CASE NO.: 2:20cv15994

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

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

Plaintiff,

v.

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

Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE AND IN OPPOSITION TO THE PLAINTIFF'S MOTION TO STRIKE THE AFFIRMATIVE DEFENSE

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INTRODUCTION

Please take notice that on Friday, October 9, 2020, at 9:00 a.m., Defendant Deputy Eric Watson, through counsel, will present the Court with supplemental evidence in opposition to Plaintiff's Motion to Strike the qualified immunity defense. Counsel will also argue in support of Deputy Watson's First Motion in Limine to exclude Plaintiff's expert witness under Federal Rules of Evidence 401, 403, and 702. For the reasons set forth below, Deputy Watson asks the court to grant his First Motion in Limine and to deny the Plaintiff's Motion to Strike.

STATEMENT OF FACTS

On February 14, 2019, Lee McDonald (hereinafter "McDonald") was working as a teacher at Fort Hampton Elementary School. McDonald Aff. ¶ 3. Around 3:00 p.m., McDonald was preparing to line students up on the sidewalk for pick-up in front of the school. *Id.* at 6. From across the street, McDonald could hear loud music coming from a house. *Id*. The lyrics were audible, and McDonald specifically heard both curse words and racial slurs. *Id.* Given the young age of the students at the elementary school, McDonald called Midland County Sheriff's Office to report a noise disturbance. *Id.* at 4, 7.

At the Sheriff's Office, Deputy Eric Watson and Deputy Eddie Rivera were just beginning their shifts when Deputy Watson was called to respond to this noise complaint. Watson Aff. ¶ 13. Both officers drove to the location of the noise

disturbance, 1501 58th Street South in Fort Hampton, and arrived around 3:15 p.m. *Id.* at 18. The deputies were each wearing their Midland County Sheriff's Office uniform, and each was driving a marked squad car. *Id.* at 17. They could both hear the loud and vulgar music coming from the house. *Id.* at 18.

Both deputies walked up to the front door and knocked, but there was no response. Watson Aff. ¶ 21. Deputy Watson then approached the side door to see if somebody could hear his knocking from that area of the home. *Id.* at 22. To overcome the loud music, Deputy Watson used his police baton to knock loudly on the side door. *Id.* at 23. With no response, Deputy Watson walked back toward the front door. *Id.*

As Deputy Watson walked around the corner to the front of the house, he heard the music get louder. Watson Aff. ¶ 24. Looking toward the front of the house, he noticed the front door was opening. *Id.* Both deputies saw David Jordan, Jr., standing in the doorway with an object in his right hand. *Id.* at 26. Deputy Rivera identified the object as a black handgun, specifically a Glock. Rivera Aff. ¶ 26.

Deputy Rivera immediately shouted, "gun, gun, gun, drop the gun, drop the gun, drop the gun." Rivera Aff. ¶ 27. Mr. Jordan raised the gun in Deputy Rivera's direction, causing her to fear for her life. *Id.* at 34. She drew her gun and retreated

backward. *Id.* at 32. Deputy Watson caught Mr. Jordan's attention, and Mr. Jordan began to close the door as he was raising the gun. *Id.* at 30.

At that moment, Deputy Watson made the conscious decision to use deadly force for the first time in his career. Watson Aff. ¶ 38-39. He saw Mr. Jordan raising a gun toward a police officer with approximately fifty children standing across the street. *Id.* at 33. Deputy Watson fired four shots, in an upward pattern, just as the front door was closing. *Id.* at 36-37. Three of the bullets hit Mr. Jordan. Roberts Aff. ¶ 6. One struck his brain, instantly killing him and ending all motor function. *Id.* at 9. Other deputies responded to the scene, where they found Mr. Jordan's body in the doorway with a black handgun in the back-right pocket of his shorts. Watson Aff. ¶ 53-54.

At the request of Mr. Jordan's family (hereinafter "Plaintiff"), Frank Edwards, Ph.D. (hereinafter "Dr. Edwards") reviewed Midland County Sheriff's department data on "stops for non-traffic misdemeanors and ordinance violations" ranging "between February 2016 and February 2019." Edwards Aff. ¶ 7. Dr. Edwards limited his research by "randomly select[ing] and review[ing] 380 case files." *Id.* at 6-7. Then, Dr. Edwards "analyzed the correlation of these stops where the Sheriff's officer drew his/her weapon, to the detainee's race and age." *Id.* at 7. Dr. Edwards made "certain observations and conclusions." *Id.* Deputy Watson was employed with Midland County Sheriff's office in "March of 2017," and it is

unclear whether any of his stops were included in the 380 randomly selected case files. Watson Aff. ¶ 2, Edwards Aff. ¶ 7.

In conducting his research, Dr. Edwards collected data on Midland County Sheriff's officer-initiated "stops based upon reasonable suspicion" Edwards Aff. ¶ 5. During these stops, "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." *Id.* at 9. Dr. Edwards opined that "racial bias plays a statistically significant role in whether Midland County Sheriff's officers decide to draw their weapon during a stop." *Id.* at 8.

Plaintiff filed suit against Deputy Watson and Sheriff Derek Michaels pursuant to Title 28 U.S.C. § 1983. Deputy Watson asserted the defense of qualified immunity, and the Plaintiff is moving to strike that defense. Separately, Deputy Watson is moving the Court to prohibit the testimony of the Plaintiff's expert witness, Frank Edwards Ph.D., should this case be permitted to go to trial.

ARGUMENT

At the Court's request, this memorandum will cover two separate motions: The Plaintiff's Motion to Strike Deputy Watson's qualified immunity defense, and Deputy Watson's First Motion in Limine to prohibit testimony from the Plaintiff's expert.

I. THE MOTION TO STRIKE DEPUTY WATSON'S QUALIFIED IMMUNITY DEFENSE SHOULD BE DENIED BECAUSE HE DID NOT VIOLATE ANY CLEARLY ESTABLISHED RIGHT.

A party may move the court to strike an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. 12(f). "A motion to strike should be granted if 'it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense and are inferable from the pleadings.'" *Operating Eng'rs Local 324 Health Care Plan v. G&W Constr. Co., 78*3 F.3d 1045, 1050 (6th Cir. 2015) (quoting Will*iams v. Jader Fuel Co., 94*4 F.2d 1388, 1400 (7th Cir. 1991)).

The Plaintiff alleges under Rule 12(f) that Deputy Watson's defense is insufficient, redundant, immaterial, impertinent, or scandalous. Qualified immunity is a unique defense, separate from other defenses like self-defense and defense of others. It is not redundant. Because Deputy Watson is being sued for actions taken within the course of his official duties, qualified immunity is both material and pertinent to this case. The doctrine of qualified immunity is applied in courts across the country, so asserting this defense is not in and of itself "scandalous." With the other strikable categories excluded, this memorandum will focus on supporting the sufficiency of Deputy Watson's affirmative defense.

The qualified immunity doctrine serves not only as protection from liability but also as protection from trial and discovery. *Pearson v. Callahan*, 555 U.S. 223,

231 (2009). If a case is erroneously permitted to go to trial, the defendant is effectively denied this defense. *Id.* To that end, the Supreme Court has consistently stressed the need to resolve questions of immunity at the earliest possible point in the case. *Id.* at 232. The Court also established a two-part test for determining the sufficiency of a qualified immunity defense pre-trial. *Id.* at 235.

A. Even Considering the Facts in the Light Most Favorable to the Plaintiff, Deputy Watson's Use of Force Was Reasonable Under the Fourth Amendment

The Supreme Court established the doctrine of qualified immunity as a way to protect law enforcement from frivolous lawsuits. *Pierson v. Ray*, 386 U.S. 547, 553-55 (1967). The Court further defined this doctrine in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), holding that "government officials performing discretionary functions generally are shielded 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." *Id.* at 818.

The qualified immunity rule from *Harlow* can be broken down into two separate questions of law. First, was there a violation of the plaintiff's statutory or constitutional rights? *Saucier v. Katz*, 533 U.S. 194, 201 (2001). And, second, was that right clearly established at the time of the alleged violation? *Id.* The plaintiff must succeed on both prongs to overcome a qualified immunity defense. *Id.* While

it is generally preferable to take the test in order, courts may use their discretion to take the second prong first. *Pearson v. Callahan*, 555 U.S. 223, 236-37 (2009).

When ruling on qualified immunity, courts should assume facts "in the light most favorable to the party asserting the injury." *Saucier*, 533 U.S. at 201. The court should draw inferences in that party's favor, but only to the extent supported by the record. *Scott v. Harris*, 550 U.S. 372, 381 n.8 (2007).

The Plaintiff alleges that Deputy Watson's use of force violated both the Fourth and Fourteenth Amendments. However, the Supreme Court has repeatedly held that the use of deadly force should be analyzed exclusively as a Fourth Amendment seizure. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985); *Graham v. Connor*, 490 U.S. 386, 388 (1989); *Tolan v. Cotton*, 572 U.S. 650, 656 (2014). The Fourteenth Amendment does not apply. *Graham*, 490 U.S. at 388.

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. Amend. IV. To determine whether a use of force was "reasonable," courts must balance the nature of the intrusion against the countervailing government interests. *Id.* at 396. Courts must allow for the fact that law enforcement officers are forced to make "split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Id.* at 397.

A Fourth Amendment analysis must be based on the totality of the circumstances, but the Supreme Court emphasized three factors that should be emphasized: the severity of the crime, whether the suspect poses an immediate threat to a person's physical safety, and whether the suspect is attempting to evade arrest. *Id.* at 396. Reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. 386, 396.

The Supreme Court has repeatedly upheld qualified immunity as a defense in cases where the officer made a split-second decision to protect the safety of others. These rulings are generally applied to vehicle chases, but the rationale is the same: the suspect's actions pose a threat to public safety, and law enforcement is forced to react. *See Mullenix v. Luna*, 136 S. Ct. 305 (2015); *Plumhoff v. Rickard*, 571 U.S. 1020 (2013); *Scott v. Harris*, 550 U.S. 372; *Brosseau v. Haugen*, 543 U.S. 194 (2004).

Recent circuit court rulings are also instructive. In *Estate of Valverde v. Dodge*, 967 F.3d 1049 (10th Cir. 2020), a suspect was surrounded by an armed SWAT team amid an undercover drug bust. Dodge, the officer defendant, saw the suspect reaching toward his waistband. *Id.* at 8. Another officer called out that the suspect had a gun, and the suspect subsequently produced a gun from around his

waist. *Id.* at 9. In less than a second, Dodge fired five shots at the suspect, causing a fatal injury. *Id.*

The plaintiff, in that case, argued that the suspect was surrendering, and he was trying to disarm himself. *Id.* at 21-22. They argued that the reasonableness of this shooting was a question for the jury. *Id.* The 10th Circuit disagreed, holding that Dodge acted within the scope of the Fourth Amendment when he made that split-second, life or death decision. *Id. accord Mullins v. Cyranek*, 805 F.3d 760 (6th Cir. 2015).

In *Tolan*, the Supreme Court illustrated the importance of drawing inferences in the plaintiff's favor. The plaintiff, in that case, was being detained outside of his home late at night, and he was eventually shot by one of the responding officers. *Tolan v. Cotton*, 572 U.S. 650, 652 (2014). The plaintiff and defendant disagreed on basic facts, such as whether the area was well-lit, whether the officer roughly grabbed the plaintiff's mother, and whether the plaintiff stood up to attack the officer. *Id.* at 652-53. These two accounts are incompatible with one another, which is why the Supreme Court overturned the Fifth Circuit decision and denied the officer's claim of qualified immunity. *Id.* at 657. If that case had reached a jury, they could reasonably choose to credit the plaintiff's story over the defendant's.

Here, unlike *Tolan*, there is no room for factual dispute. Deputy Watson and Rivera were the only two witnesses capable of seeing Mr. Jordan in the doorway, and they both identified a small, dark object in his hand. In fact, Deputy Rivera got a good enough look to identify it as a black handgun. Although Deputy Watson could not see exactly what Mr. Jordan was holding, he reasonably concluded that it was a gun when Deputy Rivera called it out as such. From across the street, McDonald could neither corroborate nor contradict these key facts.

When Deputy Watson saw Mr. Jordan raise a gun toward Deputy Rivera and fifty school children, he made the rational decision to use deadly force. The *Graham* factors tilt in Deputy Watson's favor; aggravated assault against a police officer is a severe crime, and Mr. Jordan posed an immediate threat toward everyone in front of him. Like the officer in *Valverde*, Deputy Watson was not required to wait and see what Mr. Jordan was planning to do.

Because Deputy Watson acted reasonably as the gun was being raised, the only way the Plaintiff can succeed on this Fourth Amendment issue is by proving that Mr. Jordan never had a gun in his hand in the first place. This goes beyond inference and into the realm of speculation. There is no evidence to contradict the fact that both deputies saw the gun. There is no evidence to contradict the fact that Deputy Rivera called out for Mr. Jordan to drop the gun. And there is no evidence to contradict the fact that Mr. Jordan raised the gun in Deputy Rivera's direction. It

is no coincidence that a small, black handgun was found in Mr. Jordan's pocket. Unlike *Tolan*, there is no alternative set of facts that would make Deputy Watson's conduct unreasonable at that moment.

Deputy Watson's use of force was reasonable under the Fourth Amendment, so his qualified immunity defense is sufficient. In many qualified immunity cases, the second part of the test is already answered through the first part; if an officer's actions do not violate a plaintiff's rights, then there is no clearly-established law that says otherwise. That is the case here. However, should the Court disagree, it must also consider whether a reasonable officer in Deputy Watson's position would know that they were violating the Fourth Amendment.

B. A Reasonable Officer in Deputy Watson's Position Would Not Believe that His Actions Fell Beyond the Border Between Excessive and Acceptable Force.

As the Supreme Court recently reaffirmed, "[a] clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.'" *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quoting *Reichle v. Howards*, 132 S. Ct. 2088, 182 (2012)). This part of the test is necessary to protect law enforcement from what can be a "hazy border between excessive and acceptable force." *Saucier v. Katz*, 533 U.S. 194, 206 (2001).

When deciding if a law was clearly established, courts must look at the law as it existed at the time of the conduct. *Id.* at 199. The existing precedent must "squarely govern" the specific facts at issue. *Brosseau v. Haugen*, 543 U.S. 194, 201 (2004). Without sufficient precedent, an officer cannot be held to have notice that he or she was violating the plaintiff's rights. *Id.* at 205. Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

The Supreme Court recently reaffirmed this rule in *Kisela v. Hughes*, 138 S. Ct. 1148 (2018). There, officers responded to a call regarding a woman acting erratically with a knife. *Id.* at 1150. When officers arrived, they saw the suspect approach another woman with that knife, stopping within 6 feet of her. *Id.* All three officers on the scene drew their guns and ordered the suspect to drop the knife. *Id.* at 1151. The suspect did not acknowledge the officers or follow their commands. *Id.* Fearing for the other woman's safety, Officer Kisela fired four shots at the suspect, causing non-life-threatening injuries. *Id.* These events all occurred within one minute. *Id.*

In reviewing this qualified immunity defense, the Supreme Court did not even find it necessary to analyze whether this was a reasonable search under the Fourth Amendment. *Id.* at 1152. They went directly to the second part of the test and determined that Officer Kisela did not have "fair notice" that his actions could

be unlawful. *Id.* at 1154. The plaintiff, in that case, could not find any valid precedent that would cause Officer Kisela to believe that he violated the Fourth Amendment. *Id.*

While this issue lacks precedent in the Fourteenth Circuit, other circuit courts have grappled with the "well established law" test extensively. Months ago, the Fifth Circuit denied qualified immunity for an officer in *Amador v. Vasquez*, 961 F.3d 721 (5th Cir. 2020). That case had many factual disputes, and the qualified immunity defense was initially denied at the trial court level because of those disputes. *Id.* at 730-31. *See also Cole v. Carson*, 935 F.3d 444 (5th Cir. 2019).

The Ninth Circuit made a similar decision in *Estate of Lopez v. Gelhaus*, 871 F.3d 998 (9th Cir. 2017). There, a patrol officer saw Lopez walking down the street holding a realistic-looking toy rifle. *Id.* at 1002. The officer pulled up behind Lopez and ordered him to drop the gun. *Id.* at 1003. As Lopez turned in response, the officer shot him seven times. *Id.* The Ninth Circuit held that the officer violated clearly established law because Lopez was not threatening, and a jury could conclude that the "simple act of turning was not a harrowing gesture in light of the overall context." *Id.* at 1013.

In the present case, the Plaintiff will need to cobble together a series of out-of-circuit decisions to try to argue clearly established law. But as described above,

these cases are sharply distinct from the case at hand. All of those cases involve a dispute of material fact, and the factual scenarios are incomparable. There is no factual dispute in the present case; there were only two witnesses capable of seeing Mr. Jordan's hand, and they both saw him raise his hand.

This case is closest to the facts of *Estate of Valverde* and *Kisela.* Those plaintiffs were both armed, they both made ambiguous movements with their weapons, and both defendant officers had to make a split-second decision. Even assuming that Deputy Watson knows every single use of force case from every single circuit, he would still not have notice that his actions were unconstitutional.

Because Deputy Watson's use of force was objectively reasonable, and because the Plaintiff cannot find a sufficiently analogous precedent, the Motion to Strike should be denied.

II. THE COURT SHOULD EXCLUDE THE TESTIMONY OF DR. EDWARDS BECAUSE IT IS IRRELEVANT, IT WOULD NOT HELP THE JURY, AND ANY PROBATIVE VALUE OF THE TESTIMONY IS SUBSTANTIALLY OUTWEIGHED BY UNFAIR PREJUDICE.

"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." Fed. R. Evid. 401. However, "[t]he [C]ourt 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. Moreover,

> [a] witness who is qualified as an expert" may testify to an opinion 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; (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.

Fed. R. Evid. 702. Dr. Edwards's qualifications as an expert and the reliability of his research methodology are aspects not at issue. The Court should grant Deputy Watson's motion to exclude the testimony of Dr. Edwards because racial bias is not a fact of consequence in determining the action and, as a result, his testimony will not assist the trier of fact in understanding the evidence or determine a fact at issue. Furthermore, Dr. Edwards's testimony has minimal probative value and is substantially outweighed by unfair prejudice and, therefore, should be excluded.

A. Dr. Edwards's testimony is irrelevant because racial bias is not a fact of consequence in determining the action.

Dr. Edwards's testimony does not tend to make it less probable that Deputy Watson acted reasonably during his encounter with Mr. Jordan because Dr. Edwards's testimony regards the role racial bias plays in Midland County Sheriff's department, in general. Specifically, Dr. Edwards "randomly selected and reviewed 380 case files" without regard to whether any of these case files belonged to

Deputy Watson and, as a result, Dr. Edwards's research cannot be used to make "certain observations and conclusions" about Deputy Watson in this case.

Whether racial bias plays a role in Midland County Sheriff's officers' decision to draw their weapon is not a fact of consequence in determining whether Deputy Watson acted reasonably when he fired his weapon. This is because this dispute turns on whether Deputy Watson used reasonable force given his belief that Mr. Jordan "was going to shoot [Deputy] Rivera through the front door." Certainly, the subliminal influence on decisions made by Midland County Sheriff's officers on "308" occasions are irrelevant in assessing the decision of one Midland County Sheriff's officer on February 14, 2019.

Although Dr. Edwards's research suggests "that 77% of Caucasian Midland County Sheriff's Officers drew their weapon on African American men" compared to "33%. who drew their weapon on Caucasian men," Deputy Watson did not simply draw his weapon at the sight of an African American man. Rather, Deputy Watson drew his weapon upon hearing Deputy Rivera "screaming at the top of his lungs, 'gun, drop the gun'" and seeing Mr. Jordan "raising his right hand with something small and dark in it." Accordingly, Deputy Watson fired his weapon because he believed that Mr. Jordan had a gun with which he "was going to shoot [Deputy] Rivera, and if he missed," one of the "fifty kids" that stood at the

elementary school behind him. Therefore, the Court should exclude the testimony of Dr. Edwards because it is irrelevant.

B. Dr. Edwards' testimony should be excluded because it will not assist the trier of fact in understanding the evidence or determining a fact at issue.

"A witness who is qualified as an expert may [not] testify in the form of an opinion" if "the expert's scientific, technical, or other specialized knowledge" would not "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702. "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 591 (1993) (quoting 3 Weinstein & Berger ¶ 702, p. 702-18).

It is well established that opinions that are not relevant will not be of assistance to the fact finder. *Jones v. Nat'l Council of Young Men's Christian Ass'ns of the U.S.*, 34 F. Supp. 3d 896, 901 (N.D. Ill. 2014). *See also Daubert*, 509 U.S. at 591 (explaining that the helpful requirement "primarily goes to relevance."). For example, in *Jones*, the court ruled that expert testimony was properly excluded, where plaintiffs intended to use Dr. Greenwald's testimony to educate the fact finder about racial bias against African Americans in their claims of race discrimination, against the National Council of Young Men's Christian Associations of the United States of America. 34 F. Supp. 3d at 898-99. However,

the court was "not persuaded that Dr. Greenwald's testimony and opinions [were] tied to the facts of [the] case to be useful to the jury," whereby he derived his results from data that did not "remotely approximate the conditions" that applied to the case, and the plaintiffs were unable to "identify a purpose for admitting his testimony." *Id.* at 900-01.

In this case, Dr. Edwards's testimony would not help the trier of fact to understand the evidence because his opinions are not tied to the facts of the case to be useful to the jury. Just as the expert in *Jones* derived results from data unrelated to the facts of the case, likewise, Dr. Edwards gathered case data from the Midland County Sheriff's department that did not "remotely approximate the conditions" of Deputy Watson's encounter with Mr. Jordan. For instance, Deputy Watson's encounter with Mr. Jordan was a response to a citizen placed "complaint call" for an "ordinance violation" and not a "stop based on reasonable suspicion." Nevertheless, Dr. Edwards reviewed and included data "stops for non-traffic misdemeanors" and "stops based on reasonable suspicion" in his analysis.

Additionally, Dr. Edwards relied on "stops" from February 2016 to February 2017, even though Deputy Watson was not employed by Midland County Sheriff's office until March of 2017. Indeed, Dr. Edwards can only profess that racial bias plays an unconscious role in Midland County Sheriff's officers' decisions to draw their weapon during some "stop[s] based upon reasonable suspicion." By contrast,

this case concerns the conscious, split-second decision of one officer, in a setting where he acted to save a life. Furthermore, the Plaintiff has failed to identify a purpose for his testimony in this case. As a result, Dr. Edwards's testimony is not tied to the facts or the parties in this case and, consequently, cannot assist the jury in determining any fact at issue. Therefore Dr. Edwards's testimony "is not relevant and, ergo, non-helpful."

C. Dr. Edwards's testimony should be excluded because it has minimal probative value and is substantially outweighed by a danger of unfair prejudice.

Even if expert testimony meets the requirements of 702, it may "nevertheless be appropriate to exclude [expert] testimony under Federal Rule of Evidence 403." *Id.* at 901. "The [C]ourt may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice." Fed. R. Evid. 403. Dr. Edwards's testimony has minimal probative value because racial bias is not a fact of consequence in the dispute and the Plaintiff has failed to identify a purpose for his testimony. Further, Dr. Edwards's testimony about racial bias does not fit the facts of this case, and therefore lacks probative value, given that Deputy Watson fired his weapon upon hearing Deputy Rivera shout, "gun."

Dr. Edwards's testimony is unfairly prejudicial because the jury would conclude that Deputy Watson, regardless of his actual conduct, drew and fired his weapon because of unconscious racial bias. Furthermore, Dr. Edwards would be

testifying to statistics where technical flaws can infect calculations and can distract the jury from underlying conflicts in witness testimony. Namely, Dr. Edwards's statement that "77% of Caucasian Midland County Sheriff's officers drew their weapon on African American men," could distract the jury from the fact that data, unrelated to the litigation, was collected to reach such results. Dr. Edwards's testimony would shift the jury's focus to Deputy Watson's subconscious rather than his actions and the actions of Mr. Jordan. Certainly only conscious actions can support the Plaintiff's claims in this case. Therefore, Dr. Edwards's testimony has minimal probative value and is substantially outweighed by a danger of unfair prejudice to Deputy Watson.

CONCLUSION

For the foregoing reasons, the Court should deny the Plaintiff's Motion to Strike Defendant Deputy Eric Watson's defense of qualified immunity. Additionally, the Defendant Deputy Eric Watson respectfully moves this Court to prohibit the testimony of Plaintiff's expert witness, Dr. Edwards.

Respectfully Submitted,

/s/ 4000 .

Team 4000
Attorneys for the Defendant