Team Number: 3333

CASE NO.: 2:20cv15994

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

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

Plaintiff,

vs.

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 AND IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

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NOW INTO COURT, COMES Plaintiff Sheryl Jordan, as Personal Representative of the Estate of David Jordan, Jr., who herein files her Memorandum of Law in Support of Motion to Strike and In Opposition to Motion in Limine. For the reasons set forth in detail below and based on the uncontested facts in this matter, Plaintiff respectfully moves this Court to Strike Defendant Deputy Eric Watson's Affirmative Defense of Qualified Immunity, and to grant the testimony of Plaintiff's expert witness, Frank Edwards, Ph.D.

I. STATEMENT OF THE FACTS

Victim David Jordan, Jr. ("Jordan"), a 33-year-old African American male, resided in Midland County, Florida. [Plaintiff's Complaint, 1–2; Summary of Autopsy Report, 1]. On February 14, 2019, at 3:15 p.m. Deputies Eric Watson ("Watson") and Eddie Rivera ("Rivera") arrived at Jordan's residence, 1501 58th Street South, Fort Hampton, Midland County, Florida, in response to a noise complaint for loud music. [Plaintiff's Complaint, 3].

Upon arrival, Watson knocked on the front and side doors of the residence, attempting to speak with the person responsible for the loud music. [Statement of Watson, 2–3]. Jordan opened the front door, revealing himself within the comfort of his home. [Statement of Watson, 2–3]. Watson, who saw Jordan's whole body in the doorway, heard Rivera yell "gun." [Statement of Watson, 3]. At that moment, Watson could not discern what the "small and dark item" in Jordan's right hand was. [Statement of Watson, 3]. Jordan then closed his front door with his left hand, and Watson lost sight of the item in Jordan's right hand. [Statement of Watson, 3].

Watson stated Jordan did not aim the item at anyone. [Statement of Watson, 3]. Additionally, he did not look into the house to see if anything was going on. [Statement of Watson, 4]. Rather, within seconds of hearing Rivera yell "gun," Watson rapidly fired his handgun four times and killed Jordan behind a completely closed door. [Statement of Watson, 3; Statement of McDonald, 2; Statement of

Roberts, 2]. Rivera never discharged his weapon. [Statement of Rivera, 8]. At no time did Jordan threaten, or pose a threat to, anyone. [Statement of Watson, 3]. Nevertheless, Jordan died from Watson's gunshots. [Statement of Watson, 4].

II. LAW AND ARGUMENT

A. Qualified Immunity Does Not Protect Watson Because the Use Of Deadly Force Violated Jordan's Fourth and Fourteenth Amendment Rights and Violated Clearly Established Law.

If a plaintiff's rights are violated by a local official, a plaintiff may bring a claim for damages under 42 U.S.C. § 1983. In response to § 1983 suits, law enforcement officials sued in their individual capacity may raise qualified immunity as a defense. Qualified immunity protects government officials:

> from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known [. . .]. If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. *Harlow v. Fitzgerald*, 457 U.S. 800, 818–19 (1982).

Harlow thus established a two-prong test for determining whether a defendant is entitled to qualified immunity: (1) whether the plaintiff was deprived of a right, and (2) whether the defendant violated a clearly established right. *Id*.

1. <u>Watson's use of deadly force violated Jordan's Fourth Amendment right to be free from the use of excessive and unreasonable force, and unreasonable seizure.</u>

For the first prong of the analysis in § 1983 cases alleging the use of excessive force by a police officer during an investigation, the right at issue is the Fourth

Amendment right against unreasonable seizures. *Graham v. Connor*, 490 U.S. 386, 394 (1989). The test for reasonableness is objective and based on the totality of facts of each case, without regard to motivations or intent. *Id*. at 396–97. Objective reasonableness depends on all circumstances relevant to the police officer's decision to use deadly force, including seriousness of the crime, whether the suspect poses an immediate danger, whether the suspect resisted or attempted to evade arrest, and the feasibility of providing a warning before employing deadly force. *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

In *Mercado v. City of Orlando*, 407 F. 3d 1152 (11th Cir. 2005), policemen identified themselves upon arriving at the apartment of Ramon Mercado ("Mercado"), but never warned Mercado force would be used if he did not drop his weapon. *Id*. at 1153. Mercado did not actively resist arrest, and he did not struggle with the police. *Id*. (citing *Fernandez v. Cooper City*, 207 F. Supp. 2d 1371, 1377 (S.D. Fla. 2002) (officers were afforded qualified immunity for using force to subdue an emotionally unstable person who was actively resisting arrest)). Seconds later, from a clear view six feet away, Officer Padilla ("Padilla") fired a Sage Launcher twice, causing Mercado's brain injuries. *Id*. at 1153–55. Mercado did not have time to obey Padilla's order to drop his knife because Padilla discharged his weapon within seconds of making his request. *Id*. Because Mercado did not commit a crime, resist arrest, or pose an immediate threat to anyone at the time he was shot in the

head, the court held if Padilla aimed for Mercado's head, he used excessive force when apprehending Mercado. *Id*. Padilla was trained to use the Sage Launcher and was aware it was a lethal force if he shot at a subject from close range. *Id*. In a light most favorable to Mercado, Padilla violated Mercado's Fourth Amendment rights when he intentionally aimed at and shot Mercado in the head. *Id*. (citing *Thornton v. City of Macon,* 132 F.3d 1395, 1400 (11th Cir. 1998) (denying qualified immunity for policemen when the suspect did not commit a serious crime, pose a threat to the officers or others, or actively resist arrest)).

This court must also view the facts in a light most favorable to Jordan as the nonmoving party. Based on Watson's close proximity to Jordan and Jordan's resulting death, the court must assume Watson intended to fatally shoot Jordan in the head. Similar to *Mercado,* Jordan was not committing a crime, resisting arrest, or posing an immediate threat to the officers at the time he was shot in the head. Watson could not discern what the item in Jordan's right hand was and Jordan never aimed it anyone. [Statement of Watson, 3]. Rather, he lost complete sight of the item in Jordan's right hand and did not see Jordan aim the item at anybody. [Statement of Watson, 3].

Additionally, similar to Mercado, Jordan did not have time to obey Rivera's order to drop his "small and dark item" because Watson discharged his gun within seconds of Rivera's request. [Statement of Rivera, 3]. Watson, without warning,

intentionally shot at Jordan four times from behind a closed door. [Statement of Watson, 3; Statement of McDonald, 2; Statement of Roberts, 2]. Similar to the Court's reasoning in *Mercado,* this Court should hold that the deadly shooting of Jordan without prior warning and without actual knowledge that he posed a threat violates the Fourth Amendment.

2. Watson's use of deadly force violated Jordan's clearly established right to be free from unreasonable force.

With respect to the second prong of the qualified immunity analysis as to whether an officer violated a clearly established right, the Court does "not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *White v. Pauly*, 137 S. Ct. 548, 551 (2017). Nevertheless, it is not necessary "the very action in question has previously been held unlawful." *Anderson v. Creighton,* 483 U.S. 635, 640 (1987). What must be determined is "whether the state of the law [at the time of the alleged conduct] gave [policemen] fair warning their alleged [conduct] was unconstitutional." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Even if there is no reported case "directly on point," an officer might lose qualified immunity. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Case law establishes a police officer cannot use deadly force in a situation that clearly would not justify its use; otherwise, that force is unreasonable under the Fourth Amendment. *See, e.g.*, *Mercado*, 407 F.3d 1152 (11th Cir. 2005) (the police officer should not have needed case law to know intentionally shooting a non-threatening victim in the head would violate victim's Fourth Amendment rights); *Estate of Lopez by and through Lopez v. Gelhaus*, 871 F.3d 998 (9th Cir. 2017) (officer who shot a boy was not entitled to qualified immunity because the boy appeared to carry an AK-47, but the officers had received no reports of the suspect using or threatening to use such a weapon, the suspect did not point the weapon at officers or threaten them with it, the suspect did not make any moves toward the officers and there were no reports of erratic or threatening behavior); *Dickerson v. McClellan*, 101 F.3d 1151 (6th Cir. 1996) (defendants were not entitled to qualified immunity because the decedent had simply walked slowly to the front door, hands at his side, and was shot while still in his house before he opened his door); *McKinney v. DeKalb Cty., Ga.*, 997 F.2d 1140 (11th Cir. 1993) (no qualified immunity when disputed facts could allow a jury to conclude the victim had put down his knife and was merely shifting position, not threatening the safety of any persons).

Similar to *Mercado*, *Estate of Lopez*, and *Dickerson*, Jordan was not committing a crime, resisting arrest, or posing an immediate threat to the officers at

the time he was shot in the head. [Statement of Watson, 3]; 407 F.3d 1152; 871 F.3d 998; 101 F.3d 1151. Watson also saw Jordan's whole body in the doorway before he fatally shot him. [Statement of Watson, 3]. Additionally, like in *Estate of Lopez*, *McKinney*, and *Dickerson*, Watson did not see Jordan aim the "small and dark item" in his right hand at anybody; he only saw Jordan shift positions to "raise the item near [Jordan's] hip." [Statement of Watson, 3]; 871 F.3d 998; 997 F.2d 1140; 101 F.3d 1151. As the courts in *Mercado*, *Estate of Lopez*, *Dickerson*, and *McKinney* denied the respective officers qualified immunity, this court, in viewing the facts in a light most favorable to Jordan, should deny Watson qualified immunity. 407 F.3d 1152; 871 F.3d 998; 101 F.3d 1151; 997 F.2d 1140.

Under the first prong of *Harlow*'s two-prong test for determining whether a defendant is entitled to qualified immunity, the totality of circumstances show a plaintiff would have been deprived of their Fourth Amendment right against unreasonable seizures under the above-stated facts. Jordan proved the objective test for reasonableness based on the totality of facts, which contributed to a violation of his Fourth Amendment rights. Furthermore, under the second prong of *Harlow*'s two-prong test for determining whether a defendant is entitled to qualified immunity, the circumstances show the defendant violated a clearly established right under the above-stated facts. Watson, the police officer claiming qualified immunity, knew it

was well established a police officer using deadly force in a situation that clearly would not justify its use violates the Fourth Amendment. However, Watson fatally shot Jordan, who posed no threat to anyone at the time Watson shot him. Thus, Watson should be denied qualified immunity.

B. Watson's Motion in Limine Should be Denied Because Edwards' Testimony Will Assist the Jury and is More Probative than Prejudicial.

Both parties in the present case have stipulated Dr. Frank Edwards ("Edwards") is qualified as an expert witness. The reliability of Edwards' testimony is not at issue. However, the Defense has raised the issue of whether Edwards' testimony will assist the trier of fact. Based on the foregoing reasons, it is clear that it will.

1. Edwards' testimony will assist the trier of fact in understanding the evidence and determining a fact at issue.

Federal Rule of Evidence 702 ("Rule 702") governs the admissibility of expert witness testimony and presents four requirements to determine whether an expert witness may testify in the form of an opinion:

> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

To determine whether expert testimony meets the standard of Rule 702, the Supreme Court assigned district courts with the "gatekeeper" function to assess expert testimony. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 587 (1993). The Court established:

> [when] faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset [. . .] whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue. *Id.*

Furthermore, the Court found the "gatekeeping function 'inherently require[s] the trial court to conduct an exacting analysis of the foundations of expert opinions to ensure they meet the standards for admissibility under Rule 702." *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004) (quoting *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1257 (11th Cir. 2002)). The first prong of Rule 702, whether Edwards' testimony will assist the trier of fact in understanding the evidence or in determining a fact in issue, goes primarily to relevance. *Daubert*, 509 U.S. at 586.

Federal Rule of Evidence 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." The standard for admitting relevant evidence is, "[a]ll relevant evidence is admissible,

except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority." Fed. R. Evid. 402. In *Beech Aircraft Corp. v. Rainey*, the Court described the Federal Rules of Evidence as having a "liberal thrust" for the admissibility of evidence. 488 U.S. 153, 169 (1988). The Court reaffirmed this by stating the "basic standard of relevance [. . .] is a liberal one," *Daubert*, 509 U.S. at 587.

Aside from ensuring the reliability of the expert's testimony, courts should find expert testimony admissible because, "[a]s a general rule, questions relating to the bases and sources of an expert's opinion affect the weight to be assigned [to] that opinion rather than its admissibility and should be left for the jury's consideration." *Primrose Op. Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 561–62 (5th Cir. 2004). There is no sufficient reason to exclude any testimony or evidence that may shed the slightest amount of insight. *Id*. Edwards' testimony is highly relevant because his study does not present the jury with abstract information, but rather it provides precise and reliable data that can be fully applied to facts of this particular case. [Article on Risk of Being Killed by Police, 1–6].

a. Edwards' testimony is relevant because it will assist the jury in determining the state law claim involving duty of care.

Jordan brought a state law claim of negligence against Sheriff Derek Michaels ("Michaels"), as Sheriff of Midland County, for liability of the negligent actions of

his employee, Watson. [Plaintiff's Complaint, 5–6]. To state a claim for negligence under Florida law, a plaintiff must allege the defendant owed the plaintiff a duty of care, the defendant breached that duty, and the breach caused the plaintiff to suffer damages. *Lewis v. City of St. Petersburg*, 260 F.3d 1260, 1262 (11th Cir. 2001). The Florida Supreme Court has ruled "[a] court must find no liability as a matter of law if *either* (a) no duty of care existed, or (b) the doctrine of governmental immunity bars the claim." *Kaisner v. Kolb*, 543 So. 2d 732, 734 (Fla. 1989). "[T]he question of the applicability of … immunity does not even arise until it is determined that a defendant otherwise owes a duty of care to the plaintiff and thus would be liable in the absence of such immunity" *Lewis*, 260 F.3d at 1262.

Edwards' testimony is relevant because it provides evidence Watson had a duty of care and whether immunity will ultimately bar his liability. Edwards reviewed data on the Midland County Sheriff Department ("Department") for suspect stops based on an officer's reasonable suspicion, where the Department officer drew his weapon. [Statement of Edwards, 1]. The Department's data is consistent with Edwards' research. [Statement of Edwards, 2]. Edwards' research and analysis "uses demographic methods to systematically describe the depth of the involvement of the criminal justice system in the lives of Americans." [Article on Risk of Being Killed by Police, 1]. His study focuses on "estimat[ing] the risk of being killed by police use of force in the United States by age, race, and sex," and

its main variables directly correlate to the issue at hand. [Article on Risk of Being Killed by Police, 1]. Edwards used his research and methods to review the Department's data, particularly "stops for non-traffic misdemeanors and ordinance violations." [Statement of Edwards, 1]. He analyzed "the correlation of these stops where the . . . officer drew his/her weapon, to the detainee's race and age" to reveal:

> 77% of Caucasian Midland County Sheriff's Officers drew their weapon on African American men, ages 18-35; as compared to 33% of Caucasian Midland County Sheriff's officers who drew their weapon on Caucasian men, ages 18-35. [Statement of Edwards, 2].

Here, Watson, a Caucasian Department officer, responded to a noise disturbance complaint, a county ordinance violation. [Statement of Watson, 2]. Upon responding to the noise disturbance, Watson fatally shot Jordan, a 33-year-old African American man. [Summary of Autopsy Report, 1]. The pattern displayed by Edwards' study affirms Watson violated his duty of care to serve, protect and act in accordance with the law. Watson owed a duty to Jordan to refrain from firing his weapon in an unsafe or unreasonable manner and to act as a reasonable law enforcement officer under same or similar circumstance. [Plaintiff's Complaint, 6]. A universal baseline for police practice is consistent enforcement among all demographics of the citizen population. "A law enforcement officer's duty to protect the citizens is a general duty owed to the public as a whole." *Lewis*, 260 F. 3d at 1266. Officers have a duty to act as reasonable, non-biased law enforcement officers, to ensure the welfare and safety of all citizens. *Id*.

Edwards' study reveals a pattern of blatant disregard of human rights and safety within the Department: there is an overwhelming disparity of Caucasian officers drawing their weapons on African American males, as opposed to Caucasian males. [Statement of Edwards, 2]. His study highlights the clear inconsistency between racial demographics. [Statement of Edwards, 1]. Any preconceived notion an officer may have related to a certain demographic should not impact their duty to ensure adequate regard for the welfare and safety of all citizens.

Furthermore, in Florida, when a "defendant's conduct creates a foreseeable zone of risk, the law generally will recognize a duty [to all within the zone] placed upon [the] defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses." *Lewis*, 260 F.3d at 1263 (citing *Kaisner*, 543 So.2d at 735). Edwards' testimony will assist the jury in determining whether Watson placed Jordan in a "zone of risk" because of his race and thus owed him a specific duty to exercise reasonable care when he drew and fired his weapon. *Id.* Therefore, Edwards' testimony is highly relevant.

> *b. Edwards' testimony is relevant because it will assist the jury in determining liability for negligence under the state law claim against Michaels.*

Defendants claim they are "not subject to suit pursuant to § 768.28(9), Florida Statutes." [Defendants' Answer to Wrongful Death Complaint, 4–5]. However, § 768.28(9) states:

> [an officer, employee, or agent of the state can be held liable] for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function" when an "officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Furthermore, Florida Statute § 768.28 waives sovereign immunity in certain situations, provided:

> The exclusive remedy for injury or damages suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The Supreme Court of Florida has also ruled that, applying Florida Statute § 768.28, a sheriff is a "county official," and, as such, is an integral part of the "county" as a "political subdivision." *Beard v. Hambrick*, 396 So. 2d 708, 711 (Fla. 1981). In other words, Florida Statute § 768.28 is applicable to sheriffs as a separate entity or agency of a political subdivision. *Id*. In *McGhee v. Volusia Cty.*, the court ruled "[i]t is up to the fact-finder to determine whether bad faith, malicious purpose, or willful or wanton disregard of human rights, safety, or property was present. 679 So. 2d 729, 733 (Fla. 1996).

Florida courts have ruled that "even if the claim contained sufficient allegations of tort liability under which a private person would be liable, the waiver

of sovereign immunity would still not apply if the challenged acts of the state agent were "discretionary" governmental acts rather than merely "operational" ones." *Lewis*, 260 F.3d at 1262; *see also Kaisner*, 543 So.2d at 734, 737–38. In this case, the officers, having decided to stop Lewis, had an obligation to proceed with reasonable care. *Lewis*, 260 F.3d at 1265.

Edwards' study will assist the jury in determining this fact because it is not merely an abstract historical analysis, but a present indicator of determining the behavior of Watson, as it shows statistical evidence Caucasian officers pull their weapons significantly more often on African American males in Midland County for non-criminal violations. [Statement of Edwards, 2]. Watson drew his weapon and fired it four times at Jordan, a non-threatening suspect, behind a closed door. [Statement of Watson, 3-4]. Watson's behavior creates a genuine issue of fact, which is left for the jury to decide using Edwards' study.

Edwards' testimony is especially useful in analyzing racial bias and prejudice, as there are no variable criminal elements in this study. [Statement of Edwards, 1]. Watson and Rivera arrived at Jordan's house for an entirely civil matter. [Statement of Watson, 2]. Nevertheless, when they encountered Jordan, an African-American male, they statistically became two-times more likely to draw their weapons on Jordan, as opposed to a Caucasian male suspect. [Statement of Edwards, 2]. Thus, Edwards' study is relevant because it emphasizes the way officers act when dealing

with African American males, rather than Caucasian males. The behavioral analysis in Florida Statute § 768.28 is left for the jury to decide. *McGhee*, 679 So. 2d at 733. Edwards' testimony will assist the jury in analyzing the behavior of Watson as either a discretionary or operational task, which is how Florida law determines liability. Thus, Edwards' testimony is highly relevant.

Edwards' testimony should be admitted as an expert witness, under Rules 702 and 401, as it will assist the jury in determining whether Watson breached his duty of care, or whether immunity will ultimately bar the claim. Thus, Edwards' testimony is highly relevant and should be admitted. Therefore, the court should deny Watson's Motion in Limine.

2. <u>The probative value of Edwards' research outweighs the prejudicial effects alleged by Watson.</u>

Edwards' testimony is more probative than prejudicial because it provides the jury with a statistical analysis to understand the facts of this case. Federal Rule of Evidence 403 ("Rule 403") allows for the exclusion of 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."

Edwards' testimony, at its foundation, could not be more objectively probative. At its core, it is a raw statistical analysis of the very circumstances the parties are seeking to litigate. Edwards' study is merely statistics that reveal a pattern

of behavior present in the encounters this Department has with specific racial demographics. [Statement of Edwards, 2]. If Watson believes the figures are prejudicial, it is because of the presumption this testimony provides an unfavorable frame by which to analyze these events; yet it is a factual one, nonetheless. Edwards' study explains the historical tendency of the Department's officers to disproportionately target African American males. [Statement of Edwards, 2]. It provides a foundation by which to help view the facts of this case and helps remove some of the premature bias many jurors have towards the actions of police, such as the notion a victim of a police shooting must have been committing a crime of a nature that necessitated the police's use of deadly force.[1] Thus, Edwards' study is not only probative because of the relevant data that it extrapolates, but also because it helps combat a deeply ingrained pre-existing prejudice and mitigate the obvious advantage Defendants have due to the specific facts. Watson, a Caucasian Midland County officer, fatally shot Jordan, a 33-year-old African American man, which directly correlates to the analysis of Edwards' study. [Statement of Watson, 3; Summary Autopsy Report, 1]. The facts of this case are not so apparent, and thus

[1] In criminal trials, courts may instruct jurors to treat officer testimony the same as other witnesses; "[n]o more and no less weight is to be given their testimony simply because of their official capacity with the government." *United States v. Nash*, 910 F.2d 749, 755 (11th Cir. 1990) However, "jury instructions are given at the end of the presentation of the evidence, after most jurors have made their decisions with regard to the case" Gabriel J. Chin & Scott C. Wells, *The "Blue Wall of Silence" As Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 295 (1998).

Edwards' testimony will illuminate a clearer understanding by which the jury can use to better analyze this case.

Therefore, the court should permit Edwards' testimony as it satisfies the requirements set forth in the Federal Rules of Evidence. Edwards' testimony will assist the jury under Rule 702; it is relevant under Rule 401; and its probative value is not substantially outweighed by any unfair prejudice, under Rule 403. Thus, Defense Motion in Limine should be denied.

III. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff's Motion to Strike and deny Defendants' Motion in Limine. Plaintiff successfully proved he was deprived of a right, and the defendant violated his clearly established right. Furthermore, Plaintiff successfully proved its expert witness' testimony will assist the trier of fact in understanding the evidence and determining a fact at issue, and the probative value of the expert witness' research outweighs the prejudicial effects alleged by the defendant.

Respectfully submitted,

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