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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
LAKEVILLE DIVISION**

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

CASE NO.: 2020-CV-000319

Plaintiff,

v.

SHERIFF DEREK MICHAELS in his official  
capacity as Sheriff of Midland County, and ERIC  
WATSON, an individual,

Defendants.

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**DEFENDANT’S MEMORANDUM IN SUPPORT OF  
DEFENDANT’S MOTION TO EXCLUDE AND IN OPPOSITION OF  
PLAINTIFF’S MOTION TO STRIKE**

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/s/ 2222  
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*Attorneys for the Defendant*

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## **INTRODUCTION**

Deputy Eric Watson was forced to make an impossible, split-second decision, that no individual ever wants to have to make. On February 14, 2019, Deputy Watson had to choose to take a life in order to protect the lives of another law enforcement officer, elementary school children, and other innocent bystanders. Deputy Watson's actions were produced by a unique set of circumstances, as all instances of officer-involved shootings are, and they should be judged with those circumstances in mind. Deputy Eric Watson has brought a motion to exclude the expert testimony of Dr. Frank Edwards, and is defending against a motion to strike his affirmative defense of qualified immunity.

## **STATEMENT OF THE CASE**

On February 14, 2019 at around 3 p.m., a teacher at Fort Hampton Elementary school, Mr. Lee McDonald, heard loud music with profanity coming from across the street. *Aff. Lee McDonald*, ¶ 4-7 (*hereafter* "McDonald"). Concerned for the children that were leaving the school, Mr. McDonald called in a noise complaint. *Id.*; *Aff. Deputy Eddie Rivera*, ¶ 10 (*hereafter* "Rivera"); *Aff. Deputy Eric Watson*, ¶ 13-14 (*hereafter* "Watson").

Deputy Eric Watson, a deputy for the Midland County Sheriff's Office, had just started his shift. *Watson*, ¶ 12. When the call came in, Deputy Watson was at the Sheriff's Station with Deputy Eddie Rivera, a fellow deputy with the Midland County Sheriff, and both deputies responded. *Rivera*, ¶ 9-11; *Watson*, ¶ 16.

When they arrived Deputy Watson could hear the music coming from 1501 58th Street South. *Watson*, ¶ 18. The deputies parked and Deputy Watson called in to

dispatch to let them know which house the music was coming from. Rivera, ¶ 17; Watson, ¶ 20. The deputies walked up the driveway to the front door and knocked loudly enough to be heard from the other side of the street but got no response. McDonald, ¶ 11; Rivera, ¶ 17-21; Watson, ¶ 21. Deputy Watson went to try knocking on a side door to no avail, while Deputy Rivera stayed by the front door. Rivera, ¶ 22; Watson, ¶ 22. Deputy Watson heard the music get even louder as he walked back toward Deputy Rivera. Watson, ¶ 24.

Mr. David Jordan opened the front door, and Deputy Rivera shouted to be heard over the music, “Sheriff’s Office, Sheriff’s Office.” Rivera, ¶ 24; Watson, ¶ 24. The door was wide open, and Deputy Watson could see into the foyer of the house. Watson, ¶ 25.

Mr. Jordan’s left hand was on the front door, and a small black handgun was in his right hand. Rivera, ¶ 26; Watson, ¶ 26. Deputy Rivera shouted “Gun, gun, gun, drop the gun, drop the gun, drop the gun.” Rivera, ¶ 27; Watson, ¶ 27. Deputy Watson drew his service weapon as he heard Deputy Rivera’s warnings and orders. Watson, ¶ 28. Deputy Watson saw Mr. Jordan begin to close the door and raise his right hand. *Id.* at ¶ 31.

In that moment Deputy Watson had to make a split-second decision. The door was closing, but Deputy Watson could see Mr. Jordan’s right hand being raised towards Deputy Rivera. *Id.* at ¶ 33. Deputy Watson thought that Mr. Jordan was going to shoot Deputy Rivera through the door, and if Mr. Jordan missed Deputy Rivera, fifty school children were just behind him, across the street, in the line of fire. *Id.* The door closed and Deputy Watson lost sight of Mr. Jordan when Mr. Jordan raised his right hand to his

hip area. Fearing for the life of Deputy Rivera and the children behind him, Deputy Watson fired his weapon. *Id.* at ¶ 35-36, 38. He then went to secure the back of the house, concerned that an armed suspect might attempt to escape. *Id.* at ¶ 42.

Deputy Watson fired in a vertical pattern, with the lowest shot being fired first, and the highest shot being fired last. *Id.* at ¶ 37. This incident was the first time in Deputy Watson's career that he had shot anyone. *Id.* at ¶ 39. Deputy Watson has not had any excessive force complaints lodged against him. *Id.* at ¶ 49.

Mr. Jordan died from the final shot fired by Deputy Watson. *Aff. Taylor Roberts*, ¶ 6-9. Mr. Jordan had an unloaded, stolen firearm in his back pocket. *Watson*, ¶ 54, 56. Deputy Watson identified it as being the object he saw in Mr. Jordan's hand. *Id.* at ¶ 55.

## ARGUMENT

### **I. THE COURT SHOULD EXCLUDE DR. FRANK EDWARDS' TESTIMONY BECAUSE THE TESTIMONY IS NOT RELEVANT AND CANNOT HELP THE JURY DETERMINE THE FACTS AT ISSUE. ALTERNATIVELY, THE UNFAIR PREJUDICE CAUSED BY THE TESTIMONY WOULD SUBSTANTIALLY OUTWEIGH ITS PROBATORY VALUE**

This Court should exclude Dr. Edwards' testimony for three reasons. First, an expert's testimony must assist a jury in understanding specific evidence in relation to the case, but Dr. Edwards' testimony is based on statistical models and would not clarify any specific fact for the jury in this case. Second, Dr. Edwards' testimony is not relevant to determine whether the use of force by Deputy Eric Watson was justified under the circumstances. Third, if Dr. Edwards is allowed to testify, his testimony would unfairly prejudice the jury against Deputy Watson and confuse the jury as to what they are

evaluating. This prejudice would substantially outweigh any possible probative value. The Defendant doesn't dispute the reliability of Dr. Edwards' methods or qualifications, but rather refutes the relevance and adequacy of the testimony. As such, the Court should exclude Dr. Edwards' testimony.

**A. Dr. Edwards' Scientific Expertise is Not Relevant and Would Not Help the Jury Determine Any Facts at Issue**

Per the Supreme Court's holding in *Daubert v. Merrell Dow Pharmaceuticals*, a trial court's gatekeeping function is to determine (1) whether the expert testimony can be admitted as scientific knowledge, and (2) whether it will assist the jury to understand or determine the facts at issue. *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 589, 592 (1993). A qualified expert witness may testify if "[t]he expert's scientific, technical, or other specialized knowledge will help the trier in fact to determine a fact in issue . . . ." Fed. R. Evid. 702, 28 U.S.C. "Rule 702's 'helpfulness' standard requires valid and scientific connection to the pertinent inquiry as a precondition to admissibility." *Daubert*, 509 U.S. at 592. The party introducing the expert evidence has the burden of providing its relevance. *Lust v. Merrell Dow Pharms., Inc.*, 89 F.3d 594, 598 (9th Cir. 1998).

Dr. Edwards' findings are based on data irrelevant to any factual determination. Dr. Edwards' sociological research is purely based on statistical data. It does not discuss any of the events of February 14, 2019, or Deputy Watson's actual professional conduct. The data is based on 380 stops for non-traffic misdemeanors and ordinance violations executed by the Midland County Sheriff's Office. Aff. Frank Edwards, ¶ 6-7 (*hereafter*

“Edwards”). There is no indication as to whether any of the data pertains to stops involving suspects with firearms, where the altercations took place, whether there were other officers or civilians in danger, or any other relevant circumstances related to the present case.

While Dr. Edwards’ findings do tend to show that the Midland County Sheriff’s Office suffers from a similar level of racial bias as the rest of law enforcement agencies across the nation, there is no correlation between the statistical data and Deputy Watson’s conduct. *Id.* at ¶ 10. Moreover, Deputy Watson started working for the Midland County Sheriff’s Office in March of 2017, whereas Dr. Edwards’ statistical review started with arrests made in February of 2016. The expert’s knowledge pertains, at least in part, to arrests made more than one year before the Defendant joined the Midland County Sheriff’s Office. The analyzed data also fails to identify the officers involved in those stops and does not show any discriminatory or biased behavior, or even any allegation of discriminatory or biased behavior, by Deputy Watson during his career. Thus, the study itself is uncorrelated to Deputy Watson or the events of February 14, 2019.

Dr. Edwards’ sociological knowledge has no connection to either the specific facts of the case or to Deputy Watson’s actual prior conduct. There is no evidence to indicate that Deputy Watson was responsible for any of the 380 stops analyzed by Frank Edwards. It is plaintiff’s burden to show that Dr. Edwards’ testimony would assist the jury in determining any fact at issue in the case, and they have failed to do so. As such, Dr. Edwards’ testimony cannot help the jury determine or understand the facts at issue and

does not meet the relevance requirement set forward by *Daubert* and Rule 702(a) and should not be admitted.

**B. Dr. Edwards' Testimony is Irrelevant in Determining Whether the Use of Deadly Force by Deputy Watson was Reasonable**

Irrelevant evidence is not admissible. Fed. R. Evid. 402. Evidence is relevant if: (1) it has a tendency to make a fact more or less probable; and (2) the fact is of consequence in determining the action. Fed. R. Evid. 401; *see United States v. Gomez*, 763 F.3d 845, 853 (7th Cir. 2014). A fact is “of consequence” when its existence would provide the jury with the basis to make an inference necessary to reach a verdict. *See United States v. McVeigh*, 153 F.3d 1166, 1190 (10th Cir. 1998); *see also Sims v. Great Am. Life Ins. Co.*, 469 F.3d 870, 882 (10th Cir. 2006) (“If . . . a defendant proffers evidence supporting a defense that is no longer permitted by state statute, that proffer is of no consequence to the action and therefore not properly provable.”).

1. Dr. Edwards' testimony does not show that Deputy Watson was racially biased when he decided to exercise lethal force against the armed suspect.

As discussed above, Dr. Edwards' findings are purely statistical and present no actual correlation with Deputy Watson's conduct. The testimony does not tend to prove that Deputy Watson, the only officer at issue in this case, shot the armed suspect because of racial bias. Moreover, Dr. Edwards' sociological study did not find that the arrests made by deputies of the Midland County Sheriff's Office were any more racially biased than arrests executed by other law enforcement professionals across the nation. Edwards at 10; *see generally* Frank R. Edwards et al., *Risk of Being Killed by Police Use of Force*

*in the United States by Age, Race-Ethnicity, and Sex*, 116 PROCEEDINGS NAT'L ACAD. SCI. 16793-98 (2019) (hereafter "Edwards' Research").

There is no proven correlation between the statistical data extracted from stops made by the Midland County Sheriff's Office, and Deputy Watson's professional conduct. Moreover, the study doesn't find a higher-than-national-average racial bias in the Midland County Sheriff's Office's arrest data. Thus, Frank Edwards' testimony shows nothing of relevance in relation to the present matter. The testimony would have no probative value regarding the specific facts at issue or the individual motivations of Deputy Watson.

2. Dr. Edwards' testimony does not prove that Deputy Watson's use of force was improper.

The shooting of a suspect constitutes a seizure under Fourth Amendment law. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985) ("[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."). The reasonableness of a seizure under the Fourth Amendment must be assessed objectively in light of the facts and circumstances known to the officer at the time of the seizure. *Scott v. United States*, 436 U.S. 128, 136 (1978) ("[t]he existence *vel non* of such a violation turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time). The intentions of an officer, good or evil, have no incidence on the reasonableness of use of force which is determined objectively. *Graham v. Connor*, 490 U.S. 386, 397 (1989). When determining reasonableness of use of force in a particular instance, the pressure of

split-second decisions in tense and uncertain circumstances must be taken into consideration. *Id.* at 396–97.

Here Deputy Watson’s intentions have no probative value for the jury to objectively judge the reasonableness of the seizure of the armed suspect. The jury will be instructed to assess the constitutionality of the use of force based on whether Deputy Watson could reasonably have believed that Mr. Jordan was endangering the lives or bodily integrity of others by pointing a firearm at Deputy Rivera. A subjective analysis of the officer’s psyche would be irrelevant.

Dr. Edwards’ expert opinion cannot provide the jury with a factual basis necessary to reach a verdict. Thus, the testimony fails to satisfy the material prong of Rule 401, and is both irrelevant and inadmissible according to Rule 402.

**C. Any Probative Value of Frank Edwards’ Testimony Would be Substantially Outweighed by Unfair Prejudice and Confusion of the Issues**

Relevant evidence can be excluded if its probative value is substantially outweighed by a danger of unfair prejudice or confusion of the issues. Fed. R. Evid. 403, 28 U.S.C. Evidence has probative value if it tends to make the existence of a material fact more or less likely. *United States v. King*, 713 F.2d 627, 631 (11th Cir. 1983). The degree of probative value is determined proportionally to its tendency to make a fact at issue probable. *United States v. Falco*, 727 F.2d 659, 662 (7th Cir. 1984). The Supreme Court interpreted “unfair prejudice” in Rule 403 as leading the jury to “declar[e] guilt on an improper basis” rather than on “proof specific to the offense charged.” *Old Chief v. United States*, 519 U.S. 172 (1997). The degree of prejudice of evidence is determined

accordingly to “the extent to which the jury might consider the evidence for purposes other than for what it was intended.” This is stated to occur when the evidence is likely to induce an emotional response from the jury. *Id.* If evidence might induce the jury to decide the case on an improper or emotional basis rather than the evidence presented, it is unfairly prejudicial. *United States v. Reese*, 666 F.3d 1007, 1016 (7th Cir. 2012) (citing to *United States v. Wantuch*, 525 F.3d 505, 518 (7th Cir.2008)).

While Dr. Edwards’ testimony might tend to show racial bias in the Midland County Sheriff’s Office, his testimony does *not* show that Deputy Watson’s specific conduct on February 14 was influenced at all by that bias. Moreover, Dr. Edwards’ statement and previous research shows that the alleged bias is common to law enforcement agencies across the nation. Edwards at 10; *see generally* Edwards’ Research.

Deputy Watson’s motivations are irrelevant to determining whether the use of deadly force was lawful. Therefore, Edwards’ testimony, even if found to be relevant, would only help the jury determine Deputy Watson’s internal motivations, an issue that is not material to the outcome of the action or any fact at issue. The probative value of the testimony is low if anything, while the testimony would be unfairly prejudicial to the Defendant by inflaming the passions of the jurors. Allegations of racism are currently an incredibly sensitive subject which has literally set dozens of cities across the nation ablaze. There is a serious danger of a juror acting emotionally rather than being guided by evidence in the case at issue.

The testimony would also serve to confuse the jury on the issues by presenting broad generalities within the Midland County Sheriff's Office as a potential explanation for Deputy Watson's specific use of force. This confusion further creates a risk that jurors will make a determination based on the expert's description of the department rather than what is actually at issue: Deputy Watson's actual conduct alone.

Introducing Dr. Edwards' sociological theories into the courtroom would allow plaintiff to associate a split-second decision made by Deputy Watson—who was facing an armed suspect—with the burning question of racial bias in law enforcement. Opening the door to the incendiary issue of racially motivated use of force by law enforcement would clearly confuse the jury on the issues and could induce a verdict based on emotions unrelated to the actual case, rather than an even-tempered and rational ponderation of the facts at issue.

Allowing sociological evidence, unrelated to deputy Watson's actual actions, impact his case would be unjust. The vast majority of law enforcement officers courageously put their lives on the line to keep ours safe. They do not deserve to be judged by the unprofessional behavior of a small minority. As such, the Court should exclude Dr. Edwards' testimony.

## **II. ERIC WATSON IS ENTITLED TO QUALIFIED IMMUNITY**

For qualified immunity to not apply, there must be evidence of a violation of a clearly established constitutional right, by an official who reasonably should have known that the conduct violated that right. The Plaintiff has failed to show either that a violation of a clearly established right occurred or that any reasonable officer would have known

his conduct violated a clearly established right. As such, the Court should deny Plaintiff's motion to strike Deputy Watson's affirmative defense of qualified immunity.

**A. The Standard for Qualified Immunity**

Qualified immunity protects certain government officials from civil damages unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity establishes protection for "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). In qualified immunity cases, the facts are taken in the light most favorable to the party asserting the injury, to evaluate the defendant's conduct for constitutional violations. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If the facts show a potential violation, the next step in the evaluation is whether the right that was allegedly violated was clearly established. *Id.* This step must take the specific context of the case into consideration and is not meant to a broad evaluation. *Id.* The right must be established clearly enough that a reasonable officer would know they were violating the right at the time the incident occurred. *Id.* at 202. The final step is then to determine if a reasonable officer in similar circumstances would have thought his conduct violated the alleged right. *Id.* at 205. The context in which the decision is made is relevant, particularly when involving officers in intense situations, requiring split-second decisions. *Id.* Even if an officer is mistaken as to what was going to occur, an officer is justified in using more force than is, in actuality, needed if they reasonably believe that a certain level of use of force is necessary. *Id.*

**B. There Was No Violation of a Clearly Established Right**

The use of deadly force is governed by the Fourth Amendment's protection from unreasonable search and seizure. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). Deadly force is permissible when an officer "has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." *Id.* at 11. This includes when a suspect threatens an officer with a weapon. *Id.*

While Mr. Jordan did have a right to be free from unreasonable seizure, Deputy Watson did not violate that right. Taken in a light most favorable to the plaintiff, the facts show that Mr. Jordan had a firearm out and, upon being ordered to put the weapon down, instead raised the weapon as he closed the door. The facts show that Mr. Jordan placed the weapon into his back pocket before his death. However, that does not establish a violation of his right to be free from unreasonable seizure, as the evaluation is at the time the incident occurred, and not after. *Saucier*, 533 U.S. at 202. Deputy Watson did not shoot Mr. Jordan after seeing him place the weapon in his back pocket. Deputy Watson shot Mr. Jordan as he closed the door after raising his gun in the direction of Deputy Rivera, fifty school children and their parents, teachers, and staff. As such, the Court should find there was no violation of Mr. Jordan's rights, and deny the plaintiff's motion to strike Deputy Eric Watson's affirmative defense of qualified immunity.

**C. No Officer Would Have Reasonably Believed the Actions Alleged Violated Mr. Jordan's Rights**

Even if the Court finds that Mr. Jordan's right against unreasonable seizure was violated due to Mr. Jordan placing the firearm in his back pocket, no reasonable officer

would have believed their conduct at the time was violating Mr. Jordan's rights. At the time, Deputy Watson was not aware of Mr. Jordan's intents, whatever they were. Ultimately, Deputy Watson's intentions are irrelevant to the issue at hand.

Deputy Watson was required to make a split-second decision and, upon seeing what looked like a firearm being raised and aimed not only at his partner, but at a group of fifty school children and others, Deputy Watson had to act. Mr. Jordan ignored a clear order to put down the gun issued by Deputy Rivera. Deputy Watson had probable cause to believe that Mr. Jordan posed serious harm, both to Deputy Rivera and the elementary school children, teachers, staff, and the parents present. No reasonable officer placed in the same position would believe that shooting Mr. Jordan to protect the lives of countless others would be a violation of his rights. As such, should the Court find a right was violated, the Court should find that no reasonable officer in the same position would have believed their conduct to be violating that right. Thus, the Court should deny Plaintiff's motion to strike Deputy Eric Watson's affirmative defense of qualified immunity.

### **CONCLUSION**

For the foregoing reasons, this Court should determine that the motion for the exclusion of plaintiff's expert be granted, and that the plaintiff's motion to strike defendant Deputy Eric Watson's affirmative defense of qualified immunity be denied.

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Date: 9/10/20

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