Team Number 1111

CASE NO. 2:20cv15994

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
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.

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

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INTRODUCTION

This action arises out of Plaintiff Sheryl Jordan's ("Plaintiff") 42 U.S.C. § 1983 claim against Defendant Deputy Eric Watson ("Defendant Watson") for unreasonable seizure and excessive use of force resulting in the death of Decedent David Jordan Jr. ("Mr. Jordan"). Defendant Watson asserts the affirmative defense of qualified immunity under Florida Statute 728.29(9).

Plaintiff, by and through her attorneys, moves to strike Defendant Watson's Affirmative Defense of Qualified Immunity under Rule 12(f) of the Federal Rules of Civil Procedure. Plaintiff moves to strike on the basis that: (1) Defendant Watson's use of deadly force was a seizure under the Fourth Amendment; (2) Defendant Watson's use of deadly force was unreasonable and therefore a constitutional violation; and (3) there is clearly established law prohibiting the unreasonable use of deadly force. For the foregoing reasons, the affirmative defense of qualified immunity is inapplicable to Defendant Watson and Plaintiff's motion to strike should be granted.

Plaintiff also moves to deny Defendant's Motion to Bar the Testimony of Plaintiff's Expert, Frank Edwards, under the Federal Rules of Evidence ("FRE") 401, 403 and 702. Plaintiff's motion rests on the basis that: (1) Frank Edwards' testimony is relevant under FRE 401; (2) the testimony is not substantially more prejudicial than probative under FRE 403; and (3) Frank Edwards is qualified to testify as an expert witness pursuant to FRE 702. For the foregoing reasons, the expert testimony of Frank Edwards is admissible under the FRE and Defense's motion should be denied.

Plaintiff submits the following Memorandum of Law in support of this motion:

STATEMENT OF FACTS

At all times material, Defendant Watson worked as a law enforcement officer for the Midland County Sheriff's Department. Defs.' Answer to Pl.'s Compl. ¶ 7. At all times material, Defendant Derek Michaels employed Defendant Watson at the Midland County Sheriff's Department. *Id*. at ¶ 9. On February 14th, 2019, Mr. Jordan was an adult residing at 1501 58th Street South, Fort Hampton, Florida. Pl's Compl. ¶ 3. On or about 3:15 p.m. on that date, Defendant Watson and Deputy Eddie Rivera ("Deputy Rivera") arrived at Mr. Jordan's residence in response to a noise complaint for loud music coming from the residence. Aff. Derek Watson ¶¶ 12-20. Such a noise complaint is a city ordinance violation, not a criminal violation. *Id*. at ¶ 15. A first time noise complaint is only punishable by a warning under the Fort Hampton Municipal Code. Pl.'s Compl. ¶ 12.

Upon their arrival, Defendant Watson and Deputy Rivera approached Mr. Jordan's front door. Aff. Eric Watson ¶ 21. Deputy Rivera knocked on the door, but there was no response. *Id*. Defendant Watson then approached the door on the right side of the home. *Id*. at ¶ 22. Defendant Watson used his police baton to knock on the side door, but there was no response. *Id*. at ¶ 23. At this point, Deputy Rivera again knocked on the door with his hand, but failed to announce the presence of law enforcement officers. Aff. Eddie Rivera ¶ 23. Once Mr. Jordan's front door began to open, Rivera began loudly yelling, "Sheriff's Office, Sheriff's Office." *Id*. at ¶ 24.

Deputy Rivera alleges that Mr. Jordan had a gun in his hand when he opened the door. *Id*. at ¶ 25. Defendant Watson admits that he cannot identify what was in Mr. Jordan's hand. Aff. Eric Watson ¶¶ 30-32. As Mr. Jordan was closing his front door, Defendant Watson fired his weapon into the door. *Id*. at ¶ 34-35. At no point did Defendant Watson see Mr. Jordan point a gun at anyone. *Id*. at ¶ 35.

Defendant Watson fired four shots into the front door, intending to shoot Mr. Jordan. Aff. Eric Watson ¶¶ 36-37. One of those gunshots penetrated the upper portion of Mr. Jordan's abdomen, and another would hit his skull and spatter his brain. Aff. Taylor Roberts ¶ 7. Due to the way Defendant Watson's bullet severed Mr. Jordan's mid-brain, there is no possibility that Mr. Jordan moved after being shot in the head. Aff. Taylor Roberts ¶¶ 8-9. Mr. Jordan was found dead in the foyer of his home, face down, with an unloaded handgun in his back pocket. Aff. Eric Watson ¶ 54.

Sheryl Jordan, Mr. Jordan's mother and personal representative of his estate, has filed suit pursuant to 42 U.S.C. §1983 and a state law claim of negligence. Pl.'s Compl. ¶¶ 23-32. This matter has since been removed to the United States District Court, Middle District of Florida, Lakeville Division. Notice Rem. ¶¶ 1-7. Defendant Eric Watson has asserted the affirmative defense of qualified immunity, and moves to bar Plaintiff's Expert, Frank Edwards, Ph.D ("Dr. Edwards"). Defs.' Def. to Pl.'s Compl. ¶ 7. The Defense also moves to prohibit Dr. Edwards from testifying at trial. Def.'s Mot. Limine ¶¶ 1-6. Dr. Edwards intends to testify that his review of data collected from the Midland

County Sheriff's Department indicates racial bias plays a statistically significant role in whether Midland County Sheriff's draw their weapons. Aff. Frank Edwards ¶ 8.

ARGUMENT

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

Qualified immunity is an affirmative defense that protects public officials, including police officers, from civil liability so long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982). 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). Courts use a two-prong test to analyze the applicability of the qualified immunity defense. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The first prong determines whether the officer's conduct establishes a constitutional violation. *Id*. The second prong analyzes whether the constitutional right was "clearly established" at the time of violation. *Id*.

A. Watson's Use of Deadly Force Was an Unreasonable Seizure Under the Fourth Amendment.

Defendant Watson violated Mr. Jordan's Fourth Amendment right to freedom from unreasonable search and seizure by using excessive, lethal force. When an officer restrains an individual's freedom to walk away, the officer has "seized" that individual. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). "[T]here 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). The use of deadly force against Mr. Jordan was a clearly established seizure under the Fourth Amendment.

Having established a seizure under the Fourth Amendment, the next step is to determine whether the seizure was a constitutional violation. A Fourth Amendment seizure becomes a constitutional violation when it is unreasonable. *Graham v. Connor*, 490 U.S. 386, 392-93 (1989). Claims of excessive force are analyzed under the Fourth Amendment's "objective reasonableness" standard. *Id.* at 395. To determine reasonableness, the Supreme Court uses a balancing test to weigh governmental intrusion against government interests. *Id*. at 396. The Court also determines a seizure's reasonableness by evaluating "whether the totality of the circumstances justified a particular sort of . . . seizure." *Garner*, 471 U.S. at 8-9.

The Court set forth several factors to determine the reasonableness of force used by police officers in the scope of their employment. These factors include: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396. To further evaluate whether the use of force "crosses the constitutional line," the Court has also considered these additional factors: (1) the extent of the plaintiff's injury; and (2) whether any effort was made by the officer to temper or to limit the amount of force used. *Kingsley v. Hendrickson,* 576 U.S. 389, 397-402 (2015).

In *Tennessee v. Garner*, the Court held that the use of deadly force is not constitutionally unreasonable when: (1) a suspect threatens an officer with a weapon; or (2) there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm. 471 U.S. 1, 11-12. If one of these conditions are present, then it is constitutional to use deadly force if necessary to prevent escape. *Id.*

The first *Graham* factor, the severity of the crime, weighs heavily in Plaintiff's favor. Mr. Jordan was not being arrested and was not suspected of committing any crime. The police were called to Mr. Jordan's residence in response to a noise complaint. Both Defendant Watson and Deputy Rivera admit that a noise disturbance is a county violation, not a criminal offense. Aff. Eddie Rivera ¶ 11; Aff. Eric Watson ¶ 15. Further, Deputy Rivera admits that "a noise complaint is generally not an arrestable offense unless the person becomes violent with law enforcement." Aff. Eddie Rivera ¶ 14. In this case, Mr. Jordan did not become violent with law enforcement at any point in their interaction. Therefore, using deadly force in response to an offense of this magnitude was constitutionally unreasonable.

The second *Graham* factor, whether the suspect posed an immediate threat, also weighs in Plaintiff's favor. There is no credible evidence that Mr. Jordan had a gun or weapon of any kind in his hand when his door opened. Defendant Watson admits he "can't say for certain" that Mr. Jordan had a gun in his hand. Aff. Eric Watson ¶ 32. Defendant Watson also admits that he "did not see [the object in Jordan's hand]

specifically aimed at anyone." Aff. Eric Watson ¶ 44. Based on this testimony, it is clear that Mr. Jordan did not threaten officers with a weapon at any point.

In this case, Mr. Jordan posed no immediate threat to officers. First, Mr. Jordan did not threaten officers with a weapon. Next, Defendant Watson admits that he "had not done a background investigation on Mr. Jordan before [he] knocked on the door." Aff. Eric Watson ¶ 44. Therefore, there was no probable cause to lead officers to believe that Mr. Jordan had committed any crime involving the infliction of physical harm. In accordance with *Garner*, the use of deadly force on Mr. Jordan was constitutionally unreasonable.

The third *Graham* factor, attempt to resist or evade arrest, also weighs heavily in Plaintiff's favor. Officers were called to Mr. Jordan's residence in response to a noise complaint. Under Fort Hampton Municipal Code, unauthorized loud music is punishable by fine or jail time *only* after a warning is issued for the first complaint and a civil citation is issued after the second complaint. Pl.'s Compl. ¶ 12. No evidence suggests that Mr. Jordan had ever received any warning or citation for unauthorized loud music prior to February 14, 2019.

Because he was not being arrested or suspected of committing any crime, it was fully within Mr. Jordan's rights to close his door. When a citizen is not being detained and an officer knocks on the door of their home, "provided no warrant or probable cause and exigent circumstances exist, the citizen has the right to terminate his voluntary participation in the conversation by retiring into his home and closing the door." *Moore v. Pederson,* 806 F.3d 1036, 1045 n.11 (11th Cir. 2015). Further, Deputy Rivera admits that

when he knocked on the door of Mr. Jordan's residence, he "did not say anything or announce [him]self." Aff. Eddie Rivera ¶ 23. Instead, Deputy Rivera waited until "the front door started to open" to announce himself as a Sheriff. Aff. Eddie Rivera ¶ 24.

Mr. Jordan made no attempt to resist or evade arrest as he was not being arrested for committing any crime. Mr. Jordan's lawful response to Defendant Watson and Deputy Rivera attempting to speak with him at his residence without a warrant was neither a flight nor evasion of any arrest or lawful detention. Because Mr. Jordan made no attempt to resist or evade arrest, the use of deadly force against Mr. Jordan was constitutionally unreasonable.

Additional factors laid out in *Kingsley* provide further support for Plaintiff. First, the decedent's injuries in this case were lethal and therefore, of the utmost severity. Second, no effort was made by Defendant Watson to limit the amount of force used against Mr. Jordan. These additional factors further indicate that the use of deadly force against Mr. Jordan crossed a constitutional line.

In this case, the use of deadly force against Mr. Jordan was undoubtedly a seizure under the Fourth Amendment. Mr. Jordan was not suspected of committing any criminal offense, was not violent towards the officers and did not threaten the officers with a weapon. The totality of the circumstances in this case prove that the deadly force used against Mr. Jordan was disproportionately severe and constitutionally unreasonable.

B. There is Clearly Established Law Prohibiting Defendant Watson's Unreasonable Use of Force.

A right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015). The law is clearly established when there is materially similar precedent that has "placed the statutory or constitutional question beyond debate." *Ashcroft v. Al-Kidd*, 563 U.S. 731, 741 (2011). Provided there is existing precedent, a case with materially similar facts that are "directly on point" is not required. *Id.*

In *Tennessee v. Garner*, the Court held that an officer's use of deadly force was a Fourth Amendment seizure where a police officer shot and killed an unarmed suspect fleeing the scene of a crime. 471 U.S. at 7. In *Garner*, the State argued that the common-law rule allowing the use of whatever force was necessary to effect the arrest of a fleeing felon, though not a misdemeanant, should be applied as it was the prevailing rule at the time of the adoption of the Fourth Amendment. *Id.* at 13. The Court rejected this argument and determined that the common-law rule "cannot be directly translated to the present day." *Id.* at 14. However, the Court emphasized one aspect of the common-law rule that still bears emphasis: "it forbids the use of deadly force to apprehend a misdemeanant, condemning such action as disproportionately severe." *Id.* at 15.

The Supreme Court has explicitly held that the use of deadly force to apprehend misdemeanant is disproportionately severe. Here, Mr. Jordan was not suspected of committing any criminal offense. Considering Mr. Jordan's conduct did not even amount

to a misdemeanor criminal offense and he was not being apprehended, *Garner* clearly prohibits the use of deadly force against Mr. Jordan.

Further, the Eleventh Circuit has clearly established that "the mere presence of a gun or other weapon is not enough to warrant the exercise of deadly force and shield an officer from suit. Where the weapon was, what type of weapon it was, and what was happening with the weapon are all inquiries crucial to the reasonableness determination." *Perez v. Suszczynski*, 809 F.3d 1213, 1220 (11th Cir. 2016); s*ee also Lundgren v. McDaniel*, 814 F.2d 600, 602-03 (11th Cir. 1987) (finding presence of a handgun not dispositive and denying qualified immunity). The Eleventh Circuit clearly established that the presence of a gun is not sufficient grounds to employ deadly force.

In this case, Mr. Jordan's gun: (1) was unloaded; (2) remained at all times in Mr. Jordan's back pocket; and (3) was never aimed at Defendant Watson or Deputy Rivera. The circumstances surrounding the gun in this case all demonstrate there was not an active threat of violence against Defendant Watson or Deputy Rivera. In accordance with *Perez* and *Lundgren*, the mere presence of a gun in this case does not warrant the use of deadly force and therefore, the affirmative defense of qualified immunity should be denied.

II. DR. EDWARDS SHOULD BE PERMITTED TO TESTIFY AS AN EXPERT.

The second issue before this Court is whether Dr. Edwards may testify as an expert. The admissibility of witness testimony at trial is governed by the FRE. The FRE require that: (1) the testimony is limited to information that makes any material fact more

or less likely; and (2) the prejudicial effect of the evidence sought to be admitted does not substantially outweigh the probative value. Fed. R. Evid. 401; Fed. R. Evid. 403.

The Supreme Court has recognized that the trial court has a "gatekeeping" role in determining whether expert testimony is admissible. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993). There are four factors that this Court must consider when determining whether experts may aid the trier of fact: (1) whether an expert's specialized knowledge will help the trier of fact understand the evidence or determine a fact in issue; (2) whether the testimony is based on sufficient facts or data; (3) whether the testimony is the product of reliable principles and methods; and (4) whether the expert has reasonably applied the principles and methods to the facts of the case. Fed. R. Evid. 702. The proponent of the expert testimony has the duty to prove the admissibility of the testimony by a preponderance of the evidence under FRE 401, 403 and 702. *See Bourjaily v. United States*, 483 U.S. 171, 175 (1987).

A. Dr. Edwards' Testimony is Relevant under Federal Rule of Evidence 401.

FRE 401 provides a two-element test to determine whether testimony is relevant. Fed. R. Evid. 401. First, testimony must have any tendency to make a fact more or less probable. *Id*. Second, that fact must be a fact of consequence. *Id*. The first element simply asks if the testimony has any impact on a fact. *Sims v. Great Am. Life Ins. Co.*, 469 F.3d 870, 881 (10th Cir. 2006). The second element is a question that turns on the substantive facts. *Id*.

The most succinct point in Dr. Edwards' intended testimony is that "racial bias plays a statistically significant role in whether Midland County Sheriff's officers decide to draw their weapon during a stop." Aff. Frank Edwards ¶ 8. As for the first element, the expert testimony provides an unreasonable basis for Defendant Watson to draw his weapon. Defendant Watson drew his weapon to seize Mr. Jordan. A seizure occurs where an officer, by means of physical force or show of authority, restrains the liberty of an individual. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). Considering the definition of a seizure under *Terry*, Dr. Edwards' testimony increases the likelihood that Mr. Jordan's constitutional rights and statutory protections were violated as stated in Plaintiff's Complaint. Pl.'s Compl. ¶ 25, 31. An unconstitutional seizure is listed as one of Plaintiff's key allegations. Pl.'s Compl. ¶ 25. As an element of Plaintiff's claim that Defendant Watson denies, this is a fact of consequence. For these reasons, Dr. Edwards' testimony is extremely relevant to the issue at hand.

B. Dr. Edwards' Testimony is Not Substantially More Prejudicial than Probative under Federal Rule of Evidence 403.

FRE 403 provides that when the probative value of the evidence is substantially outweighed by its prejudicial effect, the evidence may be excluded. Fed. R. Evid. 403. An examination under FRE 403 is not merely a question of whether some prejudice exists. *See generally Daubert*, 509 U.S. at 595; *United States v. Ramirez-Robles*, 386 F.3d 1234, 1246 (9th Cir. 2004). In order to be rendered inadmissible, courts place an emphasis on the necessity for the probative value to be *substantially* outweighed by the danger of unfair prejudice. *See United States v. Benavidez-Benavidez*, 217 F.3d 720, 725 (9th Cir.

2000). In determining the prejudicial value of the evidence, the committee comments of Rule 403 measures "unfair prejudice" by the potential to cause the trier of fact to make a decision on an improper basis. Fed. R. Evid. 403.

This Court may consider improper bases for decision-making that Dr. Edwards' expert testimony may elicit. The FRE list several bases that may spur improper decision-making. *Id*. In this case, there are two likely points of contention regarding the admissibility of Dr. Edwards' testimony subject to FRE 403. First, one may suggest that Dr. Edwards' statistics regarding racial bias in policing could cause a trier of fact to make determinations out of anger. Second, one could also suggest that the statistics presented would cause a juror to assume that Midland County Sherriffs are likely to act in conformity with Dr. Edwards' statistics.

The solution to these concerns is FRE 105. This rule allows this Court to only allow a trier of fact to consider evidence in a limited capacity. Fed. R. Evid. 105. Dr. Edwards' extensive research of the Midland County Sheriff's Department will be used in two ways. First, this testimony is part of the basis for Plaintiff's allegation that Defendant Watson drew and fired his weapon at Mr. Jordan at least in part, because of his race. Pl.'s Compl. ¶ 31. Second, this is also part of the basis for Plaintiff's allegation that the Defendant deprived Mr. Jordan of his constitutional rights.

Each of these allegations underpin crucial aspects of the Plaintiff's complaint. As such, Dr. Edwards' testimony holds immense probative value. Here, a limiting instruction would minimize the risk of prejudice. Due to this minimized risk, the probative value of

Dr. Edwards testimony is not substantially outweighed by its prejudicial effect and is therefore admissible under FRE 403.

C. Dr. Edwards May Testify as an Expert Witness Pursuant to Federal Rule of Evidence 702.

The final question before this court is whether Dr. Edwards can testify as an expert witness under FRE 702. The rule sets out that a witnesses with proper education and knowledge may testify to their expertise if: (1) the expert's specialized knowledge will help the trier of fact understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert reliably applied the principles and methods to the facts of this case. Fed. R. Evid. 702. Similar standards first enumerated in *Daubert* were later clarified in *Kumho Tire Co. v. Carmichael*. 526 U.S. 137, 147 (1999). The committee comments of FRE 702 explain that these cases have informed the development of the rule. Fed. R. Evid. 702. *Kumho Tire Co.* explains that the enumerated Daubert factors are intended to be flexible, and that the list of factors "neither necessarily nor exclusively applies to all experts, or in every case." 526 U.S. at 141-42.

As a preliminary matter, there must be a determination that Dr. Edwards is "qualified as an expert by knowledge, skill, experience, training, or education." Fed. R. Evid. 702. Because the parties have stipulated Dr. Edwards is a qualified expert, his qualifications are not at issue.

1. Dr. Edwards has Scientific, Technical, and Specialized Knowledge that will Help the Trier of Fact Determine a Fact at Issue.

The first *Daubert* factor considers whether Dr. Frank Edwards' specialized knowledge will help the trier of fact determine a fact in issue. While case law states that FRE 702 operates independent of other rules such as 403 and 401, there is inevitably overlap in their analyses. *Ramirez-Robles*, 386 F.3d at 1246. Dr. Edwards' findings indicate that employees of the Midland County Sheriff's Department are more likely to draw their weapons against people of Mr. Jordan's demographics. Aff. Frank Edwards ¶¶ 8-9. This tendency supports the claim that Defendant Watson drew his weapon due to Mr. Jordan's race. Dr. Edwards' specialized knowledge will aid the trier of fact in determining the basis for Defendant Eric Watson using his weapon, which is a fact at issue.

2. Dr. Edwards' Testimony is Based on Sufficient Facts and Data.

The second factor is determining whether Dr. Edwards' testimony is based on sufficient facts and data. A test for this factor is to determine whether there is an "analytical gap" between the opinion of the expert and the data from which they base their professional opinion. *GE v. Joiner*, 522 U.S. 136, 146 (1997). This Court must first look to data provided by Dr. Edwards. Dr. Edwards has provided the Court with his research regarding the impact of age, race, ethnicity, and sex on the risk of being killed by police us of force. In his research, the lifetime risk of being killed by police use of force for different demographics was calculated using model-based simulations from 2013 to 2018 Fatal Encounters data and 2017 National Vital Statistics System data. Frank

Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race–Ethnicity, and Sex*, 116 Proc. Nat'l Acad. Sci. U.S. Am. 16793, 16794-97 (2018).

Using this data and experience, Dr. Edwards conducted further research specifically tailored to the Midland County Sheriff's Department, narrowing his research to stops for non-traffic misdemeanors and ordinance violations. Aff. Frank Edwards ¶¶ 5-6. He further limited his data to the three years leading up to the month of the shooting in question. Aff. Frank Edwards ¶ 7. Given the specificity of Dr. Edwards' research, the "analytical gap" between Dr. Edwards' data and subsequent conclusions is minute.

3. Dr. Edwards' Testimony is the Product of Reliable Principles and Methods.

In weighing this factor, it is important to note that in the sociological field, there are no trials that can be run to ascertain his findings. However, the committee comments of FRE 702 specify that this factor is intended to be applicable to any technical or otherwise specialized knowledge. Fed. R. Evid. 702, This application goes so far as to allow a police officer to testify on the technicalities of the "code" that is spoken during drug transactions. *Id*. So long as the methods are deemed "reasonable" by this Court, the testimony would be admissible. *Id*.

A principle that guided Dr. Edwards' research was specificity. This principle was exemplified when Dr. Edwards narrowed his research as much as possible to gain an accurate estimate of Midland County Sherriffs' tendencies in similar situations. While it could have been possible for Dr. Edwards to include more serious offenses in his data, he instead excluded incidents based on warrants, non-traffic misdemeanors, or any felony

offense. Aff. Frank Edwards ¶ 6. In doing so, Dr. Edwards applied the most reliable principles and methods to form his expert opinion.

4. Dr. Edwards has Reliably Applied the Principles and Methods to the Facts of the Case.

The final factor of FRE 702 examines whether the testimony can be reasonably applied to the facts of the case. Fed. R. Evid. 702. The committee comments explain that the significance of this test is to determine whether the testimony "fits" the facts of the case. *Id*. Dr. Edwards has limited his research in several ways to come to specific conclusions regarding the shooting at issue before this Court. First, he limited the geographical sample size of his data by researching the Midland County Sheriff's Department specifically. Aff. Frank Edwards ¶ 5. Second, Dr. Edwards limited his data to only include types of police interactions where the use of a firearm is typically unnecessary. Aff. Frank Edwards ¶ 6. Dr. Edwards' data collection indicates disproportionate use of force toward minority groups. Aff. Frank Edwards ¶ 9.

Dr. Edwards' research regarding the disproportionate use of force by Midland County sheriffs against minorities is directly applicable to the facts of this case. These findings support allegations made by the Plaintiff that Mr. Jordan was unconstitutionally deprived of his rights when Defendant Watson unreasonably drew and fired his weapon. Therefore, it is clear that Dr. Edwards used his experience and expertise to apply his principles and methods to the facts of the matter at hand.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court to grant Plaintiff's Motion to Strike Defendant's Affirmative Defense of Qualified Immunity. Defendant Watson's seizure of Mr. Jordan was: (1) unreasonable; (2) unconstitutional; and (3) prohibited by clearly established law. Therefore, qualified immunity does not apply.

Plaintiff also respectfully requests this Court to deny Defendant's Motion to Bar the Testimony of Plaintiff's expert, Dr. Frank Edwards. Dr. Edwards' testimony is relevant, the probative value of his testimony outweighs its prejudicial effect, and he is qualified to testify as an expert. Therefore, Frank Edwards' testimony is admissible under all applicable rules of the FRE.

Respectfully Submitted

/s/ 1111 .

Team 1111
Attorneys for Plaintiff