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

PLAINTIFF'S MEMORANDA OF LAW IN SUPPORT OF MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSE AND IN RESPONSE TO DEFENDANT'S MOTION IN LIMINE

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COMES NOW Plaintiff, SHERYL JORDAN ("Plaintiff"), and pursuant to Federal Rules of Civil Procedure 12(f) and Federal Rules of Evidence 401, 403, and 702, respectfully moves this Court to strike Defendant Deputy ERIC WATSON's ("WATSON") affirmative defense of qualified immunity and to strike 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, Plaintiff respectfully shows the Court as follows:

INTRODUCTION

Two distinct issues lay before this Court. First, when sued under § 1983, WATSON pled qualified immunity, which Plaintiff then moved to strike under Fed. R. Civ. P. 12(f) because it is redundant, immaterial, impertinent and scandalous. The issue is whether WATSON—who shot JORDAN four times without belief that he posed an imminent threat, without warning, as JORDAN attempted to flee—is entitled to qualified immunity when his actions make the defense invalid as a matter of law.

Second, WATSON filed a motion in limine to prohibit Dr. Edwards' testimony under Federal Rules of Evidence 401, 403, and 702. Dr. Edwards is a highly decorated sociologist and assistant professor in the School of Criminal Justice at Rutgers University in Newark, New Jersey, who researches how systems of social control (such as police forces) produce and reinforce inequalities, specifically those that draw on an individual's various identities (i.e., race). Dr. Edwards' testimony on racial bias implicates whether WATSON acted with good faith and without malice, which is a fact of consequence. The issue is whether Dr. Edwards' testimony, which is relevant, helpful to the jury, and not

unfairly prejudicial, should be allowed to aid the jury in considering facts of consequence in this case.

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

STATEMENT OF FACTS

WATSON is a forty-year-old white male, and an officer for the Midland County Sheriff's Office with over twenty years of law enforcement experience. Watson Aff. ¶ 5, 15. The deceased, JORDAN, was a thirty-three-year old black male and a father of three children. Medical Examiner Report; Pl.'s Compl. ¶ 3. On February 14, 2019, WATSON shot JORDAN at least three times through JORDAN's closed front door, as JORDAN attempted to flee to the safety of his own home. Roberts Aff. ¶ 6; Diagram of Front Door; Medical Examiner Report.

Earlier that day, WATSON and another officer, Deputy Eddie Rivera, arrived at JORDAN's home in Fort Hampton, Florida in response to a reported "noise disturbance." Watson Aff. ¶ 15. A noise disturbance is a Municipal Code violation with a maximum penalty of 500 dollars; it is not an arrestable offense. Pl.'s Compl. ¶ 12; Rivera Aff. ¶ 4. Upon arriving at JORDAN's home in Fort Hampton, a neighborhood described by a Midland County police officer as "troubled" due to "drugs, gangs, and violence," WATSON banged loudly on both the front and side doors—not announcing himself or warning JORDAN who might be outside. Rivera Aff. ¶¶ 19, 24; McDonald Aff. ¶ 11.

When JORDAN opened his windowless door in response to the loud banging, Deputy Rivera shouted "gun, gun, gun." Watson Aff. ¶ 23; Pl.'s Compl. ¶ 15. Before seeing JORDAN, WATSON drew and aimed his weapon. Watson Aff. ¶ 28. As Deputy Rivera shouted, JORDAN quickly shut his front door, attempting to flee into the safety of his home. McDonald Aff. ¶ 14. Upon perceiving that JORDAN held "something small and dark" in his right hand, WATSON formed an *uncertain* belief that JORDAN had a gun. Watson Aff. ¶¶ 31–32. Without warning, and despite that WATSON "did not see [the potential gun] specifically aimed at anybody," he fired his weapon "rapidly four times at . . . JORDAN through his front door *as it was closing*." *Id.* at ¶¶ 35–36 (emphasis added); At least two of WATSON's four shots struck JORDAN from behind his completely closed door. Roberts Aff. ¶¶ 7–8. Those two bullets passed through JORDAN's door and entered his abdomen and brain, leaving fragments of wood inside the wounds. *Id*. One of WATSON's bullets entered JORDAN's skull, instantly cutting off all motor and sensory function. *Id.* at ¶¶ 6, 9. Although an unloaded gun was found tucked in the back pocket of the deceased JORDAN's pants, the medical report indicates that the weapon could not have been in his hands at the time WATSON fired his weapon because "JORDAN would not have had the ability to hold on to a gun or put a gun in his back pocket after he sustained the gunshot wound to the head*." Id.* at ¶ 13.

When WATSON killed JORDAN, there was no gun in JORDAN's hands, his windowless door was closed, and his music was not playing. *Id*. at ¶¶ 8, 13; McDonald Aff. ¶ 18.

Plaintiff filed her complaint for the present action on February 2, 2020 and served it on WATSON on February 21, 2020. *See generally* Pl.'s Compl.; 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 that WATSON deprived JORDAN of "[(A)] the freedom from the use of excessive and unreasonable force; [(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.

Plaintiff then served a Notice of Expert Witness on WATSON on August 1, 2020. *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. Edwards Aff. ¶¶ 1-4. "At [Platiniff'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 weapon during a stop." Edwards Aff. ¶ 5. This review confirms 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. Edwards Aff. ¶ 9.

ARGUMENT

Plaintiff requests that the Court strike WATSON's affirmative defense of qualified immunity and further requests that the Court denies WATSON's motion in limine to prohibit the testimony of Plaintiff's proffered expert witness, Dr. Edwards.

The Court should dismiss WATSON's affirmative defense of qualified immunity because WATSON's own testimony demonstrates that he violated clearly established law, making the defense invalid as a matter of law. Specifically, although WATSON falsely (and uncertainly) believed JORDAN had a gun in his right hand at the time of the shooting, WATSON violated clearly established law because he shot JORDAN without belief that the gun was aimed at anyone, while JORDAN was retreating, and without warning.

Additionally, the Court should dismiss WATSON's motion in limine to prohibit testimony by Plaintiff's proffered expert witness, Dr. Edwards, because his testimony is relevant, its probative value will substantially outweigh any prejudicial effect, and it will help the jury understand the evidence and assist in determining a fact at issue in this case.

I. THE COURT SHOULD STRIKE WATSON'S AFFIRMATIVE DEFENSE BECAUSE IT IS INVALID AS A MATTER OF LAW

The Court should strike WATSON's affirmative defense of qualified immunity because his actions—shooting without conviction that JORDAN was aiming a weapon at anyone, without warning, and while JORDAN fled—are clear violations of the Fourth and Fourteenth Amendments' prohibitions on excessive force, making the defense invalid as a matter of law.

"The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "Affirmative defenses are insufficient as a matter of law if they do not meet the general pleading requirements of Rule 8(a) of the Federal Rule of Civil Procedure, which requires 'a short and plain statement' of the defense." *Mid–Continent Cas. Co. v. Active Drywall S., Inc*., 765 F. Supp. 2d 1360, 1361 (S.D. Fla. 2011) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "An affirmative defense may also be stricken . . . if: (1) on the face of the pleadings, it is patently frivolous, or (2) it is clearly invalid as a matter of law." *Pujals ex rel. El Rey De Los Habanos, Inc. v. Garcia*, 777 F. Supp. 2d 1322, 1327 (S.D. Fla. 2011). "Ultimately, whether to . . . strike lies within the sound discretion of the district court." *Ross v. White*, 2:17-CV-04149-ODW-JC, 2018 WL 4808535, at *8 (C.D. Cal. Oct. 2, 2018).

Qualified immunity should be granted if: (1) the facts indicate a violation of a constitutional right; and (2) that right was clearly established at the time of the Defendant's misconduct. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Qualified immunity shields officials from liability when they do not "violate clearly established federal statutory or constitutional rights of which a reasonable person would have known." *Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2013).

Questions of qualified immunity should be determined at the earliest possible point of litigation because it is "an immunity from suit rather than a mere defense to liability." *Walters v. Freeman*, 572 Fed. App'x 723, 726 (11th Cir. 2014).

A. The Court Should Strike WATSON's Qualified Immunity Defense Because He Acted Objectively Unreasonably and Violated Clearly Established Civil Rights

The Fourth Amendment ensures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." U.S. Const. amend. IV. An officer's use of deadly force is a "seizure" under the Fourth Amendment. *Smith v. Kilgore*, 926 F.3d 479, 485 (8th Cir. 2019). Thus, the Fourth Amendment's reasonableness requirement, prohibiting excessive force, limits an officer's ability to use deadly force. *Cole Estate of Richards v. Hutchins*, 959 F.3d 1127, 1132 (8th Cir. 2020).

The Fourteenth Amendment states that no person shall be deprived "of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The Supreme Court has indicated a link between the Fourteenth and Fourth Amendments' excessive force standards. *See Kingsley v. Hendrickson*, 576 U.S. 389, 399-402 (2015). In *Kingsley*, the Court held that a rule of "objective reasonableness" governed a pretrial detainee's Fourteenth Amendment excessive force claim. *Id.*

Although courts consider the "totality of the circumstances" in determining whether deadly force was excessive and objectively unreasonable, the Eight Circuit has identified a few particularly relevant factors: (1) whether a suspect—though armed—actually aimed his weapon at someone; (2) whether a suspect flees; and (3) whether an officer provides a verbal warning before using deadly force. *Cole Estate*, 959 F.3d at 1132–33.

The court should strike WATSON's affirmative defense of qualified immunity because it was objectively unreasonable to shoot JORDAN as he fled, without warning, and without belief that JORDAN aimed a weapon at anyone.

(1) WATSON Used Excessive Force Because WATSON Did Not Believe That JORDAN Aimed a Gun, or Otherwise Posed an Imminent Threat.

"Generally, an individual's *mere possession* of a firearm is not enough for an officer to have probable cause to believe that [an] individual poses an immediate threat of death or serious bodily injury; the suspect must also point the firearm at another individual . . . ." *Cole Estate*, 959 F.3d at 1132 (emphasis added); *see King v. Taylor*, 694 F.3d 650, 653, 662–63 (6th Cir. 2012) (holding that using deadly force was unreasonable if the suspect, who had made verbal death threats, was not aiming the gun at the officers "just before he was shot"); *see also Brandenburg v. Cureton*, 882 F.2d 211, 213, 215 (6th Cir. 1989) (noting that an officer's use of deadly force would be unreasonable even though a suspect had threatened to kill and fired warning shots at the officer because the suspect was not "aiming his weapon" at the officer when he was shot).

Although WATSON had an uncertain belief that JORDAN held a gun, WATSON testified under oath that he did not see the gun specifically aimed at anyone. Therefore, under *Cole Estate*, WATSON acted unreasonably because no one was under imminent threat of violence. This assumes that a gun was even in JORDAN's hand; a dubious proposition given that JORDAN could not have been holding the unloaded gun found in his pants at the time that WATSON shot and killed him because WATSON's last shot penetrated JORDAN's brain, cutting off all motor function.

Because WATSON shot JORDAN without belief that JORDAN was aiming a gun at anyone, WATSON violated the Fourth and Fourteenth Amendments' prohibitions on excessive force.

(2) WATSON Used Excessive Force Because JORDAN Was Fleeing When WATSON Fatally Shot Him.

"[T]he law [is] clearly established such that [an] officer could be expected to know that shooting [an] individual seconds after he fled . . . would violate his constitutional rights." *Cole Estate*, 959 F.3d at 1135; *Id*. at 1134 (concluding that the use of deadly force on an armed suspect who "was visibly retreating" was not objectively reasonable); *see also Ludwig v. Anderson*, 54 F.3d 465, 469 (8th Cir. 1995) (finding an officer's use of deadly force objectively unreasonable because the officer shot a man "a few seconds" after the man had turned and took flight).

WATSON admits that he shot JORDAN as he was trying to escape. Like the suspects in *Cole Estate* and *Ludwig*, JORDAN was fleeing when WATSON fired his weapon "rapidly four times at . . . JORDAN *through* his front door *as it was closing*." This act of retreat indicates that JORDAN posed no threat of imminent violence, which makes WATSON's use of violence objectively unreasonable.

Therefore, WATSON used objectively unreasonable, excessive force in violation of the Fourth and Fourteenth Amendments because he shot JORDAN as he was closing his door, visibly retreating.

(3) WATSON Used Excessive Force Because He Failed to Warn JORDAN Before Shooting Him.

Before using deadly force, an officer should, when feasible, provide a warning. *Cole Estate*, 959 F.3d at 1133. The failure to warn when feasible weighs in favor of finding the use of deadly force objectively unreasonable. *Id.* at 1133 (finding that an officer who "chose to stand silent before shooting," although having "five to ten seconds" between seeing and shooting an armed suspect was objectively unreasonable in his use of deadly force) (internal quotations omitted); *see also Nance v. Sammis*, 586 F.3d 604, 611 (8th Cir. 2009) (finding that even though another officer ordered an armed suspect to "get on the ground and drop the gun," the shooting officer was unreasonable because he fired his weapon without warning).

Although Deputy Rivera yelled "gun, gun, gun," WATSON did not provide a verbal warning before shooting JORDAN. In fact, WATSON never verbally announced his presence or intention at JORDAN's home at all.

WATSON's failure to warn JORDAN before using deadly force weighs in favor of finding the force objectively unreasonable. When considered in light of the other factors (JORDAN was not aiming the alleged gun and JORDAN was retreating into his house) WATSON's failure to warn constitutes a violation of JORDAN's Fourth and Fourteenth Amendment protections against excessive force.

B. Qualified Immunity is Invalid as a Matter of Law Because WATSON's Actions Violated Rights That Were Clearly Established on February 14, 2019.

"For a right to be 'clearly established,' the law must have been sufficiently clear, at the time of the official's conduct, to put every reasonable official on notice that what he

was doing violated that right." *Hamner v. Burls,* 937 F.3d 1171, 1177 (8th Cir. 2019) (quoting *Ashcroft v. al-Kidd,* 563 U.S. 731, 741, 131 S.Ct. 2074 (2011)). "[T]he critical question 'is not whether prior cases present facts substantially similar to the present case but whether prior cases would have put a reasonable officer on notice that the use of deadly force in these circumstances would violate' the individual's 'right not to be seized by the use of excessive force.'" *Cole Estate,* 959 F.3d at 1134 (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)).

The many cases cited above to illustrate the wrongfulness of WATSON's use of deadly force—failing to warn, as JORDAN fled, and without belief that JORDAN was aiming a gun—establish that the law was sufficiently clear, on February 14, 2020, to put a reasonable official on notice that such behavior violated the Fourth and Fourteenth Amendments' prohibitions on excessive force.

In sum, WATSON's use of deadly force was excessive and objectively unreasonable because he did not believe that JORDAN aimed a gun at anyone, he perceived that JORDAN was closing his door—attempting to flee, and he failed to warn JORDAN prior to killing him. The law in support of Plaintiff's motion was clearly established before February 14, 2020. Thus, the Court should strike WATSON's affirmative defense of qualified immunity because it is redundant, immaterial, impertinent and scandalous under Federal Rule of Civil Procedure 12(f) and is clearly invalid as a matter of law.

II. THE COURT SHOULD DENY WATSON's MOTION TO PROHIBIT DR. EDWARD'S TESTIMONY BECAUSE IT SATISFIES FEDERAL RULES OF EVIDENCE.

Pursuant to Federal Rule of Civil Procedure 26(a)(2), Plaintiff provided timely notice of expert witness, Dr. Edwards, to WATSON. Specifically, Plaintiff notified WATSON that Dr. Edwards' testimony will regard the racial bias present at Midland County Sheriff's Office and the impact that racial bias had on WATSON's actions on the day he shot and killed JORDAN. Pl.'s Notice of Expert Witness. WATSON's Motion seeks to exclude Dr. Edwards' testimony, citing Federal Rules of Evidence 401, 403, and 702, arguing that his testimony "will not assist the trier of fact in understanding the evidence or determining a fact at issue," that his testimony "is likely to confuse the jury," and "that any probative value associated with the testimony… would be outweighed by its prejudicial effect." Def.'s Mot. Lim. ¶ 6–7.

Federal Rule of Evidence 702 governs the admissibility of expert testimony. Fed. R. Evid. 702; *see also United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc). Federal Rule of Evidence 702 provides: "A witness who is qualified as an expert . . . 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. . . ." Fed. R. Evid. 702(a); *see also Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 588 (1993). Accordingly, trial courts have a responsibility and duty to function as "gatekeepers" by determining the reliability and relevance of the proffered testimony: "the Rules of Evidence—especially Rule 702—do assign to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and

is relevant to the task at hand." *Daubert*, 509 U.S. at 597. Rule 702 is a flexible standard that "grants the district judge the discretionary authority, reviewable for its abuse, to determine reliability in light of the particular facts and circumstances of the particular case." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 158 (1999). As such, the courts should apply Rule 702 with the "liberal thrust" of the Federal Rules of Evidence, relaxing the once–strict traditional barriers to opinion testimony. *Daubert*, 509 U.S. at 588. If the court determines that a proffered expert witness satisfies the requirements of Rule 702, and other applicable Federal Rules of Evidence, that expert has great freedom to offer opinions. *Id*. at 582.

Here, WATSON admits that Plaintiff's proffered expert witness, Dr. Edwards, is a not only a qualified expert, but also that his qualifications and the reliability of his research methodology are not at issue. Accordingly, this response will address only the three issues raised by WATSON's motion: A) whether Dr. Edwards' testimony will help the trier of fact understand the evidence and/or determine a fact in issue; B) whether Dr. Edwards' testimony is relevant under Federal Rules of Evidence 401; and C) whether the probative value of Dr. Edwards' testimony substantially outweighs the factors of Federal Rule of Evidence 403.

A. Dr. Edwards' Testimony Will Help the Trier of Fact Understand the Evidence and Determine Whether WATSON Acted in Good Faith or With Malice.

Under Federal Rule of Evidence 702, the party offering the evidence has the burden to show that the proffered witness is qualified as an expert. *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1306 (11th Cir. 1999). As stated above, WATSON has already

admitted to this Court that Dr. Edwards is a qualified expert and that he used a reliable research methodology when coming to his conclusions. Rather, the Defendant argues that Dr. Edwards' testimony will not assist the trier of fact in understanding the evidence or determining a fact at issue. Accordingly, Defendant's main contention lies in Dr. Edwards' testimony meeting the standards of 702(a).

As outlined by the *Daubert* court, expert testimony should be admitted if the "expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." *Daubert*, 509 U.S. at 591. An expert's testimony or opinion should be excluded if such testimony will not aid the jury. *See* Fed. R. Evid. 702(a). Expert testimony will be deemed unhelpful if the average layperson is "capable of understanding an issue without the aid of an expert." *United States v. Navedo-Ramirez*, 781 F.3d 563, 568 (1st Cir. 2015).

In conducting this analysis, courts will need to determine whether the testimony is "likely to provide the jury with information that it will be able to use to draw its own conclusions." *Samaha v. Washington State Dep't of Transp.*, No. CV-10-175-RMP, 2012 WL 11091843, at *4 (E.D. Wash. Jan. 3, 2012). Accordingly, expert testimony will be properly excluded when it is found unneeded. *Salem v. United States Lines Co.*, 370 U.S. 31, 35 (1962) (holding that expert testimony "is properly excluded when it is not needed to clarify facts and issues of common understanding which [the trier of fact is] able to comprehend for [themselves]").

Dr. Edwards will help the jury understand implicit bias. Although the fact finder may have heard of the concept of implicit bias, it is unlikely that they will have the

extensive knowledge needed to understand how implicit bias may affect an individual's behavior or the meaning behind the significant statistical analysis in this case. This bias impacts everyone, meaning it played some role in WATSON's action on the day in question. Dr. Edwards' testimony will help the trier of fact understand implicit racial bias and how such bias may have impacted WATSON's actions when he decided to shoot JORDAN four times.

Dr. Edwards sufficiently tied his opinion to the facts of this case, making such opinions helpful to the trier of fact. Specifically, Dr. Edwards based his opinions in a statistical analysis of data collected from Midland County Sheriff's Office, where WATSON has been employed and trained at for three years. This level of inquiry can show a systemic problem in the Sheriff's Office—one in which WATSON plays a role by virtue of his employment there. Such testimony will assist the trier of fact in determining whether WATSON acted in good faith and without malice.

Accordingly, because the jury is unlikely to understand implicit bias and the way it relates to the significant statistical findings concerning the Midland County Sherriff's office, Dr. Edwards' testimony should not be excluded.

B. Dr. Edwards' Testimony is Relevant Because it Makes Whether WATSON Acted in Good Faith and Without Malice More or Less Probable.

The relevancy of evidence is governed by Federal Rule of Evidence 401. Fed. R. Evid. 401. Rule 401 states, "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." *Id.*; *see also Daubert,* 509 U.S. at 587 (holding

that the relevance standard is a liberal one); *Geyer v. NCL (Bahamas) Ltd.*, 203 F. Supp. 3d 1212, 1215 (S.D. Fla. 2016) (citing *Daubert* stating only "expert testimony which does not relate to *any issue* in the case is not relevant and, ergo, non-helpful.") (emphasis added). Evidence must be relevant before it is deemed admissible. *United States v. Gomez*, 763 F.3d 845, 853 (7th Cir. 2014) ("All evidentiary questions begin with Rule 402, which contains the general principle that '[r]elevant evidence is admissible' and '[i]rrelevant evidence is not.'").

Dr. Edwards' testimony gives insight to WATSON's state of mind—a fact at issue in this case. Here, Dr. Edwards' analysis was conducted to the point of statistical significance and shows that racial bias was present in Midland County Sheriff's Office. His study concludes that WATSON's actions were colored by this bias. This evidence is relevant because WATSON asserts that he acted without malice and that he acted in good faith. Good faith forms the very basis of the qualified immunity defense. *See Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982) (equating qualified immunity and good faith immunity). WATSON's potential implicit racial bias towards JORDAN as an African American man, and the statistically significant role that racial bias plays in whether Midland County officers draw their weapons during a stop, has a tendency to make WATSON's claim of acting in good faith and without malice less probable than without such evidence. That is the definition of relevance.

Therefore, because racial bias makes it less probable that WATSON acted without malice and with good faith—a fact of consequence in this case—Dr. Edwards' testimony meets the standards under Federal Rule of Evidence 401.

C. The Probative Value of Dr. Edwards' Testimony Substantially Outweighs Any Prejudicial Effect.

Under Federal Rule of Evidence 403, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. To determine whether the probative value of evidence substantially outweighs its prejudicial effect, courts conduct a balancing test. *Old Chief v. United States*, 519 U.S. 172, 182 (1997). Federal courts have observed that:

> "Relevant evidence is inherently prejudicial; but it is only unfair prejudice… which permits exclusion of relevant matter under Rule 403. Unless trials are to be conducted on scenarios, on unreal facts tailored and sanitized for the occasion, the application of Rule 403 must be cautious and sparing… Rule 403 is meant to relax the iron rule of relevance, to permit the trial judge to preserve the fairness of the proceedings by exclusion despite its relevance."

United States v. McRae, 593 F.2d 700, 707 (5th Cir. 1979); *see also United States v. Meester*, 762 F.2d 867, 875 (11th Cir. 1985) (citing *McRae*, 593 F.2d at 707).

The probative value of Dr. Edwards' testimony substantially outweighs Defendant's claim that his opinion "is likely to confuse the jury." Dr. Edwards' testimony will inform the jury of the statistically significant evidence of racial bias at Midland County Sheriff's Office. Specifically, that 77% of Caucasian Midland County Sheriff's officers drew their weapon on African American men; as compared to 33% of Caucasian Midland County Sheriff's officers who drew their weapon on Caucasian men. Understanding whether racial bias played a role in WATSON's actions will help the jury decide whether WATSON acted

in good faith. Accordingly, WATSON's motion to prohibit under Rule 403 should be denied because the probative value of Dr. Edwards' testimony outweighs any prejudicial effect.

In sum, WATSON's motion in limine to prohibit Dr. Edwards' testimony should be denied because the testimony will help the jury determine whether WATSON acted in good faith and without malice, a fact at issue in this case; Dr. Edwards' testimony is relevant; and lastly, Dr. Edwards' testimony will not confuse the jury as any prejudicial effect his highly outweighed by its probative value.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court strike WATSON's affirmative defense of qualified immunity because it is redundant, immaterial, impertinent and scandalous under Federal Rule of Civil Procedure 12(f) and is invalid as a matter of law. Specifically, WATSON's use of deadly force on JORDAN—despite not believing that JORDAN aimed a gun at anyone, perceiving that JORDAN attempted to flee, and failing to warn—violates the Fourth and Fourteenth Amendments' clearly established prohibitions on excessive force. Concurrently, Plaintiff respectfully requests that the Court deny WATSON's motion in limine to prohibit Dr. Edwards' expert testimony because it satisfies Federal Rules of Evidence 401, 403 and 702.

Respectfully submitted,

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