are not evidence…"
>
> (Vol. 1 Pg. 112 LINE 11).

The Court again for the second time admonished the jury prior to opening statements:

> "The statements that the lawyers make during their opening statements as well as the arguments they present at the end of the trial are not to be considered by you as either evidence or as your instructions on the law. Nevertheless, these statements by the lawyers and their arguments are intended to help you understand the issues and the evidence as it comes in, as well as the positions taken by both sides.
> (Vol. 1 pg. 121)

The Court also instructed the jury again at closing that argument is not evidence:

> "The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers said or do is not evidence…"
> (Vol. 6 pg. 89 LINE 17)

And then for the 4th time and prior to closing argument, the Court admonished the jury yet again, in an abundance of caution, about the lawyers' argument not being evidence, and that what the lawyers say is just argument, nothing more.

> "And it says here, You may now proceed to the jury room to begin your deliberations, but between now and that point, we are going to hear from the lawyers. Keep in mind what I told you about the distinction between the evidence that you heard and the arguments of the lawyers."
> (Vol. 6 Pg. 105 LINE 16)

Accordingly, it's fair to assume the jury heard the argument of counsel and heeded the Judge's instructions. The Jury's finding in favor of Plaintiffs' claim and rejecting the Defendants' Qualified Immunity was supported by legally sufficient evidence, and the appropriate standard was satisfied.

II. APPROPRIATE DAMAGES WERE AWARDED

Plaintiffs brought a Texas wrongful death claim against Defendants and incorporated 42 U.S.C section 1983 in their cause of action. The relevant jurisdiction in a wrongful death case

is the state providing the substantive law for the claim. Therefore Texas wrongful death cases and Fifth Circuit cases applying Texas wrongful death law comprise the relevant jurisdiction. *Vogler v. Blackmore,* 352 F.3d 150, 156 (2003). The jury in this case was charged with the considerable task of assessing a monetary dollar amount for the value of Landon Nobles' life, and determining the monetary damages to which his beneficiaries were entitled. The Defendants' complain that these "awards are clearly excessive and were the result of improper passion and prejudice." We disagree. The Defendants' themselves can not contemplate under any circumstances an award in the amount $67 million, that sum being an amount of first impression, and therefore they argue, that the jury was out of control, and what drove them into their fever pitch inflaming their passions was Plaintiffs' counsel arguments. That's what they say. But that's not the case. The fact is that the jury heard testimony and reviewed the evidence, and unanimously concluded that what they heard and reviewed clearly supported the damages awarded to Landon Nobles' mother and two minor sons. It was a unanimous verdict. Landon Nobles was shot in the back and the jury rejected the Defendants' theory of the case. It was the actual circumstances, the facts of the incident and the Defendants' incredible contradictory and disputed accounts of the events that night that inflamed the jury. Plaintiffs' awards were reasonable due to the egregious circumstance of Landon Nobles death.

1. Landon Nobles Damages

The jury awarded $3,670,000.00 for Landon Nobles' physical pain and mental anguish for his agonizing pain before his life expired after being shot in the back three times. The law assumes that physical pain results from a serious injury. *Tyler v. Likes,* 962 S.W.2d 489, 495. In Texas, a party may recover damages only for pain that is consciously suffered and experienced by the deceased. The presence or absence of physical pain is an inherently subjective question.

Gregory v. Chohan, 615 S.W. 3d 277, 302-303 (Tex.App. Dallas-2020). Courts may infer pain and suffering from proof that the deceased had severe injuries. *Id.* In addition, pain and suffering may be established by circumstantial evidence. *Id.* The fact that Richard Egal and Maxwell Johnson shot Landon Nobles three times in the back was uncontroverted. Royie Nobles testified that Landon Nobles was screaming after he was shot. (VOL. 1 PAGE 251.) This demonstrates that Landon Nobles was in excruciating pain. Detective Boline testified that Landon Nobles was declared dead at the hospital 30 minutes later after the initial call for EMS. (VOL. 4 PAGE 104). This is direct evidence that Landon Nobles was alive after being shot, albeit if for a short excruciating period. Officer Pena testified that he attempted live-saving measures by using a HALO bandage on Landon Nobles' gunshot wounds. (VOL. 3 PAGE 218). The evidence at trial was compelling, that Landon Nobles was conscious after being shot in the back at close range three times, therefore the jury award to Landon Nobles estate of $3,670,000.00 was appropriate and supported by the evidence.

2. Ida Renae Nobles Damages

"Death is different. In wrongful death cases, the emotional impact of the loss of a beloved person is the most significant damages suffered by surviving relatives." *Id.* at 304-305. The focus is on the relationship between the decedent and the survivor. Mental anguish and loss of companionship are heavily dependent on the relationship between the deceased and the beneficiary." *Id. at* 305. The jury after considering all the evidence awarded Landon Nobles' mother, Ida Renae Nobles $16,800,000.00 for her past and future loss of companionship and society and for past and future mental anguish. The Defendants' argue that the jury came to this amount solely based on "passion and prejudice." But it was the circumstances surrounding Landon Nobles death that led the jury to determine that $16,800,000.00 was appropriate. It was

the manner and means of Landon's death that inflamed the jury's "passion and prejudice," not the argument of a plaintiff counsel Landon Nobles was an integral part of Ida Renae Nobles family unit, residing with his mother Ms. Nobles, and his grandparents also lived in the household. (VOL. 3 PAGE 86-87). Ms. Nobles testified that she was haunted by her son's untimely death and as a result of his shocking death she was prescribed medication the severe depression she developed, and sleeping pills to treat her insomnia and help her cope with the loss of her son. (VOL. 3 PG 86-90). The $6.3 million awarded to Ms. Nobles for loss of companionship and society, and the $10,500,000.00 awarded for mental anguish does not reflect improper passion and prejudice, but reflects the jury's disgust at the egregious circumstances of Landon Nobles death as communicated through Ms. Nobles herself. Therefore, the evidence supports a jury awarding Ms. Nobles $16,800,000.00.

3. Landon Nobles' Minor Children

The jury awarded each of Landon Nobles' minor sons $23,150,000.00 as damages for the death of their father Landon Nobles at the hands of the police. "A family relationship between parent and child is sufficient to establish some evidence of mental anguish in the surviving family members. *Wackman v. Rubsamen,* 602 F.3d 391, 405 (5th Cir. 2010). Kadeidra Bell, K.N.'s mother testified that Landon Nobles and K.N. "spent a lot of time together because K.N. would actually be over there pretty much full-time during the week." (VOL.3 PAGE 101). Kadeidra Bell testified that that K.N. was "very aware" that his father Landon Nobles was killed by the police. Although Michelle Dashaun Smith did not testify at trial, the jury relied on the testimony of Ms. Nobles and Kadeidra Bell in determining L.N. award and the jury believed that testimony was sufficient. The jury heard the evidence and found Ms. Nobles and Kadeidra Bell credible in

assessing damages. The Jury awarded Landon Nobles' minor sons a higher award than his mother Ms. Nobles. The evidence produced by Plaintiffs was sufficient for the jury to determine that the amount awarded was based on the witness testimony and not improper passion and prejudice. Therefore, $23,150,000.00 award to each of Landon Nobles' minor sons was reasonable and appropriate.

III. PUNITIVE DAMAGES INSTRUCTION WAS APPROPRIATE

Punitive damages may be awarded in § 1983 cases "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade,* 461 U.S. 30, 56 (1983). The purpose of punitive damages is under is to deter future egregious conduct in violation of constitutional rights. *Sockwell v. Phelps,* 20 F.3d 187, 192 (5th Cir. 1994) (citing *Creamer v. Porter,* 754 F.2d 1311 at 1319 (5th Cir. 1985). Reckless indifference is a "subjective consciousness" of a risk of injury or illegality and a criminal indifference to civil obligations. *Heaney v. Roberts,* 846 F.3d 795, 803 (2017). Here, the jury awarded punitive damages in the amount of $187,500.00 against Richard Egal and $150,000.00 against Maxwell Johnson due to their violent and shocking conduct. Richard Egal testified that Landon Nobles did not point a gun at him or anyone else. (VOL. 6 pg. 61). The jury concluded that the evidence proved that Richard Egal's actions were not objectively reasonable because he testified that Landon Nobles was not an actual imminent threat to or anyone else when Richard Egal shot him in the back. Additionally, Richard Egal was reckless when he discharged his weapon three times, twice missing LN at close range sending his errant rounds flying dangerously toward an unsuspecting gaggle of people who had lackadaisically assembled at the food trucks located at the intersection of 7th and Trinity, as they usually do at that late hour. Those rounds were found up the street.

IV. DEFENSE COUNSEL FAILED TO PROPERLY OBJECT

Rule 103 of the Federal Rules of Evidence require trial counsel to alert the court to objectionable evidence, testimony, or argument. *Fed.R.Evid.103.* As for Opening Statement, Defendants complain now but did not object at the earliest opportunity which was at the time of what Defendants call objectionable comments were made. In this case, Defendant Counsel did not object to any of the myriad of errors about which he complains, save one objection made during Plaintiffs' closing which was sustained. But the notice to the trial court and error preservation exercise does not end there with a sustained objection. Defendant Counsel did not get an *adverse* ruling, in fact the objection was sustained. Defendant counsel did not request a contemporaneous instruction to the jury to cure the prejudice resulting from the comment, if there was any. Moreover, if Defendants' counsel truly felt aggrieved by that comment and that the error could not be repaired by a mere instruction to the jury, then Defendant counsel should have requested a mistrial at that point which would have properly preserved the error if the request tor mistrial was denied by the trial court. Counsel did not.

The Plain Error Rule cannot correct run of the mill failure to object. The Plain Error Rule is designed to correct clearly objectionable information like a constitutional violation resulting from a statement or evidence that affects a substantial right. Here, Defense counsel is attempting to use the Plain Error Rule to correct his failure to complain to the court with a timely objection made w specificity; Defense counsel is essentially using the Rule to cover for his sleeping at the switch. Also, conversely, 'laying behind the log' is not allowed.

Defendants complain about but did not object to 3 comments at closing, until the "George Floyd comment" which was not an objectionable comment intending to inflame the juror passion about liability or damages, but rather it was a comment regarding the new and central role that bystanders play in these police misconduct cases. The comment was not that Defendants should pay

on the order of George Floyd settlement, which is what Defendants suggest the effect that the comment had. We disagree.

Defendants complain about statements made during closing argument regarding the City's financial responsibility were "improper and served no purpose other than to inflame the jury to award inflated verdict." The Federal Rules of Evidence required a party to timely object and when doing so state the specific ground of that objection. *Fed.R.Evid.103.* In each instance, Defense Counsel failed to object and properly preserve error. The complaint is about argument, but the Court's own admonishment to the jury prior to both opening statements and prior to the closing arguments during the reading of the written jury instructions, was designed to instruct the jury that argument is not evidence. *See Trial Transcript Vol. 1 pg.112 & Vol.6 pg. 89.* Furthermore, were it error, let alone error so significant that it should result in reversing the liability determination, and / or the damages awards, Defendants did not timely object with specificity; and Defendants did not receive an adverse ruling about which to complain post-trial; and Defendant did nothing to cure the injury, if there was one. Defendants clearly did not request a mistrial or Judgment As a Matter of Law at the earliest opportunity.

Nevertheless, Defendants were sued in their official capacity as City of Austin Police Officers. The public record is replete with the City of Austin paying settlements on behalf Police Officer Defendants. *See, e.g.,* Ryan Autullo, Austin American-Statesman, "Austin to Pay $10 Million to two men injured by bean bag munitions in 2020 protests," Feb. 17, 2022; Ryan Autullo, Austin American-Statesmen, "Austin City Council agrees to $2.5M settlement in fatal police shooting of Jason Roque," Sept. 3, 2021; Philip Jankowski, Austin American-Statesman, "$3.25 million settlement approved in David Joseph police shooting," Feb. 15, 2017. Defendants' cite *Larez v. Holcomb,* a Ninth Circuit United States Court of Appeals case to support their assertion that Plaintiff's Counsel remarks "inflate

the award." *Larez v. Holcomb,* 16 F.3d 1513 (1994). The case at hand is materially different because in *Larez* the jury was instructed by the Court over defense counsel's objection upon the court informing the jury that the City would indemnify the Defendant. Here, no such instruction was given by the Court. Plaintiffs' Counsel did not introduce evidence of, or mention, or allude to the City of Austin's indemnification policy or agreement with the Defendants. The remarks made by Counsel had no bearing on the liability issue. The evidence is overwhelming that Defendants' used excessive force by shooting Landon Nobles in the back.

V. BASTON CHALLENGE WAS PROPER.

Defendants complain that Judge Lane wrongly sustained Plaintiffs' *Batson* challenge and directed that the sole African-American venireperson be sat on the petit jury. When queried by Judge Lane for Defense counsel's race-neutral explanation, Defense counsel stated that he also struck juror 11 because both had admitted arrest histories, but neither indicated they were convicted of felonies or any crime of moral turpitude. Venireperson 10 stated that his experience would not taint or otherwise impact his objectivity if selected to sit on this jury. Venireperson 11, on the other hand, stated that he was really unsure if he was actually convicted or not and, most importantly, he was unsure whether he could be impartial because of his arrest experience. (Vol. 1 Pg 53 Line 14 to Pg 54 line 18). There was no issue in the theory of Defendants' case that had anything to do with anybody involved in the case having been simply arrested for misdemeanor possession of marijuana charges or resisting arrest. In fact, there was no consequential fact or issue in the case that had anything to do with either Landon Nobles or any witness being arrested for or convicted of any crime at all. So that particular race-neutral reason given was clearly a red-herring. Defense counsel could have clearly struck Venireperson 11, which he did, for stated potential bias. Venireperson 10 denied any such bias. (Vol 1 Pg. 53 line 10). Additionally, Defense counsel argued that he also struck Venireperson 10 because

he was a "security officer."[1] But Venireperson 10 also stated that he had relatives employed in law enforcement who were sworn peace officers. (Vol 1 Pg. 47 Line 20). All of which when taken *in toto* suggested that Venireperson 10 would be a desirable juror to Defendants who are sworn peace officers in a case where the facts are as alleged in the complaint and answer. The one obvious factor that weighed heavily on the court was that venireperson 10 was the only African-American persons in the room other than the Plaintiffs who sued Defendants for the killing of their African-American son and father of two boys, and the 2 Plaintiffs' counsels Medea. You would think that Counsel defending police officers would want to seat a venireperson who has family members in Law Enforcement, and who was an armed security officer likely to be sympathetic to law enforcement and the issues peculiar to doing police work, regardless of that venireperson's race.

Although presented as facially race-neutral, the Court admonished the parties that he found the explanations thin and unconvincing. (Vol. 1 Pg. 105 Line 21 to Pg. 106 Line 13). There was no need to press Plaintiff counsel to advance an argument to trigger the court's decision to sustain the *Batson* 3-part challenge based on the excuse given by Defendants, something which the court clearly saw-through as attempting to justify counsel's race-based use of pre-emptory strikes. The Court cut to the chase, he did not jump the shark. Defendants' complaint about the Court sustaining Plaintiffs' *Batson* challenge should be rejected as out of hand.

VI. THE COURT PROPERLY ADMITTED IMPEACHMENT TESTIMONY

On cross examination Defendants' expert witness Greg Karim testified that he resigned in lieu of discharged from the Austin Police Department for "being dishonest." (Vol.4 pg. 232 &265). Under Rule 607 of the Federal Rules of Evidence a witness' credibility is always at issue. After careful

[1] The Court conducted voir dire and Venireperson 10 stated he worked in security as an armed security officer and Private Investigator at Ranger Security, starting VOL 1 PG 45 Line to PG 46 line 15.

consideration, the Court permitted Plaintiffs' Counsel to ask:

Q. "you resigned in lieu of discharge for being dishonest in relation to a personnel matter? Isn't that true?
A. "Yes. That's true." (Vol. 4 pg. 265).

Rule 608(b) of the Federal Rules of Evidence allows a witnesses' character for truthfulness or untruthfulness to be examined. Here, Greg Karim admitted to engaging in dishonest conduct in the past. Plaintiffs' Counsel did not introduce any extrinsic evidence of that dishonest conduct and was confined to the one question. Therefore, this evidence was probative and Court allowed Plaintiffs' Counsel a narrow avenue to pose the question without misleading the jury.

VII. REMITTITUR

Landon Nobles was killed by Egal and Johnson who shot LN a total of three times in the back. That evidence presented at trial, as stated above, is undisputed. The jury came to its conclusion that $67,107,500.00 is appropriate based in large part on the egregious manner in which Egal and Johnson killed Landon Nobles, and after considering the hubris of the officers who testified in support of Egal and Johnson who mostly gave self-serving sometimes unbelievable and otherwise conflicting stories, and even admitted manipulating evidence at the scene. The defendants' Police Practices Expert was unconvincing. The Defendants' ballistics expert was sullied. *By the end of evidence, the Jury was just fed up w the cops*. There is a "strong presumption in favor of affirming a jury award of damages." *Giles v. General Elec.,* 245 F.3d 474, 488 (5th Cir. 2001). As such, the jury came to a decision that reflected all of these things above, and they determined that the total for all of the Plaintiffs' injuries combined amounted to a total sum of just over $67 million dollars.[2]

[2] The 67 million dollar award is really roughly 21 million each Plaintiff x 3 plaintiffs. Were it just one P as in *Goodman* below, the award would be approx. 21M plus LN pain and suffering 3.8M and punitive damages, not 67M.

Contrary to Defendants, Plaintiffs aver that no reduction in damages nor any remittitur is warranted. The *Nobles* jury awards in total sum are indeed breath-taking. But the *Nobles* jury awards are not excessive given the way that the evidence was developed as the trial unfolded. If the jury was inflamed, they were aggravated because of the testimony and the facts. The awards are based on the testimony and evidence that was presented at trial, and the jury was careful to make idiosyncratic awards to each Plaintiff on the verdict form. The awards are specific to each P and not done generally, as in a cookie-cutter style approach where a general money award would be determined and then divided up in thirds amongst the 3 plaintiffs in equal shares. Instead, the damages awards are appropriately individualized.

a. Pain and suffering is for Landon Nobles suffering prior to his death, until he finally expired at the hospital where he was pronounced dead. Defendants presented no first-hand evidence that LN died on the street where he laid. The ambulance arrived and carried Landon to Brackenridge Hospital where he was declared dead. Had he died immediately upon being shot as the Defendants want the court to believe, they would have called the coroner to come pick up the body at the scene, not an ambulance to carry Landon to hospital.

b. Punitive Damages are appropriate in the amount awarded, see Damages section above. The punitive damages awards are not identical and that reflects that the jury carefully deliberated and determined that one officer had more culpability than the other. Clearly, the jury determined that Egal who was the ranking officer at the incident was more culpable because he was adjudged to be liable for the larger sum of the two punitive damages awards.

c. Past Pain and Suffering damages for each child: for instance each child is of approximately the same age, and so the jury gave each child the identical sums.

d. Future Pain and suffering for each child: for instance each child is of approximately the same age, and so the jury gave each child the identical sums.

e. Past and future pain and suffering for Mother: Rene Nobles is awarded a different total amount than the children. Mother is differently situated than the Children's' claims and she makes different claims than the children made.

All that said, however, *if* the Court here does believe nevertheless that it is necessary to reduce the damages, the Fifth Circuit formulated a guide, *Maximum Recovery Rule,* specifically for reducing clearly *excessive awards*: "To this end, damages are reduced to the maximum amount a reasonable jury could have awarded. In order to calculate this amount, this Court looks not only to actual awards, but may also apply a multiplier of fifty percent to past similar awards, so long as no multiplier was used in calculating those past awards." *Vogler v. Blackmore*, 352 F.3d 150, 156 (5th Cir. 2003) (citing *Giles v. Gen. Elec. Co*., 245 F.3d 474, 488 (5th Cir.2001) & *Salinas*, 286 F.3d at 831, 831 n. 6.). The Maximum Recovery Rule is not a mandatory award reduction rule. Nor is the Maximum Recovery Rule a formula that is automatically triggered. Rather, the Maximum Recovery Rule is a permissive rule that acts to normalize only excessive awards. "When evaluating jury awards, this Court reviews such awards in the context of awards in cases with similar injuries in the relevant jurisdiction." *Vogler* 352 F.3d at 156 (5th Cir. 2003) (citing Salinas, 286 F.3d at 831, 831 n. 6.).

In *Goodman v. Harris County*, the jury awarded the mother of a man shot to death by the police $5 million dollars. The Fifth Circuit affirmed the award, stating that a "reasonable jury" could find that the officer who shot and killed a fleeing suspect, applied excessive and unnecessary force:

"[I]t is clear that a reasonable jury could conclude that [the officer's] use of force was not reasonable under the circumstances known to him at the time of the incident." *Goodman v. Harris Cty*., 571 F.3d 388, 398 (5th Cir. 2009). This case and relevant facts are analogous to the facts at hand in the *Nobles* case, except in one important measure: *Goodman* had but one single plaintiff, the mother. *Nobles* has three plaintiffs, and all three plaintiffs each individually were compensated by the Jury.

In order to correctly apply the Maximum Recovery Rule to a relevant case, such as the *Goodman* case were it to be selected as the similar and relevant case, the Fifth Circuit rule "permits a verdict at 150% of the *highest inflation-adjusted recovery* in an analogous, published decisions." *Longoria v. Hunter Express, Ltd.,* 932 F.3d 360, 365 (5th Cir. 2019*)* (emphasis added). What that means is that the MRR operates first to ascertain a relatively similar case, and then adjusts the damages award in the relevant case for inflation. Then, secondly, the inflation adjusted amount is multiplied by 150%. Thus, the cumulative rate of inflation from 2007 (*Goodman* verdict) to 2022 would be applied to $5 million dollar award in *Goodman,* and the inflation adjusted award would equal $6,779,813.06.[3] Then, the inflation adjusted award is multiplied by 150% equaling $10,169,719.59 for Goodman's single plaintiff mother.

Again, it's important to note that in *Goodman* the damages were only assessed to <u>one single Plaintiff</u>: the mother. But here in *Nobles*, there are two other parties who were awarded damages by the jury. As such, their damages too should be adjusted in ratio as well, and the sum of <u>all three</u> "reduced awards" should be assessed against the Defendants. In other words, Plaintiffs suggest that all three plaintiffs are entitled to damages awards using *Goodman* as the relevant case. So when applying the *Longoria* MRR formula to *Nobles* and using *Goodman* as the relevant case, the <u>total</u>

[3] https://www.in2013dollars.com/us/inflation/2007?amount=5000000

Nobles award could be adjusted downward to $30,509,158.78[4] less punitive damages and LN pain and suffering. Moreover, Plaintiffs assert that punitive damages assessed against the officers should not be reduced by any amount at all, and neither should Landon Nobles' pain and suffering award be reduced.

In the alternative, when contemplating remittitur, the Court may choose to let the jury verdict stand in cases where the facts, injuries and parties are unique within controlling caselaw. For instance, when "[T]he facts of each case are different, prior damages awards are not always controlling; a departure from prior awards is merited "if unique facts are present that are not reflected within the controlling caselaw." *Lebron v. United States*, 279 F.3d 321, 326 (5th Cir. 2002) (citing *Wheat v. United States*, 860 F.2d 1256, 1260 (5th Cir.1988); *Wakefield v. United States*, 765 F.2d 55, 59–60 (5th Cir.1985)). In *Vogler v. Blackmore*, the Fifth Circuit found that "[n]one of the cases cited by either parties address[ed] awards made in a wholly similar" circumstances like the death of two individuals in a family at once. *Vogler* 352 F.3d at 158. As such, in cases of first impression, the Fifth Circuit found it necessary to let the jury award for the death of a child stand. *Id.*

Here, in *Nobles* there is truly no case law on-point to guide the court as regards the death of a father of two, in an excessive force case--where a father has been shot to death by police officers leaving children marred with lasting mental scars, and facing future years of life filled with fear and

[4] A similar result is reached using the 2017 *Barbara Coats* case, (Texas 14th Court of Appeals cause number 14-17-00732-CV), a Texas state case, where the jury awarded $11,005,000 to 2 parents of the deceased who was as asphyxiated by Police during an arrest. The award was apportioned and Parents received damages for past and future loss of companionship ($2.5M ea.); past and future mental anguish ($2.5M each); and pain and mental anguish to the estate ($1M) was assessed. This is very similar in the damage model to the *Nobles* case. With the MRR applied using the *Coats* case as the base, $11,005,000 adjusted for inflation converts to $13,054,058.32, and when multiplied by 150%=$19,581,087, divided by 2 Plaintiffs= $9,790,543 per plaintiff. *Barbara Coats* was reduced on appeal on grounds related to proximate cause of death, so *Coat* is not exactly analogous in that regard.

shame and humiliation. In such a case, in assessing the possibility of remittitur, the Court may choose to let the high jury verdict stand for the two children.

Remittitur is inappropriate for this case. There is no other verdict award anywhere close to compare. The Maximum Recovery Rule is a suggestion, it is a permissive non-mandatory rule to be used ONLY if the award is excessive. A jury award is not necessarily excessive just because the award is high. This award in *Nobles* is remarkable because the jury decided that as far as Loss of Companionship goes the companionship injury is valued at 11 million when a man killed by police under these circumstances.[5]

Interestingly, in arguing for remittitur, Defendants selected factually dissimilar cases—cases based on motor vehicle accidents or other incidents unrelated to law enforcement killings. Thus, Defendants' cases are irrelevant and should have no bearing on the remittitur of damages procedure under the Fifth Circuit Maximum Recovery Rule, as discussed above. *Vogler* 352 F.3d at 158; *Lebron* 279 F.3d at 326; *Longoria* 932 F.3d 360.

CONCLUSION

For the above stated reason, Plaintiffs respectfully request that the Court deny Defendants' motion for judgment as a matter of law in its entirety. Additional, sufficient evidence presented at trial would allow reasonable jurors to support the damages awarded. Defendants' motion should be denied to a new trial on liability and damages.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS

[5] The award is really roughly 21 million each Plaintiff x 3 plaintiffs plus LN pain and suffering and plus the punitive damages. Were it just one P the award would be approx. 21M plus LN pain and suffering 3.8M and punitive damages, roughly 25 million, for just one plaintiff.

Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on the 22nd day of February, 2022, I served a copy of Plaintiffs' Response in Opposition To Defendants' Renewed Motion For Judgment as a Matter of Laws and in the Alternative, For New Trial or Remittitur to all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS' CORRECTED RESPONSE IN OPPOSITION TO DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW AND IN THE ALTERNATIVE, FOR NEW TRIAL OR REMITTITUR

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTSRATE JUDGE:

Plaintiffs Ida Renae Nobles, individually, K.N., Minor, By And Through His Guardian Kadeidra Bell, & L.N., Minor, By And Through His Guardian Michelle Dashaun Smith As Heirs At Law To The Estate Of Landon Nobles (hereinafter referred to as "Plaintiffs") files this response to Defendants' renewed motion for judgment as a matter of law, motion for new trial, and Defendants' request to remit the damages awarded by the jury. Plaintiffs' ask this court to deny the Defendants' motion and request in its entirety.

INTRODUCTION

On December 15th, 2021, the jury rendered a verdict finding that Defendants Richard Egal and Maxwell Johnson violated Landon Nobles constitutional rights by killing him on the night

of May 7th, 2017. (Doc. #70). On January 7th, 2022 this Court signed the final judgement (Doc. #74). After 6 days of trial and 8 hours of deliberation the jury awarded $67,107,500.00 for Plaintiffs in a unanimous verdict.

ARGUMENT & AUTHORITIES

I. LIABILITY AND QUALIFIED IMMUNITY

The Defendants complain that the jury erred in finding them each respectively responsible for the death of Landon Nobles and that the determination is somehow invalid because of inflammatory argument. They also allege that the liability determination is invalid because the evidence upon which liability is based is insufficient. However, a close look at the evidence proves that the evidence that the jury referred to in coming to that determination is indeed sufficient.

There is no dispute that Defendant Richard Egal and Maxwell Johnson killed Landon Nobles by shooting him in the back at close range. Several witnesses, including one police witness, testified that Landon Nobles did not have a gun in his hand when he was killed and did not point any gun at anybody. This account was contrary to two police witnesses that Landon Nobles engaged the police in a gunfight. The jury ultimately decided the controversy in the favor of Plaintiffs, thereby rejecting the Defense police officers theory of the case.

The only evidence presented that Landon Nobles was armed was the self-serving testimony of 4 police officers: Richard Egal, Maxwell Johnson, Uri Tamez, and Steven Pena. Controverting evidence that was presented to the jury was the testimony of Chris Futrell, the testimony of Elvis Ingram, the testimony of Andre Anderson, the testimony of Royie Nobles, and the testimony of Police Officer Anthony Allegeretti each of whom said he did not see a gun in Landon Nobles hands when Egal and Johnson shot Landon Nobles, and that Landon Nobles did not engage the Police in a gunfight.

Qualified Immunity

Defendants' theory of the case is that Landon Nobles must have fired a handgun at the Mooseknuckle Pub, and that Qualified Immunity flows from that event. Defendants offered through Detective Steve Boline, a grainy video that was clearly not helpful in determining whether Landon Nobles fired a handgun in the air at the Mooseknuckle Pub. Detective Steve Boline testimony was that this video clearly shows Landon Nobles raise his hand and fire a weapon, however it was not very clear at all. To the contrary, Royie Nobles and Nicholas Henderson, testified as the only witnesses who were there live at the Mooseknuckle at the time of the alleged shooting of the handgun in the air. Royie Nobles unflappably testified that Landon Nobles did not have any handgun on his person that night to his knowledge, and that Landon Nobles was standing adjacent to the him the entire time at the Mooseknuckle Pub, and even walked away from the Mooseknuckle Pub together, and most importantly that Landon Nobles did not fire a weapon into the air, or fire a weapon at all while at the Mooseknuckle Pub. Nicholas Henderson also testified that he never saw Landon Nobles with a gun. Nevertheless, Defendant Counsel argues that Richard Egal heard the pop of gun when Landon Nobles impacted the bike, and that the pop that Richard Egal heard coupled with the radio report that Landon Nobles was suspected of firing shots gives Richard Egal Qualified Immunity. But that is incorrect. In fact Richard Egal's testimony was as follows:

> Q. And when Mr. Nobles hit the ground, did you hear a pop or anything like that?
> A. I heard what sounded to me at the time like a clattering or clanking kind of sound, kind of like a hollow metal sound. (Vol. 6 Pg. 53:12-16).

Later during cross-examination Egal testified:

> Q. you did not hear Landon Nobles fire -- Landon Nobles' gun fire?
> A. I did not hear a shot from Landon Nobles.
> Q. You did not see Landon Nobles shoot a gun.
> A. I did not see Landon Nobles shoot a gun. (Vol. 6 pg. 79:02-07).

Defendants did not file a pre-trial Motion for Summary Judgment to dismiss under the doctrine of Qualified Immunity. Instead, Defendants put the question to the jury. The charge was comprehensive and Defendants did not object to the jury charge on that issue at the charge conference, or at any time subsequent to testimony. The charge was read to the jury prior to the jury retiring to deliberate:

> "If you find that the plaintiffs have proved by a preponderance of the evidence that the force used was objectively unreasonable, then Defendants Richard Egal and Maxwell Johnson violated Landon Nobles' Fourth Amendment protection from excessive force, and you must then consider whether the defendants are entitled to qualified immunity which is a bar to prosecution."

Seconds later the Court gave specific instruction to the jury about Qualified Immunity:

> "If you find -- now we're moving on to Question 2.
>
> If you find that plaintiffs have proved each essential element of their excessive force claim, you must consider whether Defendants Richard Egal and/or Maxwell Johnson are entitled to what the law calls qualified immunity.
>
> Qualified immunity bars a defendant's liability even if he violated a plaintiff's constitutional rights. Qualified immunity exists to give government officers breathing room to make reasonable but mistaken judgments about open legal questions. Qualified immunity provides protection from liability for all but the plainly incompetent government officers or those who knowingly violate the law. It is plaintiffs' burden to prove by a preponderance of the evidence that qualified immunity does not apply in this case.
>
> Qualified immunity applies if a reasonable officer could have believed that the use of force was lawful in light of clearly established law and the information Richard Egal and Maxwell Johnson each possessed. But Richard Egal and Maxwell Johnson are not entitled to qualified immunity if, at the time Richard Egal and Maxwell Johnson used force on Landon Nobles, a reasonable officer with the same information could not have believed that these actions were lawful.

> Law enforcement officers are presumed to know the clearly established constitutional rights of individuals they encounter. In this case, the clearly established law at the time was that the law enforcement officers may use deadly force when an officer could have reason to believe that a suspect poses an imminent threat of serious bodily harm to the officer or others.
>
> If, after considering the scope of discretion and responsibility generally given to police officers in performing their duties and after considering all of the circumstances of this case as they would have reasonably appeared to Richard Egal and/or Maxwell Johnson at the time of their respective uses of force, you find the plaintiffs failed to prove that no reasonable officer could have believed that the use of force was lawful, then Richard Egal and Maxwell Johnson are entitled to qualified immunity, and your verdict must be for Richard Egal and Maxwell Johnson. But if you find that Richard Egal and Maxwell Johnson violated Landon Nobles' constitutional rights and that Richard Egal and Maxwell Johnson are not entitled to qualified immunity, then your verdict must be for plaintiffs."
>
> (Vol 6 Pg. 94-97).

The jury resolved the jury question on the jury verdict form clearly in favor of Plaintiffs. The jury determined that the officers were objectively unreasonable in their use of force.

If there is a rule derived from this verdict regarding Qualified Immunity, it must be that the jury decided, based on the evidence and testimony presented, that "You don't get Qualified Immunity if you telling lies."

The jury didn't reach their liability conclusions lightly or based on the alleged inflammatory rhetoric / comment by Plaintiffs' counsel at opening statement or upon closing statement. In fact, the Court clearly and unequivocally instructed the jury that opening statement is not evidence:

> "Certain things are not evidence and must not be considered by you, and I will list them for you now: Statements, arguments, and questions by lawyers are not evidence…"
>
> (Vol. 1 Pg. 112 LINE 11).

The Court again for the second time admonished the jury prior to opening statements:

> "The statements that the lawyers make during their opening statements as well as the arguments they present at the end of the trial are not to be considered by you as either evidence or as your instructions on the law. Nevertheless, these statements by the lawyers and their arguments are intended to help you understand the issues and the evidence as it comes in, as well as the positions taken by both sides.
> (Vol. 1 pg. 121)

The Court also instructed the jury again at closing that argument is not evidence:

> "The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers said or do is not evidence…"
> (Vol. 6 pg. 89 LINE 17)

And then for the 4th time and prior to closing argument, the Court admonished the jury yet again, in an abundance of caution, about the lawyers' argument not being evidence, and that what the lawyers say is just argument, nothing more.

> "And it says here, You may now proceed to the jury room to begin your deliberations, but between now and that point, we are going to hear from the lawyers. Keep in mind what I told you about the distinction between the evidence that you heard and the arguments of the lawyers."
> (Vol. 6 Pg. 105 LINE 16)

Accordingly, it's fair to assume the jury heard the argument of counsel, reviewed the evidence during deliberation, and heeded the Judge's instructions in returning their verdict. The Jury's finding in favor of Plaintiffs' claim and rejecting the Defendants' Qualified Immunity was supported by legally sufficient evidence, and the appropriate standard was satisfied.

II. APPROPRIATE DAMAGES WERE AWARDED

Plaintiffs brought a Texas wrongful death claim against Defendants and incorporated

42 U.S.C section 1983 in their cause of action. The relevant jurisdiction in a wrongful death case is the state providing the substantive law for the claim. Therefore Texas wrongful death cases and Fifth Circuit cases applying Texas wrongful death law comprise the relevant jurisdiction. *Vogler v. Blackmore,* 352 F.3d 150, 156 (2003). The jury in this case was charged with the considerable task of assessing a monetary dollar amount for the value of Landon Nobles' life, and determining the monetary damages to which his beneficiaries were entitled. The Defendants' complain that these "awards are clearly excessive and were the result of improper passion and prejudice." We disagree. The Defendants' themselves can not contemplate under any circumstances an award in the amount $67 million, that sum being an amount of first impression, and therefore they argue, that the jury was out of control, and what drove them into their fever pitch inflaming their passions was Plaintiffs' counsel arguments. That's what they say. But that's not the case. The fact is that the jury heard testimony and reviewed the evidence, and unanimously concluded that what they heard and reviewed clearly supported the damages awarded to Landon Nobles' mother and two minor sons. It was a unanimous verdict. Landon Nobles was shot in the back and the jury rejected the Defendants' theory of the case. It was the actual circumstances, the facts of the incident and the Defendants' incredible contradictory and disputed accounts of the events that night that inflamed the jury. Plaintiffs' awards were reasonable due to the egregious circumstance of Landon Nobles death.

1. Landon Nobles Damages

The jury awarded $3,670,000.00 for Landon Nobles' physical pain and mental anguish for his agonizing pain before his life expired after being shot in the back three times. The law assumes that physical pain results from a serious injury. *Tyler v. Likes,* 962 S.W.2d 489, 495. In Texas, a party may recover damages only for pain that is consciously suffered and experienced

by the deceased. The presence or absence of physical pain is an inherently subjective question. *Gregory v. Chohan,* 615 S.W. 3d 277, 302-303 (Tex.App. Dallas-2020). Courts may infer pain and suffering from proof that the deceased had severe injuries. *Id.* In addition, pain and suffering may be established by circumstantial evidence. *Id.* The fact that Richard Egal and Maxwell Johnson shot Landon Nobles three times in the back was uncontroverted. Royie Nobles testified that Landon Nobles was screaming after he was shot. (VOL. 1 PAGE 251.) This demonstrates that Landon Nobles was in excruciating pain. Detective Boline testified that Landon Nobles was declared dead at the hospital 30 minutes later after the initial call for EMS. (VOL. 4 PAGE 104). This is direct evidence that Landon Nobles was alive after being shot, albeit if for a short excruciating period. Officer Pena testified that he performed live-saving measures by using a HALO bandage on Landon Nobles' gunshot wounds. (VOL. 3 PAGE 218). The evidence at trial was compelling, that Landon Nobles was conscious after being shot in the back at close range three times, therefore the jury award to Landon Nobles estate of $3,670,000.00 was appropriate and supported by the evidence.

2. Ida Renae Nobles Damages

"Death is different. In wrongful death cases, the emotional impact of the loss of a beloved person is the most significant damages suffered by surviving relatives." *Id.* at 304-305. The focus is on the relationship between the decedent and the survivor. Mental anguish and loss of companionship are heavily dependent on the relationship between the deceased and the beneficiary." *Id. at* 305. The jury after considering all the evidence awarded Landon Nobles' mother, Ida Renae Nobles $16,800,000.00 for her past and future loss of companionship and society and for past and future mental anguish. The Defendants' argue that the jury came to this amount solely based on "passion and prejudice." But it was the circumstances surrounding

Landon Nobles death that led the jury to determine that $16,800,000.00 was appropriate. It was the manner and means of Landon's death that inflamed the jury's "passion and prejudice," not the argument of a plaintiffs' counsel. Landon Nobles was an integral part of Ida Renae Nobles family unit, residing with his mother Ms. Nobles, and his grandparents also lived in the household. (VOL. 3 PAGE 86-87). Ms. Nobles testified that she was haunted by her son's untimely death and as a result of his shocking death she was prescribed medication for the severe depression she developed, and sleeping pills to treat her insomnia and help her cope with the loss of her son. (VOL. 3 PG 86-90). The $6.3 million awarded to Ms. Nobles for loss of companionship and society, and the $10,500,000.00 awarded for mental anguish does not reflect improper passion and prejudice, but reflects the jury's disgust at the egregious circumstances of Landon Nobles death and its impact on her as communicated through Ms. Nobles herself. Therefore, the evidence supports a jury awarding Ms. Nobles $16,800,000.00.

3. Landon Nobles' Minor Children

The jury awarded each of Landon Nobles' minor sons $23,150,000.00 as damages for the death of their father Landon Nobles at the hands of the police. "A family relationship between parent and child is sufficient to establish some evidence of mental anguish in the surviving family members. *Wackman v. Rubsamen,* 602 F.3d 391, 405 (5th Cir. 2010). Kadeidra Bell, K.N.'s mother testified that Landon Nobles and K.N. "spent a lot of time together because K.N. would actually be over there pretty much full-time during the week." (VOL.3 PAGE 101). Kadeidra Bell testified that that K.N. was "very aware" that his father Landon Nobles was killed by the police. Although Michelle Dashaun Smith did not testify at trial, the jury relied on the testimony of Ms. Nobles and Kadeidra Bell in determining L.N. award and the jury believed that testimony was

sufficient. The jury heard the evidence and found Ms. Nobles and Kadeidra Bell credible in assessing damages. The Jury awarded Landon Nobles' minor sons each a higher award than his mother Ms. Nobles. The evidence produced by Plaintiffs was sufficient for the jury to determine that the amount awarded was based on the witness testimony and not improper passion and prejudice. Therefore, $23,150,000.00 award to each of Landon Nobles' minor sons was reasonable and appropriate.

III. PUNITIVE DAMAGES INSTRUCTION WAS APPROPRIATE

Punitive damages may be awarded in § 1983 cases "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade,* 461 U.S. 30, 56 (1983). The purpose of punitive damages is under is to deter future egregious conduct in violation of constitutional rights. *Sockwell v. Phelps,* 20 F.3d 187, 192 (5th Cir. 1994) (citing *Creamer v. Porter,* 754 F.2d 1311 at 1319 (5th Cir. 1985). Reckless indifference is a "subjective consciousness" of a risk of injury or illegality and a criminal indifference to civil obligations. *Heaney v. Roberts,* 846 F.3d 795, 803 (2017). Here, the jury awarded punitive damages in the amount of $187,500.00 against Richard Egal and $150,000.00 against Maxwell Johnson due to their violent and shocking conduct. Richard Egal testified that Landon Nobles did not point a gun at him or anyone else. (Vol. 6 pg. 61). The jury concluded that the evidence proved that Richard Egal's actions were not objectively reasonable because he testified that Landon Nobles was not an actual imminent threat to or anyone else when Richard Egal shot him in the back. Additionally, Richard Egal was reckless when he discharged his weapon three times, twice missing Landon Nobles at close range sending his errant rounds flying dangerously toward an unsuspecting gaggle of people who had lackadaisically assembled at the food trucks located at the intersection of 7th and Trinity, as they

usually do at that late hour. Those rounds were found up the street.

IV. DEFENSE COUNSEL FAILED TO PROPERLY OBJECT

Rule 103 of the Federal Rules of Evidence require trial counsel to alert the court to objectionable evidence, testimony, or argument. *Fed.R.Evid.103.* As for Opening Statement, Defendants complain now but did not object at the earliest opportunity which was at the time of what Defendants call objectionable comments were made. In this case, Defendant Counsel did not object to any of the myriad of errors about which he complains, save one objection made during Plaintiffs' closing which was sustained. But the notice to the trial court and error preservation exercise does not end there with a sustained objection. Defendant Counsel did not get an *adverse* ruling, in fact the objection was sustained. Defendant counsel did not request a contemporaneous instruction to the jury to cure the prejudice resulting from the comment, if there was any. Moreover, if Defendants' counsel truly felt aggrieved by that comment and that the error could not be repaired by a mere instruction to the jury, then Defendant counsel should have requested a mistrial at that point which would have properly preserved the error if the request for mistrial was denied by the trial court. Counsel did not.

The Plain Error Rule cannot correct run of the mill failure to object. The Plain Error Rule is designed to correct clearly objectionable information like a constitutional violation resulting from a statement or evidence that affects a substantial right. Here, Defense counsel is attempting to use the Plain Error Rule to correct his failure to complain to the court with a timely objection made with specificity; Defense counsel is essentially using the Rule to cover for his sleeping at the switch. Also, conversely, 'laying behind the log' is not allowed.

Defendants complain about but did not object to 3 comments at closing, until the "George Floyd comment" which was not an objectionable comment intending to inflame the juror passion about liability or damages, but rather it was a comment regarding the new and central role that

bystanders play in these police misconduct cases. The comment was not that Defendants should pay on the order of George Floyd settlement, which is what Defendants suggest the effect that the comment had. We disagree.

Defendants complain about statements made during closing argument regarding the City's financial responsibility were "improper and served no purpose other than to inflame the jury to award inflated verdict" citing FRE 411. The Federal Rules of Evidence required a party to timely object and when doing so state the specific ground of that objection. *Fed.R.Evid.103.* Defendants had a comprehensive Motion in Limine, but made no mention of issues regarding FRE 411. In this instance, Defense Counsel failed to object and properly preserve error. The complaint is about argument, but the Court's own admonishment to the jury prior to both opening statements and prior to the closing arguments during the reading of the written jury instructions, was designed to instruct the jury that argument is not evidence. *See Trial Transcript Vol. 1 pg.112 & Vol.6 pg. 89.* Furthermore, were it error, let alone error so significant that it should result in reversing the liability determination, and/or the damages awards, Defendants did not timely object with specificity; and Defendants did not receive an adverse ruling about which to complain post-trial; and Defendant did nothing to cure the injury, if there was one. Defendants clearly did not request a mistrial or Judgment As a Matter of Law at the earliest opportunity.

Nevertheless, Defendants were sued in their official capacity as City of Austin Police Officers. The public record is replete with the City of Austin paying settlements on behalf Police Officer Defendants. *See, e.g.,* Ryan Autullo, Austin American-Statesman, "Austin to Pay $10 Million to two men injured by bean bag munitions in 2020 protests," Feb. 17, 2022; Ryan Autullo, Austin American-Statesmen, "Austin City Council agrees to $2.5M settlement in fatal police shooting of Jason Roque," Sept. 3, 2021; Philip Jankowski, Austin American-Statesman, "$3.25 million settlement approved in

David Joseph police shooting," Feb. 15, 2017. Defendants' cite *Larez v. Holcomb,* a Ninth Circuit United States Court of Appeals case to support their assertion that Plaintiff's Counsel remarks "inflate the award." *Larez v. Holcomb,* 16 F.3d 1513 (1994). The case at hand is materially different because in *Larez* the jury was instructed by the Court over defense counsel's timely objection, upon the Court informing the jury that the City would indemnify the Defendant. Here, no such instruction was given by the Court. Plaintiffs' Counsel did not introduce evidence of, or directly mention, or allude to the City of Austin's indemnification policy or agreement with the Defendants. The remarks made by Counsel had no bearing on the liability issue. The evidence is overwhelming that Defendants' used excessive force by shooting Landon Nobles in the back.

V. BASTON CHALLENGE WAS PROPER.

Defendants complain that the Court wrongly sustained Plaintiffs' *Batson* challenge and directed that the sole African-American venireperson be sat on the petit jury. When queried by Judge Lane for Defense counsel's race-neutral explanation, Defense counsel stated that he also struck juror 11 because both had admitted arrest histories, but neither indicated they were convicted of felonies or any crime of moral turpitude. Venireperson 10 stated that his experience would not taint or otherwise impact his objectivity if selected to sit on this jury. Venireperson 11, on the other hand, stated that he was really unsure if he was actually convicted or not and, most importantly, he was unsure whether he could be impartial because of his arrest experience. (Vol. 1 Pg 53 Line 14 to Pg 54 line 18). There was no issue in the theory of Defendants' case that had anything to do with anybody involved in the case having been simply arrested for misdemeanor possession of marijuana charges or resisting arrest. In fact, there was no consequential fact or issue in the case that had anything to do with either Landon Nobles or any witness being arrested for or convicted of any crime at all. So that particular race-neutral reason given was clearly a red-herring. Defense counsel could have clearly struck

Venireperson 11, which he did, for stated potential bias. Venireperson 10 denied any such bias. (Vol 1 2Pg. 53 line 10). Additionally, Defense counsel argued that he also struck Venireperson 10 because he was a "security officer."[1] But Venireperson 10 also stated that he had relatives employed in law enforcement who were sworn peace officers. (Vol 1 Pg. 47 Line 20). All of which when taken *in toto* suggested that Venireperson 10 would be a desirable juror to Defendants who are sworn peace officers in a case where the facts are as alleged in the complaint and answer. The one obvious factor that weighed heavily on the court was that venireperson 10 was the only African-American persons in the room other than the Plaintiffs who sued Defendants for the killing of their African-American son and father of two boys. You would think that Counsel defending police officers would want to seat a venireperson who has family members in Law Enforcement, and who was an armed security officer likely to be sympathetic to law enforcement and the issues peculiar to doing police work, regardless of that venireperson's race.

Although presented as facially race-neutral, the Court admonished the parties that he found the explanations thin and unconvincing. (Vol. 1 Pg. 105 Line 21 to Pg. 106 Line 13). There was no need to press Plaintiff counsel to advance an argument to trigger the court's decision to sustain the *Batson* 3-part challenge based on the excuse given by Defendants, something which the court clearly saw-through as attempting to justify counsel's race-based use of pre-emptory strikes. The Court cut to the chase, he did not jump the shark. The finding is implicit in the Court's decision to seat Venireperson 10. Defendants' complaint about the Court sustaining Plaintiffs' *Batson* challenge should be rejected as out of hand.

VI. THE COURT PROPERLY ADMITTED IMPEACHMENT TESTIMONY

[1] The Court conducted voir dire and Venireperson 10 stated he worked in security as an armed security officer and Private Investigator at Ranger Security, starting VOL 1 PG 45 Line to PG 46 line 15.

On cross examination Defendants' expert witness Greg Karim testified that he resigned in lieu of discharged from the Austin Police Department for "being dishonest." (Vol.4 pg. 232 &265). Under Rule 607 of the Federal Rules of Evidence a witness' credibility is always at issue. After careful consideration, the Court permitted Plaintiffs' Counsel to ask:

Q. "you resigned in lieu of discharge for being dishonest in relation to a personnel matter? Isn't that true?
A. "Yes. That's true." (Vol. 4 pg. 265).

Rule 608(b) of the Federal Rules of Evidence allows a witnesses' character for truthfulness or untruthfulness to be examined. Here, Greg Karim admitted to engaging in dishonest conduct in the past. Plaintiffs' Counsel did not introduce any extrinsic evidence of that dishonest conduct and was confined to the one question. Therefore, this evidence was probative and Court allowed Plaintiffs' Counsel a narrow avenue to pose the question without misleading the jury.

VII. REMITTITUR

Landon Nobles was killed by Egal and Johnson who shot Landon Nobles a total of three times in the back. That evidence presented at trial, as stated above, is undisputed. The jury came to its conclusion that $67,107,500.00 is appropriate based in large part on the egregious manner in which Egal and Johnson killed Landon Nobles, and after considering the hubris of the officers who testified in support of Egal and Johnson who mostly gave self-serving sometimes unbelievable and otherwise conflicting stories, and even admitted manipulating evidence at the scene. The defendants' Police Practices Expert was unconvincing. The Defendants' ballistics expert was sullied. *By the end of evidence, the Jury was just fed up with the cops*. There is a "strong presumption in favor of affirming a jury award of damages." *Giles v. General Elec.,* 245 F.3d 474, 488 (5th Cir. 2001). As such, the jury came to a decision that reflected all of these things above, and they determined that the total for all of

the Plaintiffs' injuries combined amounted to a total sum of just over $67 million dollars.[2]

Contrary to Defendants, Plaintiffs aver that no reduction in damages nor any remittitur is warranted. The *Nobles* jury awards in total sum are indeed breath-taking. But the *Nobles* jury awards are not excessive given the way that the evidence was developed as the trial unfolded. If the jury was inflamed, they were aggravated because of the testimony and the facts. The awards are based on the testimony and evidence that was presented at trial, and the jury was careful to make idiosyncratic awards to each Plaintiff on the verdict form. The awards are specific to each Plaintiff and not done generally, as in a cookie-cutter style approach where a general money award would be determined and then divided up in thirds amongst the 3 plaintiffs in equal shares. Instead, the damages awards are appropriately individualized.

a. Pain and suffering is for Landon Nobles suffering prior to his death, until he finally expired at the hospital where he was pronounced dead. Defendants presented no first-hand evidence that Landon Nobles died on the street where he laid. The ambulance arrived and carried Landon to Brackenridge Hospital where he was declared dead. Had he died immediately upon being shot as the Defendants want the Court to believe, they would have called the coroner to come pick up the body at the scene, not an ambulance to carry Landon to hospital.

b. Punitive Damages are appropriate in the amount awarded, see Damages section above. The punitive damages awards are not identical and that reflects that the jury carefully deliberated and determined that one officer had more culpability than the other.

[2] The 67 million dollar award is really roughly 21 million each Plaintiff x 3 plaintiffs. Were it just one P as in *Goodman* below, the award would be approx. 21M plus LN pain and suffering 3.8M and punitive damages, not 67M.

Clearly, the jury determined that Egal who was the ranking officer at the incident was more culpable because he was adjudged to be liable for the larger sum of the two punitive damages awards.

c. Past Pain and Suffering damages for each child: for instance each child is of approximately the same age, and so the jury gave each child the identical sums.

d. Future Pain and suffering for each child: for instance each child is of approximately the same age, and so the jury gave each child the identical sums.

e. Past and future pain and suffering for Mother: Rene Nobles is awarded a different total amount than the children. Mother is differently situated than the Children's' claims and she makes different claims than the children made.

All that said, however, *if* the Court here does believe nevertheless that it is necessary to reduce the damages, the Fifth Circuit formulated a guide, *Maximum Recovery Rule,* specifically for reducing clearly *excessive awards*: "To this end, damages are reduced to the maximum amount a reasonable jury could have awarded. In order to calculate this amount, this Court looks not only to actual awards, but may also apply a multiplier of fifty percent to past similar awards, so long as no multiplier was used in calculating those past awards." *Vogler v. Blackmore*, 352 F.3d 150, 156 (5th Cir. 2003) (citing *Giles v. Gen. Elec. Co*., 245 F.3d 474, 488 (5th Cir.2001) & *Salinas*, 286 F.3d at 831, 831 n. 6.).

The Maximum Recovery Rule is not a mandatory award reduction rule. Nor is the Maximum Recovery Rule a formula that is automatically triggered. Rather, the Maximum Recovery Rule is a permissive rule that acts to normalize only excessive awards. "When evaluating jury awards, this Court reviews such awards in the context of awards in cases with similar injuries in the relevant jurisdiction." *Vogler* 352 F.3d at 156 (5th Cir. 2003) (citing Salinas, 286 F.3d at 831, 831 n. 6.).

In *Goodman v. Harris County*, the jury awarded the mother of a man shot to death by the police $5 million dollars. The Fifth Circuit affirmed the award, stating that a "reasonable jury" could find that the officer who shot and killed a fleeing suspect, applied excessive and unnecessary force: "[I]t is clear that a reasonable jury could conclude that [the officer's] use of force was not reasonable under the circumstances known to him at the time of the incident." *Goodman v. Harris Cty*., 571 F.3d 388, 398 (5th Cir. 2009). This case and relevant facts are analogous to the facts at hand in the *Nobles* case, except in one important measure: *Goodman* had but one single plaintiff, the mother. *Nobles* has three plaintiffs, and all three plaintiffs each individually were compensated by the Jury.

In order to correctly apply the Maximum Recovery Rule to a relevant case, such as the *Goodman* case were it to be selected as the similar and relevant case, the Fifth Circuit rule "permits a verdict at 150% of the *highest inflation-adjusted recovery* in an analogous, published decisions." *Longoria v. Hunter Express, Ltd.,* 932 F.3d 360, 365 (5th Cir. 2019*)* (emphasis added). What that means is that the MRR operates first to ascertain a relatively similar case, and then adjusts the damages award in the relevant case for inflation. Then, secondly, the inflation adjusted amount is multiplied by 150%. Thus, the cumulative rate of inflation from 2007 (*Goodman* verdict) to 2022 would be applied to $5 million dollar award in *Goodman,* and the inflation adjusted award would equal $6,779,813.06.[3] Then, the inflation adjusted award is multiplied by 150% equaling $10,169,719.59 for Goodman's single plaintiff mother.

Again, it's important to note that in *Goodman* the damages were only assessed to <u>one single Plaintiff</u>: the mother. But here in *Nobles*, there are two other parties who were awarded damages by the jury. As such, their damages too should be adjusted in ratio as well, and the sum of <u>all three</u>

[3] https://www.in2013dollars.com/us/inflation/2007?amount=5000000

"reduced awards" should be assessed against the Defendants. In other words, Plaintiffs suggest that all three plaintiffs are entitled to damages awards using *Goodman* as the relevant case. So when applying the *Longoria* MRR formula to *Nobles* and using *Goodman* as the relevant case, the total *Nobles* award could be adjusted downward to $30,509,158.78[4] less punitive damages and Landon Nobles pain and suffering. Moreover, Plaintiffs assert that punitive damages assessed against the officers should not be reduced by any amount at all, and neither should Landon Nobles' pain and suffering award be reduced.

In the alternative, when contemplating remittitur, the Court may choose to let the jury verdict stand in cases where the facts, injuries and parties are unique within controlling caselaw. For instance, when "[T]he facts of each case are different, prior damages awards are not always controlling; a departure from prior awards is merited "if unique facts are present that are not reflected within the controlling caselaw." *Lebron v. United States*, 279 F.3d 321, 326 (5th Cir. 2002) (citing *Wheat v. United States*, 860 F.2d 1256, 1260 (5th Cir.1988); *Wakefield v. United States*, 765 F.2d 55, 59–60 (5th Cir.1985)). In *Vogler v. Blackmore*, the Fifth Circuit found that "[n]one of the cases cited by either parties address[ed] awards made in a wholly similar" circumstances like the death of two individuals in a family at once. *Vogler* 352 F.3d at 158. As such, in cases of first impression, the Fifth Circuit found it necessary to let the jury award for the death of a child stand. *Id.*

[4] A similar result is reached using the 2017 *Barbara Coats* case, (Texas 14th Court of Appeals cause number 14-17-00732-CV), a Texas state case, where the jury awarded $11,005,000 to 2 parents of the deceased who was as asphyxiated by Police during an arrest. The award was apportioned and Parents received damages for past and future loss of companionship ($2.5M ea.); past and future mental anguish ($2.5M each); and pain and mental anguish to the estate ($1M) was assessed. This is very similar in the damage model to the *Nobles* case. With the MRR applied using the *Coats* case as the base, $11,005,000 adjusted for inflation converts to $13,054,058.32, and when multiplied by 150%=$19,581,087, divided by 2 Plaintiffs= $9,790,543 per plaintiff. *Barbara Coats* was reduced on appeal on grounds related to proximate cause of death, so *Coat* is not exactly analogous in that regard.

Here, in *Nobles* there is truly no case law on-point to guide the court as regards the death of a father of two, in an excessive force case--where a father has been shot to death by police officers leaving children marred with lasting mental scars, and facing future years of life filled with fear and shame and humiliation. In such a case, in assessing the possibility of remittitur, the Court may choose to let the high jury verdict stand for the two children.

Remittitur is inappropriate for this case. There is no other verdict award anywhere close to compare. The Maximum Recovery Rule is a suggestion, it is a permissive non-mandatory rule to be used ONLY if the award is excessive. A jury award is not necessarily excessive just because the award is high. This award in *Nobles* is remarkable because the jury decided that as far as Loss of Companionship goes the companionship injury is valued at 11 million when a man killed by police under these circumstances.[5]

Interestingly, in arguing for remittitur, Defendants selected factually dissimilar cases—cases based on motor vehicle accidents or other incidents unrelated to law enforcement killings. Thus, Defendants' cases are irrelevant and should have no bearing on the remittitur of damages procedure under the Fifth Circuit Maximum Recovery Rule, as discussed above. *Vogler* 352 F.3d at 158; *Lebron* 279 F.3d at 326; *Longoria* 932 F.3d 360.

CONCLUSION

For the above stated reason, Plaintiffs respectfully request that the Court deny Defendants' motion for judgment as a matter of law in its entirety. Additional, sufficient evidence presented at trial would allow reasonable jurors to support the damages awarded. Defendants' motion should be denied to a new trial on liability and damages.

[5] The award is really roughly 21 million each Plaintiff x 3 plaintiffs plus LN pain and suffering and plus the punitive damages. Were it just one P the award would be approx. 21M plus LN pain and suffering 3.8M and punitive damages, roughly 25 million, for just one plaintiff.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

I certify that on February 28th, 2022, I conferred with Henry Gray Laird of the City of Austin Law Department, and he does not oppose the filing of this Plaintiffs' Corrected Response in Opposition To Defendants' Renewed Motion For Judgment As A Matter of Law And In The Alternative, For New Trial Or Remittitur.

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

CERTIFICATE OF SERVICE

I certify that on the 1st day of March, 2022, I served a copy of Plaintiffs' Correct Response in Opposition To Defendants' Renewed Motion For Judgment as a Matter of Laws and in the Alternative, For New Trial or Remittitur to all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

/s/ Charles Medearis
CHARLES MEDEARIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY EXECUTION ON FINAL JUDGMENT PENDING DISPOSITION OF POST-TRIAL MOTIONS AND APPEAL

Defendants Richard Egal and Maxwell Johnson file this Reply in Support of their Motion to Stay Execution on the Final Judgment (Doc. 74) pending the final disposition of their Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur and any subsequent appeals pursuant to Rule 62 of the Federal Rules of Civil Procedure as follows:

A. Plaintiffs' argument that Egal and Johnson are the real parties in interest does not necessitate a bond for posttrial motions and a potential appeal.

Contrary to Plaintiffs' counsel's closing argument in which he argued that "[y]ou must make the City pay" in order to avoid more George Floyd style incidents, Plaintiffs now argue that Egal and Johnson are the real parties in interest and thus must post a bond. Plaintiffs ignore the fact that Rule 62(f) of the Federal Rules of Civil Procedure provides that "[i]f a judgment is a

lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give."

Under Texas state law, the City of Austin, as a municipality, may "institute and prosecute suits without giving security for costs and may appeal from judgment without giving supersedeas or cost bond." Tex. Civ. Prac. and Rem. Code §6.002 (b). Additionally, Texas courts have extended this exemption from filing bonds to city officials sued in their official capacities. *Greanias v. City of Houston,* 841 S.W.2d 411, 413 (Tex. App.—Houston, 1st Dist. 1992); *Parker v.White,* 815 S.W.2d 893, 895 (Tex.App.—Tyler 1991, no writ); *Cornette v. Aldridge,* 404 S.W.2d 138 (Tex.Civ.App.—Amarillo 1966, writ ref'd n.r.e.); *Weber v. Walker,* 591 S.W.2d 559 (Tex.Civ.App.—Dallas 1979, no writ).

Here, Plaintiffs sued Egal and Johnson in their official capacities as Austin Police Officers as well as in their individual capacities. (Doc. 1, ¶¶ 4-5) As a result, the Texas exemption from filing supersedeas bonds pending appeal applies to Egal and Johnson, and they should be permitted to proceed with their posttrial motions and any subsequent appeals without the necessity of posting a bond.

B. Plaintiffs' argument that this judgment should be paid ahead of out-of-court settlements is without merit.

Plaintiffs attach reports of other settlements reached by the City of Austin and claimants arising out of separate, non-related incidents and argue that Plaintiffs' judgment should be paid ahead of any pre-trial settlements in other cases. Plaintiffs cite no authority for this argument. Plaintiffs also have produced nothing beyond their bare assertions that Defendants are involved in some "scheme" to avoid satisfying the judgment in this case.

Defendants have done nothing more than file posttrial motions and this motion requesting that they be permitted to proceed with the posttrial motions and potential appeals without having to post a bond, which under Texas law, they are entitled to do as discussed above. Plaintiffs have provided no authority for their contention that the City must either pay this judgment first or avoid settling other claims which somehow are not "ripe" for settlement. As a result, Plaintiffs' argument is without merit.

PRAYER

Accordingly, pursuant to the City of Austin's Resolution No. 870409-02, and the above authorities, Defendants request that the Court enter a stay of execution of the Final Judgment without the necessity of posting a supersedeas bond pending final disposition of Defendants' Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur and any subsequent appeals. Alternatively, Defendants request that the Court set a reasonable supersedeas bond.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
Gray.laird@austintexas.gov
Monte L. Barton
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin- Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-1342

Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 2nd day of March, 2022, I served a copy of the foregoing document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON,	§	
Defendants.	§	

DEFENDANTS' REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW AND, IN THE ALTERNATIVE, FOR NEW TRIAL OR REMITTITUR

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

I. There was Insufficient Evidence to Support the Jury's Finding that Egal and Johnson Violated Landon Nobles' Constitutional Rights by Using Excessive Force; Egal and Johnson are Entitled to Qualified Immunity.

The overwhelming evidence at trial demonstrated that Egal and Johnson had reason to believe that Landon Nobles posed a threat of serious harm when he turned toward the officers while holding a gun in his right hand and fired a shot. Additionally, the physical evidence at the scene established that Nobles had a handgun and fired a round. Plaintiffs offered no explanation at trial, and offer no explanation in their response, of how the handgun and holster arrived at Nobles' feet after the shooting.

Plaintiffs state in their response that several witnesses testified that Nobles did not have a gun outside the Mooseknuckle Pub or near the scene of the shooting. However, Plaintiffs' description of the witnesses' testimony is inaccurate and misleading. First, Plaintiffs claim that

Royie Nobles "unflappably testified" that Landon Nobles did not have a handgun that night and that Nobles did not fire a weapon while at the Mooseknuckle Pub. Yet, this purported testimony is found nowhere in Royie Nobles' actual trial testimony. Instead, Royie Nobles merely testified that to his knowledge, Nobles did not have a gun that night. (Trial Transcript, Vol. 1, p. 252) That is a far cry from negating the physical evidence and the testimony of every witness who saw Nobles' hands just prior to the shooting who confirmed that he was holding a gun. Royie Nobles actually confirmed that Landon Nobles matched the description of the suspect who fired the gun at the Mooseknuckle Pub provided to Officer Huckaby by civilian witnesses. (Trial Transcript, Vol. 1, p. 248)

Plaintiffs also claim that Nicholas Henderson testified that he never saw Landon Nobles with a gun. However, Henderson testified that while at the Mooseknuckle Pub, Nobles was behind Henderson the entire time, and that Henderson did not see who fired the shot outside the pub. (Trial Transcript, Vol. 1, pp. 211-212) Henderson also confirmed that Nobles wore clothing that night that matched the description of the suspect who fired the gun. (Trial Transcript, Vol. 1, p. 228) Henderson's testimony further revealed that he and Royie Nobles were nowhere near Landon Nobles at the time Egal and Johnson fired their weapons. Henderson testified that he was "positive" that he and the others in the group, including Royie Nobles, were at least 30-40 yards from Landon Nobles when he was shot. (Trial Transcript, Vol. 1, p. 221)

Plaintiffs' recounting of other witnesses' testimony is similarly inaccurate. Plaintiffs claim that one police witness testified that "Landon Nobles did not have a gun in his hand when he was killed and did not point any gun at anybody." Actually, the officer Plaintiffs are referring to, Officer Allegretti, testified that from his distance and angle, he could not see Nobles' hands. (Trial Transcript, Vol. 2, p. 188) Likewise, Andre Anderson and Elvis Ingram also did not see Nobles'

hands prior to the shooting. Anderson testified that he could not see Nobles' hands or the right side of his body before the officers fired their weapons. (Trial Transcript, Vol. 2, pp. 127-129) Ingram testified that he could not see Nobles' hands before the officers fired. (Trial Transcript, Vol. 2, pp. 84-85) Notably, though, both Anderson and Ingram confirmed that they heard a small caliber gunshot come from Nobles' direction near the time of Nobles' collision with Egal's bike. (Trial Transcript, Vol. 2, pp. 83-84; 124-126) Anderson confirmed that the officers had not drawn their weapons at the time he heard the small caliber gunshot from Nobles' direction. (Trial Transcript, Vol. 2, p. 125-126)

Plaintiffs also claim that Chris Futrell controverted the officers' testimony that Nobles had a gun. However, Plaintiffs cite none of Futrell's actual testimony. Futrell's actual trial testimony revealed that he was at least fifty feet from Nobles at the time the officers fired, and that Futrell was never focused on Nobles the entire time. (Trial Transcript, Vol. 1, pp. 189; 191; 195) Futrell admitted that he did not have the same perspective as the officers. (Trial Transcript, Vol. 1, p. 195) Also, in response to the question: "[y]ou didn't see whether or not Nobles had a weapon in his hands before shots were fired either, is that correct?" Futrell answered: "That is correct." (Trial Transcript, Vol. 1, p. 191)

The testimony of every witness who was in a position to see Nobles' right hand established that Nobles was holding a handgun just before Egal and Johnson fired their weapons. The testimony and physical evidence also established that Nobles' gun fired shortly after Nobles collided with Egal's bicycle. Plaintiffs make no attempt in their response to counter the physical evidence found at the scene, including the spent shell casings that matched the gun found at Nobles' feet. The fact that the two spent shell casings matched the 32 caliber handgun found at Nobles' feet is undisputed. Plaintiffs offered no evidence to dispute these conclusions.

Here, Egal and Johnson did not violate clearly established law but were in fact following clearly established law. Plaintiffs make no effort in their response to distinguish the cases cited by the officers that demonstrate that qualified immunity attaches to the officers' actions in this incident. Moreover, a recent Fifth Circuit case with facts remarkably similar to this case further supports a grant of qualified immunity in this case.

In *Wilson v. City of Bastrop,* 2022 WL 510228, (5th Cir., February 21, 2022), Officer Green, a Bastrop, Louisiana police officer, responded to a report of an armed confrontation at an apartment complex. *Id.* at *1. When Green approached a stationary vehicle which matched the description provided in the report, the suspect, Thomas Johnson, stepped out of the vehicle holding a pistol. *Id.* Johnson ignored Green's orders to shut the vehicle's door and immediately ran toward a nearby school. Johnson did not comply with Green's orders to drop the gun, and Green fired at him. *Id.* Johnson ran into an adjacent field and then Green saw Johnson look over his shoulder at Green and point the barrel of the gun in Green's direction. *Id.* Green continued to chase Johnson across the field. Another officer, Officer McKinney, heard the gunshots and proceeded to the opposite side of the field. *Id.* He then saw Johnson approaching his squad car and ordered Johnson to stop and drop the gun. When Johnson did not comply, McKinney fired at Johnson, who stumbled, looked at McKinney, picked up his gun and continued to flee. *Id.* Both officers gave chase and when in range, both officers shot and struck Johnson, who dropped and died at the scene. *Id.*

On appeal, the Fifth Circuit affirmed the district court's grant of summary judgment on qualified immunity. *Id.* at *5. The Court noted that given the difficulty of split-second judgments, the Court judges the reasonableness of an officer's use of force "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, (*citations omitted*)

and avoids "second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." *Id.* at *2. The Court found that Green's actions in firing at Johnson were objectively reasonable since Johnson ran while armed in the presence of onlookers and ignored Green's orders to drop the gun. *Id.* at *3. The Court noted that Fifth Circuit precedent does not require that officers wait until a suspect turns toward them, with weapon in hand, before applying deadly force to ensure their safety. *Id.* at *4. The Fifth Circuit also rejected plaintiffs' argument in *Wilson* that Johnson posed no threat because he never actually aimed his gun at an officer. The Court stated: "[p]laintiffs identify no basis for second-guessing an officer's split-second judgment that a fleeing, armed suspect could turn a gun on him at a moment's notice. *Id.* at fn. 3. The Court noted: "[m]oreover, even if the gun was never pointed toward the officers, they could have reasonably thought Johnson posed a serious threat to onlookers." *Id.* at fn. 3.

Similarly, here, when viewed from the perspective of a reasonable officer on the scene of this rapidly evolving incident, it was reasonable for Egal and Johnson to believe that Nobles posed an imminent threat of serious bodily harm to Egal, Johnson and others near the scene. The video evidence and the testimony from all witnesses who saw Nobles' hands as well as the physical evidence established that Nobles was armed and presented a threat of serious harm to the officers and others in the area, just as the suspects in Wilson and the cases cited in Defendants' motion. Accordingly, Defendants Richard Egal and Maxwell Johnson respectfully request that the Court enter judgment as a matter of law in their favor and dismiss the Plaintiffs' claims.

II. The Court erred in submitting the punitive damages instruction to the jury.

"A jury may assess punitive damages in a §1983 suit 'when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference

to the federally protected rights of others.'" *Heaney v. Roberts,* 846 F.3d 795, 803 (5th Cir. 2017)(citing *Smith v. Wade,*461 U.S. 30, 56 (1983). Reckless indifference is a "subjective consciousness of a risk of injury or illegality and a criminal indifference to civil obligations." *Id.*

Plaintiffs argue in their response that "[t]he jury concluded that the evidence proved that Richard Egal's actions were not objectively reasonable because he testified that Landon Nobles was not an actual imminent threat to him or anyone else when Richard Egal shot him in the back." (Doc. 90, p. 10) First, Plaintiffs again misrepresent trial testimony. Egal never testified that Nobles was not an imminent threat. In fact, Egal testified on multiple occasions that he believed Nobles was an imminent threat and that is why he fired at Nobles. (Trial Transcript, pp. 27-28; 30)

Second, objective reasonableness is not the standard for punitive damages. In order to support an award of punitive damages, there must be a "subjective consciousness" of a risk of injury or illegality and a criminal indifference to civil obligations. *Heaney,* 846 F.3d at 803. Plaintiffs produced no evidence of a subjective consciousness or evil intent on the part of Egal and Johnson. The fact that Egal missed two shots at Nobles is not evidence of any subjective consciousness of a risk of injury. There was no evidence from which a reasonable jury could find the necessary level of evil intent or recklessness necessary to support the punitive damages claim. As a result, the Court should enter judgment in favor of Egal and Johnson on the punitive damages claim and dismiss those claims with prejudice.

III. Plaintiffs' Counsel's blatantly prejudicial and inflammatory remarks during opening statement and closing argument warrant a new trial on liability and damages.

Plaintiffs make no serious attempt to explain how the statements made by Plaintiffs' counsel were not improper. Instead, Plaintiffs contend that the plain error rule does not apply because Defendants did not object to all of the improper comments. Plaintiffs' argument is incorrect.

First, Plaintiffs contend that the most egregious statement of Plaintiffs' counsel: "[t]his was a terrible experience and it did not have to be. You must make the City pay for that; otherwise, we're going to go into the future with more George Floyd style incidents, more Landon Nobles style incidents and that poses a very grave danger…"[1] was not improper and was only a comment regarding the new and central role that bystanders play in police misconduct cases. This argument is without merit. No evidence was presented at trial which made any connection between this incident and the George Floyd incident. An argument that the City must pay in order to prevent more incidents like the George Floyd incident has nothing to do with any role bystanders played in this incident. Simply put, this statement was obviously designed and delivered with only one purpose: to inflame the jury by connecting this incident to the George Floyd incident. Thus, this statement was clearly improper.

Second, Defendants made a contemporaneous objection to this statement which was sustained by the Court. Contrary to Plaintiffs' argument, the Court's general jury instructions that cautioned the jury to distinguish between arguments of counsel and the evidence were not sufficient to cure any prejudicial effect of the statement. The Fifth Circuit has recognized that where, as here, the improper statements were among "the last thing[s] the jury heard before retiring to deliberate" and a "colossal verdict" followed, a general instruction at the close of trial is grossly inadequate to cure the prejudicial effect and reversal is required. *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant,* 888 F.3d 753, 786 (5th Cir. 2018).

Third, contrary to Plaintiffs' argument, the Fifth Circuit and district courts have frequently used the plain error rule to order a new trial as the result of improper statements in closing arguments even when there was no objection at trial. In fact, the courts in almost every case cited

[1] (Trial Transcript, Vol. 6, p. 141-142)

in Defendants' Motion for New Trial (Doc. 86) applied the plain error rule to order a new trial as the result of improper closing argument. *See Whitehead v. Food Max of Mississippi, Inc.,*163 F.3d 265, 277 (5th Cir. 1998); *Westbrook v. General Tire and Rubber Co.,* 754 F.2d 1233, 1238 (5th Cir. 1985); *Rojas v. Richardson,* 703 F.2d 186, 190-91 (5th Cir. 1983); *Schleunes v. American Cas. Co. of Reading, Pa.,* 528 F.2d 634, 638 (5th Cir. 1976); *Edwards v. Sears, Roebuck and Co.,* 512 F.2d 276, 283 (5th Cir. 1975); *Brownlee v. United Fidelity Life Ins. Co.,* 117 F.R.D. 383, 390 (S.D. Miss. 1987).

The plain error rule is applicable in this case as well. To establish plain error, a litigant must show: "(1) that an error occurred; (2) that the error was plain, which means clear or obvious; (3) the plain error must affect substantial rights; and (4) not correcting the error would seriously impact the fairness, integrity, or public reputation of judicial proceedings." *Septimus v. Univ. of Houston*, 399 F.3d 601, 607 (5th Cir. 2005).

For the reasons set forth in Defendants' Motion for New Trial, the various statements made in opening statement and closing argument were clearly improper and similar statements have been found to be clearly improper and plain error by the Fifth Circuit and other courts. Additionally, these statements affected the substantial rights of the Defendants as demonstrated by the size of the verdicts. These statements had an inescapable influence on the liability issue and damages. An argument that the City must pay in order to prevent more George Floyd incidents, among other improper statements, without doubt influenced the jury's liability decision as well as its decision on damages. Moreover, not correcting the error would seriously impact the fairness and integrity of the judicial proceedings. As a result, the Court should grant a complete new trial.

IV. The Damages Awards were Excessive, Unjust, and Not Supported by the Evidence.

Plaintiffs' counsel's improper statements encouraged the jury to send a message to the City,

and the amount of the jury's verdict demonstrates that this tactic was successful. It also reflects that the damages are clearly excessive. Compensatory damages under §1983 are designed to *compensate* someone based on their actual losses. *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 308 (1986)(*emphasis added)*. Any damages awarded beyond that—whether based on punishment, the value of the constitutional right, or the notion of "sending a message"—are excessive. *Id.*

A. Landon Nobles' Damages

Plaintiffs cite *Tyler v. Likes,* 962 S.W.2d 489, 495 (Tex. 1997) for the proposition that "the law assumes that physical pain results from a serious injury." The court in *Tyler* actually stated that where serious bodily injury is inflicted…**some** degree of physical pain is the necessary result. *Id. (emphasis added).* Plaintiffs' argument that the $3,670,000.00 award for Landon Nobles' physical pain and mental anguish is reasonable is not supported by the evidence. Contrary to Plaintiffs' statement in their response, Royie Nobles actually testified that Landon Nobles was not screaming after he was shot. (Trial Transcript, Vol. 1, p. 251) While some degree of physical pain may be presumed, no evidence other than speculation supports this large of an award.[2]

B. Damages award to Ida Renae Nobles and Landon Nobles' children

Plaintiff quotes *Wackman v. Rubsamen,* 602 F.3d 391, 405 (5th Cir. 2010) to establish that "[a] family relationship between parent and child is sufficient to establish **some** evidence of mental anguish in the surviving family members." (*emphasis added)* While some mental anguish of Ms. Nobles and Landon Nobles' sons may have been established, the evidence did not support the extremely high awards to Ms. Nobles and the two children for past and future loss of

[2] In *Vogler v. Blackmore,* 352 F.3d 150, 160 (5th Cir. 2003), cited by Plaintiffs, the Court actually remitted a $200,000 award for the deceased's conscious pain and suffering in a wrongful death case to $30,000 when the award was speculative and not supported by the evidence.

companionship and society and past and future mental anguish.

Plaintiffs do not attempt to distinguish the cases cited by Defendants in which courts found that much lesser awards to parents for the loss of children and awards to children for the loss of parents to be excessive. Instead, Plaintiffs evidently contend that *Goodman v. Harris County*, 571 F.3d 388 (5th Cir. 2009), where the jury award $5,000,000.00 to the mother of a man shot by police, is the most factually similar case to this one. However, it should be noted that the amount of the jury verdict was not contested in *Harris* and thus was not even addressed by the Fifth Circuit. Moreover, the award in *Harris* was obviously much lower than the $16,800,000.00 total award to Ms. Nobles in this case and demonstrates the excessiveness of the awards in this case.

Additionally, when evaluating awards for excessiveness, the Court is not limited to reviewing the awards in the context of awards in other cases with similar underlying facts. Instead, the Court reviews the awards "in the context of awards in cases **with similar injuries** in the relevant jurisdiction." *Vogler v. Blackmore,* 352 F.3d 150, 156 (5th Cir. 2003)(*emphasis added)* The cases cited by Defendants in their motion for new trial or remittitur in which courts found awards excessive are all death cases and involve similar familial relationships (parent of deceased and children of deceased). In each of those cases, the courts found much lesser awards than the awards in this case to be excessive. Moreover, even in the cases cited by Plaintiffs, the Courts granted significant remittiturs. For example, in *Lebron v. United States,* 279 F.3d 321 (5th Cir. 2002), the Fifth Circuit remitted a noneconomic damages award from $9 million to $1.25 million and awards of $1.5 million to each parent for loss of consortium to $1 million.

The jury's awards in this case are clearly excessive and indicate that the jury was guided not by the evidence but instead by passion and prejudice. Accordingly, the Court should grant a new trial, or alternatively, substantially remit the damages awards.

V. Plaintiffs did not meet their burden of demonstrating that the Defendants' peremptory strike of Juror Number 5 was based on the potential juror's race, and there was no finding of purposeful discrimination.

The Plaintiffs did not meet their burden of demonstrating that the Defendants' attempted peremptory strike Potential Juror No. 10 (Trial Juror Number 5) was based on race. In their response, Plaintiffs analyze the Defendants' use of a peremptory strike as if it were a challenge for cause. Plaintiffs note that neither Juror 10 and Juror 11 indicated that they were convicted of felonies or any crime of moral turpitude and that Juror 10 stated that his prior arrest would not affect his objectivity. They also contend that this case did not involve misdemeanor possession of marijuana.

But that is not the standard to evaluate a *Batson* challenge of a peremptory strike. As the opponent of the peremptory strike, Plaintiffs had the burden of persuasion regarding racial motivation in the use of the strike, and Plaintiffs did not meet that burden here. Plaintiffs offered no support or proof for their contention of purposeful discrimination other than Juror No. 10 was the only African American in the venire. Defendants offered two race-neutral reasons for the peremptory strike of Juror 10 and neither the reasons themselves nor anything else indicated that the reasons were pretextual. There was no finding of purposeful discrimination, and the Court's denial of Defendants request to excuse Potential Juror No. 10 was clearly erroneous.

CONCLUSION

For the reasons set forth above, Defendants Richard Egal and Maxwell Johnson respectfully request that the Court grant their motion for judgment as a matter of law and dismiss the Plaintiffs' claims against them with prejudice. Alternatively, Defendants respectfully request that the Court order a new trial on liability and damages or alternatively, remit the damages awarded by the jury to a reasonable damages award. Defendants further request any additional

relief to which they may be entitled.

RESPECTFULLY SUBMITTED,
ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
Monte L. Barton
Assistant City Attorney
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin Law Department
P.O. Box 1546, Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 7th day of March 2022, I served a copy of this document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

Case 1:19-cv-00389-ML Document 96 Filed 03/08/22 Page 1 of 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
MAR 8 2022
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,
Plaintiffs,

v.

SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON
Defendants.

CIVIL ACTION NO. 1:19-cv-00389-ML

ORDER GRANTING DEFENDANTS' MOTION TO STAY EXECUTION ON FINAL JUDGMENT PENDING DISPOSITION OF POST-TRIAL MOTIONS AND APPEAL

This Court, having considered Defendants' Motion to Stay Execution of the Final Judgment Pending Disposition of Post-Trial Motions and Appeal, all other pleadings on file and all applicable law, hereby GRANTS the motion. Accordingly, the Court hereby enters a stay of execution of the Final Judgment (Doc. 74) pending final disposition of the Defendants' Renewed Motion for Judgment as a Matter of Law and, in the alternative, Motion for New Trial or Remittitur and any subsequent appeals without the necessity of posting a supersedeas bond.

IT IS SO ORDERED.

SIGNED this 8TH day of MARCH, 2022.

Mark Lane, United States Magistrate Judge

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Wednesday, March 23, 2022 6:27:41 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 3/23/2022 at 6:27 PM CDT and filed on 3/23/2022
Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 99

Docket Text:
Transcript filed of Proceedings held on March 8, 2022, Proceedings Transcribed: Motions Hearing. Court Reporter/Transcriber: Lily I. Reznik, Telephone number: 512-391-8792 or Lily_Reznik@txwd.uscourts.gov. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 4/13/2022, Redacted Transcript Deadline set for 4/25/2022, Release of Transcript Restriction set for 6/21/2022, (lr)

1:19-cv-00389-ML Notice has been electronically mailed to:

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, kelly.resech@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=3/23/2022] [FileNumber=26423311-0] [68e382b066726a68f945060495bfab4084cedcad54d53fcb66eb73268eaef3dd481b512570b05f15078d99f80387e8880e317f6d750351ddc20f11ec3e3e0e6c]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN,	§	
Defendants.	§	

JOINT ADVISORY TO THE COURT

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Plaintiffs Ida Renae Nobles, Individually, K.N., Minor, by and through his guardian Kadeidra Bell, and L.N., Minor, by and through his guardian Michelle Dashaun Smith as Heirs at Law to the Estate of Landon Nobles and Defendants Richard Egal and Maxwell Johnson file this Joint Advisory to the Court as follows:

The parties advise the Court that they have mediated this case in accordance with the Court's order of March 8, 2022 (Doc. 98) and the parties were not able to resolve this matter at the mediation.

RESPECTFULLY SUBMITTED,

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
Monte L. Barton
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

/s/ Edmund Davis
Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN,	§	
Defendants.	§	

ADVISORY TO THE COURT

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell Johnson file this Advisory to the Court as follows:

Defendants Richard Egal and Maxwell Johnson attach as Exhibit A to this Advisory their Mediation Memorandum as instructed by the Court's order on March 8, 2022 (Doc. 98).

RESPECTFULLY SUBMITTED,

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
Monte L. Barton
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 29th day of April, 2022, I served a copy of the foregoing document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES, **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
SERGEANT RICHARD EGAL AND CORPORAL MAXWELL JOHNSON, **Defendants.**	§	

PRE-MEDIATION MEMORANDUM

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell Johnson submit this Pre-Mediation Memorandum in accordance with the Court's Order of March 8, 2022 (Doc. 98) as follows:

A. Any settlements agreed to by the City of Austin involving law enforcement related deaths, dating back to 2015.

1. *Ketty Sully, Individually and as Heir at Law to the Estate of David Joseph v. Geoffrey Freeman and the City of Austin,* In the United States District Court for the Western District of Texas, Austin Division, No. 1:16-cv-00818-RP. Lawsuit arose out of a February 8, 2016 incident in which 17 year old David Joseph was shot by Officer Geoffrey Freeman as Joseph ran toward Freeman in an Austin neighborhood. Total settlement: $3,250,000.00.

2. *Thomas Munroe III and Karen Munroe, Individually and as Heirs to the Estate of Richard Alexander Munroe v. Officer Matthew Murphy and Officer Stephen Johnson,* In the United States

District Court for the Western District of Texas, Austin Division, No. 1:16-cv-0116-RP. Lawsuit arose out of a July 15, 2015 incident in which Plaintiffs' 25 year old son was shot by APD officers on his front porch when officers saw him raise a BB pistol in their direction. Total settlement: $895,000.00.

3. *Albina Roque and Vincente Roque, Individually and as Heirs at Law to the Estate of Jason Roque, and on Behalf of All Wrongful Death Beneficiaries v. James Harvel,* In the United States District Court for the Western District of Texas, Austin Division, No. 1:17-cv-932-LY. Lawsuit arose out of a May 2, 2017 incident in which an officer shot 20 year old Jason Roque after Roque pointed a BB pistol in the officer's direction and then allegedly attempted to flee. Total settlement: $2,250,000.00.

B. Relevant Fifth Circuit cases involving wrongful death, remittitur, the maximum recovery rule, and any other persuasive cases.

Remittitur: In determining whether a new trial or remittitur is the appropriate remedy, the Fifth Circuit has held that when a jury verdict results from passion or prejudice, a new trial, not remittitur, is the proper remedy. *Brunnemann v. Terra Int'l, Inc.,* 975 F.2d 175, 178 (5th Cir. 1992). Damages awards which are merely excessive or so large as to appear contrary to right reason, however, are subject to remittitur, not a new trial. *Id., citing Wells v. Dallas Independent School District,* 793 F.2d 679, 683 (5th Cir. 1986).

Maximum Recovery Rule: Courts in the Fifth Circuit apply the "maximum recovery rule" to determine whether an award is excessive. *Puga v. RCX Sols, Inc.,* 922 F.3d 285, 297 (5th Cir. 2019). Under the maximum recovery rule, the verdict must be reduced to the maximum amount the jury could have properly awarded. *Gaddy v. Taylor Seidenbach, Inc.,* 446 F.Supp.3d 140, 159 (E.D. Louis. 2020)(citing *Brunnemann v. Terra Int'l, Inc.,* 975 F.2d 175, 178 (5th Cir. 1992).

Relevant Cases:

1. *Haley v. Pan American World Airways, Inc.,* 746 F.2d 311, 318-319 (5th Cir. 1984).

Facts: Plaintiffs' 25 year old son was killed in a plane crash. Wrongful death case brought against airline.

Initial Damages Award: $15,000 for son's mental anguish/pre-impact fear and $350,000 to each parent for loss of companionship and society.

Final Damages Award: Fifth Circuit affirmed the $15,000 award for son's mental anguish. Fifth Circuit reduced awards to parents for loss of companionship and society to $200,000 each. Fifth Circuit noted that, at the time, a review of other cases indicated that $150,000 appeared to be the largest damage award for loss of an adult child in federal and state cases from Louisiana.

2. *Vogler v. Blackmore,* 352 F.3d 150 (5th Cir. 2003).

Facts: Plaintiff's wife and 3 year old daughter were killed in a motor vehicle accident.

Initial Damages Award: $200,000 to parent for past loss of companionship and society of daughter and $1,300,000.00 to parent for future loss of companionship and mental anguish; $200,000 for deceased's pain and suffering and mental anguish prior to death

Final Damages Award: Fifth Circuit affirmed the $200,000 and $1,300,000.00 awards to the surviving parent but reduced the award for deceased's pain and suffering to $30,000 based on maximum recovery rule since there was insufficient evidence of extensive mental anguish.

3. *Grandstaff v. City of Borger, Tex.,* 767 F.2d 161, 172 (5th Cir. 1985).

Facts: Officers mistook Plaintiff's decedent for a fugitive and shot and killed him. Wrongful death action.

Initial Award: Father of adult son awarded $200,000 for loss of companionship and mental anguish. Minor child of decedent awarded $250,000 for loss of companionship and society

Final Damages Award: Fifth Circuit affirmed the damages awards to father and child and found that damages awarded were consistent with Texas law.

4. *Caldarera v. Eastern Airlines, Inc.,* 705 F.2d 778, 785 (5th Cir. 1983).

Facts: Wrongful death action against airline brought by husband for deaths of his wife, son and mother.

Initial Award: $100,000 for loss of companionship and society of plaintiff's mother; $150,000 for loss of plaintiff's son; $400,000 to 4 year old child for loss of companionship and society of mother.

Final Award: Fifth Circuit held that awards for loss of companionship and society of plaintiff's mother of $100,000 and $150,000 for loss of plaintiff's son were not excessive. Fifth Circuit reduced the $400,000 award to 4 year old child for loss of companionship and society of mother to $300,000 since child was in normal health and required no exceptional care.

5. *Douglass v. Delta Air Lines, Inc.,* 897 F.2d 1336, 1345 (5th Cir. 1990).

Facts: Wrongful death case brought by surviving widow and children of passenger killed in a plane crash.

Initial Award: Three minor children's recoveries for mental anguish ranged from $50,000 to $100,000 and recoveries for loss of companionship and society ranged from $270,000 to $420,000.

Final Award: Fifth Circuit affirmed the children's awards for mental anguish. Fifth Circuit used the maximum recovery rule and analyzed other Texas awards to reduce children's awards for loss of companionship holding that each child's recovery for the loss of companionship of the parent could not far exceed $200,000 so the aggregate sum for each child would not exceed $300,000.

6. *Wackman v. Rubsamen,* 602 F.3d 391, 408 (5th Cir. 2010).

Facts: Wrongful death case brought by three adult daughters of deceased against hospice caretakers of deceased.

Initial Award: $250,000 to each daughter for past mental anguish and $50,000 to two daughters for future mental anguish and $75,000 to one daughter for future mental anguish.

Final Award: Fifth Circuit affirmed the awards for past mental anguish but reversed the awards for future mental anguish. Fifth Circuit held that plaintiffs produced no evidence of future mental anguish that was more than mere worry, anxiety, vexation, embarrassment or anger.

7. *Wellborn v. Sears, Roebuck & Co.,* 970 F.2d 1420 (5th Cir. 1992).

Facts: Wrongful death products liability case brought by parent for death of 14 year old son who was killed when he was pinned underneath an automatic garage door.

Initial Award: $1,000,000 for son's conscious pain and suffering; $1,225,000 for mother's mental anguish and loss of companionship and society.

Final Award: Fifth Circuit affirmed the awards. Fifth Circuit noted that the record established that the mother acted as the son's sole caretaker and she and her son were very close. Mother also presented evidence that she required medication as the result of son's death, attended group therapy sessions and missed time from work as the result of son's death.

8. *Gutierrez v. Exxon Corporation,* 764 F.2d 399 (5th Cir. 1985).

Facts: Wrongful death action against oil company brought by parents of adult child who was killed when casing head of an oil well fell on him.

Initial Award: $250,000 to parents for loss of companionship and society and $750,000 for mental anguish.

Final Award: Fifth Circuit affirmed the awards. The Fifth Circuit analyzed the awards under the maximum recovery rule and found that this level of recovery had been awarded to parents of a deceased child before in Texas and that there was evidence that the parents were suffering from a severe depressive reaction that lasted an unusually long time.

9. *Frazier v. Honeywell Intern., Inc.,* 518 F.Supp.2d 831 (E.D. Tex. 2007).

Facts: Wrongful death action brought by parents who lost their 18 year old daughter in motor vehicle accident.

Initial Award: Both parents awarded a total of $24,000,000.00 for their past and future loss of companionship and mental anguish.

Final Award: District Court granted a remittitur to a total recovery of $9.75 million ($4,875,000 to each parent for past and future loss of companionship and mental anguish). The Court noted that it was not bound by the maximum recovery rule since other cases in the jurisdiction lacked several unique characteristics of the case. Instead, the Court used a remittitur analysis and reduced the verdict to a total of $9.75 million even though the district court's opinion on the defendant's post-trial motions described the father's testimony as being "as compelling and moving as any this judge has heard in over 30 years as a civil trial attorney and judge."

10. *Ford Motor Co. v. Durrill,* 714 S.W.2d 329 (Tex. App.—Corpus Christi-Edinburg, 1986).

Facts: Wrongful death case brought by parents when their adult daughter was killed as a result of burn injuries from a fuel tank explosion and fire.

Initial Award: $2,050,000 to mother and $2,300,000.00 to father for death of their daughter and $2.5 million to personal representative of daughter's estate.

Final Award: Court of Appeals compared the verdicts to the verdicts in other cases and held that the verdicts were excessive. The Court reduced the awards to $300,000 for the mother and $300,000 for the father and reduced the award to the daughter's estate to $1,700,000.

11. *Halliburton Co. v. Olivas,* 517 S.W. 2d 349 (Tex. App.—El Paso, 1974).

Facts: Wrongful death action brought by widow and on behalf of minor child as the result of motor vehicle collision.

Initial Award: $200,000 award to minor child for death of father.

Final Award: Court of Appeals held that the award to the minor child was excessive when compared to other comparable cases and suggested remittitur of $80,000.

12. *Hawkins v. Walker,* 238 S.W.3d 517 (Tex. App.—Beaumont, 2007).

Facts: Wrongful death action brough by parents of 26 year old patient who died of a ruptured tubal ectopic pregnancy.

Initial Award: $1,000,000 to mother for past and future loss of companionship and society and $700,000 for past and future mental anguish.

Final Award: New trial granted since mother's award not supported by the evidence. Court reviewed prior Texas and Fifth Circuit cases and noted that courts required specific evidence of severe grief and severe mental anguish before affirming awards of $500,000 or more. There was no evidence of the need for medical treatment, depression, that mother could no longer work or that her daily activities were affected as the result of her daughter's death.

13. *Guzman v. Guajardo,* 761 S.W.2d 506 (Tex. App.—Corpus Christi-Edinburg, 1988).

Facts: Wrongful death case arising out of the death of 7 year old child in motor vehicle collision.

Initial Award: Mother awarded: $100,000 for past loss of society; $300,000 for future loss of society; $200,000 for past mental anguish; $200,000 for future mental anguish. Father awarded $60,000 for future loss of society and $100,000 for future mental anguish.

Final Award: Court of Appeals affirmed the awards, finding that evidence at trial supported the awards since evidence was presented of the close relationships of parents to the child.

14. *Sanchez v. Mica Corp.,* 107 S.W.3d 13 (Tex. App.—San Antonio, 2002).

Facts: Wrongful death case as the result of electrocution of mother of two teenagers who was electrocuted when she stepped on an electrical pull box on a public sidewalk.

Initial Award: $7 million to the two children for mental anguish and loss of society.

Final Award: Court of Appeals rejected remittitur and affirmed award. Court relied on evidence that the mother was the only care-giving parent and helped one child who had a speech impediment and learning challenges. Court noted that Plaintiffs presented detailed expert testimony from a clinical psychologist who treated the children following their mother's death who documented the mental anguish of the children.

15. *Best Steel Bldgs, Inc. v. Hardin,* 553 S.W.2d 122, (Tex.App.—Tyler, 1977).

Facts: Wrongful death action arising out of motor vehicle collision in which father of three and a half year old child died.

Initial Award: Three and a half year old daughter of decedent awarded $50,000.

Final Award: Court of Appeals remitted the award to $35,000 when there was scant evidence of support of child by the father.

16. *Cresthaven Nursing Residence v. Freeman,* 134 S.W. 214 (Tex. App.—Amarillo, 2003).

Facts: Wrongful death action against nursing home for mother's death.

Initial Award: $4.5 million to daughter for loss of society and companionship.

Final Award: Court of Appeals suggested a remittitur of $3 million since $4.5 million award was not supported by the evidence. Court noted that although a reasonable juror could find that the mother and daughter's relationship was close and that they had lived together for eight years until the mother went to the nursing home, there was little evidence of common interests or activities.

17. *Gulf States Utilities Co. v. Reed*, 659 S.W.2d 849 (Tex. App.—Houston, 1983).

Facts: Plaintiff's 13 year old son was electrocuted when he came in contact with a live wire while crawling under a metal building to retrieve a frisbee.

Initial Award: Mother awarded $500,000 for loss of society of her son and $500,000 for mental anguish.

Final Award: Court of Appeals affirmed the awards. Court noted that there was considerable evidence of mother's mental anguish and loss of society, including that she was hospitalized for five months following his death and was diagnosed as suffering from a severe depressive reaction. She also had severe weight loss, and extreme difficulty sleeping.

18. *Gregory v. Chohan,* 615 S.W.3d 277 (Tex. App.—Dallas, 2020).

Facts: Wrongful death case arising from multi-vehicle accident. 45 year old trucker was killed when he was outside his truck after another trucker jack-knifed his truck that blocked interstate.

Initial Award: Awarded decedent's 8 year old and 10 year old sons of $160,000 for loss of past companionship, $160,000 for past mental anguish, $1.2 million for loss of future companionship. Infant daughter was awarded $1,360,000 for loss of companionship and society. Parents of trucker were each awarded $640,000 for mental anguish and loss of companionship.

Final Award: Court of Appeals affirmed the awards. Court noted detailed evidence at trial of significant and continuing grief over the loss of their father and as a result of his death, they

could not afford to do the things they used to do. Extensive evidence that father provided financial and emotional support to family and promoted the education of his children. Court also noted severe emotional distress of mother and that family was forced to move cross-country as the result of trucker's death.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN RILEY, CHIEF OF LITIGATION

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
Monte L. Barton
Assistant City Attorney
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 29th day of April, 2022, I served a copy of the foregoing document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:
Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com

LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-CV-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS' MEMORANDUM IN AID OF MEDIATION

As ordered by Judge Mark Lane on 08 March 2022 in docket number 98, this memorandum is submitted in aid of reaching a mediated settlement.

First off, **this case is a rare jury verdict**. There have been just 3 jury awards for the Plaintiff in the past 7 years in Austin. And only the Nobles trial was a wrongful death resulting from an Officer Involved Shooting. (OIS). The other 2 jury verdicts in the Austin division were a 2015 excessive force trial and another in 2016. So, there is no comprehensive body of jury trials to compare Nobles with when it comes to the question of monetary jury awards, especially if the relevant jurisdiction is restricted to just Austin cases involving the City of Austin. The majority of cases whether excessive force or wrongful death are settlement cases. Settlement results reflect the measured calculations and negotiations by the parties pre-trial, and those calculated settlements

though arriving at an agreed resolution, are not the same as a verdict by the people. Settlement is not an expression by the people of what the public considers to be objectively reasonable Law Enforcement behavior in the 4th Amendment context. But a jury verdict in a wrongful death case is both the public's expression of what is objectively reasonable or unreasonable LE behavior, and it is also a declaration of what a human life is worth when killed or injured at the hands of LE. A jury trial is the true declaration by the people of what justice looks like. Also, a jury verdict answers important public policy questions, while a settlement does not. In other words, comparing jury verdicts to a body of settlements is like comparing apples to oranges.

Although the court asked that we provide just 2 sets of information (settlements in Austin since 2015, and persuasive caselaw regarding remittitur and the Maximum Recovery Rule (MRR), we thought it would be instructive to take a comprehensive look at the MRR. (See Exhibits 1 and 2).

We define "relevant facts" as serious injury or death resulting from Law Enforcement personnel. Other relevant information: number of parties; total jury award or settlement; the remittitur if any; the published sum of settlement, if publication was allowed.

MAXIMUM RECOVERY RULE

1. The Fifth Circuit formulated a guide, the Maximum Recovery Rule, specifically as a guide to aid courts that are doing remittitur when reducing clearly *excessive awards.*[1]

[1] Awards / settlements that are remarkable but not excessive. Note that the awards have been progressively increasing in value as time passed.

- *Wackenhut v Delarosa,* 305 SW3rd 594 (13 COA, 2009). Texas jury verdict for $45 million death in correctional facility by Officers. Court of Appeals reduced to $42 million because one of the parties passed away. Settlement not reported.
- *George Floyd (2021)* in Minneapolis MN settled for $27 million with $500,000 designated for community development.
- *Breonna Taylor (2020)* SWAT raided wrong apartment in Louisville KY settled for $12 million.
- *Tamil Rice (2016)* in Cleveland OH, $6 million. The kid in playground had a toy gun was killed by police.
- *Eric Gardner (2015)* strangled to death by NYCPD in NYC settled for $5.9 million.

"To this end, damages are reduced to the maximum amount a reasonable jury could have awarded. In order to calculate the maximum amount a reasonable jury could award, [the] Court looks not only to actual [past] awards, but may also apply a multiplier of fifty percent to past similar awards, so long as no multiplier was used in calculating those past awards." *Vogler v. Blackmore*, 352 F.3d 150, 156 (5th Cir. 2003) (citing *Giles v. Gen. Elec.Co*., 245 F.3d 474, 488 (5th Cir.2001) & *Salinas*, 286 F.3d at 831, 831 n. 6.).

2. The Maximum Recovery Rule is not a mandatory award reduction rule. Nor is the Maximum Recovery Rule a formula that is automatically triggered. Rather, the Maximum Recovery Rule is a permissive rule that acts to normalize only excessive awards. "When evaluating jury awards, this Court reviews such awards in the context of awards in cases with similar injuries in the relevant jurisdiction." *Vogler* 352 F.3d at 156 (5th Cir. 2003) (citing Salinas, 286 F.3d at 831, 831 n. 6.).

PLAINTIFFS' RELEVANT CASES

Interestingly, in arguing for remittitur in their Motion for JMOL (document 92), Defendants selected factually dissimilar cases—cases based on motor vehicle accidents or other incidents unrelated to law enforcement killings. Thus, Defendants' cases are all irrelevant and should be rejected because they bear no similarity on the remittitur of damages procedure under the Fifth Circuit's Maximum Recovery Rule, as discussed above. *Vogler* 352 F.3d at 158; *Lebron* 279 F.3d at 326; *Longoria* 932 F.3d 360.

We are of the opinion that the relevant case in the relevant jurisdiction that the court should refer to for guidance refer to *Goodman v Harris County*, a federal case, where the jury awarded

the mother of a man shot to death by the police $5 million dollars. The Fifth Circuit affirmed the award, stating that a "reasonable jury" could find that the officer who shot and killed a fleeing suspect, applied excessive and unnecessary force: "[I]t is clear that a reasonable jury could conclude that [the officer's] use of force was not reasonable under the circumstances known to him at the time of the incident." *Goodman v. Harris Cty*., 571 F.3d 388, 398 (5th Cir. 2009). This case and relevant facts are analogous to the facts at hand in the *Nobles* case, except in one important measure: *Goodman* had but one single plaintiff, the mother. Had Goodman more plaintiffs, the result would have been multiplied by the number of additional plaintiffs. *Frazier v. Honeywell Intern., Inc.,* 518 F. Supp. 2d 831 (E.D. Tex. 2007). In our case, *Nobles* has three plaintiffs, and an Estate, and all three plaintiffs and the Estate were each individually compensated by the Jury. The Nobles estate was specifically awarded 3 million itself. In order to correctly apply the Maximum Recovery Rule to a relevant case, such as the *Goodman* case were it to be selected as the similar and relevant case, the Fifth Circuit rule "permits a verdict at 150% of the *highest inflation-adjusted recovery* in an analogous, published decisions." *Longoria v. Hunter Express, Ltd.,* 932 F.3d 360, 365 (5th Cir. 2019*)* (emphasis added). What that means is that the Maximum Recovery Rule operates first to ascertain a relatively factually similar case, and then adjusts the damages award in the relevant case for inflation. Then, secondly, the inflation adjusted amount is multiplied by 50%. Thus, the cumulative rate of inflation from 2007 (*Goodman* verdict) to 2022 would be applied to $5 million dollar award in *Goodman,* and the inflation adjusted award would equal $6,779,813.06.[2]

[2] https://www.in2013dollars.com/us/inflation/2007?amount=5000000

Then, the inflation adjusted award is multiplied by 150% (or add 50%) equaling $10,169,719.59 for Goodman's single plaintiff mother. [2] Again, it's important to note that in *Goodman* the damages were only assessed to one single Plaintiff: the mother.[3] But here in *Nobles*, there are three other parties who were awarded damages by the jury for a total of 4 plaintiffs: the three surviving family members, and the Landon Nobles' estate. As such, each Plaintiff should be awarded the same sum as the one plaintiff in *Goodman*. In other words, Plaintiffs suggest that each of the three plaintiffs are entitled to damages awards using *Goodman* as the relevant case. So when applying the *Longoria* Maximum Recovery Rule formula to *Nobles* and using *Goodman* as the relevant case, the total *Nobles* award could be adjusted downward from 67 million to a total of $30,509,158.78, less punitive damages and Landon Nobles' pain and suffering which is paid to the estate.

CONCLUSION

In the end, it is a difficult and arduous task for the jury to determine the value of a mother's tears, it is the task of the jury to give a valuation to the weight that a child will bear having lost his father to police violence. Poor people don't have much: poor people don't have a resume or a college

[3] A similar result is reached using the 2017 *Barbara Coats* case, (Texas 14th Court of Appeals cause number 14-17-00732-CV), a Texas state case, where the jury awarded $11,005,000 to 2 parents of the deceased who was as asphyxiated by Police during an arrest. The award was apportioned and Parents received damages for past and future loss of companionship ($2.5M ea.); past and future mental anguish ($2.5M each); and pain and mental anguish to the estate ($1M) was assessed. This is very similar in the damage model to the *Nobles* case. With the Maximum Recovery Rule applied using the *Coats* case as the base, $11,005,000 adjusted for inflation converts to $13,054,058.32, and when multiplied by 150%=$19,581,087, divided by 2 Plaintiffs= $9,790,543 per plaintiff. *Barbara Coats* was reduced on appeal on grounds related to proximate cause of death, so *Coat* is not exactly analogous in that regard because the *Nobles* case does not have an apportionment of contribution / fault.

education, or a fat salary, or real estate holdings by which to establish the value of their lives —all that poor people have is each other. And if you take away one of those family members, that amounts to an enormous loss. Plaintiffs do not think that remittitur is in order. Plaintiffs contend that the jury rightly returned its award in that whopping sum because of the hubris of the police witnesses and the egregiousness of the facts regarding the killing of Landon Nobles. But if the court is to make a reduction in the jury award, Plaintiffs submit that a fair settlement or remittitur amount using the Maximum Recovery Rule as a guide will be between 9 and 30 million dollars, based on the number of plaintiffs per *Frazier*.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

EXHIBIT 1-RELEVANT SETTLEMENTS

Austin Police Department- Officer Involved Shootings Resulting in Death				
VICTIM NAME	DATE SETTLED	COUNTY	AWARDED AMOUNT	FACTS
Jason Roque	2021	TRAVIS	SETTLEMENT AMOUNT $2,250,000	On May 2, 2017, Jason Roque was killed by Austïn PD OIS. Roque's mom called 911 and told police her son was suicidal and had a BB gun. Police responded to find Roque walking on northeast Austin Street with what appeared a handgun. According to federal lawsuit, Roque was pointing the gun at his head and asking officers to kill him. During the encounter police officer Harvel shot Roque three times.
David Joseph	2017	TRAVIS	SETTLEMENT AMOUNT $3,250,000	Officer Geoffrey Freeman shot naked and unarmed 17-year old, David Joseph. David was standing in the middle of the street and starts sprinting towards the police car.

				Freeman fired his gun twice killing the naked boy.
Larry Eugene Jackson Jr.	2016	TRAVIS	SETTLEMENT AMOUNT $1,850,000	In the course a Central Austin bank robbery investigation, Larry Eugene Jackson Jr. attracted the suspicion of Detective Charles Kleinert, part of an FBI taskforce at the time investigating the bank robbery. When asked to identify himself Larry misidentified himself then ran off. After Kleinert caught up to Jackson, they struggled and Kleinert shot Jackson once in the back of the neck.
Nathaniel Sanders	2011	TRAVIS	SETTLEMENT AMOUNT $750,000	Sanders was allegedly shot twice in the chest by eight-year veteran Austin Police Officer Leonardo Quintana, as Sanders sat asleep in the back seat of a gold Mercedes station wagon in the parking lot of the Walnut Creek apartments. According to police, Sanders was one of three men in the wagon that night. As Sanders awoke by police actions, he allegedly reached for his weapon and Quintana fired killing Sanders.
Kevin Brown	2009	TRAVIS	SETTLEMENT AMOUNT $1,000,000	25 year old shot twice by Sergeant Michael Olsen in the back after a foot chase outside of a nightclub. Olsen said he thought Brown was reaching for a gun. An autopsy showed he was shot twice in the back.
Daniel Rocha	2008	TRAVIS	SETTLEMENT AMOUNT $1,000,000	18 year old Daniel Rocha was killed by a single round from APD Officer Julie Schroeder during a “traffic stop” made in connection with an undercover drug operation. Rocha was a passenger in the vehicle.

Austin Police Department- Non-Death Resulting Cases				
VICTIM NAME	YEAR	COUNTY	AWARDED AMOUNT	FACTS
Justin Howell	2022	TRAVIS	SETTLEMENT AMOUNT $8,000,000	SHOT WITH A BEAN BAG ROUND- Howell, 20 at the time and a Texas State University Student, was left in a critical condition after attending a social protest in May 2020 to protest against the officer-involved deaths of George Floyd in Minneapolis and Michael Ramos in Austin. He suffered a fractured skull and brain damage after an Austin Police officer shot him with a bean bag round.

Brad Levi Ayala	2022	TRAVIS	SETTLEMENT AMOUNT $2,950,000	SHOT WITH A BEAN BAG ROUND- Ayala, who was 16 at the time, suffered brain trauma as a result of being shot by an Austin Police Department officer on May 30th, 2020 with a bean bag round. Ayala is now left with life long brain damage.
Anthony Evans	2022	TRAVIS	SETTLEMENT AMOUNT $2,000,000	SHOT WITH A BEAN BAG ROUND- Evans, 26, was protesting and trying to have meaningful conversations with Austin officers. As night fell the crowd got rowdier he tried to leave the scene and when he started jogging and when he turned his face, he got shot in the cheek and he went down to the ground. Evans had to endure two surgeries and three days in the hospital and now has a permanent titanium plate in his jaw.
Arinanna Chavez	2022	TRAVIS	SETTLEMENT AMOUNT $150,000	SHOT WITH A BEAN BAG ROUND- Suffered a concussion when she was shot in the back of the head with a less-lethal round by an Austin police officer. The shot knocked her to the ground and caused a serious head wound, head trauma and a concussion.
Carlos Chacon	2016	TRAVIS	VERDICT AWARD $1,000,000 REMITTITUR $60,000 FINAL SETTLEMENT AMOUNT $154,000	Chacon called 911 twice to report and Officers Russell Rose and Eric Copeland responded and confronted Chacon. Chacon was assaulted and taser by Officers Rose and Copeland. Chacon sustained a cut above his eye caused by Officer Copeland's punches. Chacon was taken to the hospital, received stitches to close the wound, and was discharged.
Pete Hernandez	2016	TRAVIS	VERDICT AWARD $877,000 REMITTITUR $713,000	Plaintiff was assaulted by three Austin Police Officers after he was forced to the ground in a Walmart parking lot as police were investigating a car theft.

WESTERN DISTRICT OFFICER INVOLVED DEATH				
VICTIM NAME	YEAR	COUNTY	AWARDED AMOUNT	FACTS
Gilbert Flores	2022	SAN ANTONIO	JURY AWARD $10,370,000	Jurors in a federal civil trial awarded $10.37 million to the family of Gilbert Flores who was shot and killed outside his home in Bexar County. 2 officers responded to Flores' San Antonio home. Flores was armed with a knife. Both deputies fired their guns. The jurors in the watched a bystander's video which showed Flores had his hands up in the air before he was shot.
Antorine Scott	2022	SAN ANTONIO	No figures available. Parties filed a joint advisory to the Court	Scott, 36, was unarmed when he was fatally shot by Officer John Lee on February 16, 2016. Lee was called to assist officers in arresting Scott outstanding drug warrants. The officer said he thought Scott was holding a gun when he opened fire on him, but turned out to be a cell phone.
Javier Ambler II	2021	WILLIAMSON	SETTLEMENT AMOUNT $5,000,000	Javier Ambler II $5M (2019) WILLIAMON COUNTY — Ambler , 40, was killed while being filmed by TV reality show, "Live PD". He was tased 4 times in total while he told deputies he couldn't breathe and had congestive heart failure. He was killed after a 22- minute traffic chase that started because he failed to dim his headlights.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

EXHIBIT 2-RELEVANT CASES INVOLVING WRONGFUL DEATH

1. *Goodman v. Harris County*, 571 F.3d 388 (2009)
   Appeal from the United States District Court for the Southern District of Texas.
   Mother filed wrongful death suit against deputy constable, constable, and county under section 1983 and Texas Tort Claims Act for fatal shooting of her son.
   Jury Verdict $5 Million award.
   Remittitur: NONE (Remittitur was not raised on a Motion For New Trial).

2. *Wackenhut Corrections Corporation and Warden David Forrest v. Gregorio De La Rosa, Sr., et al*, 305 S.W. 3d 594 (2009) Court of Appeals of Texas, Corpus Christi-Edinburg;
   Jury Verdict $47.5 Million in actual and punitive damages.
   Jury Award Breakdown:
   Plaintiff's estate received $20M in punitive damages against Wackenhut; $500K in punitive damages against Warden Forrest
   Mother- received $2.5 M for past mental anguish; $2.5M for future mental anguish; $2.5M for past loss of future companionship and society; $2.5M for future loss of companionship and society;
   Father- $2.5M for past mental anguish; $2.5M past loss of companionship;
   Oldest Daughter- $2M for future mental anguish; $2M for future loss of companionship;
   Middle Daughter- $2M for future mental anguish; $2M for future loss of companionship;
   Youngest daughter- $2M for future mental anguish; $2M for future loss of companionship;

   Court reversed trial court's award of $5 million to Father due to his death.

3. *Fraizer v. Honeywell International., Inc.,* 518 F. Supp. 2d 831
   No. 2-05CV548
   United States District Court Eastern District Marshall Division
   Parents of passenger killed in motor vehicle accident brought wrongful death action against seatbelt manufacturer.
   Jury Verdict award $24 Million to parents
   Remittitur: $9.75 Million

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS'ADVISORY TO THE COURT

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Plaintiffs Ida Renae Nobles, individually, K.N., Minor, By And Through His Guardian Kadeidra Bell, & L.N., Minor, By And Through His Guardian Michelle Dashaun Smith As Heirs At Law To The Estate Of Landon Nobles (hereinafter referred to as "Plaintiffs") files this Plaintiffs' Advisory to the Court:

The court on 1 June 2022 asked the Plaintiffs' counsel to submit to the court the case law that Plaintiffs referred to regarding Qualified Immunity (QI), and for the Maximum Recovery Rule.

In this case, Defendants made the conscious and calculated decision to not put QI at issue. [March 8th, 2022 Motions Hearing pg. 11]. The Defendants waive immunity if without raising QI, the case proceeds to trial. QI is a bar to lawsuit, it is not a defense to liability like

a question for the jury to answer at trial. See *Pearson v. Callahan*, 555 U.S. 223 (2009), 129 S. Ct. 808, 172 L.Ed.2d 565, 77 USLW 4068, 09 Cal. Daily Op. Serv. 755...on page 6 citing: *Mitchell v. Forsyth,* 472 U.S. 511 (1985). "The entitlement is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." The protection of Qualified Immunity is lost if Defendants fail to raise it, so it follows that the Defendants essentially agreed to be sued. Thus, Defendants' who are represented by sophisticated and experienced counsel, expressly submitted the case to trial, and accordingly their request for JMOL is entirely inappropriate.

The jury award is not outrageous. The sum of $67 million must be viewed in the proper light. Upon closer analysis, the sum really amounts to an unremarkable award in a wrongful death case: 20 million per plaintiff (x3) and 7 million for the estate. 20 million per plaintiff is not so excessive. 7 million for pain and suffering of a man who police shot in the back and left to die on the street is not at all outrageous. In this instant case, Plaintiffs' urge the Court to review *Goodman v. Harris Cty*., 571 F.3d 388, 398 (5th Cir. 2009). This case and relevant facts are analogous to the facts at hand in the *Nobles* case, except in one important measure: *Goodman* had but one single plaintiff, the mother. Had Goodman more plaintiffs, the result would have been multiplied by the number of additional plaintiffs. *Frazier v. Honeywell Intern., Inc.,* 518 F. Supp. 2d 831 (E.D. Tex. 2007). The disturbing nature and the accumulated impact of all the testimony and evidence presented is what carried the jury to their verdict. The officers' testimony was disproven and contradicted by independent witnesses. And the Officers' credibility was sorely compromised, in fact undermined, in the eyes of the jury by their own admissions of tampering with the scene and removing critical evidence in their retelling of shooting Landon Nobles in the back. The jury clearly

contemplated and deliberated over what they calculated to be the monetary value of LN life framed in the light of the outrageous conduct of the Police in shooting LN and their actions in the aftermath. What the Jury is called upon to do differs greatly from the traditional resolution of these kinds of police shooting cases usually by mediated settlement, which if successful results in an agreement regarding what the defendants, in this case the City[1] *is willing* to pay as compensation. But the Defendants elected to put the question to a jury, and now the Defendants *have been unambiguously told* what they will pay: 20 million for LN life. That is to say 20 million per plaintiff. And 7 million to the estate. That is not so outrageous.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

[1] City of Austin indemnifies its agents for acts and omissions

CERTIFICATE OF SERVICE

I certify that on the 10th day of June, 2022, I served a copy of Plaintiffs' Advisory to the Court to all parties of record, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

/s/ Edmund Skip Davis
EDMUND SKIP DAVIS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON, AND THE CITY OF AUSTIN,	§	
Defendants.	§	

ADVISORY TO THE COURT

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Defendants Richard Egal and Maxwell Johnson file this Advisory to the Court in response to the Plaintiff's June 10, 2022 Advisory to the Court (Doc. 105) as follows:

1. *Pearson v. Callahan,* 555 U.S. 223, 129 S. Ct. 808 172 L.Ed.2d 565 (2009). Contrary to Plaintiff's assertions in their Advisory to the Court and at the recent hearing, the Supreme Court in *Pearson* did not hold that qualified immunity is waived if the case proceeds to trial and is submitted to the jury. Rather, the Court in *Pearson* stated that qualified immunity is "*effectively* lost if a case is *erroneously* permitted to go to trial." 555 U.S. at 232 (emphasis added). The Court in *Pearson* held that the Tenth Circuit erred in reversing the District Court's grant of summary judgment in favor of officers based on qualified immunity. *Id.* The Court did not discuss any waiver of qualified immunity at all. Plaintiff's strained interpretation of *Pearson* would effectively nullify a party's right to seek judgment as a matter of law under Rule 50 of the Federal

Rules of Civil Procedure.

2. *Goodman v. Harris County.,* 571 F.3d 388 (5th Cir. 2009).

Plaintiffs contend that *Goodman v. Harris County*, 571 F.3d 388 (5th Cir. 2009), where the jury awarded $5,000,000.00 to the mother of a man shot by police, is the most factually similar case to this one. However, it should be noted that the amount of the jury verdict was not contested in *Harris* and thus was not even addressed by the Fifth Circuit. Thus, there is no discussion or evaluation of the damages evidence in *Goodman* which can be compared to the damages evidence in this case. Plaintiff's argument that had *Goodman* involved more than one plaintiff, the result would have been multiplied by the number of additional plaintiffs is pure speculation and not based on any actual facts discussed in the *Goodman* opinion. Moreover, even if the Court were to consider the *Goodman* case as a comparator for evaluating an appropriate remittitur, $3,000,000 of the $5,000,000 verdict in *Goodman* was a punitive damages award, and that portion of the *Goodman* verdict should not be considered when evaluating comparative sums under a remittitur/maximum recovery analysis.

RESPECTFULLY SUBMITTED,

/s/ H. Gray Laird III
H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov
Monte L. Barton
State Bar No. 24115616
Monte.barton@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546

Telephone: (512) 974-1342
Facsimile: (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on the 14th day of June, 2022, I served a copy of the foregoing document on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Edmund Davis
State Bar No. 24028272
attorney.skip.davis@gmail.com
LAW OFFICE OF EDMUND DAVIS
P.O. Box 201123
Austin, Texas 78720
Telephone: (512) 698-2215

Charles Medearis
State Bar No. 24044896
cmedearislaw@gmail.com
LAW OFFICE OF CHARLES MEDEARIS
710 W 14th Street, Suite C
Austin, Texas 78701
Telephone: (512) 524-0814

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL & L.N., MINOR, BY AND THROUGH HIS GUARDIAN, MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	**A-19-CV-389-ML**
Plaintiffs,	§	
V.	§	
SERGEANT RICHARD EGAL AND CORPORAL MAXWELL JOHNSON,	§	
Defendants.	§	

ORDER

Before the court are Plaintiffs' Motion for Attorney Fees (Dkt. #77), Defendants' Motion for Judgment as a Matter of Law, or in the Alternative, for New Trial or Remittitur (Dkt. #86), and all related briefing. Having reviewed the docket, all relevant briefing, and considered the arguments of the parties made at trial and at the hearings, the court enters the following order.

I. FACTUAL BACKGROUND

This case involves the fatal shooting of twenty-four-year-old Landon Nobles ("Nobles") by Austin Police Officers Sergeant Richard Egal ("Egal") and Corporal Maxwell Johnson ("Johnson"). On the evening of May 7, 2017,[1] Nobles went to the entertainment district on Sixth Street in downtown Austin, Texas to celebrate a birthday with friends. At approximately 2:30 a.m., just after closing time for the bars, Austin Police Department received reports of a single gunshot

[1] On the weekend of May 7, 2017, the annual Pecan Street Festival was also being held in downtown Austin, Texas on Sixth Street.

fired into the air in front of the Mooseknuckle Pub, by an individual described as a black male wearing a white shirt with a "Air Jordan" logo and blue shorts.

Johnson and several other officers were responding to the radio report by heading toward the Mooseknuckle Pub when they encountered an individual who matched the suspect's description—later determined to be Nobles—around the intersection of Sixth Street and Trinity Street. As Johnson and the other officers approached Nobles, he took off running north up Trinity and the officers began pursuit. Egal was separately responding to the report when he encountered Nobles running from the officers on Trinity. In an effort to stop Nobles, Egal pushed his bicycle in Nobles' path which caused Nobles to stumble to the ground momentarily. At this point, the testimony varies as to what exactly happened during the officers' pursuit of Nobles. The jury heard the following accounts from testifying witnesses.

Defendant Johnson testified that he was "100 percent positive" he saw a handgun in Nobles' right hand while he was running on Trinity Street. Tr. Vol. 5 at pp. 50-60. Johnson further testified that he saw Nobles point the gun over his shoulder and take a shot at him, and that Johnson heard and saw the gun's muzzle flash. *Id*. Johnson testified that he fired his weapon at Nobles twice before Nobles fell to the ground, at which time Johnson saw a gun fall to the ground near Nobles' feet. *Id*. at p. 61.

Defendant Egal testified that after he pushed the bicycle and Nobles stumbled, Egal heard a distinct clatter sound and saw a small pistol in Nobles' right hand. Tr. Vol. 6 at pp. 25-36. Egal testified that he "clearly saw a gun," and responded by drawing his own weapon and firing at Nobles three times. *Id*. at pp. 26-27. Egal stated that after Nobles fell to the ground, Egal went up and instructed Nobles to show his hands and Nobles complied by putting his hands up to show that his hands were clear. *Id*. at p. 31.

One of the other officers chasing Nobles on Trinity Street, Officer Anthony Allegretti, testified that he could not see Nobles' hands clearly, and that at no point did he see Nobles with a gun in his hands, nor did he see Nobles turn back or point anything. Tr. Vol. 2 at pp. 188-196. Allegretti further stated that he never drew his firearm during the chase, and instead pulled out his taser. *Id*. at p. 184.

Officer Steven Pena, another one of the officers involved in the chase of Nobles on Trinity Street, testified that he saw a gun in Nobles' hand after Nobles stumbled on the bicycle. Tr. Vol. 3 at pp. 178-182. Pena stated that he heard a gunshot come from Nobles' direction after he tripped on the bicycle, and further stated that he believed he saw Nobles begin to reach over his shoulder behind him after he continued running. *Id*. at pp. 181-183. Pena testified that he drew his service weapon during the chase but did not fire it. *Id*. Pena also testified that after Nobles was on the ground and handcuffed, Pena saw a handgun at Nobles' feet. *Id*. at p. 181.

The jury also heard from Officer Uri Tamez, who testified that he saw Nobles stumble on the bicycle, and that after Nobles got up and continued running, Tamez saw Nobles turn his body and point a handgun at the officers. Tr. Vol. 3 at pp. 227-233. Tamez stated that Nobles began shooting at the officers chasing him and that he saw the muzzle flash and heard approximately one or two shots. *Id*. at pp. 229, 231. Tamez testified that he drew his weapon before hearing Johnson and Egal begin firing their weapons. *Id*.

A sound technician working on Sixth Street that evening who was an eyewitness to the incident testified that he was close by, that he had an unobstructed view of Nobles' hands, and that he is certain Nobles was not holding a gun. Tr. Vol. 1 at pp. 160-162, 182-184, 189 ("I saw there was no weapon in his hands.").

Royie Nobles, Landon Nobles' cousin who was with him on Sixth Street that evening, testified that he witnessed Nobles take off running from the officers on Trinity, that he heard a

"pop" after Nobles stumbled over the bicycle, and then heard several more "pops" after Nobles got back up and continued running. Tr. Vol. 1 at pp. 249-251. According to Royie Nobles, he had an unobstructed view of Nobles and "[n]othing was in his hands." *Id*. at p. 251. Royie Nobles further testified that, as far as he knew, Landon Nobles did not have a gun with him that evening. *Id*. at p. 252.

The jury also heard from two security guards patrolling Sixth Street that evening. The first security guard testified that he saw Nobles running on Trinity, saw Nobles trip over the bicycle, and specifically testified that Nobles did not turn toward the officers chasing him until after he had been shot, just before Nobles fell to the ground. Tr. Vol. 2 at pp. 40-42. The first security guard also stated that he could clearly see Nobles' hands and that he saw nothing in them, and that at no point did he see Nobles point anything at the officers. *Id*. at pp. 42, 47.

The second security guard testified that he witnessed the chase on Trinity and that he did not look at Nobles' hands specifically, but that he did not think Nobles was holding anything while running. Tr. Vol. 2 at pp. 100-101. The second security guard further testified that after Nobles stumbled over the bicycle, he heard a pop, which he recognized as a gunshot sound. *Id*. at pp. 124-126. He stated that Nobles then got back up and continued running, and that at some point Nobles slightly "hunched" his body to look behind him but specified that Nobles never actually turned toward the police. *Id*. at pp. 126-133.

In addition to the witness testimonies, the jury heard from Defendants' ballistics expert, Greg Karim, who testified that a handgun recovered near Nobles' body matched a shell-casing found in front of Mooseknuckle Pub and a shell-casing located on the right side of Trinity Street, under Egal's bicycle. Tr. Vol. 4 at pp. 213-227.

The evidence presented at trial definitively showed that Defendants Egal and Johnson fired a total of five shots, three of which struck Nobles in the back and ultimately resulted in his death.

After Nobles was shot, the officers handcuffed Nobles on the ground, secured the area, and performed life-saving measures at the scene until EMTs arrived to take over. Nobles was pronounced dead at approximately 3:08 a.m. on May 7, 2017. In all, only a few minutes elapsed between the officers first seeing Nobles at the intersection of Sixth and Trinity Streets and Nobles being shot.

II. PROCEDURAL HISTORY

On April 5, 2019, Nobles' mother, Ida Renae Nobles, and his young children, K.N. and L.N., through their respective guardians ("Plaintiffs"), brought suit against the City of Austin, Sergeant Richard Egal, and Corporal Maxwell Johnson alleging violations of Landon Nobles' Fourth Amendment right to be free from the use of excessive force. Dkt. #1. On July 15, 2021, Plaintiffs voluntarily dismissed the City of Austin from this lawsuit. *See* Dkt. #35; Dkt #36. Defendants did not file any summary judgment motions before trial.

Following a six-day trial, the jury rendered a verdict in favor of Plaintiffs on December 15, 2021. Dkt. #70. Specifically, the jury found that Defendant Egal and Defendant Johnson each "violated Landon Nobles' Fourth Amendment right to be protected from excessive force by using excessive force during the course of Nobles' shooting." Dkt. #70. The jury further found that both Defendant Egal's and Defendant Johnson's actions during the shooting of Nobles were "objectively unreasonable in light of the clearly established law at the time, such that no reasonable officer could have believed that the shooting was lawful." *Id*.

The jury's verdict awarded the following damages:

- To Plaintiffs jointly:
  - $3.67 million for the physical pain and mental anguish experienced by Landon Nobles;
  - $187,500 against Defendant Richard Egal as exemplary damages;
  - $150,000 against Defendant Maxwell Johnson as exemplary damages;

- To Nobles' mother, Ida Renae Nobles:
  - $2 million for past loss of companionship and society;
  - $4.3 million for future loss of companionship and society;
  - $3.5 million for past mental anguish;
  - $7 million for future mental anguish;

- To Kadeidra Bell, as Next Friend of Nobles' child K.N.:
  - $500,000 for past loss of companionship and society;
  - $11.2 million for future loss of companionship and society;
  - $250,000 for past mental anguish;
  - $11.2 million for future mental anguish;

- To Michelle Dashaun Smith, as Next Friend of Nobles' child L.N.:
  - $500,000 for past loss of companionship and society;
  - $11.2 million for future loss of companionship and society;
  - $250,000 for past mental anguish;
  - $11.2 million for future mental anguish.

Dkt. #70. The jury award totaled $67,107,500.

On February 4, 2022, Defendants filed the instant Renewed Motion for Judgment as a Matter of Law, or in the Alternative, Motion for New Trial and Motion for Remittitur ("Defendants' Motion"). Dkt. #86. Plaintiffs filed a Response (Dkt. #93), and Defendants filed a Reply (Dkt. #95). On March 8, 2022, the court held a hearing on Defendants' Motion and ordered the parties to mediation. *See* Dkt. #97; Dkt. #98.

On April 29, 2022, the parties submitted a Joint Advisory informing the court that they could not resolve their disputes at mediation. Dkt. #100. On June 1, 2022, the court held a second in-person hearing on Defendants' Motion. Dkt. #104.

III. RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

A. Legal Standard

Judgment as a matter of law is appropriate only when "a reasonable jury would not have a legally sufficient evidentiary basis to find for the [nonmoving] party on that issue." FED. R. CIV. P. 50(a). A motion for judgment as a matter of law is thus "a challenge to the legal sufficiency of

the evidence supporting the jury's verdict." *Ford v. Cimarron Ins. Co*., 230 F.3d 828, 830 (5th Cir. 2000).

Courts "accord great deference to the jury's verdict when evaluating the sufficiency of the evidence." *Thomas v. Texas Dep't of Crim. Justice*, 220 F.3d 389, 392 (5th Cir. 2000). The court "must examine the evidence as a whole," *MultiPlan, Inc. v. Holland*, 937 F.3d 487, 494 (5th Cir. 2019), and "draw all reasonable inferences in the light most favorable to the verdict," *Allstate Ins. v. Receivable Fin. Co*., 501 F.3d 398, 405 (5th Cir. 2007). In doing so, the court must "credit[ ] the non-moving party's evidence and disregard[ ] all evidence favorable to the moving party that the jury is not required to believe." *Apache Deepwater, LLC v. W&T Offshore, Inc*., 930 F.3d 647, 653 (5th Cir. 2019). It "may not make credibility determinations or weigh the evidence, as those are jury functions." *Fairchild v. All Am. Check Cashing, Inc*., 815 F.3d 959, 966 (5th Cir. 2016).

The Fifth Circuit has counseled that "judgment as a matter of law should not be granted unless the facts and inferences point 'so strongly and overwhelmingly in the movant's favor that reasonable jurors could not reach a contrary conclusion.'" *Flowers v. S. Reg'l Physician Servs. Inc*., 247 F.3d 229, 235 (5th Cir. 2001) (quoting *Omnitech Int'l, Inc. v. Clorox Co*., 11 F.3d 1316, 1322 (5th Cir. 1994)).

B. Analysis

Defendants first renew their motion for judgment as a matter of law, arguing that there is no evidence to support the jury's verdict in favor of Plaintiffs on their excessive force claims, that no reasonable jury would find against Defendants on qualified immunity, and that there is no evidence to support the court's punitive damages instruction to the jury.

i. Excessive Force

The Fourth Amendment confers a right to be free from excessive force during an arrest. *Deville v. Marcantel*, 567 F.3d 156, 169 (5th Cir. 2009) (per curiam). To establish a claim of

excessive force under the Fourth Amendment, a plaintiff must show "(1) an injury (2) which resulted directly and only from the use of force that was clearly excessive to the need and (3) the force used was objectively unreasonable." *Cass v. City of Abilene*, 814 F.3d 721, 731 (5th Cir. 2016) (citation and internal quotation marks omitted).

"Excessive force claims are necessarily fact-intensive; whether the force used is 'excessive' or 'unreasonable' depends on 'the facts and circumstances of each particular case.'" *Deville*, 567 F.3d at 167 (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Guiding this inquiry, the Supreme Court has identified three sets of facts which deserve careful consideration in determining whether the force used is "excessive" or "unreasonable": (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396; *see also Griggs v. Brewer*, 841 F.3d 308, 313-14 (5th Cir. 2016) ("A court must measure the force used under the facts as a reasonable person would perceive them, not necessarily against the historical facts.").

Viewing the evidence in the light most favorable to Plaintiffs and disregarding all evidence favorable to the moving party that the jury is not required to believe, the court cannot conclude that the evidence is "so strongly and overwhelmingly in [Defendants'] favor that reasonable jurors could not reach a contrary conclusion," as to Plaintiffs' excessive force claims. *Flowers*, 247 F.3d at 235.

First, it is undisputed that Nobles sustained an injury—he was shot and killed by Defendants. Second, it is also undisputed that Nobles' death resulted directly and only from the force applied by Egal and Johnson. Whether Defendants' use of force was excessive to the need came down to two very different versions of events.

As discussed above, Defendants' position at trial was that Nobles had a firearm in his hand while running from them. Defendants relied on testimony from Egal and Johnson that Nobles at some point during the chase, began to turn toward the officers pursuing him with a gun in hand, and testimony that Nobles fired a weapon during the chase. In addition to Johnson's and Egal's testimony, Defendants also presented testimony from other officers that stated Nobles had a gun in hand and discharged the weapon. Defendants maintained that Egal and Johnson fired their weapons at Nobles only after perceiving some combination of Nobles turning and pointing the firearm in their direction. Plaintiffs, on the other hand, contended that Nobles was simply running away and was not a threat to the officers. Plaintiffs relied on the testimony of citizen witnesses, such as the sound technician, Nobles' cousin, and the security guards, who testified that Nobles did not have a gun in hand, and never pointed any weapon during the pursuit.[2] Plaintiffs also emphasized that Nobles was shot three times in the back. The jury was presented with evidence showing that entrance wounds for all three shots were either in Nobles' back or buttocks. Plaintiffs argued that the location of the entrance wounds was inconsistent with Nobles turning towards the officers.

Plaintiffs submitted evidence sufficient for a reasonable jury to agree with their version of events. This included several eyewitnesses that testified that they never saw Nobles holding a firearm or aiming a firearm at officers. In addition to the evidence supporting their version of events, Plaintiffs presented evidence that undermined Defendants' version of events. While never conceding possession of the firearm that was subsequently discovered near Nobles' body, Plaintiffs did argue that the physical evidence did not support the officers' testimony. For example, a shell-casing was found under Egal's bike on the right-side of Trinity Street. Like the shell-casing

[2] Plaintiffs' Counsel also noted that the weapon recovered near Nobles' body was never definitively linked to Nobles, arguing there was insufficient proof to establish it was Nobles' gun and insinuating that it may have been planted.

discovered in front of the Mooseknuckle Pub, this shell-casing matched the firearm discovered near Nobles' body. However, the jury heard testimony from the ballistics expert that the firearm ejects shell-casings to the right. The discovery of the shell-casing under Egal's bicycle on the right side of the street was consistent with the firearm having been discharged while pointing northbound, or up, Trinity Street. The shell-casing's location was arguably inconsistent with the officers' testimony that Nobles turned in a southbound direction, towards the officers, when the firearm was discharged.

With respect to the *Graham* factors, the jury heard testimony that Nobles was suspected of the crime of firing a weapon into the air in front of a bar on Sixth Street, a misdemeanor crime which, although not intended to hurt anyone, can be dangerous. The evidence also showed that Nobles actively fled from the officers when they began to approach him. However, as discussed above, the jury heard conflicting evidence on whether Nobles posed an immediate threat to the safety of the officers or others. The ultimate conclusion of which version of the facts to believe in such a case must be left to the jury, which is responsible for making credibility determinations. *See Reeves*, 530 U.S. at 150; *Ostrander v. Kosteck*, 2017 WL 4414263, at *4 (W.D. Tex. Oct. 4, 2017). Viewing the evidence in the light most favorable to Plaintiffs and disregarding all evidence favorable to the moving party that the jury is not required to believe, the court finds there is sufficient evidence to support the jury's conclusion that the force used by Defendants was excessive or unreasonable. *See Faulkenberry v. Yost*, 2018 WL 297615 (W.D. Tex. Jan. 3, 2018). Consequently, viewed in the light most favorable to Plaintiffs, the court is unable to conclude there was a lack of substantial evidence to support the jury's verdict in favor of Plaintiffs on their excessive force claims.[3]

[3] The court notes that an alternative outcome on the excessive force question could have just as easily been supported by the evidence presented at trial. Importantly, at the time the jury made its decision it had the benefit of having witnessed the actual testimony at trial. Though another jury might have weighed the evidence differently or might

ii. Qualified Immunity

Defendants also assert they are entitled to judgment as a matter of law because no reasonable jury could find that they were not entitled to qualified immunity. "Qualified immunity protects public officials from suit unless their conduct violates a clearly established constitutional right." *Brumfield v. Hollins*, 551 F.3d 322, 326 (5th Cir. 2008) (internal quotation marks omitted). To overcome a qualified immunity defense, a plaintiff must show that (1) the official violated a statutory or constitutional right, and (2) the right was "clearly established" at the time of the challenged conduct. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A district court has discretion to decide which of the two prongs of qualified-immunity analysis to tackle first. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

At trial, Plaintiffs and Defendants presented two different versions of events to the jury, and as discussed above, Plaintiffs submitted sufficient evidence for a reasonable jury to agree with their version of events. As to the first step of the qualified immunity analysis, because the court concludes there was enough evidence for the jury to accept Plaintiffs' version of events based on the jury's credibility determinations, it also concludes that the evidence was sufficient to show Defendants violated Nobles' constitutional rights. *See Morris*, 449 F.3d at 684.

The court next turns to whether Nobles' constitutional rights were "clearly established" at the time of the challenged conduct. *See Harlow*, 457 U.S. at 818. "A Government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear' that every 'reasonable official would have understood that what he is doing violates that right.'" *Ashcroft v. al–Kidd*, 563 U.S. 731 (2011) (alterations in original)

---

have made different credibility assessments, all that matters for resolving this motion is that the record contains some evidence on which this jury could have relied in reaching its verdict. Because the record is not devoid of evidence to uphold this jury's verdict, the verdict must stand. *Long v. Faenas Transp., LLC,* 2021 WL 1379513, at *6 (E.D. Tex. Mar. 19, 2021), *aff'd sub nom. Long v. Faenas Transp., LLC*, 2021 WL 5119717 (5th Cir. Nov. 3, 2021).

(quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The Supreme Court "does not require a case directly on point for a right to be clearly established," but "existing precedent must have placed the statutory or constitutional question beyond debate." *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (internal quotation marks omitted).

The court therefore analyzes whether, in May 2017, a reasonable government official would have known that Defendants' actions violated Nobles' rights. In their Motion, Defendants point to several cases in which the Fifth Circuit found officers entitled to qualified immunity based on the fact a suspect was armed, or believed to be armed, to argue that Defendants' actions in this case fall within the objective reasonable standard. *See* Dkt. #86 at 6-9 (citing *Garza v. Briones*, 943 F.3d 740, 748 (5th Cir. 2019); *Valderas v. City of Lubbock*, 937 F.3d 384 (5th Cir. 2019); *Hudspeth v. City of Shreveport*, 270 Fed. App'x. 332, 337 (5th Cir. 2008)). Defendants emphasize Johnson's and Egal's belief that Nobles had a gun while fleeing on a crowded street and the rapid nature of the incident to support their argument that Defendants did not violate clearly established law by firing on Nobles. Dkt. #86 at 9. Defendants further argue that the fact that some of the other officers had conflicting narratives does not preclude a finding of qualified immunity, as differing perspectives are to be expected in "the heat of a perilous and rapidly evolving situation." *See Garza,* 943 F.3d at 748.

Plaintiffs respond that despite Defendants' arguments post-trial, the jury heard the competing evidence at trial, explicitly considered the question of qualified immunity, and ultimately concluded in its jury verdict that Plaintiffs proved Defendants' actions were objectively unreasonable given the facts and circumstances at the time and that Defendants therefore were not entitled to qualified immunity. *See* Dkt. # 70 at 2-3 (Jury Verdict Form). Plaintiffs further highlight that Defendants did not file any pre-trial motions to dismiss or motions for summary judgment on

the basis of qualified immunity, instead posing the question to the jury in the jury charge. Dkt. #90 at 4.

At trial, Plaintiffs presented evidence that other officers also in pursuit of Nobles did not see a gun or hear any gunshots until Egal and Johnson fired their weapons. Plaintiffs further elicited testimony from the other responding officers that those officers did not have their weapons drawn, or instead drew tasers. Plaintiffs also elicited competing testimony from citizen witnesses that did not see any weapon in Nobles' hand. In response to Defendants' Motion, Plaintiffs highlight these facts and assert that they presented adequate evidence at trial to support the jury's finding in their favor on the issue of qualified immunity. Dkt. #90 at 3.

The court acknowledges that Defendants' post-trial motion presents compelling arguments in their favor. However, although some evidence could support a contrary conclusion, the court finds that the jury's verdict on qualified immunity is not against the great weight of the evidence such that the verdict will result in a miscarriage of justice. *See Kie v. Williams*, 697 F. App'x 388, 390 (5th Cir. 2017) (per curiam). Though another jury might have weighed the evidence differently, all that matters for resolving this motion is that the record contains some evidence on which this jury could have relied in reaching its verdict. Accordingly, Defendants have not made "a clear showing of an absolute absence of evidence to support the jury's verdict." *Whitehead v. Food Max of Mississippi, Inc.*, 163 F.3d 265, 269 (5th Cir. 1998); *see also, e.g. Stanton v. Jarvis Christian Coll.*, 477 F. Supp. 3d 561, 573 (E.D. Tex. Aug. 6, 2020), *aff'd*, 2022 WL 738617 (5th Cir. Mar. 11, 2022).

iii. Punitive Damages Instruction

Defendants also challenge the court's jury instructions,[4] asserting that there was "no evidence from which a reasonable jury could find the necessary level of evil intent or recklessness necessary to support the punitive damages claim." Dkt. #86 at 10. Defendants' Motion thus requests the court enter judgment in Defendants' favor on the punitive damages claims and dismiss those claims with prejudice. *Id*. at 11.

In objecting to the punitive damage instruction, Defendants argue that Plaintiffs failed to submit any evidence of malicious intent or recklessness. The court disagrees. The jury's verdict on Plaintiffs' excessive force claims against Egal and Johnson permitted the jury to impose punitive damages. *See Jones v. Conner*, 233 F.3d 574 (5th Cir. 2000) (per curiam). Since this court has already concluded that the evidence was sufficient as a matter of law to support the jury's findings of excessive-force liability, it follows that the jury had the discretion to award punitive damages. *Smith v. Wade*, 461 U.S. 30, 51-52 (1983); *Ostrander v. Kosteck*, 2017 WL 4414263, at *10 (W.D. Tex. Oct. 4, 2017). Accordingly, the court denies Defendants' motion for judgment as a matter of law as to the punitive damages claims.

IV. MOTION FOR NEW TRIAL

A. Legal Standard

Rule 50 also provides that a party "may include an alternative or joint request for a new trial under Rule 59." FED. R. CIV. P. 50(b); *Long v. Shultz Cattle Co*., 881 F.2d 129, 132 (5th Cir. 1989) (An alternative motion for a new trial "may be granted even if the moving party is not entitled to judgment as a matter of law."). Rule 59(a) provides that a court may grant a new trial

[4] Defendants first raised an objection to the inclusion of the punitive damages instruction on the basis of insufficient evidence at the final charge conference, and reasserted their objection before the jury began to deliberate (Tr. Vol. 6 at p. 87), thus Defendants have preserved their objection. *See Best v. Johnson*, 714 F. App'x 404, 408-09 (5th Cir. 2018).

"for any reason for which a new trial has heretofore been granted in an action at law in federal court." FED. R. CIV. P. 59(a)(1)(A). Though undefined by the Rule, a district court may grant a new trial if, for example, it finds that "the verdict was against the weight of the evidence," or "the damages awarded were excessive." *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 784 (5th Cir. 2018) (brackets, internal quotes, and citation omitted). "A motion for a new trial should not be granted unless the verdict is against the great weight of the evidence, not merely against the preponderance of the evidence." *Dahlen v. Gulf Crews, Inc*., 281 F.3d 487, 497 (5th Cir. 2002).

The decision to grant or deny a motion for a new trial, including the determination of whether a verdict is against the great weight of the evidence, is a question committed to the court's sound discretion. *Six Dimensions, Inc. v. Perficient, Inc*., 969 F.3d 219, 230 (5th Cir. 2020); *Foradori v. Harris*, 523 F.3d 477, 503-04 (5th Cir. 2008). This discretion is even broader when the court denies, rather than grants, such a motion. *Compare Cates v. Creamer*, 431 F.3d 456, 460 (5th Cir. 2005) ("Where a motion for a new trial is granted, we scrutinize that decision more closely," because "the broad discretion allowed to the trial court is tempered by the deference due to a jury" (internal quotes and citation omitted)), *with Whitehead*, 163 F.3d at 269 ("It goes without saying that review of the denial of a new trial motion is more limited than when one is granted. The denial will be affirmed unless, on appeal, the party that was the movant in district court makes a clear showing of an absolute absence of evidence to support the jury's verdict, thus indicating that the trial court had abused its discretion in refusing to find the jury's verdict contrary to the great weight of the evidence.") (internal quotes and citation omitted)).

B. Analysis

Defendants' Motion alternatively seeks a new trial under Rule 59. Dkt. #86. Defendants offer a plethora of arguments in moving for a new trial, the majority of which have already been

addressed and rejected by the court at the March 8, 2022 and June 1, 2022 hearings. Defendants' chief arguments are as follows. Defendants assert that the court erred in denying their attempted peremptory strike of a juror on *Batson* grounds and in allowing impeachment testimony of Defendants' firearms expert Dkt. #86 at 26. Defendants further assert that a new trial is warranted based on certain prejudicial and inflammatory remarks made by Plaintiffs' Counsel during trial. *Id*. at 11-18. The majority of Defendants' briefing, however, is dedicated to its arguments that the jury's findings that the Defendants used excessive force and its findings in favor of Plaintiffs on qualified immunity were against the great weight of the evidence. *Id*. at 3-10. Defendants additionally argue that the jury's damages awards are clearly excessive and unjust, demonstrating it was the improper result of emotion and passion, thus necessitating a new trial. *Id*. at 19-25. The court addresses Defendants' arguments in turn.

A. *Batson* Challenge

Defendants' Motion asserts that the court erred by sustaining Plaintiffs' *Batson* challenge to their attempted peremptory strike of a juror. Dkt. #86 at 27-29. In *Batson v. Kentucky*, the Supreme Court outlined a three-step process for determining whether preemptory strikes have been applied in a discriminatory manner. *Batson v. Kentucky*, 476 U.S. 79 (1986). First, the claimant must make a prima facie showing that the peremptory challenges have been exercised on the basis of race. Second, if this requisite showing has been made, the burden shifts to the party accused of discrimination to articulate race-neutral explanations for the peremptory challenges. Finally, the trial court must determine whether the claimant has carried his burden of proving purposeful discrimination. *See Batson*, 476 U.S. at 93-98. "On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008); *see United States v. Kennedy*, 707 F.3d 558, 568 (5th Cir. 2013) (*Batson* rulings reviewed for "clear error"). The Fifth Circuit has held that it "must give great deference to

the district court because findings in this context largely turn on an evaluation of the credibility or demeanor of the attorney who exercises the [peremptory] challenge." *Kennedy*, 707 F.3d at 568.

At the end of jury selection, Plaintiffs raised a *Batson* challenge to the Defendants' attempted peremptory strike of the only African American on the jury panel. Tr. Vol. 1 at pp. 105-106. Upon inquiry by the court, Defendants' Counsel argued that they sought to strike the juror because he had previously been arrested for a misdemeanor possession of marijuana and because he worked in security, and Defendants planned to call two security guards as witnesses with some conflicting testimony. After considering the proffered race-neutral reasons for striking the sole black juror, the court found Defendants' Counsel's explanations to be unconvincing and sustained Plaintiffs' *Batson* challenge. Tr. Vol. 1 at pp. 105-106. Defendants now assert that because Plaintiffs had the burden of demonstrating Defendants' race-neutral explanations were pretextual, the court erred in sustaining the *Batson* challenge. Dkt. #86 at 28. However, as the Fifth Circuit has explained, "[i]n a typical peremptory challenge inquiry, the decisive question will normally be whether a proffered race-neutral explanation should be believed. There will seldom be any evidence that the claimant can introduce—beyond arguing that the explanations are not believable or pointing out that similar claims can be made about non-excluded jurors who are not minorities." *United States v. Bentley-Smith*, 2 F.3d 1368, 1373-74 (5th Cir. 1993).

Here, the court listened to Defendants' Counsel's proffered explanations and reached a decision that their explanations for the peremptory strike were pretextual and that the attempted strike was based on race. The juror in question was a 39-year-old African American man who wore a coat and tie during voir dire and every day thereafter during trial. He answered all questions respectfully and directly. He did not attempt to misdirect, mislead or avoid answering any questions asked. Despite having provided the attorneys an opportunity to question the panel, no effort was made by Defendants' Counsel to distinguish the juror in question from any other

members of the panel during questioning. Defendants' justification for their exercise of their peremptory strike was belied during the eventual trial. Two men working security on Sixth Street testified during the trial. Like the juror, both men were African American. The first of the two testifying security guards testified he neither heard a shot nor saw Nobles with a firearm in his hand. Yet the second testifying security guard was actually a supervisor and testified in a manner somewhat consistent with the Defendants' version of events. The supervisor security guard testified that while he did not see a gun in Nobles' hand, he did hear a gunshot that preceded the officers' discharge of their weapons. Simply put, the Defendants' proffered basis for the exercise of their peremptory strike was unpersuasive.

B. Impeachment of Defendants' Expert

Defendants argue the court further erred in allowing impeachment testimony concerning their firearms expert. Dkt. #86 at 26. At trial, Plaintiffs sought to question Defendants' firearms expert, Greg Karim, regarding a prior disciplinary proceeding involving alleged dishonesty in a personnel matter. Tr. Vol. 4 at p. 265. Out of the presence of the jury, the court determined that in-depth questioning and extrinsic evidence of the disciplinary matter and personnel issue was inadmissible under FED. R. EVID. 403. Over Defendants' objection, the court allowed Plaintiffs to ask Karim a single question regarding his alleged prior dishonesty: "Now isn't it true, Mr. Karim, that you resigned from your duties in the Austin Police Department, and you resigned in lieu of discharge for being dishonest in relation to a personnel matter?" *Id*.

In their Motion, Defendants assert that the court erred in admitting this limited impeachment of Karim, arguing that the testimony had no relevance to Karim's conduct as an expert in the instant matter or his trial testimony. Dkt. #86 at 26. As stated at the March 8, 2022 hearing, the court significantly restricted Plaintiffs' impeachment of Karim on this issue, limiting Plaintiffs to a single question that made clear that the alleged dishonesty against Karim was not

connected to his work as an expert in this case but to an unrelated personnel incident while employed by Austin Police Department. The court rejects Defendants' argument that a new trial is warranted based on this limited testimony.

C. Remarks by Plaintiffs' Counsel

Defendants also assert that a new trial is warranted based on Plaintiffs' Counsel's "blatantly prejudicial and inflammatory remarks during opening statement and closing argument." Dkt. #86 at 11. Defendants point to Plaintiffs' Counsel's statements referencing the George Floyd incident and community conscience,[5] appeals to emotion and passion,[6] and references to the City of Austin defending and indemnifying the Officers.[7] *Id*. at 13-16, 18.

"Courts usually permit reasonable latitude in counsel's final arguments to the jury." *Edwards v. Sears, Roebuck & Co*., 512 F.2d 276, 283 (5th Cir. 1975). "No doubt, final arguments must be forceful." *Whitehead v. Food Max of Mississippi, Inc*., 163 F.3d 265, 276 (5th Cir. 1998), "Proficiency in jury argument, an ability to sway doubtful minds, a method of convincing others of the rightness of one's positions are important not only to successful advocacy but also to effective representation of the client's interests." *Edwards*, 512 F.2d at 283. "But advocacy is circumscribed both by an attorney's own professional responsibility and the court's obligation to provide the parties a fair trial." *Id*. "Obviously, awards influenced by passion and prejudice are the antithesis of a fair trial." *Whitehead*, 163 F.3d at 276. "When a final argument is challenged for

[5] "Let's take, for instance, George Floyd. Were it not for a bystander, they would have gotten away with that. We have a similar situation here." (Tr. Vol. 6 at p. 107).

[6] For example, "His kinfolk that were down there with him for the birthday celebration that they were going to participate in, they watched him die. They didn't even get a chance to hold him while he died or console him while he was in his pain. He bled out like a dog on the street. They didn't get to say goodbye to him." (Tr. Vol. 1, at p. 132); and "he laid there looking at the police officers asking them, 'Why did you shoot me? Stop shooting me.'" (Tr. Vol. 6, at p. 140).

[7] "Mr. Laird is a lawyer for the City, and it's the City of Austin who's defending the cops in this action." (Tr., Vol. 6, at p. 111); "And it's hard to sit in judgment of nice guys, but you're not sitting in judgment where they're going to lose their jobs or they're going to prison. You're sitting in judgment on whether or not the City is going to pay out for their mistakes when they were their agents." (Tr. Vol. 6, at p. 123).

impropriety or error," a court must review the entire argument "within the context of the court's rulings on objection, the jury charge, and any corrective measures applied by the trial court." *Id.* at 275-76.

As an initial matter, Defendants failed to object during trial to nearly all of the remarks they now complain of. Failure to object during trial results in waiver. *See Edwards v. Sears, Roebuck and Co*., 512 F.2d 276, 283 (5th Cir. 1975)); *see also, e.g., Baisden v. I'm Ready Prods., Inc*., 693 F.3d 491, 509 (5th Cir. 2012) (movant waived objection to statements in closing argument because he "raised no objection to the statements at trial"). In the event of waiver, a court may grant a new trial only if the closing argument "'affect[s] the substantial rights of the parties'" by, for example, "seriously prejudic[ing] [the movant's] right to a fair trial." *Edwards*, 512 F.2d at 286 (quoting FED. R. CIV. P. 61); *see also Liner v. J.B. Talley and Co., Inc*., 618 F.2d, 327, 329-330 (5th Cir. 1980) (expressing "extreme reluctance to grant relief in the absence of an objection"). Here, Defendants did not object to all but one of the remarks they now challenge, as such Defendants must prove those statements "rise to the level of severity that would require a new trial to avoid a miscarriage of justice." *Baisden*, 693 F.3d at 509 n.17. Having reviewed the record as a whole, the court concludes Defendants have not shown that the remarks affected their substantial right to a fair trial in totality. *See id.; see also Stanton v. Jarvis Christian Coll*., 477 F. Supp. 3d 561, 574 (E.D. Tex. Aug, 6, 2020), *aff'd*, 2022 WL 738617 (5th Cir. Mar. 11, 2022).

The court notes that Defendants did raise an objection to the arguably most objectionable statement , in which Plaintiffs' Counsel stated, "[t]his was a terrible experience and it did not have to be. You must make the City pay for that; otherwise, we're going to go into the future with more George Floyd style incidents, more Landon Nobles style incidents . . ." Tr. Vol. 6, at pp. 141-142. The court sustained that objection and gave a curative instruction. *Id*. at pp. 142-143. The Fifth Circuit has held that "[a] new trial is required only when, after a review of the entire record, it

appears that there is a significant possibility that the prejudicial evidence had a substantial impact on the jury verdict. We give great weight to the trial court's assessment of the prejudicial effect of the evidence, and prejudice may be rendered harmless by a curative instruction." *United States v. Valles*, 484 F.3d 745, 756 (5th Cir. 2007). Defendants here have not shown how the court's instructions were insufficient to cure any concerns about the remark.

While the court agrees that Plaintiffs' Counsel made several statements that skirt the line of appropriateness, upon review of the statements in context, the record as a whole, and the relevant case law, the court concludes that Defendants have not met their burden to establish that a new trial is warranted on this basis. *See Whitehead*, 163 F.3d at 276.

D. Damages Excessive

Lastly, Defendants contend that the jury's verdict on damages was "excessive, unjust, and not supported by the evidence," thus indicating the award resulted from passion or prejudice and warranting a new trial as a matter of law. Dkt. #86 at 19-25. While Defendants are correct a new trial is warranted where a damage award is motivated by passion or prejudice, *see, e.g., Consol. Cos., Inc. v. Lexington Ins. Co*., 616 F.3d 422, 435 (5th Cir. 2010), the court rejects Defendants' claim the jury was necessarily so motivated here. It is just as likely the jury's excessive award included an impermissible valuation of the deprivation of Nobles' constitutional rights or was a consequence of Defendants' failure to provide its own damages valuation to the jury in the event of a loss on liability. *See Chacon v. Copeland*, 103 F. Supp. 3d 827, 834-35 (W.D. Tex. April 30, 2015).

The Fifth Circuit has "firmly established in previous cases that it will not reverse a jury verdict for excessiveness except on "the strongest of showings." *Foradori v. Harris*, 523 F.3d 477, 504 (5th Cir. 2008). The size of the award a plaintiff is entitled to is generally a question of fact, and the reviewing court "should be 'exceedingly hesitant' to overturn the decision of the jury—

the primary fact finder—and the trial judge who concurred with its verdict." *Id*. Thus, the Fifth Circuit has explained, "we have upheld the denial of a new trial on the question of damages even when we have disagreed with the award, and we will reverse an award as excessive only when it "clearly exceeds that amount that any reasonable man could feel the claimant is entitled to." *Id*. (internal citations omitted). Accordingly, Defendants' motion for a new trial based on the damages award is denied. *See Foradori*, 523 F.3d at 504*; see also Caldarera v. E. Airlines, Inc*., 705 F.2d 778, 784 (5th Cir. 1983)

In the alternative to ordering a new trial, Defendants request the court remit the damages awarded by the jury to a reasonable damages award. Dkt. #86 at 29. As indicated at the hearing, and as discussed in detail below, the court agrees that a remittitur is necessary in this case.

V. REMITTITUR

A. Legal Standard

A court may order a remittitur where the jury's damages award "is entirely disproportionate to the injury sustained." *Caldarera*, 705 F.2d at 784. An award is "entirely disproportionate" when it is "so large as to shock the judicial conscience, so gross or inordinately large as to be contrary to right reason, so exaggerated as to indicate bias, passion, prejudice, corruption, or other improper motive," or one which "clearly exceed[s] that amount that any reasonable man could feel the claimant is entitled to." *Id*. (internal citations and quotation marks omitted). A verdict is excessive as a matter of law if it exceeds "any rational appraisal or estimate of the damages that could be based upon the evidence before the jury." *Brunnemann v. Terra Int'l, Inc*., 975 F.2d 175, 178 (5th Cir. 1992) (internal quotation marks omitted). "It is a basic concept of damages that they must be proved by the party seeking them." *Servicios–Expoarma, C.A. v. Indus. Mar. Carriers, Inc*., 135 F.3d 984, 995 (5th Cir. 1998).

Where a damages award is excessive, the court "may either order a new trial on damages or may give the plaintiff the option of avoiding a new trial by agreeing to a remittitur of the excessive portion of the award." *Hernandez v. M/V Rajaan*, 841 F.2d 582, 587 (5th Cir. 1988) (citing *Osburn v. Anchor Labs, Inc*., 825 F.2d 908, 919 (5th Cir. 1987)). Fifth Circuit law dictates that the size of the remittitur is determined in accord with the "maximum recovery rule," under which the verdict must be reduced to the maximum amount the jury could properly have awarded. *See Naquin v. Elevating Boats, LLC*, 744 F.3d 927, 940 n.67 (5th Cir. 2014) ("Under this circuit's 'maximum recovery rule,' we will uphold a jury award if there is a damage award in at least one 'factually similar case from the relevant jurisdiction' that, when increased by 50%, equals or exceeds the challenged jury award." (quoting *Moore v. M/V ANGELA*, 353 F.3d 376, 384 (5th Cir. 2003)). Importantly, while "factually similar cases 'provide an objective frame of reference, . . . they do not control our assessment of individual circumstances.'" *Dulin v. Bd. of Comm'rs of Greenwood Leflore Hosp*., 586 F. App'x 643, 650 (5th Cir. 2014). Further, when a "review of the caselaw reveals that there is no factually similar case in the relevant jurisdiction[,] the maximum recovery rule is not implicated." *Foradori*, 523 F.3d at 505. "'Of course, [the court's] reassessment of the damages cannot be supported entirely by rational analysis, but involves an inherently subjective component.'" *Giles v. Gen. Elec. Co*., 245 F.3d 474, 489 (5th Cir. 2001) (quoting *Eiland v. Westinghouse Elec. Corp*., 58 F.3d 176, 183 (5th Cir. 1995)); *see also Puga v. RCX Sols., Inc*., 922 F.3d 285, 297 (5th Cir. 2019).

B. Analysis

As previously noted, the jury awarded a total of $67,107,500 in damages to Plaintiffs: $3,670,000 for Landon Nobles' physical pain and mental anguish prior to his death; $6,300,000 to Nobles' mother, Ida Renae Nobles, for her past and future loss of companionship and society; $10,500,000 for Ida Renae Nobles' past and future mental anguish; and identical awards of

$23,150,000 to each of Nobles' minor sons, K.N. and L.N., for their past and future loss of companionship and past and future mental anguish. *See* Dkt. #70. The jury also assessed punitive damages awards of $187,500 and $150,000 against Defendant Egal and Defendant Johnson, respectively. *Id*.

At the March 8, 2022 hearing on the instant Motion, the court expressly communicated to the parties its conclusion that the jury's award was clearly excessive and that a remittitur would be necessary. *See* Dkt. #97. As such, the court ordered the parties to mediation, with a focus on negotiating an appropriate reduction in damages. Dkt. #98. In an attempt to aid the mediation, the court further instructed the parties to each draft a memorandum on the issue of remittitur and to compile the best cases in support their positions. *Id.*; *see also* Dkt. #101; Dkt. #102. After the mediation was unsuccessful, at the June 1, 2022 hearing, the parties were further given the opportunity to present further arguments in support of their respective remittitur positions. Dkt. #104.

The court has made a review of all the cases submitted by the parties related to remittitur. The court has also conducted its own comprehensive research and has been unable to find any cases directly on point with the instant matter. No reported case is wholly similar to the facts of this case, thus the maximum recovery rule is not mandated here. *See Foradori*, 523 F.3d at 505. However, due to the size of the verdict in this case the court is of the opinion that a remittitur analysis is appropriate. *Lebron v. United States*, 279 F.3d 321, 326 (5th Cir. 2002) (explaining, "Because the facts of each case are different, prior damages awards are not always controlling; a departure from prior awards is merited 'if unique facts are present that are not reflected within the controlling caselaw.'"). With this backdrop, the court remits portions of the jury's award as described below.

i. Landon Nobles' Physical Pain and Mental Anguish

Defendants first contend that the jury's award of $3,600,000 for the physical pain and mental anguish experienced by Landon Nobles prior to his death is excessive and unsupported by the evidence. Dkt. #86 at 21-22.

Texas law provides that damages for pain and suffering are recoverable only if the person was aware or conscious after the accident. *See Southern Pac. Transp. Co. v. Luna*, 730 S.W.2d 36, 38 (Tex. App.—Corpus Christi 1987, no writ) ("In Texas, only pain consciously suffered and experienced is compensable.")(citing *Burrous v. Knotts*, 482 S.W.2d 358 (Tex. Civ. App.—Tyler 1972, no writ)); *Levinge Corp. v. Ledezma*, 752 S.W.2d 641, 645 (Tex. App.—Houston [1st Dist.] 1988, no writ) ("Damages for pain and suffering during unconsciousness are not allowable."); *see also Guzman v. Guajardo*, 761 S.W.2d 506, 512 (Tex. App.—Corpus Christi 1988, writ denied) ($600,000 award upheld where decedent "consciously felt severe pain for at least fifteen minutes after being struck"); *Missouri Pac. R.R. v. Lane*, 720 S.W.2d 830, 833 (Tex. App.—Texarkana 1986, no writ) ($19,500 award upheld for pain and suffering due to terror and anguish decedent suffered for six to eight seconds); *Gulf States Util. Co. v. Reed*, 659 S.W.2d 849, 855 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.); *Ruiz v. Guerra*, 293 S.W.3d 706, 722 (Tex. App.—San Antonio 2009, no pet.) (conscious pain and suffering may be inferred from proof that the deceased had severe injuries or may be established by circumstantial evidence).

When the existence of pain and suffering is established, "there is no objective way to measure the adequacy of the amount awarded as compensation, which is generally left to the discretion of the fact-finder." *Dawson*, 107 S.W.3d at 751. The amount of damages awarded for pain and suffering are "necessarily speculative and each case must be judged on its own facts." *Pentes Design Inc. v. Perez*, 840 S.W.2d 75, 80–81 (Tex. App.—Corpus Christi 1992, writ denied). Further, mental anguish is also recoverable for injuries of such a "shocking and disturbing nature

that mental anguish is a highly foreseeable result," including suits for wrongful death. *Id*. Where the plaintiff himself has been seriously injured, mental anguish may be inferred by the fact finder. *Popkowsi v. Gramza*, 671 S.W.2d 915, 919 (Tex. App.—Houston [1st Dist.] 1984, no writ); *see also City of Tyler*, 962 S.W.2d at 495.

Here, it is undisputed that Nobles was shot three times and died as a result. Thus it is clear that Nobles suffered physical pain and mental anguish. However, Defendants' Motion notes that no evidence was presented at trial regarding how long Nobles survived after the shooting. While the jury heard testimony that after Nobles was shot and fell to the ground, Nobles was able to raise his hands up to comply with Egal's order to show his hands (Tr. Vol. 6 at p. 30), by the time officers began performing CPR on Nobles, "within a minute or two, if not faster," after the shooting, Nobles had lost consciousness (Tr. Vol. 3 at p. 196). No evidence was presented indicating whether or not Nobles ever regained consciousness. The record reflects Nobles died on scene at 3:07 a.m. on May 17, 2017.

"The duration of the pain and mental anguish is an important consideration." *HCRA of Tex., Inc. v. Johnston*, 178 S.W.3d 861, 871 (Tex. App.—Fort Worth 2005, no pet.). Further, a damages award for pre-death mental anguish cannot stand when the only evidence to support it is speculative or purely conjectural. *See Vogler v. Blackmore*, 352 F.3d 150, 160 (5th Cir. 2003) (award of $200,000 to estate of deceased for pain and suffering and mental anguish prior to death excessive). Here, the jury heard minimal evidence regarding Nobles' physical pain and mental anguish prior to his death. It is clear that the evidence cannot support the jury's $3,600,000 damages award. The court therefore finds an award greater than $1,000,000 would be excessive and remits the jury's award accordingly.

ii. Ida Renae Nobles' Awards for Loss of Companionship and Society and Mental Anguish

Defendants object to the jury's awards of $6,300,000 for Ida Renae Nobles' past and future loss of companionship and society and $10,500,000 for her past and future mental anguish.

In wrongful death cases, mental anguish damages and loss of companionship and society damages both compensate for noneconomic losses. *Moore v. Lillebo*, 722 S.W.2d 683, 687 (Tex. 1986). However, these two elements of damages are separate and do not overlap. *Id*.; *Thomas v. Uzoka*, 290 S.W.3d 437, 454 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). Mental anguish is the emotional pain, torment, and mental suffering that the plaintiff experienced as a result of the death of a family member. *Plasencia v. Burton*, 440 S.W.3d 139, 148 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *Thomas*, 290 S.W.3d at 455. Damages for mental anguish are intended to compensate the beneficiary for the deleterious effect that the wrongful death had on the beneficiary. *Moore*, 722 S.W.2d at 688; *Thomas*, 290 S.W.3d at 455. To recover for mental anguish, a claimant must demonstrate a high degree of mental suffering beyond disappointment, anger, resentment, or embarrassment, although mental anguish may include all these emotions. *Thomas*, 290 S.W.3d at 455. Proof of mental anguish can include painful emotions such as grief, severe disappointment, indignation, wounded pride, despair, public humiliation, or a combination of any or all of those feelings. *Id*.

By contrast, damages for loss of companionship and society are intended to compensate the beneficiary for the positive benefits flowing from the love, comfort, companionship, and society that the beneficiary would have received had the decedent lived. *Moore*, 722 S.W.2d at 687-88; *Thomas*, 290 S.W.3d at 455. Thus, while mental anguish emphasizes the negative impact that the wrongful death had on the beneficiary, loss of companionship and society focuses on the removal of positive benefits that the beneficiary once enjoyed but which were taken away by the wrongful death. *Moore*, 722 S.W.2d at 688. Although mental anguish is distinguishable from loss

of companionship and society, the jury may consider some of the same factors in awarding damages for both of the elements. Those factors include (1) the relationship between the decedent and the beneficiary, (2) the living arrangements of the parties, (3) any absence of the deceased from the beneficiary for extended periods, (4) the harmony of family relations, and (5) the parties' common interests and activities. *Id*.

Mental anguish and loss of companionship and society are "inherently somewhat imprecise." *Thomas*, 290 S.W.3d at 454. Because these damages are unliquidated and incapable of precise mathematical calculation, the jury is given significant discretion in fixing the amount of the award. *Id*. However, that discretion is limited. *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996).

The evidence presented at trial in support of loss of companionship and society and mental anguish for Ida Renae Nobles is as follows: Ms. Nobles testified that she and Landon Nobles lived with her parents, and Landon Nobles would occasionally help out with household expenses. Tr. Vol. 3, at p. 88. She further stated that Landon Nobles also helped take out the trash and performed yard work. *Id*. at p. 87. Ms. Nobles explained that she is disabled, and after her surgeries she relied on Landon to help her. *Id*. Further, Ms. Nobles testified that since Landon's death, she has been prescribed sleeping pills and medication for depression. *Id*. at 86. Ms. Nobles also testified that she misses her son and that, because Landon was "the glue to the family," without Landon the family does not gather together as much at holidays. *Id*. at p. 85.

The court agrees that the forgoing testimony, while sympathetic, does not support the jury's award of $6,300,000 for Ms. Nobles' past and future loss of companionship and society nor its award of $10,500,000 for her past and future mental anguish. A comparison of other wrongful

death cases involving parental loss of a child confirms this conclusion.[8] For example, in *Frazier v. Honeywell*, 518 F.Supp.2d 831 (E.D. Tex. Oct. 3, 2007), the district court found the jury's award of $24,000,000 to the parents of a young woman killed by a drunk driver was excessive, and remitted the award to $4,875,000 to each parent for past and future loss of companionship and mental anguish, despite the fact the court's opinion described the father's testimony as being "as compelling and moving as any this judge has heard in over 30 years as a civil trial attorney and judge." *Id*.

In *Wellborn v. Sears, Roebuck & Co*., 970 F.2d 1420 (5th Cir. 1992), the Fifth Circuit upheld an award of $1,225,000 for mother's mental anguish and loss of companionship and society after her 14-year-old son was killed when he was pinned underneath an automatic garage door. However in affirming, the Circuit Court noted that the record established that the mother acted as the son's sole caretaker and she and her son were very close, and highlighted the fact that the mother also presented evidence that she required medication as the result of son's death, attended group therapy sessions, and missed time from work as the result of son's death. *Id*.

In *Gulf States Utilities Company v. Reed*, the court affirmed wrongful death damages of $500,000 for loss of society and $500,000 in mental anguish awarded to the mother of a thirteen-year-old boy who was electrocuted while retrieving a Frisbee from under a metal building. 659 S.W.2d 849, 852-53 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.). In reviewing the sufficiency of the evidence, the *Reed* court noted that the decedent was the mother's only child and that he had a close affectionate relationship with her. *Id*. at 855. Further, the mother was hospitalized for five months after his death. *Id*. Her doctors subsequently diagnosed her with severe chronic depression attributable to her son's death and placed her on anti-depressants, which were

[8] Although neither party submitted any case citations to cases with similar underlying facts, namely incidents of officer-involved deaths or shootings, the court reviews awards "in the context of awards in cases with similar injuries in the relevant jurisdiction." *Vogler v. Blackmore*, 352 F.3d 150, 156 (5th Cir. 2003).

to be continued indefinitely. She also suffered severe weight loss and sleeping difficulties following her son's death. *Id*.

Although damages for mental anguish are not susceptible to an exact calculation or prediction, the evidence Plaintiffs presented at trial is insufficient to support the jury's awards of $6,300,000 for Ida Renae Nobles' past and future loss of companionship or its an award of $10,500,000 for her past and future mental anguish. The court therefore remits the jury's awards to $1,000,000 for Ida Renae Nobles' past and future loss of companionship and society; and $1,000,000 for Ida Renae Nobles' past and future mental anguish.

iii. K.N.'s and L.N.'s Awards for Loss of Companionship and Society and Mental Anguish

Defendants also object to the jury's identical awards of $23,150,000 to Nobles' minor sons, K.N. and L.N., for their past and future loss of companionship and society and past and future mental anguish. Dkt. #86 at 24-25. Defendants assert that these awards are clearly excessive, not supported by the evidence. *Id*.

The testimony at trial revealed that Nobles' sons, K.N. and L.N. were both two years old at the time of Landon Nobles' death and at the time of trial were six years old. Tr. Vol 3, at pp. 85, 100. Kadeidra Bell, K.N.'s mother, testified that Nobles was a good father and spent time with K.N. *Id*. at pp. 100-101. She also testified that Nobles contributed by helping her with buying diapers. *Id*. at p. 104. Bell also testified that Nobles often watched K.N. for her during the week while she was at work. *Id*. According to Bell, her husband, K.N.'s stepfather, has assumed a father-figure role for K.N. and he and K.N are very close. *Id*. at p. 102. Ida Renae Nobles testified that both K.N. and L.N. know that their father loved them. *Id*. at p. 95. Plaintiff Michelle Dashaun Smith, the mother of L.N., did not testify at trial so the only testimony regarding Landon Nobles' relationship to L.N. was the testimony of Ida Renae Nobles and Kadeidra Bell. Both Ms. Nobles

and Bell indicated that K.N. and L.N. are very close as brothers and often spent time together with their father.

The court finds that the jury's awards $500,000 for past loss of companionship and society, $11.2 million for future loss of companionship and society, $250,000 for past mental anguish, and $11.2 million for future mental anguish to K.N. and L.N. are excessive. Again, comparison of other death cases involving a child's loss of parent support this finding.

For example, in *Cresthaven Nursing Residence v. Freeman*, 134 S.W. 214 (Tex. App.—Amarillo 2003), where an adult daughter brought action against a nursing home for her mother's wrongful death and was awarded $4.5 million by the jury for loss of society and companionship, the court suggested a remittitur of $3 million based on evidence that although the mother and daughter had been close when they lived together, the relationship weakened when the mother moved to the nursing home and there was "little evidence of common interests or activities." *Id*.

In *Gregory v. Chohan*, 615 S.W.3d 277 (Tex. App.—Dallas 2020), where a 45-year-old trucker was killed in a motor-vehicle accident, the court affirmed a jury's awards to the decedent's 8-year-old and 10-year-old sons of $160,000 for loss of past companionship, $160,000 for past mental anguish, $1.2 million for loss of future companionship, and its award of $1,360,000 to his infant daughter for loss of companionship and society. The *Gregory* court noted evidence of the children's significant and continuing grief, and "extensive" evidence of their decedent father's financial, educational, and emotional support to his children. *Id*.

In *Sanchez v. Mica Corp*., 107 S.W.3d 13 (Tex. App.—San Antonio 2002), the court affirmed an award of $7 million to the two children of a woman electrocuted to death by a wire on a public sidewalk, finding that the mother was the only care-giving parent and helped one child who had a speech impediment and learning challenges. The *Sanchez* court further noted that the

plaintiffs presented detailed expert testimony from a clinical psychologist who treated the children following their mother's death who documented the mental anguish of the children. *Id*.

The limited evidence presented at trial in the instant matter does not sufficiently support the jury's awards to K.N. and L.N. totaling over $23 million each. Such a large award cannot be said in this situation to "fairly and reasonably compensate" K.N. and L.N. *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996). Although these types of awards are necessarily imprecise, the jury "cannot simply pick a number and put it in the blank." *Id*. The $23.15 million-dollar awards look close to that. A review of the trial testimony of Ida Renae Nobles and Kadeidra Bell reveals that there was no evidence that the jury could base the extremely high awards for mental anguish and loss of companionship. On the present record, the court concludes an award greater than $2,000,000 to K.N. and L.N., each, for their past and future loss of companionship and society and $500,000 to K.N. and L.N. each for their past and future mental anguish would be excessive and remits the jury's award accordingly.

iv. Punitive Damages

Lastly, the court does not find the jury's awards of $187,500 in punitive damages against Defendant Egal and $150,000 against Defendant Johnson to be excessive. *See Wilen v. Falkenstein*, 191 S.W.3d 791, 802 (Tex. App.—Fort Worth 2006, pet. denied) ("We review the alleged excessiveness of an exemplary damages award under state law as a factual sufficiency challenge. . . We may only reverse if the exemplary damages award is so against the great weight and preponderance of the evidence as to be manifestly unjust."). Accordingly, the punitive damages awards will not be remitted.

IV. MOTION FOR ATTORNEYS' FEES

Also pending is Plaintiffs' Motion for Attorney Fees. Dkt. #77. Plaintiffs request an award of $82,400 in fees for attorney Edmund "Skip" Davis, an award of $85,200 in fees for attorney

Charles Medearis, and an award of $4,131.70 for reasonable costs. Dkt. #76; Dkt. #77. At the hearing held on March 8, 2022, Defendants indicated they do not oppose Plaintiffs' motion. *See* Dkt. #99. Accordingly, the court grants Plaintiffs' Motion for Attorney Fees (Dkt. #77) as unopposed.

V. CONCLUSION

Based on the foregoing, **IT IS ORDERED** that Defendants' Renewed Motion for Judgment as a Matter of Law, and, in the Alternative, for New Trial or Remittitur (Dkt. #86) is **GRANTED IN PART** and **DENIED IN PART** as described in this opinion.

IT IS FURTHER ORDERED that the jury's award of damages is **REMITTED** as follows:

- the amount of damages awarded for Landon Nobles' past physical pain and suffering and mental anguish is remitted to $1,000,000;
- the amount of damages awarded for Ida Renae Nobles' past and future loss of companionship and society is remitted to $1,000,000;
- the amount of damages awarded for Ida Renae Nobles' past and future mental anguish is remitted to $1,000,000;
- the amount of damages awarded for K.N.'s past and future loss of companionship and society is remitted to $2,000,000;
- the amount of damages awarded for K.N.'s past and future mental anguish is remitted to $500,000;
- the amount of damages awarded for L.N.'s past and future loss of companionship and society is remitted to $2,000,000;
- the amount of damages awarded for L.N.'s past and future mental anguish is remitted to $500,000.

IT IS FURTHER ORDERED that, **within fourteen (14) days** from the entry of this order, Plaintiffs shall file a notice indicating on the record whether they elect to (a) accept the adjusted award or (b) reject the adjusted award and have a new trial on the issue of damages.[9]

Lastly, the court **ORDERS** that Plaintiffs' Motion for Attorney Fees (Dkt. #77) is **GRANTED** as unopposed.

SIGNED August 31, 2022.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

[9] As noted above, remittitur may only be ordered if the party whose damages would be lowered has the option of rejecting the remitted award and opting for a new trial. *Hetzel v. Prince William Cnty*., 523 U.S. 208, 211 (1998) (per curiam). The new trial after the rejection of a remitted award need not address liability; a new trial should be set only to determine damages. *Vogler v. Blackmore*, 352 F.3d 150, 161 (5th Cir. 2003).

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

IDA RENAE NOBLES, INDIVIDUALLY, K.N., MINOR, BY AND THROUGH HIS GUARDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GUARDIAN MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES,	§	
Plaintiffs,	§	
	§	**CIVIL ACTION NO. 1:19-cv-00389-ML**
v.	§	
	§	
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants.	§	

PLAINTIFFS' ELECTION TO ACCEPT REMITTITUR

TO THE HONORABLE MARK LANE, UNITED STATES MAGISTRATE JUDGE:

Comes now Plaintiffs Ida Renae Nobles, individually, K.N., Minor, By And Through His Guardian Kadeidra Bell, & L.N., Minor, By And Through His Guardian Michelle Dashaun Smith As Heirs At Law To The Estate Of Landon Nobles (hereinafter referred to as "Plaintiffs") and they file this Notice to the Court and to all Parties:

Plaintiffs' hereby give notice that they ACCEPT the adjusted award Ordered by this Court on August 31st, 2022 (Doc.107).

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123

Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of September, 2022, a copy of Plaintiffs' Election to Accept Remittitur was served to all parties of record, by and through their attorney of record below, in compliance with the Federal Rules of Civil Procedure. via CM/ECF:

ATTORNEYS FOR DEFENDANTS

H. Gary Laird III
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311
gray.laird@austintexas.gov

Monte L. Barton
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-1342
Facsimile: (512) 974-1311
Monte.barton@austintexas.gov

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
/s/ Charles Medearis
CHARLES MEDEARIS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES	§	
INDIVIDUALLY, K.N. MINOR, BY	§	
AND THROUGH HIS GUARDIAN	§	
KADEIDRA BELL, & L.N., MINOR,	§	
BY AND THROUGH HIS GUARDIAN,	§	**A-19-CV-389-ML**
MICHELLE DASHAUN SMITH AS	§	
HEIRS AT LAW TO THE ESTATE OF	§	
LANDON NOBLES,	§	
Plaintiff	§	
V.	§	
	§	
SERGEANT RICHARD EGAL AND	§	
CORPORAL MAXWELL JOHNSON,	§	
Defendants.	§	

AMENDED FINAL JUDGMENT

Before the court is the above-styled and numbered action. The parties consented to this court's jurisdiction, and the case was assigned to this court's docket for all purposes on February 25, 2021 (Dkt. #16).

On December 6, 2021, the court called the above-styled and numbered cause for trial on all claims alleged by Plaintiffs against Defendants Sergeant Richard Egal and Corporal Maxwell Johnson and the case proceeded with a jury of eight legally qualified jurors. On December 15, 2021, the jury returned its verdict in favor of Plaintiffs, and on January 5, 2022 the court entered Final Judgment. In light of the court's ruling on Defendants' Motion for Judgment as a Matter of Law, or in the Alternative, for New Trial or Remittitur (Dkt. #107) and Plaintiffs' Election to Accept Remittitur (Dkt. #108), the court renders the following Amended Final Judgment pursuant to Federal Rules of Civil Procedure 58 and 59.

IT IS ORDERED that amended judgment is entered in favor of Plaintiffs Ida Renae Nobles, individually, K.N., minor, by and through his guardian Kadeidra Bell & L.N., minor, by and through his guardian Michelle Dashaun Smith as heirs at law to the estate of Landon Nobles.

IT IS FURTHER ORDERED that the jury's award of damages is **REMITTED** as follows:

- the amount of damages awarded for Landon Nobles' past physical pain and suffering and mental anguish is remitted to $1,000,000;
- the amount of damages awarded for Ida Renae Nobles' past and future loss of companionship and society is remitted to $1,000,000;
- the amount of damages awarded for Ida Renae Nobles' past and future mental anguish is remitted to $1,000,000;
- the amount of damages awarded for K.N.'s past and future loss of companionship and society is remitted to $2,000,000;
- the amount of damages awarded for K.N.'s past and future mental anguish is remitted to $500,000;
- the amount of damages awarded for L.N.'s past and future loss of companionship and society is remitted to $2,000,000;
- the amount of damages awarded for L.N.'s past and future mental anguish is remitted to $500,000.

AS PREVIOUSLY ORDERED, Plaintiffs are entitled to recover the following punitive damages, awarded by the jury in their verdict, from these defendants:

- Defendant Egal - $187,500.00
- Defendant Johnson - $150,000.00.

AS PREVIOUSLY ORDERED, Plaintiffs are entitled to recover an award of $82,400 in fees for attorney Edmund "Skip" Davis, an award of $85,200 in fees for attorney Charles Medearis, and an award of $4,131.70 for reasonable costs.

IT IS FURTHER ORDERED that any pending motions are hereby **TERMINATED**.

IT IS FURTHER ORDERED that all relief not expressly granted is hereby **DENIED**.

IT IS FINALLY ORDERED that the case is hereby **CLOSED.**

SIGNED September 14, 2022.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IDA RENAE NOBLES INDIVIDUALLY, K.N. MINOR, BY AND THROUGH HIS GAURDIAN KADEIDRA BELL, & L.N., MINOR, BY AND THROUGH HIS GAURDIAN, MICHELLE DASHAUN SMITH AS HEIRS AT LAW TO THE ESTATE OF LANDON NOBLES *Plaintiffs* v. SERGEANT RICHARD EGAL AND CORPORAL MAXWELL JOHNSON *Defendants*	§ § § § § § § § § § § § § § § § §	A-19-CV-389-ML

DEFENDANTS' NOTICE OF APPEAL

TO THE HONORABLE MAGISTRATE JUDGE MARK LANE:

Notice is hereby given that Defendants Sergeant Richard Egal and Corporal Maxwell Johnson appeal to the United States Court of Appeals for the Fifth Circuit from the Amended Final Judgment entered by the District Court on September 14, 2022. This appeal is filed pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, and pursuant to 28 U.S.C. § 1291. Defendants will be the Appellants in the appeal and will pay the $505 filing fee to the district clerk pursuant to 28 U.S.C §§ 1913 and 1917 contemporaneous with filing this notice of appeal.

Respectfully submitted,

BUTLER SNOW LLP

By: /s/ Amanda G. Taylor
Amanda G. Taylor
TSBN 24045921
amanda.taylor@butlersnow.com
Marshall Bowen
TSBN 24096672
marshall.bowen@butlersnow.com
1400 Lavaca Street, Suite 1000
Austin, TX 78701
(737) 802-1800
(737) 802-1801 (fax)

CITY OF AUSTIN LAW DEPARTMENT

Henry Gray Laird, III
Assistant City Attorney
TSBN 24087054
gray.laird@austintexas.gov
P.O. Box 1546
Austin, TX 78767
(512) 974-1342
(512) 974-1311 (fax)

Attorneys for Appellants Sergeant Richard Egal And Corporal Maxwell Johnson

CERTIFICATE OF SERVICE

I certify that on September 30, 2022, a true and correct copy of the foregoing Notice of Appeal was e-filed with the district clerk and was electronically served on all counsel for Plaintiffs via the CM/ECF system.

/s/ Amanda G. Taylor
Lead Appellate Counsel for Defendants

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Wednesday, November 16, 2022 4:02:43 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 11/16/2022 at 4:00 PM CST and filed on 11/16/2022

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 116

Docket Text:
Transcript filed of Proceedings held on December 13, 2021, Proceedings Transcribed: Trial On The Merits, Volume 5 of 7. Court Reporter/Transcriber: Lily I. Reznik, Telephone number: 512-391-8792 or Lily_Reznik@txwd.uscourts.gov. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 12/7/2022, Redacted Transcript Deadline set for 12/19/2022, Release of Transcript Restriction set for 2/14/2023, Appeal Record due by 12/1/2022, (lr)

1:19-cv-00389-ML Notice has been electronically mailed to:

Amanda Taylor amanda.taylor@butlersnow.com, ecf.notices@butlersnow.com, jessica.veiga@butlersnow.com, sas.schraub@butlersnow.com

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, kelly.resech@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=11/16/2022] [FileNumber=27656215-0] [b472e8cccb60c6069047478b9cba61a0e7fe28092a2071a809b82eaaf96c323cb dc13135d170b4a0481ec8880b8bcef3d4fceb1b566c3e429ca04c9e0642f307]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:19-cv-00389-ML Nobles et al v. City of Austin et al Transcript Filed
Date: Wednesday, November 16, 2022 4:03:24 PM

*** External Email - Exercise Caution ***

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 11/16/2022 at 4:01 PM CST and filed on 11/16/2022

Case Name: Nobles et al v. City of Austin et al
Case Number: 1:19-cv-00389-ML
Filer:
WARNING: CASE CLOSED on 01/05/2022
Document Number: 117

Docket Text:
Transcript filed of Proceedings held on June 1, 2022, Proceedings Transcribed: Motion Hearing. Court Reporter/Transcriber: Lily I. Reznik, Telephone number: 512-391-8792 or Lily_Reznik@txwd.uscourts.gov. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 12/7/2022, Redacted Transcript Deadline set for 12/19/2022, Release of Transcript Restriction set for 2/14/2023, Appeal Record due by 12/1/2022, (lr)

1:19-cv-00389-ML Notice has been electronically mailed to:

Amanda Taylor amanda.taylor@butlersnow.com, ecf.notices@butlersnow.com, jessica.veiga@butlersnow.com, sas.schraub@butlersnow.com

Charles Medearis cmedearislaw@gmail.com

Edmund Milton Davis attorney.skip.davis@gmail.com

Henry Gray Laird , III gray.laird@austintexas.gov, kelly.resech@austintexas.gov, priscilla.chavez@austintexas.gov

Monte L. Barton , Jr monte.barton@austintexas.gov, carol.smith@austintexas.gov, ruth.blackwelder@austintexas.gov

1:19-cv-00389-ML Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1080075687 [Date=11/16/2022] [FileNumber=27656239-0] [a4d7ee4003d5c55e009ceac508c90161e15e66c9f0cf483cd3e05a8e82788054e904c4231da814978e48417b91bc66f7f0ab9d2b078ae0e4842ffdc0dfeafab5]]

CAUTION: This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to cybersecurity@austintexas.gov.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 11, 2023
Lyle W. Cayce
Clerk

No. 22-50871

IDA RENAE NOBLES, *Individually*; KADEIDRA BELL, GUARDIAN *for K.N., a minor, as heir at law to the estate of* LANDON NOBLES; MICHELLE DASHAUN SMITH, GUARDIAN *for L.N., a minor as heir at law to the estate of* LANDON NOBLES,

Plaintiffs—Appellees,

versus

SERGEANT RICHARD EGAL, *Austin Police Department*; CORPORAL MAXWELL JOHNSON, *Austin Police Department*;

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:19-CV-389

CLERK'S OFFICE:

Under FED. R. APP. P. 42(B), the appeal is dismissed as of October 11, 2023, pursuant to appellants' motion.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

By: _____
Roeshawn Johnson, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 11, 2023

Mr. Philip Devlin
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

No. 22-50871 Nobles v. Egal
USDC No. 1:19-CV-389

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

cc: Mr. Marshall Ayres Bowen
Mr. Edmund Milton Davis
Mr. Charles Medearis
Mrs. Amanda Garrett Taylor

4/26/2023 12:30 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-23-002206
Jessica A. Limon

D-1-GN-23-002206

CAUSE NO. _____

KADEIDRA BELL As Next Friend of K.N., a Minor Child and MICHELLE DASHAUN SMITH As Next Friend of L.N., a Minor Child,	§	**IN THE DISTRICT COURT**
Plaintiffs	§	201ST, DISTRICT COURT
v.	§	**_____JUDICIAL DISTRICT**
SERGEANT RICHARD EGAL, CORPORAL MAXWELL JOHNSON	§	
Defendants	§	**TRAVIS COUNTY, TEXAS**

PLAINTIFFS' ORIGINAL PETITION AS NEXT FRIEND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Kadeidra Bell as Next Friend of K.N., a Minor Child, and Michelle Dashaun Smith as Next Friend of L.N., a Minor Child, and they file this Plaintiffs' Original Petition as Next Friend, and shows unto the Court the following:

I. PARTIES

Kadeidra Bell, is the mother and guardian of minor child K.N. K.N. is also the child of Landon Nobles, who is deceased. Kadeidra Bell can be contacted through her attorneys of record, the undersigned.

Michelle Dasahun Smith, is the mother and guardian of minor child L.N. L.N. is also the child of Landon Nobles, who is deceased. Michelle Dasahun Smith can be contacted through her attorneys of record, the undersigned.

Sergeant Richard Egal is and was at all times relevant to this cause of action a duly

appointed police officer of the Austin Police Department. He is being sued in his individual capacity and in his official capacity as an Austin Police Department Officer. Defendant Sergeant Richard Egal can be served at his place of business, Austin Police Department Headquarters, 715 E. 8th Street, Austin, Texas 78701 or wherever he may be found.

Corporal Maxwell Johnson is and was at all times relevant to this cause of action a duly appointed police officer of the Austin Police Department. He is being sued in his individual capacity and in his official capacity as an Austin Police Department Officer. Defendant Corporal Maxwell Johnson can be served at his place of business, Austin Police Department Headquarters, 715 E. 8th Street, Austin, Texas 78701 or wherever he may be found.

II.
JURISDICTION, VENUE, AND CLAIM FOR RELIEF

This Court has jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements. Venue is proper Travis County, Texas, under Texas Civil Practice & Remedies Code §15.002 because it is where all or a substantial part of the events or omissions giving rise to the claim occurred. Plaintiffs seek monetary relief more than $1,000,000. (TEX. R. CIV. PROC.47(c)(4).

III.
FACTS

On or about May 7th, 2017, Landon Nobles, a twenty-four-year-old African-American Austinite, was shot three times on his back by Sergeant Richard Egal and Corporal Maxwell Johnson. As a result of the Defendants' unlawful use of deadly force against Landon Nobles, he passed away. Plaintiffs filed a wrongful death lawsuit in the United States District Court for the Western District of Texas Austin Division alleging both Defendants Sergeant Richard Egal and Corporal Maxwell Johnson violated Landon Nobles civil rights pursuant to 42 U.S.C.

§ 1983. Following a six-day jury trial, the jury rendered a verdict in favor of Plaintiffs on December 15th, 2021 and awarded $67,107,500. On August 31st, 2022 the award was remitted to $8.3 million dollars. The Austin City Council approved and authorized the payment of $3,300,000 to the Plaintiffs.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to answer and appear, so that the Court appoints an Attorney Ad Litem for the minors K.N. and L.N. and enter a judgement approving the settlement.

Respectfully submitted,

/s/ Edmund M. Skip Davis
EDMUND M. DAVIS
Bar Number 24028272
P.O. Box 201123
Austin, Texas 78720
Phone 512-698-2215
Email: attorney.skip.davis@gmail.com

/s/ Charles Medearis
CHARLES MEDEARIS
LAW OFFICE OF CHARLES MEDEARIS
Bar Number 24044896
710 W 14th Street, Suite C
Austin, Texas 78701
Phone 512-524-0814
Email: cmedearislaw@gmail.com
ATTORNEYS FOR PLAINTIFFS