4444P

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.

Plaintiff's Memorandum of Law in Support of its Motion to Strike Defendants' Qualified Immunity Affirmative Defense Claim and in Opposition to Defendants' Motion In Limine Re: Frank Edwards

---

/s/ 4444P

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

United States Circuit Court of Appeals Cases

United States District Court Cases

Statutes

Rules

INTRODUCTION

Plaintiff, Sheryl Jordan, as Personal Representative of the Estate of David Jordan, Jr., asserts that Eric Watson's ("Defendant") shooting at Mr. Jordan through a closed door is a clear and established violation under the Fourth and Fourteenth Amendments to not be subject to use of excessive force. Additionally, Plaintiff asserts that the probative value of Professor Edwards' testimony is not substantially outweighed by the dangers of unfair prejudice or misleading the jury.

Plaintiff, Sheryl Jordan, as Personal Representative of the Estate of David Jordan, Jr., by and through her attorneys and pursuant to Local Rule 12(f) of the Federal Rules of Civil Procedure files this Memorandum of Law in Support of her Motion to Strike Defendants' Qualified Immunity Affirmative Defense Claim and in Opposition to the Defendants' Motion in Limine Re: Frank Edwards.

STATEMENT OF FACTS

David Jordan, Jr. resided in Midland County, Florida, and had three children. Complaint at 1-2, ¶ 3. On February 14, 2019, at 3:15 p.m., the Defendants arrived at Mr. Jordan's residence in response to a noise complaint for loud music. *Id.* at 3, ¶ 11. Unauthorized loud music is potentially a violation of Fort Hampton Municipal Code with a maximum penalty of $500 and/or up to 60 days in jail only after a warning is issued for the first complaint and a civil citation is issued after the second complaint. *Id.* at 3, ¶ 12. Mr. Jordan had no prior complaints. A noise disturbance is not a criminal violation. Defendant Watson's Sworn Statement, 2, ¶ 15.

Defendant Derek Michaels was the Sheriff for Midland County and employed Defendant Eric Watson in his capacity as a law enforcement officer with the Midland County Sheriff's Office. Complaint at 2, ¶ 7. Mr. Rivera and Defendant Watson knocked on the front and side doors of Mr. Jordan's home in an attempt to speak with him. *Id.* No background investigation or call history search was conducted before the defendants arrived at Mr. Jordan's residence. Defendant Watson's Sworn Statement at 4, ¶ 44-45. After Defendant Watson knocked on the doors, the front door opened, revealing Mr. Jordan within the comfort of his own home. Complaint at 3, ¶ 14. At no time did Mr. Jordan threaten or otherwise pose a threat to the defendants, or anyone else. *Id.* at 4, ¶ 18. Defendant Rivera indicated loudly that Mr. Jordan had a gun, and then the front door shut. *Id.* at 3, ¶ 15. Despite the door being closed, Defendant Watson fired his handgun approximately four times and killed Mr. Jordan. *Id.* at 3, ¶ 16.

Defendant Watson could see Mr. Jordan's face and whole body standing in the doorway before he shot him. Defendant Watson's Sworn Statement at 3, ¶ 29. Defendant Watson could not say for certain that Mr. Jordan held a gun. *Id.* at ¶ 32. Defendant Watson lost sight of what was in Mr. Jordan's hand as the door shut and did not see it aimed at anybody. *Id.* at ¶ 35. After Mr. Jordan was shot, the Midland County Sheriff's Office dispatched a SWAT team and many personnel to Mr. Jordan's home in an effort to subdue him, although he was already dead. Complaint at 4. The gun discovered on Mr. Jordan's body was not loaded. Defendant Watson's Sworn Statement at 5, ¶ 56. Shortly after the shooting, Defendant Watson learned that he arrested Mr. Jordan and several others on curfew violations in the past. *Id.* at 4, ¶ 46-47. The Estate of Mr. Jordan filed a

two-count complaint for wrongful death against Defendant Watson and pursuant to 42 U.S.C. § 1983, and a state law claim of negligence against Defendant Michaels, respectively. Complaint at 4-5.

ARGUMENT

I. THIS COURT SHOULD GRANT PLAINTIFF'S MOTION TO STRIKE BECAUSE DEFENDANTS ARE NOT ENTITLED TO QUALIFIED IMMUNITY AFTER VIOLATING PLAINTIFF'S CLEARLY ESTABLISHED FOURTH AND FOURTEENTH AMENDMENT RIGHTS.

A Rule 12(f) motion to strike a defense is proper when the defense is insufficient as a matter of law. Fed. R. Civ. Proc. 12(f); *Anchor Hocking Corp. v. Jacksonville Electric Authority*, 419 F. Supp. 992 (M.D. Fl 1976). "A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." Fla. R. Civ. Proc. 1.140(f). Defendants' qualified immunity affirmative defense is insufficient because the relevant law with respect to the constitutional rights allegedly violated was clearly established by 2019 and, as a matter of law, no Defendant could have held an objectively reasonable belief that the wrongful conduct alleged could have been lawful.

The doctrine of qualified immunity protects government officials from civil liability so long as their conduct does not violate clearly established constitutional rights of which a reasonable person would have been aware under the circumstances. *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Malley v. Briggs*, 475 U.S. 335, 335 (1986) (Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law"). Qualified immunity analysis is a two-step process: courts

must determine whether a plaintiff alleges a constitutional violation, and whether the right at issue was clearly established at the time of the alleged violation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The order in which the court addresses the two steps rests in the sound discretion of the court. *Pearson*, 555 U.S. at 236.

A. The Officers' Use Of Force Against David Jordan, Jr. Was Excessive, In Violation Of His Fourth Amendment Constitutional Right.

Plaintiff alleges that Defendants violated David Jordan, Jr.'s right to be free from the use of excessive force. The Fourth Amendment gives citizens the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures…" U.S. CONST. amend. IV. The Supreme Court has long held that all claims of excessive force in the context of an arrest or detention should be analyzed under the Fourth Amendment's reasonableness standard. *See Graham v. Connor*, 490 U.S. 386, 395 (1989). Under this reasonableness test, the court considers the totality of the circumstances. *Plumhoff v. Rickard*, 572 U.S. 765, 773 (2014). "The 'reasonableness' inquiry in an excessive force case is an objective one: 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; *see also Lee v. Ferraro*, 284 F.3d 1188, 1197 (11th Cir. 2002) (stating that a court must ask "whether a reasonable officer would believe that this level of force is necessary in the situation at hand"). To determine whether the use of force was objectively reasonable under the circumstances, courts weigh three factors: (1) the severity of the crime at issue, (2) the immediate threat that the suspect posed to officers

and others, and (3) any active resistance or attempt to flee by the suspect. *Graham*, 490 U.S. at 396; *see also Lee*, 284 F.3d at 1198 (stating that the "force used by a police officer in carrying out an arrest must be reasonably proportionate to the need for that force"). "In addressing these factors, the Court should consider the need for the application of force, the relationship between the need and amount of force used, and the extent of the injury inflicted." *Pace v. City of Palmetto*, 489 F. Supp. 2d 1325, 1331 (M.D. Fla. 2007).

In this case, considering the *Graham* factors, Defendant Watson's use of force was objectively unreasonable and excessive when he fired his gun at a man in his own home through a closed door. The first Graham factor weighs overwhelmingly in favor of Mr. Jordan and his estate because he was not guilty of any crime. This was a complaint over loud music and Defendant Watson expressly stated that "[a] noise disturbance is a county ordinance violation. It is not a criminal violation." Defendant Watson's Sworn Statement at 2, ¶ 15. The Officers did not run a background check on Mr. Jordan prior to arrival at his residence and admitted to being there for a simple investigation. *Id.* at 4, ¶ 44-45. A noise disturbance violation is potentially a violation of Fort Hampton Municipal Code with a maximum penalty of $500 and/or up to 60 days in jail only after a warning is issued for the first complaint and a civil citation is issued after the second complaint. Complaint at 3, ¶ 12. A noise disturbance does not provide a basis for believing that the use of any amount of force would be necessary to warn Mr. Jordan, much less shoot him through a closed door four times.

Likewise, the second *Graham* factor also weighs in favor of Mr. Jordan's estate. Mr. Jordan did not pose an immediate threat or any kind of threat to Defendant Watson or anyone else. He was completely non-violent. Defendant Watson alleges that he "could see Mr. Jordan's face and whole body," but at the same time states that he "can't say for certain that what Mr. Jordan had in his right hand was a gun." Defendant Watson's Sworn Statement at 3, ¶ 29-32. Although Deputy Rivera indicated that Mr. Jordan had a gun, at the time of the applicable use of excessive force Mr. Jordan was behind a closed door with no line of sight with Defendant Watson or Deputy Rivera. Defendant Watson admits that he lost sight of what was in Mr. Jordan's hand as the door shut and did not see it aimed at anybody. Defendant Watson's Sworn Statement at 3, ¶ 35. Even if the officers allege that Mr. Jordan did pose an immediate threat, the use of excessive force is not justified because Mr. Jordan would have to shoot blindly through a closing door if he were to shoot. Despite those factors, Defendant Watson chose to respond to the situation with lethal force through a closed door. After the grisly shooting of Mr. Jordan, the gun was discovered unloaded in the back of his shorts. Complaint at 3, ¶ 17. Dr. Roberts stated that Mr. 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." Sworn Statement of Taylor Roberts, MD at 2, ¶ 13. This suggests that Mr. Jordan was not holding the gun and further suggests that he did not pose as an immediate threat.

As for the third *Graham* factor, Mr. Jordan was not resisting arrest or attempting to evade arrest, he was in the apparent safety of his own home. Mr. Jordan was not under suspicion for any crime, not charged, and had no reason to flee. Outside of playing his

music too loud, Mr. Jordan did not commit any crime. The officers clearly violated Mr. Jordan's constitutional rights to be free from use of excessive violence.

B. Mr. Jordan's Right To Be Free From Excessive Force As It Was Applied On The Facts Of This Case Was Clearly Established.

The second prong of the qualified immunity analysis requires this Court to determine whether the law was sufficiently clearly established to provide Defendant Watson with fair warning that his conduct violated Mr. Jordan's constitutional rights. 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). One way to show 'clearly established' is by pointing to a prior case with similar facts, but that is not the only way to do so. *See, e.g., United States v. Lanier*, 520 U.S. 259, 271 (1997) (citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)) (recognizing that a general constitutional rule "identified in the decisional law" may apply with "obvious clarity to the specific conduct in question," even though the challenged conduct has not previously been held unlawful). In order for the law to be clearly established, it is not necessary to show that "the very action in question has been held unlawful, but it is to say that in light of pre-existing law the unlawfulness must be apparent." *Anderson*, 483 U.S. at 640; *see also Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (stating that officers can "be on notice that their conduct violates established law even in novel factual circumstances"); *Lanier*, 520 U.S. at 271 ("There has never been … a section 1983 case accusing welfare officials of selling foster children into slavery; it does

not follow that if such a case arose, the officials would be immune from damages [or criminal] liability").

The Supreme Court has held that "[w]here the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985); *see also Acoff v. Abston*, 762 F.2d 1543, 1547 (11th Cir. 1985) (holding that to pose a threat of serious physical harm, the suspect must actually threaten the officer). "[A]n officer's violation of the *Graham* reasonableness test is a violation of clearly established law if there are no substantial grounds for a reasonable officer to conclude that there was a legitimate justification for acting as [he] did." *Casey v. City of Federal Heights*, 509 F.3d 1278, 1286 (10th Cir. 2007).

In the circumstances of this case, every reasonable officer would have known that Defendant Watson's shooting of Mr. Jordan, a nonviolent, non-dangerous, individual in the comfort of his home, violated his constitutional right to be free from excessive force. The Plaintiff submits that the rulings in *Garner* and *Graham* clearly establish protections embodied by the Fourth Amendment, to wit: (1) deadly force may not be used to apprehend a fleeing offender unless the offender places the officer or others in immediate danger of death or serious bodily injury; and (2) any use of force by officers - deadly or otherwise - must be proportional to the threat posed by the offender. These principles apply with obvious clarity to the facts of this case and place Defendant Watson on notice that his conduct violated this clearly established law. The undisputed facts in the record reveal that: (1) Mr. Jordan was resting in the safety of his house and not under suspicion

of any crime; (2) Defendant Watson used deadly force when he shot the closed door which served as a barrier between Mr. Jordan and the officer; and (3) at the time that Defendant Watson used deadly force, no one was in immediate danger of being harmed.

Therefore, Defendant Watson was clearly on notice of the prohibition against shooting at a non-violent and non-threatening individual and every reasonable officer would conclude that shooting a person through a closed door, who was not under investigation for any crime, would be clearly unlawful. The qualified immunity defense should be stricken.

C. Even If This Court Find That The Fourth Amendment Does Not Apply, Mr. Jordan's Substantive Due Process Rights Were Violated Under The Fourteenth Amendment.

Courts have acknowledged excessive force that violates the Fourth Amendment can also violate the Fourteenth Amendment. The "elaborate legal discussion required to determine whether defendants' specific acts of physical force occurred in a Fourth or a Fourteenth Amendment setting" is irrelevant to a determination whether the conduct was unconstitutional in the first place. *Albritten v. Dougherty County, Ga.*, 973 F. Supp. 1455, 1464 (M.D. Ga. 1997). A plaintiff whose claim is not susceptible to proper analysis with reference to a specific constitutional right may still state a claim under § 1983 for a violation of his Fourteenth Amendment substantive due process right, and have the claim judged by the constitutional standard which governs that right. *See Landol–Rivera v. Cruz Cosme*, 906 F.2d 791, 796 (1st Cir. 1990) ("We assume that claims of excessive force outside the context of a seizure still may be analyzed under substantive due process principles"); *Pleasant v. Zamieski*, 895 F.2d 272, 276 n. 2 (6th Cir. 1990) ("[P]resumably

this imperative would preserve fourteenth amendment substantive due process analysis for those instances in which a free citizen is denied his or her constitutional right to life through means other than a law enforcement official's arrest, investigatory stop or other seizure."); and *Wilson v. Northcutt*, 987 F.2d 719, 722 (11th Cir. 1993) ("[W]e hold that a non-seizure Fourteenth Amendment substantive due process claim of excessive force survives Graham").

The Fourteenth Amendment, in relevant part states, that no state shall "deprive any person of life, liberty, or property, without due process of law…" U.S. CONST. amend. XIV. "[T]he Due Process Clause of the Fourteenth Amendment was intended to prevent government 'from abusing [its] power, or employing it as an instrument of oppression.'" *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 126 (1992). This protection governs both legislative and executive action. *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). In cases dealing with abusive executive action, "only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.'" *Collins*, 503 U.S. at 129. The level of executive abuse of power that amounts to a constitutional violation is that which "shocks the conscience." *Id.; see also Breithaupt v. Abram*, 352 U.S. 432, 435 (1957) (conduct that " 'shocked the conscience' and was so 'brutal' and 'offensive' that it did not comport with traditional ideas of fair play and decency' violates due process). The easiest case to find a constitutional violation is through "conduct intended to injure in some way unjustifiable by any government interest." *Lewis*, 523 U.S. at 849.

Here, Defendant Watson's actions are "conscience-shocking." Defendant Watson fired his handgun with a purpose to cause harm to Mr. Jordan. Defendant Watson stated that he was "shooting to eliminate a threat." Sworn Statement of Deputy Eric Watson at 4, ¶ 38. Mr. Jordan was behind a closed, had no criminal history, and was not participating in any criminal activity. Moreover, Defendant Watson was aware that lethal shots were not proportional to the supposed threat. Defendant Watson's actions were in clear violation of Plaintiff's Fourteenth Amendment rights and the qualified immunity defense should be stricken.

II. THIS COURT SHOULD DENY THE DEFENDANT'S MOTION IN LIMINE BECAUSE PROFESSOR FRANK EDWARDS' TESTIMONY WILL ASSIST THE TRIER OF FACT IN UNDERSTANDING THE EVIDENCE OR DETERMINE A FACT AT ISSUE.

The admission of expert testimony is governed by Federal Rule of Evidence 702, which provides as follows:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education 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 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. First, Professor Edwards' expert testimony is relevant to show that racial bias had an impact on the defendant when he killed Mr. Jordan. Second, the probative value of Professor Edwards' testimony is not substantially outweighed by the dangers of unfair prejudice or misleading the jury. Therefore, this Court should deny the Defendant's Motion in Limine to prohibit testimony about the racial bias present in

Midland County Sheriff's Office and the impact that racial bias had on the actions of Defendant Watson when he shot and killed David Jordan, Jr.

A. Professor Edwards' Testimony Is Relevant To Show That Racial Bias Had An Impact On The Defendant When He Killed David Jordan, Jr.

Evidence is relevant if it "has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401(a), (b). Professor Edwards' testimony is predicated on the scientific relationship between police violence and ethnicity. His data tends to show that people of color face a higher likelihood of being killed by police than do their white counterparts. Report of Professor Edwards at 1. Those findings were used as the basis of his review of Midland County Sheriff's Department. In his review, he gathered data on stops based upon reasonable suspicion performed by Midland County Sheriff's officers where the Sheriff's officer drew his/her weapon during the stop. Edwards' Sworn Statement at 1, ¶ 5. His professional opinion is 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 2, ¶ 8. That evidence goes toward the main issue in this case, that the defendant was unjustified when he shot and killed David Jordan, Jr. Rather than act as a reasonable officer under the circumstances, Professor Edwards' testimony would suggest to the jury that the defendant's judgment was clouded by racial bias when he unreasonably deprived David Jordan, Jr. of life, liberty, and due process of law, as well as comports with each FRE 702 standard.

As a general rule, a party may introduce expert testimony at trial if the expert opinion "will help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). A witness can be qualified as an expert based on the expert's 1) education, 2) knowledge, 3) experience, 4) training, or 5) skill. Fed. R. Evid. 702. Professor Edwards teaches statistics and conducts research at Rutgers University's School of Criminal Justice. He has publications, reports, and presentations in sociology and criminology, the latest of which analyzes the risk of being killed by police use of force in the United States by age, race, and sex. Edwards' C.V., 1-10. Edwards' career, including training, education, skill, knowledge, and experience have all been centered around analyzing issues very much like the case at bar.

Further, Professor Edwards testimony is the product of sufficient facts and data, applied to the facts of this case. Professor Edwards stated that his findings about the Midland Sheriff's Department were consistent with his findings published in his research article. Edwards' Sworn Statement at 2, ¶ 10. Evidence may be admitted as relevant if "the testimony is based on sufficient facts and data; the testimony is the product of reliable principles and methods; and the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702(b)-(d). Professor Edwards plans on testifying about data collected from 380 stops for non-traffic misdemeanors and ordinance violations conducted by the Midland County Sheriff's Department. Edwards' Sworn Statement at 1, ¶ 6 and 2, ¶ 7. This data was selected because they are stops for non-traffic misdemeanors and ordinance violations where the officer drew his weapon. *Id.* at 1, ¶ 5, 6. He found that 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 2, ¶ 9.

These observed cases mirror the facts of the case at bar. The Defendant was called to Mr. Jordan's home for a noise complaint, which is an ordinance violation. Mr. Jordan was black, and 33 at the time he was shot and killed by the Defendant. Professor Edwards' opinion that racial bias plays a statistically significant role in whether Midland County Sheriff's Officers decide to draw their weapons during a stop is based on sufficient facts and data, applied to the facts of this case. Therefore, it is admissible under Rule 702.

B. The Probative Value Of Professor Edwards' Testimony Is Not Substantially Outweighed By The Dangers Of Unfair Prejudice Or Misleading The Jury.

The probative value of Professor Edwards' testimony is not substantially outweighed by the dangers of unfair prejudice or misleading the jury. Evidence may be excluded if "its probative value is substantially outweighed by a danger of: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. "Evidence must be excluded where its relevance is substantially outweighed by its prejudicial effect, that is, by its tendency to encourage the jury to decide cases on improper grounds." Fed. R. Evid. 403 Advisory Committee's Note (2011). The relevance of Professor Edwards' testimony is not substantially outweighed by any prejudicial effect. Further, Rule 403 requires a court to "look at the evidence in a light most favorable to its admission, maximizing its

probative value and minimizing its undue prejudicial impact. *United States v. Lopez*, 649 F.3d 1222, 1247 (11th Cir. 2011). His findings about the Midland County Sheriff's Department are probative of the central issue in the case, therefore it helps the jury decide the case on proper ground. According to his research, racial bias has played a statistically significant role in whether an officer draws his weapon on a minority. Edwards' Sworn statement at 2, ¶ 9. The jury may determine the weight of this evidence.

Any prejudicial effect this testimony has does not substantially outweigh its probative value, since it bears at the heart of the case. Inclusion would have a tendency to prove that the shooting was unjustified and that Mr. Jordan's life was unreasonably seized. "[The] [m]ajor function of Rule 403 is limited to excluding matter of scant or cumulative probative force, dragged in by heels for sake of its prejudicial effect; rule is meant to relax iron rule of relevance, to permit trial judge to preserve fairness of proceedings by exclusion despite its relevance; it is not designed to permit court to "even out" weight of evidence, to mitigate crime, or to make contest where there is little or none." Fed. R. Evid. 403 Advisory Committee's Note (2011). Edwards' testimony serves as direct aid to the Plaintiff's argument, it is not brought in for the sake of its prejudicial effect. "Rule 403 is an extraordinary remedy that should be used only sparingly since it permits the trial court to exclude concededly probative evidence." *United States v. Chandler*, 996 F.2d 1073, 1101 (11th Cir. 1993). Any prejudicial effect against the defendant would be slight, since the data suggests a general trend among Midland County's Caucasian officers. *See* Edwards' Sworn Statement. This trend adds light to the circumstances that led to Mr. Jordan being shot.

Further, inclusion of this evidence would not mislead the jury. The testimony provides light to the surrounding facts and circumstances around the shooting. Professor Edwards' research shows the risk of being killed by police force at the national level. *See* Edwards' Report. This risk is broken down demographically and then extrapolated to instances of police force that Midland County's Sheriff's Department employs. Edwards' Sworn statement at 2, ¶ 9. This serves to clarify the nature of the instant case to the jury. By applying sufficient facts and data, Mr. Jordan's estate is able to show how a noise complaint ended with an officer shooting Mr. Jordan when he was within the comfort of his own home. Thus, Professor Edwards' testimony is proper and should not be excluded for misleading the jury.

CONCLUSION

WHEREFORE, Plaintiff asks this Court to grant Plaintiff's Motion to Strike because Defendants are not entitled to qualified immunity after violating Plaintiff's clearly established Fourth and Fourteenth Amendment Rights.

Plaintiff asks this Court should deny Defendant's Motion in Limine because Professor Frank Edwards should be permitted to testify under Federal Rules of Evidence 401 and 702.

Respectfully submitted,

s/ #4444P
#4444P
Counsel for Plaintiff