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

Case No. 2:20-cv-15994

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.

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

#4444D
Counsel for Defendants

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INTRODUCTION

Defendant Deputy Eric Watson ("Watson") asks this Court, pursuant to Rules 401, 403, and 702 of the Federal Rules of Evidence, to prohibit the testimony at trial of Plaintiff Sheryl Jordan's ("Plaintiff") expert witness, Frank Edwards, Ph.D. Edwards' testimony will not assist the trier of fact in understanding the evidence, it will likely confuse the jury, and any probative value associated with his testimony would be outweighed by its prejudicial effect.

Additionally, Plaintiff, as Personal Representative of the Estate of David Jordan, Jr. ("Decedent"), has asserted a Section 1983 claim against Watson. Plaintiff alleges that Watson's alleged use of excessive force against Decedent violated his clearly established rights under the Fourth and Fourteenth Amendments to be free from the use of excessive force and seizure. Complaint ("Compl."), ¶¶ 23-27. Plaintiff now moves to strike Watson's affirmative defense of qualified immunity.

Defendant Watson, by and through his attorneys and pursuant to Local Rule 3.01, files this Memorandum of Law in Support of his Motion in Limine and in Opposition to Plaintiff's Motion to Strike Defendant's Affirmative Defense of Qualified Immunity.

STATEMENT OF FACTS

Watson has been employed with the Midland County Sheriff's Office for three years and is assigned to the Road Patrol Unit. Watson Statement, ¶¶ 2, 8. Decedent was an unmarried adult male residing at 1501 58th Street South, Fort Hampton, Florida. Compl., ¶ 3. Plaintiff was Decedent's mother and has been appointed the personal representative of Decedent's estate. *Id*. at ¶ 2.

On February 14, 2019, around 3:00 p.m., Watson and Deputy Rivera received a noise complaint call from the area of Fort Hampton Elementary School. Watson Statement, ¶¶ 12, 14. Fort Hampton Elementary teacher Lee McDonald called the police because "loud, vulgar music" was being played from a home across the street from the school. McDonald Statement, ¶¶ 4, 6. As Watson pulled into the area of the noise complaint, he immediately heard "very loud" music containing "pretty foul" language. Watson Statement, ¶¶ 18-19. Watson established the music was coming from the home of Decedent. *Id.* at ¶ 19.

The officers "banged" on the front door a couple of times but did not get an answer. *Id*. at ¶ 21. Watson walked to the right side of the house and knocked on the side door but received no answer. *Id*. at ¶ 22. Simultaneously, Rivera knocked on the front door again. Rivera Statement, ¶¶ 22, 23. As the front door began to open, Rivera yelled out that it was the Sheriff's Department. *Id*. at ¶ 24. As Rivera watched the front door open, Watson walked back towards the front door and saw the door opened "wide enough that [Watson] could see into the foyer of [Decedent's] house." Watson Statement, ¶¶ 24, 25. After the door opened, Watson saw Decedent standing a few feet away from Rivera but did not know who Decedent was. *Id.* at ¶¶ 26, 44. Rivera could see that Decedent had a small handgun in his right hand. Rivera Statement, ¶ 26. When Rivera saw the handgun, he repeatedly shouted, "gun … drop the gun." *Id.* at ¶ 27. Watson could see that Decedent had a small dark object in his right hand, and he heard Rivera screaming on the top of his lungs to "drop the gun" over the loud music. Watson Statement, ¶¶ 26, 27, 31.

At this point, Watson came from the side of the house towards the front door and aimed his service weapon at Decedent. *Id*. at ¶ 28. Decedent raised his right arm with his gun in Rivera's direction. Rivera Statement, ¶ 28. When Decedent raised the gun in Rivera's direction, Rivera drew his gun and began to retreat back. *Id*. at ¶ 32. Rivera thought he was going to be shot. *Id.* Watson yelled "hey" and Decedent looked at Watson while still pointing the gun at Rivera. *Id*. at ¶ 30. The front door began to close but Decedent's hand was still coming up towards Rivera. Watson Statement, ¶ 31. Watson believed that Decedent was going to shoot Rivera, and if he missed, the bullets could have struck the fifty children standing behind the officers. *Id.* at ¶ 33. Watson then fired his weapon four times at Decedent as the door was closing. *Id.* at ¶ 36. He fired in a "vertical trajectory from bottom to the top[,]" with the lowest shot being the first. *Id*. at ¶ 37. This was the first time in Watson's career that he had ever shot someone. *Id*. at ¶ 39. To his knowledge, he has never had an excessive force complaint made against him. *Id*. at ¶ 49. After the shots were fired, the officers took cover behind Rivera's patrol car while Rivera called over the radio. Rivera Statement, ¶ 36. Eventually the SWAT team took position and Watson and Rivera were removed from the scene. *Id*. at ¶ 38.

Watson later saw a photo of Decedent lying face down with the gun in the back pocket of his shorts. Watson Statement, ¶ 54. Watson believed that the gun in Decedent's shorts was the small dark object Decedent had in his hand during the incident. *Id*. at ¶ 55. He also learned that the gun was stolen, and that Decedent had a blood alcohol level of .32. *Id.* at ¶¶ 56-57.

On February 2, 2020, Plaintiff, on behalf of Decedent, filed a complaint for wrongful death in the Circuit Court of the Thirtieth Judicial Court, in and for Midland County, Florida. Compl., ¶¶ 1-32.

ARGUMENT

Defendant Watson asks this Court to grant his Motion in Limine and deny Plaintiff's Motion to Strike Defendant's Affirmative Defense of Qualified Immunity. First, this Court, pursuant to Rules 401, 403, and 702 of the Federal Rules of Evidence, should grant Defendant's Motion in Limine to prohibit the testimony at trial of Plaintiff's expert witness, Frank Edwards, Ph.D. Edwards' testimony will not assist the trier of fact in understanding the evidence or determining a fact at issue and Edwards' opinion is likely to confuse the jury. Even if the evidence is found to be relevant, any probative value associated with Edwards' testimony would be outweighed by its prejudicial effect. Second, this Court should deny Plaintiff's Motion to Strike because the affirmative defense of qualified immunity is legally sufficient as Watson did not violate Decedent's constitutional rights, and even if Watson did violate those rights, his alleged conduct was not clearly established at the time to be a violation of Decedent's rights.

I. PLAINTIFF'S EXPERT WITNESS FRANK EDWARDS' TESTIMONY SHOULD BE PROHIBITED BECAUSE IT WILL NOT ASSIST THE TRIER OF FACT IN UNDERSTANDING THE EVIDENCE

Defendant Watson moves this Court, pursuant to Rules 401, 403, and 702 of the Federal Rules of Evidence, to prohibit the testimony at trial of Plaintiff's expert witness, Frank Edwards, Ph.D. His testimony will not assist the trier of fact in determining a fact at issue and his opinion is likely to confuse the jury. Even if the evidence is found to be

relevant, any probative value associated with the testimony would be outweighed by its prejudicial effect.

For evidence to be admissible, it must be relevant. Relevant evidence helps to prove or disprove a material fact. *See* Fed. R. Evid. 401. Expert testimony is only relevant if the testimony is based on sufficient facts or data. *See* Fed. R. Evid. 702(b). Rule 702 "impose[s] on the trial judge [an] additional responsibility to determine whether that [expert] testimony is likely to promote accurate factfinding." *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2317 (2016) (citing 29 C. Wright & V. Gold, Federal Practice and Procedure: Evidence §6266, p. 302 (2016)). To qualify an expert under this rule, the district court must act as "a 'gatekeeper' and 'conduct an exacting analysis' of the basis for the expert's testimony." *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1256-57 (11th Cir. 2002) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)).

Even relevant evidence may be excluded if its probative value is outweighed by the danger that it will unfairly prejudice or confuse the jury. *See* Fed. R. Evid. 403. Applying Rule 403 "requires a fact-intensive, context-specific inquiry." *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 388 (2008). "The inquiry required by those rules is within the province of the district court[.]" *Id.* Expert testimony will violate Rule 403 if it has an "undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403 advisory committee's note to 2011 amendment. Weighing possible prejudice against probative force under Rule 403 "exercises more control over experts than over lay witnesses." *Daubert*, 509 U.S. at 595

(citing Jack B. Weinstein, Rule 702 of the Federal Rules of Evidence Is Sound; It Should Not Be Amended, 138 F.R.D. 631, 631 (1991)). In this case, whatever probative value Edwards' testimony may have, it is clearly outweighed by its prejudicial effect.

A. Edwards' Broad Testimony And Research Is Not Relevant Because It Does Not Aid The Court In Determining Whether Watson Violated Decedent's Constitutional Rights

Edwards' testimony of possible racial bias in the Midland Sheriff's Department will not aid the court in proving the facts of this case. Under Rule 401 of the Federal Rules of Evidence, in order for evidence to be admissible in court, it must be relevant. *See* Fed. R. Evid. 401. Edwards' testimony is based on data collection that is too broad and it does not help prove that Watson acted "recklessly, maliciously, or deliberately indifferent" towards Decedent's constitutional rights. Compl., ¶ 26.

Edwards' data pertains to 380 Midland County Sheriff's Department case files collected over a three-year period. Edwards Statement, ¶ 7. Edwards claims he made "certain observations" regarding these case files that led him to the conclusion 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 ¶¶ 7-8. It is unclear whether this data includes stops in which Watson was involved. Also, the "stops" that Edwards evaluated were stops from "non-traffic misdemeanors" and "ordinance violations." *Id*. at ¶ 6. This is too broad of a description and certain stop types may be more likely than others to result in the drawing of a weapon. In this case, Watson was called in regards to a noise violation. Watson Statement, ¶ 14. Edwards' research may not adequately cover this specific type of encounter.

The age range mentioned in Edwards' testimony is also too broad. His testimony alleges the potential of racial bias against African American men ages 18-35, but Decedent in this case was 33 years old. Edwards Statement, ¶ 9; Summary Autopsy Report. Although this is within the age range studied by Edwards, the data regarding weapons being drawn on 33-year-old African American men may be much different than the averaged statistics he presented.

In his twenty years of policing, Watson has never had an excessive force claim made against him. Watson Statement, ¶ 49. There are no facts to show that Watson fired at Decedent because of a racial bias. Watson saw Decedent raising what he believed to be a gun at Rivera, and he fired at Decedent to eliminate the threat. *Id.* at ¶¶ 31-32, 38. Therefore, Edwards' testimony is simply not relevant to the actions Watson took on the day of the incident.

Edwards claims that his findings about the Midland Sheriff's Department were consistent with the findings published in his research article. Edwards Statement, ¶ 10. But his article does not contain enough sufficient data to make that claim. Pursuant to Rule 702 of the Federal Rules of Evidence, an expert witness may testify only if the testimony is "based on sufficient facts or data." Fed. R. Evid. 702(c). His research article studied the risk of being killed by the police force in the United States by age, race/ethnicity, and sex. Edwards' Research Article at p. 16793. But it did not include other factors such as the socioeconomic status of the victim or the crime rates in the area of the shootings. The variable of crime rate is important to this case because the noise complaint was made was a high crime area. Watson Statement, ¶ 7. The study did not

evaluate any data "on variables that may be associated with variation in risk within racial/ethnic groups such as skin tone, multiracial identity, or social class." Edwards' Research Article at p. 16796. Further, the data collected from 2013 to 2018 cannot be used to consider future events because the study does not have enough statistical power to look at trends over time. *See Id.* Since Watson's alleged actions took place in 2019, it cannot be compared to the data in Edwards' study. Making *any* assumptions about an act done in 2019 from this study would be speculative. Therefore, Edwards' testimony regarding his findings about potential racial bias in the Midland Sheriff's Department is not relevant.

B. Even If Edwards' Testimony Is Relevant, Any Probative Value Is Greatly Outweighed By The Danger Of Unfair Prejudice And Jury Confusion

Even if this Court finds that Edwards' testimony is relevant to this case, any probative value it has is outweighed by the danger of unfair prejudice and jury confusion. Pursuant to Rule 403, the court may exclude relevant evidence if its probative value is "substantially outweighed by a danger of… unfair prejudice [and] misleading the jury." Fed. R. Evid. 403. In this case, there is serious danger of unfair prejudice in admitting Edwards' testimony regarding the possibility of racial bias in policing.

Unfair prejudice within the context of Rule 403 means "an undue tendency to suggest [a] decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403 advisory committee's note to 2011 amendment. Allowing for evidence regarding possible racial bias in police forces will incite the jury to punish Watson, even though none of the findings can prove that racial bias played a role

in *his* actions. Edwards' broad testimony will compel the jury to make an improper and emotionally charged decision instead of focusing on the facts. Admitting this testimony would seriously hinder the protections against unfair prejudicial testimony under Rule 403. Fed. R. Evid. 403.

Relevant evidence may also be excluded if its probative value is outweighed by the danger that it will confuse the jury. *See* Fed. R. Evid. 403. Edwards' opinion will likely confuse the jury because his testimony is extremely nuanced, and the jury will not be able to account for the missing variables in his research. The testimony will distract from, rather than aid in explaining, the evidence presented in this case. Plaintiff seeks to admit Edwards' testimony to aid in the theory of racial bias regarding when Midland County Sheriff's decide to draw their weapons. But to prove racial bias, "a plaintiff bears the burden of showing that race was a but-for cause of its injury." *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1014 (2020). With the facts presented in the record, that is impossible to do. Therefore, admitting the testimony will only confuse and distract the jury from understanding the facts of this case.

In all, Edwards' testimony is not relevant because it is too broad, and his research article does not contain enough data. Even if the testimony is found to be relevant, its probative value is greatly outweighed by the prejudicial effect it will have on the jury. This Court should find that Edwards' testimony is inadmissible pursuant to Rules 401, 403, and 702 of the Federal Rules of Evidence and grant Defendant's Motion in Limine.

II. THIS COURT SHOULD DENY PLAINTIFF'S MOTION TO STRIKE BECAUSE WATSON'S CONDUCT WAS NOT OBJECTIVELY UNREASONABLE TO HAVE VIOLATED DECEDENT'S RIGHTS AND IT WAS NOT CLEARLY ESTABLISHED

Plaintiff alleges that Watson's actions of using deadly force against Decedent violated his clearly established rights under the Fourth and Fourteenth Amendments to be free from the use of excessive force and seizure. Compl., ¶¶ 23-27. Plaintiff now moves to strike Watson's affirmative defense of qualified immunity, claiming that it is an insufficient defense and that Watson cannot rely upon it. Plaintiff's MTS, ¶¶ 3, 5. As shown below, Watson *can* successfully rely upon the defense of qualified immunity as it is legally and factually sufficient. Therefore, Plaintiff's Motion to Strike should be denied.

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." An affirmative defense will be held insufficient only if: "(1) it is patently frivolous on its face; or (2) it is clearly invalid as a matter of law." *Seybold v. Clapis*, 966 F. Supp. 2d 1312, 1314 (M.D. Fla. 2013). It will be "held insufficient as a matter of law only if it appears that the defendant cannot succeed under any set of facts which it could prove." *Reyher v. Trans World Airlines, Inc.*, 881 F. Supp. 574, 576 (M.D. Fla. 1995). Motions to strike "on the grounds of insufficiency" are generally "not favored." *Carlson Corp./Southeast v. School Bd. of Seminole County*, 778 F. Supp. 518, 519 (M.D. Fla. 1991).

It is well established that qualified immunity is an affirmative defense. *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982). Qualified immunity "protects government officials 'from liability in civil damages insofar as 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) (quoting *Harlow*, 457 U.S. at 818). In a qualified immunity analysis, courts must determine if: (1) the individual defendant's actions were objectively unreasonable and therefore a constitutional violation; and (2) the individual defendant violated a clearly established right such that he was "on notice that his conduct would be clearly unlawful." *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001). As shown below, Plaintiff's Motion to Strike should be denied because Plaintiff cannot pass this two-prong test since Watson: (1) did not violate Decedent's rights; and (2) even if this Court finds that Watson violated his rights, it was not clearly established at the time that Watson's alleged conduct would be in violation of those rights.

A. Watson's Alleged Conduct Was Not Objectively Unreasonable To Have Violated Decedent's Fourth Amendment Rights

Plaintiff alleges that Watson violated Decedent's rights under the Fourth and Fourteenth Amendments. According to the Supreme Court in *Graham v. Connor*, 490 U.S. 386, 395 (1989), Plaintiff's claim should be analyzed solely under the Fourth Amendment's reasonableness standard. Since Watson's actions were not objectively unreasonable, he did not violate Decedent's Fourth Amendment rights. Thus, the

affirmative defense of qualified immunity is legally sufficient, and this Court should deny Plaintiff's Motion to Strike.

The Fourth Amendment gives citizens the right "to be secure in their persons, houses, papers, and effects, against unreasonable… seizures[.]" U.S. Const. amend. IV. The Supreme Court has explicitly stated that "*all* claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." *Graham*, 490 U.S. at 395 (emphasis in original); *County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998) (stating that substantive due process analysis is inappropriate if the claim is covered by the Fourth Amendment). "[A]pprehension by use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). Here, because Plaintiff's constitutional claims are based on Watson's alleged use of excessive force, the claims should be analyzed solely under the Fourth Amendment's reasonableness standard. *Carr v. Tatangelo*, 338 F.3d 1259, 1268 (11th Cir. 2003).

When determining whether a right was violated, it must be shown that the individual's actions were objectively unreasonable and therefore a constitutional violation. *Saucier*, 533 U.S. at 201. The question is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham*, 490 U.S. at 397. This is "judged from the perspective of a reasonable officer on the scene, rather than with the

20/20 vision of hindsight." *Id.* at 396. Courts must "embody allowance for the fact that police officers are often 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 396-97.

Courts look at the overall circumstances, including "the seriousness of the crime, whether the suspect poses an immediate danger to the officer or others, whether the suspect resisted or attempted to evade arrest, and the feasibility of providing a warning before employing deadly force." *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010). It is "constitutionally permissible for an officer to use deadly force when 'the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.'" *Carr*, 338 F.3d at 1268 (quoting *Garner*, 471 U.S. at 11). Qualified immunity protects an officer's reasonable mistakes about the legality of the use of force "in the hazy border between excessive and acceptable force." *Mullenix v. Luna*, 136 S. Ct. 305, 312 (2015) (citation omitted).

Here, Watson's use of force was not objectively unreasonable because the Decedent posed an immediate threat to Watson and Rivera. As Decedent opened the front door, Rivera saw that Decedent "had a small black handgun in his right hand." Rivera Statement, ¶¶ 25, 26. Rivera gave warning to Decedent and immediately started shouting at him to drop his gun. *Id.* at ¶ 27. In response to hearing Rivera shout out "gun, drop the gun[,]" Watson came around the corner of the house and saw Decedent raise his right hand while holding a gun in Rivera's direction. Watson Statement, ¶¶ 24, 38. Watson reasonably believed that Decedent was going to "shoot Rivera through the

front door, and if he missed Rivera, there were 50 kids behind [the officers]." *Id.* at ¶ 33. Hearing Rivera yell that Decedent had a gun coupled with his own reasonable belief that Decedent was pointing a gun at Rivera forced Watson to make a split-second judgment to eliminate the armed threat. *Id.* at ¶¶ 27, 36, 38. Because Watson had probable cause to believe that Decedent posed a serious threat, he permissibly used deadly force. *Carr*, 338 F.3d at 1268. Even if the door was closed, the threat was still present, as Decedent had a gun and could have used it to shoot through the door. Medical examiner Taylor Roberts suggests Decedent did not have a gun pointed at Rivera. *See* Roberts Statement, ¶ 13. However, Roberts was not at the scene when this occurred, and the reasonableness standard is "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. Even if Watson mistakenly saw Decedent holding a gun, any reasonable officer in Watson's shoes would have fired their weapon to eliminate the armed threat. *Vaughan v. Cox*, 316 F.3d 1210, 1214 (11th Cir. 2003), *cert. denied*, 123 S. Ct. 2252 (2003) (holding that officers may "reasonably but mistakenly conclude that probable cause exists to justify the use of deadly force."). Watson acted objectively reasonable in the dangerous situation he was faced with. Therefore, Watson permissibly used deadly force and did not violate Decedent's rights under the Fourth Amendment.

B. Even If Watson Violated Decedent's Rights, Those Rights Were Not Clearly Established

Even if this Court were to find that Watson violated Decedent's rights, it was not clearly established at the time that Watson's conduct would be in violation of those

rights. Thus, the affirmative defense of qualified immunity is legally sufficient, and therefore, this Court should deny Plaintiff's Motion to Strike.

A right is clearly established when, at the time of the conduct, the law was "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix*, 136 S. Ct. at 308. The legal principle must be "settled law" dictated either by controlling authority or a "robust consensus of cases of persuasive authority." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589-90. The existing precedent at the time of the conduct must have placed the "constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). There can be the "rare obvious case, where the unlawfulness of the officer's conduct is sufficiently clear[.]" *Wesby*, 138 S. Ct. at 590. But relevant case law is usually required. *Id.* at 590. Under either scenario, the "state of the law" at the time must provide an officer with "fair warning" that his alleged conduct was unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). The "clearly established law must be 'particularized' to the facts of the case." *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

Here, at the time of Watson's conduct in February 2019, the state of the law was not clearly established to have given him fair warning that an officer violates the Fourth Amendment by using deadly force against an armed and threatening individual. It is true that the Supreme Court and Eleventh Circuit have recognized that an officer "may not seize an unarmed non-dangerous suspect by shooting him dead." *Garner*, 471 U.S. at 11; *Mercado v. City of Orlando*, 407 F.3d 1152 (11th Cir. 2005) (holding that shooting a

non-threatening person at close range was a clearly-established use of excessive force); *Pruitt v. City of Montgomery*, 771 F.2d 1475 (11th Cir. 1985) (holding that shooting an unarmed suspect with no potential risk to police or others was impermissible). However, that precedent does not apply to the facts here as Decedent posed a dangerous threat to Rivera and others. Watson Statement, ¶¶ 33, 38. In *Garner*, an officer was reasonably sure that the individual was unarmed and shot the individual as he climbed over the fence. *Garner*, 471 U.S. at 3-4. The Court determined that the state statute allowing the officer to use deadly force under the circumstances was impermissible. *Id*. at 22. Contrary to the officer in *Garner*, Watson reasonably believed that Decedent was armed and threatening. The Supreme Court has recognized that "*Garner* and *Graham* do not by themselves create clearly established law outside 'an obvious case.'" *White*, 137 S. Ct. at 552 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004). Thus, at the time of the incident, the law was not sufficiently clear to have put a reasonable officer in Watson's shoes on notice that his conduct violated the Fourth Amendment.

Because the state of the law was not clearly established to have given Watson fair warning that his alleged conduct violated the Fourth Amendment, Watson's affirmative defense of qualified immunity is legally sufficient against Plaintiff's Fourth Amendment claim.

CONCLUSION

WHEREFORE, Defendant Deputy Eric Watson asks this Court to grant Defendant's Motion in Limine and deny Plaintiff's Motion to Strike.

Respectfully submitted,

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