

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

WAYNE B. LYNCH, Administrator of the  
Estate of Donovan W. Lynch, Deceased,

Plaintiff,

v.

Case No. 2:21-cv-00341

SOLOMON D. SIMMONS, III,  
a/k/a SOLOMON D. SIMMONS, Individually  
and in his Official Capacity as a Police Officer  
for the City of Virginia Beach, Virginia,  
and  
CITY OF VIRGINIA BEACH,

Defendants.

**ANSWER AND GROUNDS OF DEFENSE**

NOW COMES Defendant Solomon D. Simmons, III (“Officer Simmons”) by counsel  
and states as his Answer and Grounds of Defense to the Complaint filed in this matter as follows:

**Introduction**

1. Officer Simmons admits the allegation of paragraph 1 that he shot Donovan W. Lynch (“Mr. Lynch”), but denies the allegation that the shooting was unlawful as Officer Simmons acted reasonably and with appropriate lethal force under the circumstances of his encounter with Mr. Lynch. Officer Simmons is without knowledge or information to admit or deny the remaining allegations of paragraph 1.

2. Officer Simmons admits the allegation of paragraph 2 that he shot Mr. Lynch twice on March 26, 2021 and avers that the use of lethal force was justified under the circumstances of his encounter with Mr. Lynch. Officer Simmons is without knowledge or information to admit or deny the remaining allegations of paragraph 2.

3. Officer Simmons admits the allegation of paragraph 3 that he was on his way to respond to “an incident” when Mr. Lynch was shot. Officer Simmons denies the remaining allegations of paragraph 3.

4. Paragraph 4 alleges the capacity in which Plaintiff brings this action which states a legal conclusion requiring no answer.

### **Jurisdiction**

5. Paragraph 5 alleges this court’s jurisdiction over the claim made pursuant to 42 U.S.C. § 1983. Officer Simmons does not contest this court’s jurisdiction.

6. Paragraph 6 alleges this court’s jurisdiction over pendant claims made pursuant to the laws of the Commonwealth of Virginia. Officer Simmons does not contest this court’s jurisdiction.

7. Paragraph 7 alleges satisfaction of notice requirements necessary for filing claims against the City of Virginia Beach which notice requirements do not apply to the claims against Officer Simmons.

### **Venue**

8. Paragraph 8 alleges that venue is proper in this judicial district. Officer Simmons does not contest the propriety of venue.

9. Paragraph 9 alleges that venue is proper in this judicial division. Officer Simmons does not contest the propriety of venue.

### **Parties**

10. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 10.

11. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 11.

12. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 12.

13. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 13.

14. Officer Simmons admits the allegations of paragraph 14.

15. Officer Simmons admits the allegations of paragraph 15 and avers that because the Complaint names the City of Virginia Beach as a defendant, the suit against Officer Simmons in his official capacity is duplicative and should be dismissed.

16. Officer Simmons admits the allegations of paragraph 16.

17. Officer Simmons admits the allegations of paragraph 17.

#### **Factual Allegations**

18. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 18.

19. Officer Simmons admits the allegations of paragraph 19.

20. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 20.

21. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 21.

22. Officer Simmons admits the allegation of paragraph 22 that Mr. Lynch encountered Officer Simmons. Officer Simmons is without knowledge or information sufficient to admit or deny the remaining allegations of paragraph 22.

23. Officer Simmons admits that he encountered Mr. Lynch during an active shooter situation. Officer Simmons avers that he heard what sounded to him like the slide of a handgun placing a bullet into the chamber, turned in the direction of the sound and observed Mr. Lynch

crouching behind shrubbery. Officer Simmons avers that he called out, whereupon Mr. Lynch rose and turned with a firearm in hand and pointed in Officer Simmons' direction. Officer Simmons admits that he then fired his police issued firearm and that two shots struck Mr. Lynch. Officer Simmons admits that Mr. Lynch later died. Officer Simmons avers that at the time he discharged his weapon he feared for his life and the lives of other officers and citizens in the vicinity. Officer Simmons denies the remaining allegations of paragraph 23.

24. Officer Simmons is without knowledge or information to admit or deny the allegations of paragraph 24 except that Officer Simmons denies that Mr. Lynch was "unmistakable as anyone else."

25. Officer Simmons denies the allegations of paragraph 25 and avers that, during the course of responding to multiple shootings and ongoing gunfire Officer Simmons heard what sounded to him like the slide of a handgun placing a bullet into the chamber, turned in the direction of the sound and observed Mr. Lynch crouching behind shrubbery. Officer Simmons called out, whereupon Mr. Lynch rose and turned with a firearm in hand and pointed in Officer Simmons' direction, at which time Officer Simmons, fearing for his life and facing an armed individual in an active shooting situation, fired at Mr. Lynch.

26. Officer Simmons denies the allegations of paragraph 26 and avers that, while he does not recall his exact language, he called out to Mr. Lynch prior to firing.

27. Officer Simmons admits the allegation of paragraph 27 that he did not attempt to determine the identity of Mr. Lynch prior to firing his police issued firearm and avers that the circumstances of his encounter did not allow sufficient time to determine Mr. Lynch's identity. Officer Simmons denies the remaining allegations of paragraph 27.

28. Officer Simmons denies the allegations of paragraph 28 and avers that he acted

reasonably and with appropriate lethal force under the circumstances of his encounter with Mr. Lynch.

29. Officer Simmons admits the allegations of paragraph 29 that he did not activate his body camera, but avers that he did not do so because from the time he left his police cruiser to the time of Mr. Lynch's shooting there existed the threat of deadly force on which Officer Simmons' attention was focused, as Officer Simmons was proceeding in the direction of ongoing gunfire as part of an attempt to protect the general public and with firsthand knowledge that civilians had been shot having rendered aid to one such shooting victim earlier that evening.

30. Officer Simmons denies the allegations of paragraph 30 and avers that, pursuant to police policy, other officers attended to Mr. Lynch after Mr. Lynch was shot while Officer Simmons was removed from the scene.

31. Officer Simmons admits the allegations of paragraph 31 that Mr. Lynch died as a result of the shooting and avers that Mr. Lynch contributed to his death by (a) entering into an active shooting zone, (b) crouching unannounced behind shrubbery, (c) arming himself with a weapon, (d) placing a bullet into the chamber of the weapon during an active shooting situation, (e) rising and turning toward a police officer with the loaded weapon in hand, a bullet in the chamber, and pointed at police officers, (f) all while, on information and belief, Mr. Lynch was under the influence of alcohol.

**Count I - 42 U.S.C. § 1983 - Excessive Force**

32. As his response to paragraph 32, Officer Simmons repeats and realleges his response to paragraphs 1 through 31.

33. Paragraph 33 alleges the capacity in which Officer Simmons has been sued and requires no answer.

34. Officer Simmons admits the allegation of paragraph 34 that he used lethal force

against Mr. Lynch, but denies the remaining allegations of paragraph 34 and avers that he acted reasonably and with appropriate lethal force under the circumstances of the encounter with Mr. Lynch.

35. Officer Simmons denies the allegations of paragraph 35.

36. Officer Simmons admits the allegations of paragraph 36.

37. Officer Simmons denies the allegations of paragraph 37.

38. Officer Simmons denies the allegations of paragraph 38.

39. Officer Simmons denies the allegations of paragraph 39.

40. Officer Simmons denies the allegations of paragraph 40.

**Count II - 42 U.S.C. § 1983 - Failure to Properly Train and Supervise**

41. As his response to paragraph 41, Officer Simmons repeats and realleges his response to paragraphs 1 through 40.

42. Paragraph 42 makes allegations against the City of Virginia Beach and requires no answer. To the extent that a response is required, the allegation is admitted.

43. Paragraph 43 makes allegations against the City of Virginia Beach and requires no answer. To the extent that a response is required, the allegations are denied.

44. Paragraph 44 makes allegations against the City of Virginia Beach and requires no answer. To the extent that a response is required, the allegations are denied.

45. Paragraph 45 makes allegations against the City of Virginia Beach and requires no answer. To the extent that a response is required, the allegations are denied.

46. Paragraph 46 makes allegations against the City of Virginia Beach and requires no answer. To the extent that a response is required, the allegations are denied.

**Count III - Gross Negligence**

47. As his response to paragraph 47, Officer Simmons repeats and realleges his

response to paragraphs 1 through 46.

48. Paragraph 48 alleges the capacity in which Officer Simmons has been sued and requires no answer.

49. Officer Simmons admits the allegations of paragraph 49.

50. Officer Simmons denies the allegations of paragraph 50, including the allegations that he breached any applicable duty, and avers that he acted reasonably and with appropriate lethal force under the circumstances of the encounter with Mr. Lynch.

51. Officer Simmons denies the allegations of paragraph 51.

52. Officer Simmons admits the allegation of paragraph 52 that Mr. Lynch died as a result of the shooting but avers that he acted reasonably and with appropriate force under the circumstances of the encounter with Mr. Lynch and avers that Mr. Lynch contributed to his death by (a) entering into an active shooting zone, (b) crouching unannounced behind shrubbery, (c) arming himself with a weapon, (d) placing a bullet into the chamber of the weapon during an active shooting situation, (e) rising and turning toward a police officer with the loaded weapon in hand, a bullet in the chamber, pointed at police officers, (f) all while, on information and belief, Mr. Lynch was under the influence of alcohol.

53. Officer Simmons denies the allegations of paragraph 53.

54. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 54.

#### **Count IV - Assault and Battery**

55. As his response to paragraph 55, Officer Simmons repeats and realleges his response to paragraphs 1 through 54.

56. Paragraph 56 alleges the capacity in which Officer Simmons has been sued and requires no answer.

57. Officer Simmons denies the allegations of paragraph 57 and avers that he acted reasonably and with appropriate force under the circumstances of the encounter with Mr. Lynch.

58. Officer Simmons denies the allegations of paragraph 58 and avers that he acted reasonably and with appropriate force under the circumstances of the encounter with Mr. Lynch.

59. Officer Simmons admits the allegations of paragraph 59 that Mr. Lynch died as a result of Officer Simmons' conduct but avers that he acted reasonably and with appropriate force under the circumstances of the encounter with Mr. Lynch and that Mr. Lynch contributed to his death by (a) entering into an active shooting zone, (b) crouching unannounced behind shrubbery, (c) arming himself with a weapon, (d) placing a bullet into the chamber of the weapon during an active shooting situation, (e) rising and turning toward a police officer with the loaded weapon in hand, a bullet in the chamber, pointed at police officers, (f) all while, on information and belief, Mr. Lynch was under the influence of alcohol.

60. Officer Simmons denies the allegations of paragraph 60.

61. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 61.

#### **Count V - Survivorship**

62. As his response to paragraph 62, Officer Simmons repeats and realleges his response to paragraphs 1 through 61.

63. Paragraph 63 alleges the capacity in which Officer Simmons has been sued and requires no answer.

64. Officer Simmons denies the allegations of paragraph 64.

65. Officer Simmons denies the allegations of paragraph 65.

#### **Count VI - Va. Code § 8.01-50, et seq. - Wrongful Death**

66. As his response to paragraph 66, Officer Simmons repeats and realleges his



response to paragraphs 1 through 65.

67. Paragraph 67 alleges the capacity in which Officer Simmons has been sued and requires no answer.

68. Officer Simmons denies the allegations of paragraph 68.

69. Officer Simmons denies the allegations of paragraph 69.

70. Officer Simmons denies the allegations of paragraph 70.

71. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 71.

### **Count VII - Punitive Damages**

72. As his response to paragraph 72, Officer Simmons repeats and realleges his response to paragraphs 1 through 71.

73. Paragraph 73 alleges the capacity in which Officer Simmons has been sued and requires no answer.

74. Officer Simmons denies the allegations of paragraph 74 and avers that “Punitive Damages” is not an individual cause of action.

75. Officer Simmons denies the allegations of paragraph 75 and avers that “Punitive Damages” is not an individual cause of action.

76. Officer Simmons denies the allegations of paragraph 76 and avers that “Punitive Damages” is not an individual cause of action.

77. Officer Simmons is without knowledge or information sufficient to admit or deny the allegations of paragraph 77 and avers that “Punitive Damages” is not an individual cause of action.

### **Affirmative Defenses**

1. As his first affirmative defense, Officer Simmons avers that he is entitled to

qualified immunity for the following reasons:

(a) Officer Simmons had probable cause to believe and reasonably believed that Mr. Lynch posed a threat of serious physical harm either to Officer Simmons or to others such that he was authorized to use lethal force;

(b) Officer Simmons' use of lethal force under the circumstances of his encounter with Mr. Lynch did not violate clearly established law;

(c) considering the totality of the circumstances, including the amount of time available for him to act, Mr. Lynch's possession of a deadly weapon, and the exigencies of the circumstances, including multiple civilian shootings, ongoing gunfire and attack on officers, Officer Simmons' conduct was reasonable from the perspective of a reasonable law-enforcement officer on the scene at the time of the incident;

(d) it was not feasible under the circumstances of Officer Simmons' encounter with Mr. Lynch to provide a warning regarding the use of lethal force; and

(e) under the circumstances of Officer Simmons' encounter with Mr. Lynch, there were no other options available other than the immediate use of lethal force.

2. As his second affirmative defense, Officer Simmons avers that, considering the totality of the circumstances, his conduct was reasonable, including reasonable from the perspective of a reasonable law enforcement officer on the scene at the time of the incident.

3. As his third affirmative defense, Officer Simmons avers that at all times during his encounter with Mr. Lynch, including his use of lethal force, he was operating in compliance with Virginia Beach Police Department General Order 5.01 governing use of force.

4. As his fourth affirmative defense, Officer Simmons avers that Mr. Lynch was negligent in contributing to his injury and death by (a) entering an active shooting situation,

(b) crouching unannounced behind shrubbery, (c) arming himself with a lethal weapon, (d) placing a bullet into the chamber of the weapon during an active shooting situation, (e) rising and turning toward police officers with the loaded weapon, bullet in chamber, pointed at police officers, (f) all while, on information and belief, Mr. Lynch was under the influence of alcohol.

5. As his fifth affirmative defense, Officer Simmons avers that his actions were taken in self-defense.

6. As his sixth affirmative defense, Officer Simmons avers that his actions were taken in defense of others.

7. As his seventh affirmative defense, Officer Simmons avers that Mr. Lynch assumed the risk of his injuries and death, and such assumption was a proximate cause of his injuries, death and damages.

Dated: July 21, 2021

Respectfully submitted,

SOLOMON D. SIMMONS, III

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2021, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

By \_\_\_\_\_/s/\_\_\_\_\_  
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