Team Number: 3000

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.

Case No. 2:20cv15994

DEFENDANT'S REPLY TO PLAINTIFF'S MOTION TO STRIKE AND MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE

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COMES NOW Defendant, Deputy ERIC WATSON ("WATSON"), and pursuant to Federal Rules of Civil Procedure 12(f) and Federal Rules of Evidence 401, 403, and 702, respectfully moves this Court to deny Plaintiff SHERYL JORDAN's ("Plaintiff"), as Personal Representative of the Estate of DAVID JORDAN, JR. ("JORDAN"), motion to strike WATSON's affirmative defense of qualified immunity and to grant WATSON's motion in limine to prohibit the testimony at trial of Plaintiff's expert witness, Frank Dr. Edwards, Ph.D. ("Dr. Edwards"). In support thereof, WATSON respectfully shows the Court as follows:

INTRODUCTION

Two distinct issues lay before this Court. First, WATSON shot and killed an armed civilian while the decedent pointed a gun at WATSON's partner. When sued under § 1983, WATSON pled qualified immunity. Qualified immunity—as a defense—requires factual and legal analysis, however Plaintiff moved to strike under Fed. R. Civ. P. 12(f) before the summary judgment stage. The issue is whether a motion to strike is the proper vehicle to resolve qualified immunity and whether the defense should be stricken at all.

Second, Plaintiff plans to present the testimony of Dr. Edwards, which would show statistics of the Midland County Sheriff's Office. Dr. Edwards would conclude that these statistics show a racial bias present in the office. But Dr. Edwards' inquiry is merely statistical analysis, did not research any facts occurring on the day in question, and did not concern WATSON as an individual. The issue is whether Dr. Edwards' testimony is irrelevant, unfairly prejudicial, and unhelpful for the jury.

WATSON prays that this Court deny Plaintiff's motion to strike WATSON's affirmative defense of qualified immunity and that the Court grant WATSON's Motion in Limine to prohibit Dr. Edwards' testimony.

STATEMENT OF FACTS

On February 14, 2019, WATSON, a deputy of three years in the Midland County Sheriff's Office with twenty years of experience, begins his day by answering a routine noise complaint with his newly-assigned partner Deputy Eddie Rivera. Watson Aff. ¶¶ 2, 5–6, 8–14; Rivera Aff. ¶¶ 8–11. Noise complaints are not criminal in nature but can lead to arrest if the person becomes violent. Rivera Aff. ¶¶ 12, 14. WATSON and Rivera proceed to JORDAN's house, across the street from an elementary school, to ask him to turn down his music. Watson Aff. ¶¶ 18–19; Rivera Aff. ¶¶ 15–18. After knocking on his front door and hearing no response, WATSON walks around the side of the house to try the side door. Watson Aff. ¶¶ 21–23.

Suddenly, WATSON hears his partner Deputy Rivera yell out, "Gun! Gun! Drop the gun! Drop the gun!" Watson Aff. ¶¶ 26–27; Rivera Aff. ¶ 27. Returning to the door, WATSON witnesses JORDAN standing in the open doorway holding something. Watson Aff. ¶ 29. WATSON, based off his twenty years of experience in law enforcement, believes it to be a gun. *Id.* at ¶¶ 2–3, 32. Deputy Rivera later described the object as a "small black handgun" and a "Glock." Rivera Aff. ¶ 26. Based on Deputy Rivera's warning to JORDAN and WATSON's own visual confirmation, WATSON believes JORDAN is holding a gun. Watson Aff. ¶ 32.

WATSON notices many potential harms. It is about 3:15 p.m. on a Thursday and JORDAN's front door is immediately facing an elementary school. Watson Aff. ¶¶ 12, 18–19. About fifty school children stand outside behind Deputy Rivera. *Id.* at ¶ 33. The only thing between the gun and those children are Deputy Rivera and a squad car. Watson Aff. ¶ 20. When WATSON sees JORDAN raise the gun in Deputy Rivera's direction, he must—in an instant—balance many probabilities. Watson Aff. ¶ 33. WATSON fears that JORDAN is about to shoot his partner. *Id.* He also knows if JORDAN misses, the shot could hit children. *Id.* As JORDAN heads back into the house, whether to get ammunition, secure the house, or any other purpose,[1] WATSON decides to eliminate the threat. *Id.* at ¶¶ 37–38. He fires four shots. *Id.* at ¶ 36. He runs to the back of the house to prevent further flight. *Id.* ¶ at 42.

Later, WATSON learned his shots killed JORDAN. *Id.* at ¶ 53. Medical examiners called to the scene found a small black gun in JORDAN's shorts, just like the gun Deputies Rivera and WATSON saw. *Id.* at ¶¶ 54–55; Photo of Gun in Decedent's Back Pocket. The gun was not loaded and was stolen. Watson Aff. ¶ 56.

Plaintiff filed the complaint for the present action on February 2, 2020 and served it on WATSON on February 21, 2020. *See generally* Pl.'s Compl.; Pl.'s Mot. To Strike ¶; Def.'s Mot. Lim. ¶ 1. The first count of the complaint is under 42 U.S.C. § 1983, alleging violations of Plaintiff's constitutional rights—specifically and only that WATSON deprived JORDAN of "[(A)] the freedom from the use of excessive and unreasonable force;

[1] WATSON does not know what purpose JORDAN has when returning indoors. *See generally* Watson Aff.

[(B)] the freedom from unreasonable seizure; and [(C)] the freedom from deprivation of life and liberty without due process of law." Pl.'s Compl. ¶¶ 23–27. The only other count is a state law claim of negligence against Co-defendant Sheriff Derek Michaels—Deputy Rivera and WATSON's superior. Pl.'s Compl. ¶¶ 28–32. No other claim is alleged in this complaint. *See generally* Pl.'s Compl.

Without having ever previously alleged racial bias against WATSON, Plaintiff served a Notice of Expert Witness on WATSON on August 1, 2020—nearly six months after they filed the complaint. *See* Pl.'s Notice of Expert Witness. Plaintiff's proffered expert witness, Dr. Edwards, is an expert in sociology who "focuses on how systems of social control produce and reinforce inequality." Edwards Aff. ¶ 3. His qualifications, recognitions, and accolades are legion, having sixteen publications, five awards and fellowships, and three professional degrees. *Id.* at ¶¶ *1–4*.

"At [Plaintiff's] request, [Dr. Edwards] conducted a review of Midland County Sheriff's department data" and arrived at an opinion "that racial bias plays a statistically significant role in whether Midland County Sheriff's officers decide to draw their weapons during a stop." *Id.* at ¶ 5. This review alleges a disparate impact on minorities; specifically, that 77% of white officers drew their weapon on African American men, ages 18–35; as compared to 33% who drew their weapon on white men of the same age. *Id.* at ¶ 9. To conduct his research, Dr. Edwards "analyzed the correlation of [] stops where the Sheriff's officer drew his/her weapon, to the detainee's race and age." *Id.* at ¶ 7. At no point is it mentioned that Dr. Edwards ever interviewed, studied, researched, asked about, thought about, or even knew of Deputy WATSON. *See generally id.* The totality of this expert's

sworn statement that bears on his review of Midland's Sheriff's department comprises no more than six paragraphs. *See id.* at ¶¶ 5–10.

Plaintiff anticipates that Dr. Edwards will testify beyond the Department's disparate impact—specifically stating that "Dr. Edwards will testify regarding the racial bias present at Midland County Sheriff's Office and the impact that the racial bias had on Deputy Eric WATSON's actions . . . ." Pl.'s Notice of Expert Witness. As of yet, Plaintiff has added no amended complaint to include an Equal Protection claim or anything similar.

ARGUMENT

I. THE COURT SHOULD DENY PLAINTIFF'S MOTION TO STRIKE BECAUSE THE STRIKING CONTEXT IS IMPROPER FOR MERIT-BASED CLAIMS AND THE QUALIFIED IMMUNITY DEFENSE IS WELL–FOUNDED.

"[C]ourt[s] may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Insufficiency of an affirmative defense is judged by whether the defense gives notice to the plaintiff. *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015). Motions seeking to strike one or more affirmative defenses are "generally disfavored." *Walsh v. City of New York*, 585 F. Supp. 2d 555, 557 (S.D.N.Y. 2008). To prevail on a such a motion, the moving party must show that (1) no facts exist which allow the defense to succeed; (2) there is no question of law which, when resolved, allows the defense to succeed; and (3) that the

moving party is prejudiced by the inclusion of the defense.[2] *Tardif v. City of New York,* 302 F.R.D. 31, 32 (S.D.N.Y. 2014).

A. Plaintiff Rushes This Motion to Strike to Avoid a Proper Proceeding on the Merits

Courts have noted that arguments, which are in truth based on the merits of the case, "should not be addressed on a motion to strike" but instead held until dispositive motions may occur. *Quintana v. Baca,* 233 F.R.D. 562, 565 (C.D. Cal. 2005) (denying a 12(f) motion to strike the affirmative defense of qualified immunity of a sheriff). Courts may commit reversible error when granting a motion to strike qualified immunity before summary judgment. *See e.g.*, *Atkins v. Pickard,* 298 Fed. Appx. 512, 513 (7th Cir. 2008). (holding 12(f) motions are "not a good fit" for resolving issues like qualified immunity and describing the court's error as "jump[ing] the gun").

WATSON pled the affirmative defense of qualified immunity, as was required. By so pleading, WATSON preserved his defense and gave Plaintiff notice of the defense so that JORDAN could knowledgably and strategically conduct discovery. However, instead of proceeding to discovery in proper, Plaintiff moved to strike the defense a mere twenty days after WATSON's answer was filed.

To succeed in striking WATSON's affirmative defense, Plaintiff must show that no facts exist which would give WATSON qualified immunity. This requires a showing that

[2] WATSON stipulates that were qualified immunity to exist in this case that JORDAN would be prejudiced by its inclusion. Therefore, no further discussion of the third prong will be discussed.

the officer-in-question violated constitutional rights established as a matter of law (under the *Pearson* and *Saucier* standard). *See* Part B, *infra*.

Plaintiff cannot show facts which satisfy these prongs. The facts will ultimately show that—contrary to Plaintiff's assertion—WATSON acted in defense of others. WATSON's actions were reasonable and not contrary to any of JORDAN's rights. By so acting, WATSON remained within the legal safety of qualified immunity. *See* Part B, *infra*.

Plaintiff cannot meet the burden to prove that WATSON's qualified immunity is immaterial, insufficient, impertinent, or scandalous. Therefore, WATSON should be allowed to maintain this affirmative defense until proper disposition.

B. WATSON Is Immune from Liability Under the Doctrine of Qualified Immunity Because He Acted as a Reasonable Sheriff.

42 U.S.C. § 1983 allows anyone deprived of "any rights, privileges, or immunities secured by the Constitution and laws" by a peace officer or other state government authority to sue said officer in an action at law. Plaintiff sued WATSON under § 1983 for excessive force, wrongful death, and deprivation of life and liberty without due process of law as protected by the Fourth and Fourteenth Amendments. U.S. Const. amends. IV, XIV.

However, government officials are immune from liability for civil damages if their conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). To determine whether qualified immunity applies, the Court asks whether WATSON's conduct violated a constitutional right and whether that right was clearly established. *Id.* at 232–33, 243 (citing *Saucier v. Katz*, 553 U.S. 194, 201 (2001)). "In other words, immunity

protects all but the plainly incompetent or those who knowingly violate the law." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curium). WATSON's actions are judged from the point of view of "a reasonable officer on the scene" and not with "20/20 vision of hindsight." *Id.* Each inquiry depends on the facts of the specific case, and the "calculus of reasonableness" must account for the split-second decision making required by officers in the face of uncertain, mercurial, perilous situations. *Id.* For these reasons, WATSON is entitled to qualified immunity "unless the existing precedent 'squarely governs' the specific facts at issue." *Id.* at 1153.

(1) None of JORDAN's Constitutional Rights Were Violated Because WATSON Acted as a Reasonable Officer By Protecting His Partner and Schoolchildren

Law on excessive force depends heavily on the unique facts of each case. Accordingly, officers are entitled to qualified immunity unless precedent "squarely governs the specific facts at issue." *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019). Courts weigh reasonableness by examining these prongs: (1) the severity of the crime, (2) whether the suspect poses threat to the safety of the officers or others, and (3) whether the suspect is attempting to flee. *Kisela*, 138 S. Ct. at 1152.

All of the prongs weigh in favor of WATSON. Although the first prong of reasonableness may have weighed in favor of Plaintiff initially (i.e., the noise complaint was not severe), when JORDAN raised and pointed a gun at Rivera, he committed the crime of aggravated assault on a police officer. Fla. Stat. § 784.07 (2020). The third prong, whether the suspect was fleeing, weighs also for Defendants because WATSON could reasonably conclude that JORDAN was fleeing when he closed the door. In fact, WATSON

did so conclude, as is shown by his actions to secure the backdoor (i.e., to prevent further flight by JORDAN or others) and to not enter the house because of the armed suspect inside.

The second prong—defense of others—deserves particular weight. *Garczynski v. Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009) (noting that the government has a heavy interest in protecting the safety of its officers and the public). When defending others, WATSON's reasonableness needs only "probable cause to believe" that the person in question posed a threat of serious physical harm to the officer or others. *Kisela*, 138 S. Ct. at 1148. If WATSON has such a belief, then it is not constitutionally unreasonable to use deadly force and to prevent flight using deadly force. *Id.* Probable cause "is not a high bar," *Kaley v. United States*, 134 S. Ct. 1090, 1103 (2014), and demands only the "kind of 'fair probability' on which 'reasonable and prudent people, not legal technicians, act.'" *Id.*; *see also Rushing v. Parker*, 599 F.3d 1263, 1268 (11th Cir. 2010) (granting qualified immunity to an officer despite noting the officer's method of determining probable cause was "by no means perfect").

WATSON believed three things when he fired his weapon: first, that JORDAN had a weapon which was aimed in Deputy Rivera's direction; second, that behind Deputy Rivera were fifty or so elementary schoolchildren; and third, that JORDAN was holding a gun. Courts have determined in similar situations that such facts give probable cause to believe that a threat of harm is imminent. In *Penley v. Eslinger*, police shot a boy who used a toy gun to create a standoff at a school. 605 F.3d 843, 845 (11th Cir. 2010). The Eleventh Circuit held that it did not matter whether the threat was real, only that it was reasonably

perceived as real. *Id.* In *Kisela v. Hughes*, 138 S. Ct. 1148 (2018), officers shot a suspect hacking a tree with her knife. Although the suspect was not within six feet of another person and did not point the knife at anyone, police officers shot her. *Id.* at 1151. WATSON's actions are consistent with these precedents and were made in a good faith effort to prevent harm to a fellow officer and to the public.

Because WATSON acted in defense of others, there was no excessive force, wrongful death, or deprivation of life contrary to the Fourth or Fourteenth Amendments. Therefore, Plaintiff cannot satisfy the first prong to escape qualified immunity—that a constitutional right was violated.

(2) WATSON Did Not Violate Any of JORDAN's Constitutional Rights That Were Clearly Established at the Time of the Incident.

In *City of Escondido*, the Supreme Court stressed "the need to identify a case where an officer acting under similar circumstances was held to have violated the Fourth Amendment" or if no such case exists, the need for precedent that puts the "lawfulness of the particular [action] *beyond debate*." 139 S. Ct. 500, 504 (2019) (emphasis added). WATSON anticipates Plaintiff may argue two points not addressed above.

First, that WATSON failed to warn JORDAN, however warning is only required when "feasible." *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (holding a failure to warn was not violative of clearly established law when other officers had presumably already warned suspect). Moreover, in *Pauly*, the Court held that so long as the officer operated under the reasonable assumption that another officer gave warning, his own failure to warn was not fatal. *Id.* In the present case, Deputy Rivera did instruct JORDAN to drop his gun, which

could be reasonably understood as a verbal warning. *See Rogers v. King*, 885 F.3d 1118, 1122 (8th Cir. 2018) (holding that officers pointing guns at an armed suspect while yelling to drop the gun would give the suspect "adequate notice" that escalation could lead to deadly force).

Second, the Plaintiff may argue that JORDAN was retreating, and that officers may not use deadly force when a suspect is retreating. However, this argument is also flawed. In cases Plaintiff may cite for this proposition like *Cole Estate of Richards v. Hutchins*, 959 F.3d 1127 (8th Cir. 2020) and *Ludwig v. Anderson*, 54 F.3d 465 (8th Cir. 1995), the threat of harm had already passed when the suspects fled. *Cole Estate*, 959 F.3d at 1130–31 (the decedent had a rifle pointed at the ground for at least five seconds before he walked into his house); *Ludwig*, 54 F.3d at 469 (the suspect had already been sprayed with mace and run away). In the present case, on the other hand, JORDAN was actively raising a gun in Deputy Rivera's direction—simultaneously endangering the fifty schoolchildren behind him—when closing the door to the house. WATSON did not deal with a bygone threat, and therefore WATSON acted reasonably.

In sum, because WATSON acted reasonably, the Court should not strike his affirmative defense of qualified immunity.

II. THE COURT SHOULD GRANT WATSON'S MOTION IN LIMINE TO PROHIBIT DR. EDWARDS' TESTIMONY BECAUSE IT IS IRRELEVANT, UNFAIRLY PREJUDICIAL, AND IT WILL NOT HELP THE JURY UNDERSTAND THE EVIDENCE OR DETERMINE A FACT AT ISSUE.

WATSON stipulates that Dr. Edwards is qualified to be tendered as an expert witness and does not contest the reliability of his methodology. Yet even where an expert

is so qualified, the opinion is nonetheless inadmissible unless it fully complies with the entirety of Federal Rules of Evidence 401, 403, and 702. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 591, 595 (1993). Therefore, WATSON's presentation to the court here are limited to the following points: (1) Dr. Edwards' testimony is not relevant under Rule 401; (2) Dr. Edwards' opinion is unfairly prejudicial under Rule 403; and (3) Dr. Edwards' testimony will not help the trier of fact understand the evidence nor determine a fact in issue under Rule 702.

A. Dr. Edwards' Testimony is not Relevant Because WATSON's Alleged Bias is Not of Consequence and the Reasonableness of WATSON's Actions are not More or Less Probable Based on Such Bias.

Dr. Edwards' testimony is not probative of the reasonableness of WATSON's actions and WATSON's alleged racial bias is not an issue in this case. Evidence is only admissible if it is relevant and not otherwise prohibited. *See* Fed. R. Evid. 402. "'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.'" *Daubert*, 509 U.S. at 587 (quoting Fed. R. Evid. 401).

Courts have found evidence of discrimination to be irrelevant where constitutional claims are brought under provisions other than the Equal Protection Clause. *Whren v. United States*, 517 U.S. 806, 813 (1996) ("[T]he Constitution prohibits selective enforcement of the law based on . . . race[,] [b]ut the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause.").

Dr. Edwards' testimony should be excluded because whether WATSON is a racist is not "of consequence to the determination of the action." Fed. R. Evid. 401. The facts at

issue here are whether WATSON deprived JORDAN of his freedom from (1) "the use of excessive and unreasonable force;" (2) "unreasonable seizure;" and (3) "deprivation of life and liberty without due process of law." Racial bias is not listed as an element in the complaint, no amended complaint has been filed, and no existing element in this action requires even an implicit showing of racial bias. If Plaintiff wanted to bring in evidence of bias, she should have made an Equal Protection claim— the proper avenue for "objecting to intentionally discriminatory application of the laws." *Whren*, 517 U.S. at 813. On these grounds alone, Dr. Edwards' testimony is not relevant.

Similarly, Dr. Edwards' testimony of racial bias does not have any tendency to make the reasonableness of WATSON's actions "more or less probable than [they] would be without [such] evidence." *Daubert*, 509 U.S. at 587; Fed. R. Evid. 401. Reasonableness does not turn one way or the other with or without Dr. Edwards' allegations of racial bias, and therefore, evidence to that effect is not relevant.

B. Dr. Edwards' Testimony is Unfairly Prejudicial Because Focusing on Racism Distracts the Jury From the Relevant Issues of the Case.

Even if Dr. Edwards' testimony is found to have some relevance to this case, his testimony should be barred because any proof it offers is miniscule when compared to its prejudicial effect. Courts "may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Fed. R. Evid. 403.

"Unfair prejudice" is defined as "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Advisory Committee's Notes on Fed. R. Evid. 403, 28 U.S.C.App., p. 860; *see also Old Chief v.*

United States, 519 U.S. 172, 181 (1997) ("[T]he risk that a jury will convict for crimes other than those charged—or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment—creates a prejudicial effect that outweighs ordinary relevance.").

As should be the case here, courts have specifically found that allegations of racial bias, even where relevant, are unfairly prejudicial. *See e.g., Beck v. Koppers, Inc.*, No. CIV.A. 3:03CV60-P-D, 2006 WL 2228878, at *2 (N.D. Miss. Apr. 3, 2006) ("[E]ven if the evidence of alleged racism were legally relevant under Rule 401, the probative value of such evidence would clearly be substantially outweighed by unfair prejudice since the jury might concentrate on racism rather than whether or not the defendants caused pollution."); *Manuel v. City of Chicago*, 335 F.3d 592, 597 (7th Cir. 2003) (affirming district court's exclusion of evidence that supervisor discriminated against other employees based on race because such evidence had slight probative value and significant potential for prejudice).

Further, the jury's vulnerability to unfair prejudice is especially exposed when an expert is testifying, and judges consequently have heightened control over experts when conducting a 403 balancing test. *Daubert*, 509 U.S. at 595 ("Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses").

Here, Plaintiff attempts to take advantage of the jury's vulnerability to the heightened persuasive power of an expert, and the court should not allow it. Dr. Edwards'

publications, awards, fellowships, degrees, and other decorations lure the jury's focus away from the heart of the dispute. Dr. Edwards is merely a conduit for Plaintiff to paint WATSON as a "bad person." *See Old Chief*, 519 U.S. at 181. No mention of racial bias exists anywhere in the record aside from Dr. Edwards' testimony itself. If admitted, Dr. Edwards' speculative testimony about racism will impermissibly provoke the jury's sensitivity against racial animus. Resultantly, the jury will be needlessly confused, misled, and inflamed.

Therefore, in the interest of fairness and efficiency, the Court should find that Dr. Edwards' testimony is too prejudicial to be admitted.

C. Dr. Edwards' Testimony Will Not Help the Trier of Fact Understand the Evidence or Determine a Fact at Issue

Dr. Edwards' testimony is inadmissible because it does not fit the facts of the case and the jury possesses sufficient expertise of this type on its own. To admit expert testimony into evidence, the expert must "help the trier of fact in understanding the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). If "[e]xpert testimony . . . does not relate to any issue in the case," it "is not relevant and, ergo, non-helpful." *Daubert*, 509 U.S. at 591. This consideration has been characterized "as one of 'fit.'" *Id.*

Courts have specifically found expert "opinion [to be] *unhelpful* to a trier of fact if it attempts to apply a general observation about a larger group to particular individuals whose conduct is in question." *Equal Employment Opportunity Comm'n v. S&B Indus., Inc.*, No. 3:15-CV-0641-D, 2017 WL 345641, at *4 (N.D. Tex. Jan. 24, 2017) (emphasis added) (finding inadmissible an expert's opinion that a group was discriminatory where

the opinion was used to apply the stereotype to individuals within that group); *see also Rowe Entm't, Inc. v. William Morris Agency, Inc.*, No. 98 CIV. 8272 (RPP), 2003 WL 22272587, at *7 (S.D.N.Y. Oct. 2, 2003) (holding that expert testimony of institutionalized discrimination in the concert industry was not relevant in an action against specific members of that industry).

Even where expert testimony fits the facts of a case, it is still "properly . . . excluded . . . if [the jury], as [people] of common understanding, are as capable of comprehending the primary facts and of drawing correct conclusions from them as are [expert] witnesses . . . ." *Salem v. U.S. Lines Co.*, 370 U.S. 31, 35 (1962). Unless the subject of the opinion is "so complicated as to require the testimony of an expert witness," *Wilson v. Muckala*, 303 F.3d 1207, 1218 (10th Cir. 2002), the jury is more than equipped to "adequately weigh these problems through common-sense evaluation." *United States v. Thevis*, 665 F.2d 616, 641 (5th Cir. 1982).

As discussed *supra*, race is not related to any element in this dispute, and evidence to that effect, even from an expert, does not help a jury determine any fact *at issue* in this case. *See* Fed. R. Evid. 702(a). Expert testimony of racial bias does not lend understanding to whether JORDAN raised a gun towards WATSON's partner, whether WATSON should have warned JORDAN, whether JORDAN was fleeing, or whether JORDAN's behavior threatened schoolchildren. The testimony is therefore pointless.

Dr. Edward's research regarding the Midland County Sheriff's Office not only fails to fit the issues in dispute, it also fails to fit WATSON individually. Absent more evidence, the analytical gap between Dr. Edwards' observation—that white officers in Midland

County draw their weapon on African American men more often than on white men—and his opinion that WATSON individually is racially biased is too wide to justifiably bridge. This logical fallacy is the same that was fatal to the plaintiff's argument in *Rowe*. *See Rowe*, 2003 WL 22272587, at *7. Therefore here, just as in *Rowe*, the Court should find Dr. Edwards' opinion unhelpful.

Dr. Edwards' testimony is also not needed because the concept of disparate impacts is well within an ordinary juror's understanding. Dr. Edwards' opinion is not complicated. It comprises a grand total of six short paragraphs and states little more than that a disparate impact exists in the Midland County Sheriff's Office. The jury does not need an expert to insult their intelligence.

In sum, Dr. Edwards' testimony presents an inordinate emphasis on a non-issue. Dr. Edwards' testimony does not fit because race is not an element in the cause of action, and because generalizations about the Midland County Sheriff's Office do not speak to WATSON individually. The jury can find the necessary facts without this expert, so the Court should not waste their time by admitting unhelpful testimony.

PRAYER FOR RELIEF

WATSON prays this Court deny Plaintiff's motion to strike WATSON's affirmative defense of qualified immunity. Additionally, WATSON respectfully requests that the Court grant his motion in limine against Plaintiff's Expert Witness Dr. Edwards, as his testimony is irrelevant, unfairly prejudicial, and unhelpful for the jury.

Respectfully submitted,

WRIGHT & WRIGHT, P.A.
Attorneys for Defendants
1401 Gulfport Boulevard, Suite 1300
Fort Hampton, Florida 33705
Telephone (555) 555-6789
Telecopier (555) 555-9876
Email: wright@wrightandwright.com

BY***s/ Elizabeth M. Wright***
ELIZABETH M. WRIGHT
Fla. Bar No. 9889001