Team Number 1111

CASE NO. 2:20cv15994

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT
LAKEVILLE DIVISION

SHERYL JORDAN,

as Personal Representative of the Estate of DAVID JORDAN, JR.,

Plaintiff,

v.

SHERIFF DEREK MICHAELS

in his official Capacity as Sheriff of Midland County,

and ERIC WATSON, an individual,

Defendants.

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY AND IN SUPPORT OF DEFENDANT'S MOTION TO BAR THE TESTIMONY OF PLAINTIFF'S EXPERT, FRANK EDWARDS.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

United States Supreme Court:

Court of Appeals:

District Courts

STATUTES

RULES

INTRODUCTION

Plaintiff Sheryl Jordan ("Plaintiff") brought claims against Defendant Deputy Eric Watson ("Deputy Watson") under 42 U.S.C. § 1983 and State Law Negligence. This matter was removed to the United States District Court, Middle District of Florida, Lakeville Division. Deputy Watson asserts the affirmative defense of qualified immunity under Florida Statute 728.29(9). Plaintiff has moved under Rule 12(f) of the Federal Rules of Civil Procedure for a preliminary injunction to strike Deputy Watson's Affirmative Defense of Qualified Immunity. Plaintiff's motion rests on the basis that the defense is insufficient on the grounds that Watson did not act as a reasonable officer and is therefore not entitled to the defense of Qualified Immunity.

Deputy Watson, by and through his attorneys, moves for an order granting qualified immunity and requests this Court deny Plaintiff's motion. Alternatively, this motion serves to preserve Deputy Watson's affirmative defense of qualified immunity for trial. Defendant also submits this memorandum in support of his Motion to Bar the Testimony of Plaintiff's expert, Frank Edwards ("Dr. Edwards"), under the Federal Rules of Evidence ("FRE") 702, 401, and 403.

STATEMENT OF FACTS

On February 14, 2019 on or about 3:15pm, Deputies Watson and Eddie Rivera ("Deputy Rivera") were responding to a noise complaint at 1501 58th Street South, Fort Hampton, Florida. Pl's Compl. ¶ 3. Unauthorized loud music is a violation of Fort Hampton Municipal Code. Pl's Compl. ¶ 12. Deputies Watson and Rivera were responding to the noise complaint to issue a warning and request that the occupant lower the volume. Aff.

Watson ¶ 14. The complaint was called in by a teacher who works at an elementary school across the street. Aff. McDonald ¶ 4. Children were lining up to be picked up from the adjacent elementary school. *Id*. at ¶ 6. The music contained vulgar language which was audible from the school. *Id*. When responding to the complaint, Deputies Watson and Rivera were acting in their official capacity as law enforcement officers with the Midland County Sheriff's Office. Pl's Compl. ¶10.

Deputy Watson knocked on the front and side doors, the latter with a baton, to no answer. Aff. Watson ¶¶ 22, 23. Deputy Watson rejoined Deputy Rivera at the front door, where Mr. Jordan answered the door with a pistol in hand. Aff. Rivera ¶ 26. Deputy Rivera yelled "Sheriff's Office" as the door opened. *Id*. at ¶ 24. Deputy Rivera ordered Mr. Jordan three times to drop the gun. *Id.* at ¶ 27. Mr. Jordan raised the gun at Deputy Rivera, glanced at Deputy Watson, and retreated into the house, closing the door behind him. Aff. Watson ¶ 31. Believing Mr. Jordan had committed felony aggravated assault and was fleeing in a manner which endangered the Deputies and the children at the school across the street, Deputy Watson fired through the door four times, striking Mr. Jordan three times. *Id*. at ¶¶ 34-38. The Deputies then retreated behind Deputy Rivera's patrol car until SWAT arrived to secure the scene. Aff. Rivera ¶ 38. Mr. Jordan died on the scene. Aff. Roberts ¶¶ 5-6. A stolen handgun was found on Mr. Jordan's person. Aff. Watson ¶ 56. Toxicology found that his blood alcohol content was 0.32, four times the legal driving limit. *Id.* at ¶ 57

ARGUMENT

I. DEFENDANT DEPUTY ERIC WATSON'S AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY SHOULD BE DENIED.

The first issue before this Court is Plaintiff's motion is to strike Deputy Watson's affirmative defense of qualified immunity. Under Federal Rule of Civil Procedure 12(f), the court may strike from a pleading, by motion or on the court's own initiative, an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter Fed. R. Civ. P. 12(f). Motions to strike on these grounds may be denied unless the allegations have no possible relation to the controversy and may cause prejudice to a party. *Augustus v. Board of Public Instruction of Escambia County, Fla.*, 306 F.2d 862, 868 (5th Cir. 1962); *Poston v. American President Lines Ltd.*, 452 F. Supp. 568, 570 (S.D. Fla. 1978). When deciding a motion to strike, a court must accept the truthfulness of well pled facts, and "cannot consider matters beyond the pleadings." *Thompson v. Kindred Nursing Ctrs. E., LLC*, 211 F. Supp. 2d 1345, 1348 (M.D. Fla. 2002) (citing *Carlson Corp./Southeast v. School Board Of Seminole County, Fla.*, 778 F. Supp. 518 (M.D. Fla. 1991).

The defense of qualified immunity shields federal and state officials from money damages, but can be overcome if a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct. *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The sequence of these factors may be considered by courts in any order, but it is often appropriate to consider the factors sequentially. *Pearson v. Callahan*, 555 U.S. 223, 235 (2009). Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (citing *Harlow*, 457 U.S. at 818).

To establish a good faith qualified immunity defense, a defendant must first prove that they were acting within the scope of their discretionary authority when the alleged wrongful action took place. *Zeigler v. Jackson*, 716 F.2d 847, 849 (11th Cir. 1983). Once the defendant establishes his good faith, the burden shifts to the plaintiff to show lack of good faith. *Id*. Second, the plaintiff must show that the defendant violated the plaintiff's clearly established constitutional rights. *Id*. 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." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (citing *Ashcroft*, 563 U.S. at 741).

The conflict in the instant case concerns two factors. The first is whether Mr. Jordan was exercising a constitutional right which was then violated by Deputy Watson. The second is if a right existed which was violated by Deputy Watson's conduct. Plaintiff has alleged excessive and unreasonable force, unreasonable seizure, and deprivation of life and liberty without due process of law. Pl's Compl. ¶ 25. Aiming a firearm at a law enforcement officer after refusing multiple orders to drop the firearm is felony aggravated assault, and not a clearly established constitutional right. 784.07(2)(c), Fla. Stat. (2019). Deputy Watson acted in good faith in a lawful and objectively reasonable manner when responding with proportionate force as necessary to protect himself, his fellow law enforcement officer, and bystanders including dozens of children behind him. Any reasonable law enforcement officer in a similar situation would not have understood the use of deadly force against Mr. Jordan to be a violation of his rights. Deputy Watson's good faith actions

shift the burden to the plaintiff to show lack of good faith. *Zeigler*, 716 F.2d at 849. Plaintiff's motion to strike is drastic and frivolous and therefore, should be denied. *Thompson*, 211 F. Supp. 2d at 1348. Following this, qualified immunity shields Deputy Watson from any liability from plaintiffs claim under 42 U.S. Code § 1983.

A. No right or law was violated.

The instant case concerns a seizure under the Fourth Amendment. A seizure is a restraint of an individual's liberty by physical force or show of authority. *Terry v. Ohio*, 392 U.S. 1, 19 (1968). A person is seized within the meaning of the Fourth Amendment only if a reasonable person in light of the circumstances would believe they are not free to leave. *California v. Hodari D.*, 499 U.S. 621, 628 (1991). Deputy Rivera yelled "Sheriff's office" twice as the door opened. Aff. Rivera ¶ 23. The deputies were also identified visually as law enforcement by their clothing. *Beckman v. Hamilton*, 731 F. App'x 737, 742 (11th Cir. 2018). Deputy Rivera saw a firearm in Mr. Jordan's hand, and shouted "gun, gun, gun, drop the gun, drop the gun, drop the gun." Aff. Rivera ¶ 27. This exchange was the first order given by law enforcement, the first time the Deputies were identified as law enforcement, and the first seizure in the instant case. Following the show of authority by Deputy Rivera, a reasonable person in Mr. Jordan's place would not believe they were free to leave.

1. The use of deadly force by a law enforcement officer in the line of duty is a Fourth Amendment seizure.

While it is not always clear exactly when minimal police interference crosses the threshold and becomes a seizure, "there can be no question that apprehension by the use of

deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). Law enforcement officers may detain a person under circumstances which reasonably indicate such person is committing a criminal violation. 901.151(2), Fla. Stat. (2019). Law enforcement officers may detain an individual if the officer has probable cause to believe the individual to be in possession of a weapon. 901.151(5), Fla. Stat. (2019). The attempted detention of Mr. Jordan when he appeared with a firearm, and subsequent use of deadly force by Deputy Watson for raising the firearm at Deputy Rivera, are both seizures under the Fourth Amendment. The seizures were subject to an objective reasonableness requirement, which is met by the sequence of events and proportion of force utilized by the responding officers. *Graham v. Connor*, 490 U.S. 386, 388 (1989) (applying objective reasonableness standard for claims of excessive force). Deputy Watson is relying upon the presumption that the force he used on February 14, 2019 was for the purpose of protecting the public health, safety, and/or welfare and is otherwise presumed to be for the purpose of preventing a harm, a rebuttable presumption which requires proof to the contrary by clear and convincing evidence. 11.066, Fla. Stat. (2019).

2. Florida State Law permits use of deadly force by the officers in the instant case.

Deputy Watson reasonably believed that Mr. Jordan posed a threat which was lethal or threatened great bodily harm to Deputy Rivera, and the children at the school across the street. Aff. Watson ¶ 33. When Mr. Jordan refused to drop his firearm after being ordered to do so three times, and lifted that weapon at Deputy Rivera, he committed aggravated assault, a felony in the second degree under Florida Law. 784.021; 784.07(2)(c), Fla. Stat.

(2019). When Mr. Jordan committed aggravated assault against Deputy Rivera and attempted to flee, the actions of the Deputies then fell under protocol for apprehending a violent felon. 784.07(2)(c), Fla. Stat. (2019). Florida Law permits the use of any force by law enforcement under circumstances where the officer reasonably believes the fleeing felon poses a threat of death or serious physical harm to the officer or others. 776.05(3)(a), Fla. Stat. (2019). "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Deputy Watson responded reasonably with proportionate and necessary force to defend himself, his fellow officer, and bystanders from Mr. Jordan. Deputy Watson's action did not constitute unreasonable force, unreasonable seizure, or deprivation of life or liberty without due process of law.

B. No right has been "clearly established" by the plaintiff

Government officials performing discretionary functions should be protected from liability for civil damages if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would be aware. *Harlow*, 457 U.S. at 818 (1982). Those who are plainly incompetent or who knowingly violate the law cannot invoke qualified immunity. *Malley v. Briggs*, 475 U.S. 335 (1986). Therefore, the official will be protected from § 1983 liability for a discretionary act unless the violated constitutional right is of such a basic nature that a reasonable official would have known it, or if the official breaks a law.

C. Mr. Jordan did not have a right to aim a firearm at the deputies.

There exists a core constitutional right to bearing arms in the home for lawful self-defense. See *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). Florida State Laws also provide for self-defense in the home, wherein no person has a duty to retreat and in fact has the right to stand their ground against an assailant. 776.013, Fla. Stat. (2019). This right does not apply where the person threatened is a law enforcement officer performing their official duties, and the officer identifies themselves or the person threatening force knew, or the person reasonably should have known that they were a law enforcement officer. 776.013(3)(d), Fla. Stat. (2019). Raising a firearm at the officers constituted a felony, forfeiting his right to use a firearm in the interest of public safety.

D. A reasonable official in Deputy Watson's shoes would have acted similarly and not understood they were violating Mr. Jordan's rights.

A law enforcement officer's ability to use deadly force under the circumstances in this case has been clearly established. Even if a law enforcement officer fails to identify themselves verbally, or does not get the opportunity, an objectively reasonable officer can believe the suspect involved knows their status as law enforcement. *Beckman*, 731 F. App'x at 742. In *Beckman*, a suspect fired several shots at Sheriff's deputies a few seconds after the deputies arrived on the scene. *Id*. Even if incorrect, a reasonable belief that a suspect is pointing a gun at an officer is sufficient for officers to use deadly force. *Carr v. Tatangelo*, 338 F.3d 1259, 1269, 1272-73 (11th Cir. 2003) (affirming the grant of qualified immunity).

Courts have found that even undercover officers who do not get a chance to identify themselves may respond to threats with deadly force in fast evolving circumstances under reasonable belief that a suspect poses a threat to others. *Molina-Gomes v. Welinski*, 676

F.3d 1149, 1153 (8th Cir. 2012) (affirming the grant of qualified immunity that the officer's use of force was constitutional). In the instant case, like in *Beckman*, Deputy Rivera and Deputy Watson were uniformed officers who arrived on the scene in two official sheriff's vehicles. Aff. Rivera ¶ 16. Deputy Rivera was only a few feet in front of Mr. Jordan when he answered the door. Aff. Watson ¶ 26. Mr. Jordan had an unobstructed view of Deputy Rivera. Deputy Watson was oriented 45 degrees from the door, also within Mr. Jordan's view, and both deputies were in a position to see the firearm in Mr. Jordan's hand. Aff. Watson ¶¶ 29, 32, Aff. Rivera ¶ 26. Under these circumstances, like in *Beckman* and *Carr*, it was reasonable for Deputy Watson to believe the deputies' status as law enforcement officers was known by Mr. Jordan, and that Mr. Jordan posed a lethal threat to them. Following the understanding of the threat posed under the circumstances, Deputy Watson's actions were reasonable and not unlike what any other reasonable law enforcement officer would have done in the same situation.

II. DR. EDWARDS SHOULD NOT BE PERMITTED TO TESTIFY AT TRIAL.

The second issue before this Court is whether Dr. Frank Edwards should be allowed to testify at trial. Deputy Watson respectfully asks this Court to grant his first motion in limine, pursuant to Federal Rules of Evidence 702, 401, and 403, to prohibit the testimony of Dr. Edwards. The Rules of Evidence task the trial judge with ensuring that any and all scientific testimony or evidence admitted is not only relevant, but reliable. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993). The Supreme Court informs us that the primary locus of this obligation is Rule 702, which clearly contemplates some degree

of regulation of the subjects and theories about which an expert may testify. *Id.* This "gatekeeping" obligation, requiring an inquiry into both relevance and reliability, applies not only to "scientific" testimony, but to all expert testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999).

Faced with a proffer of expert scientific testimony, the trial judge must determine at the outset, pursuant to Rule 104(a), whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. *Daubert*, 509 U.S. at 592. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue. *Id.*

Plaintiff intends to call Dr. Edwards to testify to apparent racial bias within the Midland County Sheriff's Department. While the Defendant stipulates that Dr. Edwards is qualified as an expert witness, his testimony is nonetheless inadmissible, and should be prohibited on the following grounds: (1) it is inadmissible pursuant to Federal Rule of Evidence 702 and the standard set forth in *Daubert*; (2) it will not make the existence of any fact of consequence to the determination of the action more or less probable than it would be without it; and (3) the testimony would present a substantial danger of unfair prejudice, confusion of the issues, and misleading the jury.

A. Dr. Edwards' testimony should be prohibited pursuant to Federal Rule of Evidence 702.

A witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific,

technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case. Fed. R. Evid. 702. It is the duty of the proponent of the expert testimony to prove the admissibility of the testimony by the preponderance of the evidence. *Bourjaily v. United States*, 483 U.S. 171, 175 (1987).

1. Dr. Edwards will not help the trier of fact to understand the evidence or to determine a fact in issue.

The testimony that Plaintiff seeks to introduce through Dr. Edwards is not only immaterial, but completely unrelated to the facts. Dr. Edwards "focuses on how systems of social control produce and reinforce inequality, and explores how politics, policy feedbacks, and social structures affect the relationships between families and the state." Aff. Edwards ¶ 3. While such a vague description provides little guidance for this Court, his sworn statement says that he was hired by the Plaintiff to conduct "a review of Midland County Sheriff's department data on stops based upon reasonable suspicion performed by Midland County Sheriff's officers where the Sheriff's officer drew his/her weapon during the stop." *Id.* at ¶ 5.

The testimony that Plaintiff seeks to introduce through Dr. Edwards will not help the trier of fact understand the evidence. Dr. Edwards' research, commissioned by the Plaintiff, makes no connection to the facts at issue. His testimony distracts from the facts; it does not supplement them. The subject of race is not mentioned once throughout

Plaintiff's complaint. Instead, the lawsuit sounds in excessive force under 42 U.S.C. § 1983 and state law negligence. Dr. Edwards' research makes no connection between his alleged findings and the parties. He alleges that "racial bias plays a statistically significant role in whether Midland County Sheriff's officers decide to draw their weapon during a stop." Aff. Edwards ¶ 8. However, his limited research makes no mention of stops like the one faced by Deputies Watson and Rivera, i.e., stops where deputies are met with someone armed with a handgun. His findings are also absent any connection between racial bias and Deputy Watson, and therefore do not assist the trier of fact.

2. Dr. Edwards' testimony is not based on sufficient facts or data.

The Rules of Evidence—especially Rule 702—assign to the trial judge the task of ensuring that an expert's testimony rests on a reliable foundation. *U.S. v. Frazier*, 387 F.3d 1244, 1261 (11th Cir. 2004). Dr. Edwards' testimony lacks sufficient facts and data to form an adequate foundation for admissibility.

The scope of Dr. Edwards' data was limited. His sworn statement indicates that he did not review *all* stops made by the Sheriff's Department. Instead, the stops he reviewed were nontraffic misdemeanors and ordinance violations. Aff. Edwards ¶ 6. These self-imposed parameters produced a minute data set of only 650 stops, which Dr. Edwards further dwindled to 380 stops in a limited three-year period. Dr. Edwards alone determined that this data defined the relevant cases for analysis; we disagree. The analysis makes no mention of: (1) whether the suspect had a firearm; (2) whether the deputies were threatened with deadly force; or (3) whether the stop occurred because of violence. It gives no information on the percentages of Caucasian vs. African American offenders who were the

subject of the stops. The analysis is underinclusive and fails to consider key data points. It is unfair to conclude, much less present to a jury, that there is bias within the sheriff's department with such limited facts and data.

3. The testimony offered by Mr. Edwards is not the product of reliable principles and methods.

The importance of *Daubert* 's gatekeeping requirement cannot be overstated. As the Supreme Court framed it in *Kumho Tire*: The objective of that requirement is to ensure the reliability and relevancy of expert testimony. *Kumho Tire,* 526 U.S. at 152. It is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field. *Id.*

The *Daubert* Court listed four non-inclusive factors courts should consider in determining reliability under Rule 702: (1) whether the theory or technique can be tested; (2) whether it has been subjected to peer review; (3) whether the technique has a high known or potential rate of error; and (4) whether the theory has attained general acceptance within the scientific community. *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1312 (11th Cir. 1999). The purpose of the *Daubert* inquiry is to vet the proposed testimony under Rule 702's requirements that it be "based on sufficient facts or data," use "reliable principles and methods," and "reliably appl[y] the principles and methods to the facts of the case." *Id.*, Fed.R.Evid. 702.

This *Daubert* analysis demonstrates the unreliability of Edwards' methods. First, no testing has occurred to support Edwards' results. He investigated a small number of a

specific type of stop but has not tested his conclusions by interviewing officers or performing fieldwork. Second, Mr. Edwards' research has not been subjected to peer review. He was commissioned by the Plaintiff for a specific purpose, and the record is absent any evidence that the scientific community has reviewed his findings. Third, the rate of error of Mr. Edwards' technique is unknown, but the dubiousness of his research cannot be ignored. The research is limited to such a specific data set that Plaintiff cannot reasonably expect this Court to conclude that it is relevant to the facts. Finally, Mr. Edwards' research specific to the Midland County Sheriff's Department has not achieved *any* acceptance in the scientific community.

Mr. Edwards has not employed the same level of intellectual rigor that characterizes the practice of an expert during his work on this case. The factors set forth in *Daubert* demonstrate that the reliability of Mr. Edwards' testimony is insufficient under Rule 702.

4. Mr. Edwards has not reliably applied the principles and methods to the facts of the case.

Conjectures that are probably wrong are of little use in reaching a quick, final, and binding legal judgment about a particular set of events. *See Daubert*, 509 U.S. at 597. The Supreme Court has recognized that, in practice, a gatekeeping role for the judge inevitably will prevent the jury from learning of authentic insights and innovations. *Id.* That, nevertheless, is the balance that is struck by Rules of Evidence designed not for the exhaustive search for cosmic understanding but for the particularized resolution of legal disputes. *Id.*

Mr. Edwards has not established that the deputies in this instance have a racial bias or that any bias affected their judgment. The undisputed testimony from both deputies will be that they saw a weapon and only used force after fearing for their lives. Mr. Edwards has not properly applied his research to the facts of this case, and his testimony should therefore be barred pursuant to Rule 702.

B. Frank Edwards' testimony is inadmissible pursuant to Federal Rule of Evidence 401.

"Relevant evidence" is defined as that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid. 401. "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." *Daubert*, 509 U.S. at 591.

Mr. Edwards' research focuses on how systems of social control produce and reinforce inequality. His work did not establish a correlation between racial bias and Deputies Watson or Rivera, or whether bias caused them to use deadly force. It is absent any information that could make a fact of consequence in this case more probably true than not true.

Scientific research, while interesting and valuable to society, does not always assist the trier of fact. The *Daubert* Court provides the following analogy:

> The study of the phases of the moon, for example, may provide valid scientific "knowledge" about whether a certain night was dark, and if darkness is a fact in issue, the knowledge will assist the trier of fact. However (absent creditable grounds supporting such a link), evidence that the moon was full on a certain night will not assist the trier of fact in determining whether an individual was unusually likely to have behaved irrationally on that night.

Daubert, 509 U.S. at 591. Tellingly, Mr. Edwards conducted no research involving Deputies Watson or Rivera. He provided no information on whether this alleged departmental bias influenced the deputies on the day in question.

The actual data tells a different story. This confrontation was the first time Deputy Watson fired his service weapon in the line of duty, and only began to fire after Deputy Rivera observed a pistol in Mr. Jordan's hand. Mr. Edwards' research is insufficient and will not assist the trier of fact in determining whether Deputy Watson acted within his rights and is therefore irrelevant. Aff. Watson ¶ 39.

C. Frank Edwards' testimony is inadmissible pursuant to Federal Rule of Evidence 403.

The value in Dr. Edwards' testimony for the Plaintiff lies not in science, but in its power to provoke anger. The probative value of the testimony that Plaintiff seeks to present is grossly outweighed by its potential for prejudice. Because of the powerful and potentially misleading effect of expert evidence, expert opinions that otherwise meet the admissibility requirements may still be excluded by applying Rule 403. *Frazier*, 387 F.3d at 1263. A court in weighing possible prejudice against probative force under Rule 403 exercises more control over experts than over lay witnesses." *Daubert*, 509 U.S. at 595.

While not discussed at length in *Daubert,* the presumption in favor of admissibility established by Rules 401 and 402, together with *Daubert* 's "flexible" approach, may well mandate an enhanced role for Rule 403 in the context of the *Daubert* analysis, particularly when the scientific or technical knowledge proffered is novel or controversial. *U.S. v. Posado*, 57 F.3d 428, 435 (5th Cir. 1995).

Dr. Edwards' testimony makes no connection between his data and the facts. Plaintiff seeks to suggest racial bias by innuendo in this case without a sufficient connection to the facts. This case has come to trial to determine whether excessive force was used by Midland County Sheriff's deputies. Racial bias within the department is not a material issue. Any probative value among Dr. Edwards' research is substantially outweighed by the risk of undue prejudice and should therefore be barred.

CONCLUSION

For the foregoing reasons, Defendant Eric Watson respectfully requests that this Court deny Plaintiff's Motion to strike Defendant's Affirmative Defense of Qualified Immunity and grant Defendant's motion to bar the testimony of Plaintiff's expert, Frank Edwards.

Respectfully Submitted,

/s/ 1111 .

Team 1111
Attorneys for Defendant