UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

Case No. 2:20cv15994

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases *Page(s)*

Constitutional Provisions

Statutes

Federal Rules of Evidence

Other Authorities

INTRODUCTION

Eric Watson respectfully files this memorandum of law in opposition to the Motion to Strike his affirmative defense of qualified immunity, and in support of his Motion in Limine to exclude the testimony of Dr. Frank Edwards.

Watson, a Deputy at the Midland County Sheriff's Office diligently responded to a noise complaint. While there, David Jordan, Jr., threatened the lives of Watson, Deputy Eddie Rivera, and the school children across the street, with a small, black object believed to be a gun. This prompted Watson to discharge his weapon, thereby ensuring Jordan was no longer a threat to their lives. Because Watson acted reasonably under the circumstances he is entitled to qualified immunity. Further, any testimony regarding racial bias elicited from Dr. Edwards is inadmissible because it is irrelevant to the action and will confuse the jury.

STATEMENT OF FACTS

Noise Complaint. On February 14, 2019, at approximately 3:15 P.M., Deputy Eric Watson and Deputy Eddie Rivera responded to a noise complaint for loud, vulgar music containing several inappropriate expletives emitting from a house located at 1501 58th Street South in Midland County, the residence of David Jordan, Jr. (Compl. ¶ 11.) Jordan's residence was located across the street from Fort Hampton Elementary School. (McDonald S.S. ¶ 5.)

The Investigation. Upon arrival, Watson and Rivera knocked on the front door several times. (Compl. ¶ 13.) After receiving no response, Watson then approached the side door and knocked, while Rivera remained alone at the front door. (Compl. ¶ 13.) Watson

decided to return to the front door after receiving no response at the side door. (Watson S.S. ¶ 23.) As he rounded the corner of the house, he noticed the music get louder and the front door begin to open. (Watson S.S. ¶ 24.)

The Threat. As Rivera noticed the door open, he announced himself as a Deputy with the Sheriff's Office. (Rivera S.S. ¶ 24.) The door fully opened, revealing Jordan, a middle-aged black man, holding a small gun in his right hand. (Rivera S.S. ¶ 26.) Reaching for his own weapon, Rivera ordered Jordan to drop the gun multiple times. (Rivera S.S. ¶ 27.) Having heard Rivera's warnings, Watson drew his firearm and rushed to Rivera's aid. (Watson S.S. ¶ 27-28.) Next, Jordan began to raise his right hand with the gun pointed in Rivera's direction. (Rivera S.S. ¶ 28.) Jordan then spotted Watson approaching and attempted to close the front door. (Watson S.S. ¶ 31.) Believing Jordan was armed—which not only endangered a fellow officer, but also dozens of elementary school children across the street—Watson fired his weapon four times in a vertical trajectory. (Watson S.S. ¶ 33, 36.)

The Aftermath. Immediately following the incident, Watson secured the area behind the house to ensure there were no other armed individuals. (Watson S.S. ¶ 42.) Meanwhile, Rivera reported that shots were fired and called for backup. (Rivera S.S. ¶ 36.) Jordan was pronounced dead at the scene, and his body was located in the foyer with a stolen, unloaded handgun in his back pants pocket. (Compl. ¶ 17.) It was later determined that Jordan's blood alcohol content was at least .32, four times the legal limit in Florida, when the incident occurred. (Watson S.S. ¶ 57.) Watson also later learned he had arrested Jordan for a curfew violation in 2004. (Watson S.S. ¶ 46.)

ARGUMENT

Jordan has brought two claims against Watson and Sheriff Derek Michaels under federal and Florida state law. At this time, any issues regarding the negligence claim against Watson and Michaels are not before this Court as the Motion to Strike only pertains to Watson's affirmative defense of qualified immunity. This Court, therefore, need only consider the reasonableness of Watson's conduct under 42 U.S.C. § 1983.

A wronged individual may sue a government actor in his official capacity under § 1983. 42 U.S.C. § 1983. A government actor is liable to the injured party when he acts under color of law and violates the party's civil rights. *Id.* The injured party can establish liability for the government actor if the actor, (1) is personally involved in the constitutional deprivation or, (2) a sufficient causal connection exists between the defendant's conduct and the constitutional violation. *See* 11th Cir. Pattern Jury Instr. § 5.3 (2020).

In the § 1983 action before this Court, Jordan alleges Watson violated his Fourth Amendment rights. § 1983. The Fourth Amendment protects individuals from "unreasonable searches and seizures." U.S. Const. amend. IV. All claims brought against law enforcement under § 1983 related to excessive and deadly force and unreasonable searches and seizures are analyzed under the "reasonableness requirements" of the Fourth Amendment, which permits law enforcement officers to use objectively reasonable force in the course of their duties. *Graham v. Connor*, 490 U.S. 386, 396–97 (1989). Under the objective reasonableness courts should consider "whether an objectively reasonable officer in the same situation could have believed that the force used was not excessive." *Robinson v. Rankin*, 815 F. App'x 330, 339 (11th Cir. 2020) (internal quotations omitted).

I. This Court should deny the Motion to Strike because Watson is entitled to qualified immunity since his conduct did not violate Jordan's clearly established constitutional rights.

Qualified immunity is an affirmative defense designed to protect government actors, like law enforcement officers, from liability when using discretion in the course of their duties. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *see Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Specifically, this doctrine shields 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." *Harlow*, 457 U.S. at 818.

Additionally, qualified immunity applies to government officials unless, (1) the facts alleged show the officer's conduct violated a constitutional right, *and* (2) the right was clearly established at the time of the alleged misconduct." *Jackson v. Humphrey*, 776 F.3d 1232 (11th Cir. 2015) (emphasis added); s*ee also Pearson*, 555 U.S. at 226. This doctrine exists to guard officials from disruption, harassment, and liability so they may reasonably accomplish their duties without constant interference. *Pearson*, 555 U.S. at 231.

Watson is entitled to qualified immunity because he did not violate Jordan's constitutional rights under the Fourth or Fourteenth Amendment. Further, even if this Court finds that Watson violated Jordan's rights, those rights were not clearly established at the time of Watson's alleged misconduct. Because the two-prong test is not satisfied, this Court should deny Plaintiff's Motion to Strike Watson's Affirmative Defense of Qualified Immunity.

A. Because Watson's conduct was reasonable when he discharged his weapon to subdue the imminent threat Jordan created, Watson did not violate his Fourth or Fourteenth Amendment rights.

Inquiries into excessive force and unreasonable seizure require an analysis under the Fourth Amendment's objective reasonableness standard. *Graham,* 490 U.S. at 395 ("*all* claims that law enforcement officers have used excessive force—deadly or not— . . . should be analyzed under the Fourth Amendment and its 'reasonableness' standard."); *Tennessee v. Garner*, 471 U.S. 1, 7 (1985) ("there can be no question that . . . a seizure [is] subject to the reasonableness requirement of the Fourth Amendment."). As such, Watson did not violate Jordan's Fourth Amendment rights because the discharge of his weapon was objectively reasonable under the circumstances.

1. Watson's seizure of Jordan was reasonable because he did not use excessive force when discharging his weapon at an uncooperative suspect who threatened Rivera's life.

Watson's use of force was reasonable because he had probable cause to believe that Jordan posed an imminent threat to the life of Deputy Rivera and dozens of school children directly behind them. Whether an officer used unreasonable force depends on the "perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. Accordingly, officers are often required to make split-second decisions regarding the necessity of force in rapidly evolving situations. *Id.* at 396–97.

Likewise, a seizure occurs when a suspect is "[apprehended] by the use of deadly force." *Garner*, 471 U.S. at 1, 7. An officer must intentionally restrain a person's freedom of movement to seize him. *Id*. While Watson did seize Jordan when he discharged his

weapon, the seizure was reasonable because Watson had probable cause to believe that Jordan posed a threat of serious physical harm to others. *See Graham*, 490 U.S. at 386; *see also Thomas v. Durastanti*, 607 F.3d 655 (10th Cir. 2010) (explaining that the seizure was reasonable when an officer used deadly force after being threatened with a weapon).

Officers may use deadly force when protecting the lives of themselves and others. *See McCullough v. Antolini*, 559 F.3d 1201 (11th Cir. 2009). For example, in *McCullough v. Antolini*, the court held the officers' use of deadly force was reasonable given the gravity of the threat the suspect posed to the officers. *Id.* at 1208. In that case, the suspect refused the officers' orders to show his hands and instead attempted to drive his vehicle towards one of the officers. *Id.* at 1203–04. Both officers responded by firing their weapons until the threat subsided. *Id.* at 1204. The Eleventh Circuit determined that the officers' use of deadly force was reasonable. *Id.* at 1208. Because the suspect operated his vehicle in such a dangerous manner, he put the lives of the officers—as well as any nearby civilians—in peril. *Id.* The officer was ultimately granted qualified immunity because his split-second decision to eliminate the threat in a tense situation was justified under the circumstances. *Id.*; *see also Graham*, 490 U.S. at 396–97.

When a suspect creates a serious risk of harm to others by refusing an officer's orders, the officer is justified in using deadly force to subdue the threat. *See Garza v. Briones*, 943 F.3d 740 (5th Cir. 2019) (finding that a deputy did not use excessive or unreasonable force after shooting a suspect who disregarded orders to drop the handgun). For instance, the court found in *Ratliff v. Aransas County, Texas*, that it is reasonable for a deputy to use deadly force when an armed suspect refuses to drop his weapon. 948 F.3d

281, 288 (5th Cir. 2020). In that case, a deputy shot a resident several times after he ignored the deputy's order to drop the pistol he was holding. *Id.* at 283. The court specifically acknowledged conflicting evidence regarding what direction the resident was pointing the gun and determined that the deputy had reason to fear for his life. *Id.* at 289–90; *see also Ramirez v. Knoulton*, 542 F.3d 124 (5th Cir. 2008) (determining that an armed suspect's Fourth Amendments rights were not violated when an officer used deadly force against him after bringing his hands together instead of dropping his weapon).

Here, Watson's use of deadly force was reasonable because Jordan posed a serious threat to Rivera and the nearby school children. Jordan's behavior forced Watson to make an instantaneous decision when a threat to another officer's life emerged. Like the officers in *McCullough*, Rivera warned Jordan to drop his weapon several times. Had Jordan abided, the shooting likely never would have occurred. Instead, Jordan responded with aggressive behavior when he raised his hand and pointed the gun towards Rivera, giving Watson reason to believe he was going to shoot Rivera.

Moreover, it was not necessary for Watson to know at the time of the shooting that the object in Jordan's hand was a gun. Rather, he need only have an objective belief that the item was a gun. Like in *Antolini*, whether or not the suspect actually possessed a weapon, the officer's reasonable belief was justified. When Rivera shouted for Jordan to drop the gun, any reasonable officer would believe Jordan was, in fact, holding a gun. As such, Watson's actions were objectively reasonable when he saw a small, dark object in Jordan's hand, heard Rivera's warnings, and believed a fellow officer's life was in imminent danger.

In this case, Watson reasonably seized Jordan because he threatened Rivera's life when Jordan pointed what Watson believed to be a gun at Rivera. Though it is disputed whether Jordan directly aimed the object in his hand at Rivera, *Ratliff* demonstrates how Jordan's refusal to comply and drop the weapon is enough to justify deadly force. Therefore, Watson did not unreasonably seize Jordan because he had probable cause to believe that Jordan posed a severe risk to Rivera's safety.

2. This Court should analyze Jordan's claim of deprivation of life and liberty without due process under the reasonableness standard because his allegations are fully covered by the Fourth Amendment.

This Court should examine Jordan's Fourteenth Amendment claims under the reasonableness requirements of the Fourth Amendment because Jordan has already alleged a Fourth Amendment violation. The Fourteenth Amendment provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

In *Graham*, the Court determined that § 1983 claims should be analyzed under "the specific constitutional right infringed upon rather than a more generalized substantive due process analysis." *Graham*, 490, U.S. at 396. The Supreme Court later clarified in *County of Sacramento v. Lewis*, that Fourteenth Amendment claims arising out of a law enforcement officer's "arrest, investigatory stop, or other seizure, must be brought under [the] Fourth or Eighth Amendment." *Cnty. of Sacramento*, 523 U.S. 833, 843 (1998) (internal citations omitted). The Supreme Court is reluctant to expand substantive due process rights, which is why it requires parties bring § 1983 claims under the Fourth or Eighth Amendment. *See Graham*, 490 U.S. at 394.

Even if this Court decides to analyze Jordan's deprivation of life and liberty claim under the substantive due process analysis, Watson still did not violate Jordan's Fourteenth Amendment rights. Generally, to prevail on a Fourteenth Amendment claim, a victim must establish that the officer's conduct "shocked the conscience." *Cnty. of Sacramento*, 532 U.S. at 836. An officer's conduct only rises to the level of shocking to the conscience when it is considered the most egregious official conduct. *Id.* at 846. Outside the confines of arrest, "only a purpose [intended] to cause harm . . . will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." *Id.* 836.

Because the Fourth Amendment fully covers Jordan's allegations, this Court should, instead, analyze all of his claims under the reasonableness requirements. In the alternative, if it is determined that Jordan's claims should be analyzed under substantive due process, Watson still did not violate Jordan's Fourteenth Amendment rights because his conduct did not shock the conscience. Watson's conduct was not egregious because his intention, when drawing his weapon, was not to kill Jordan but rather, to protect a fellow officer. Because Watson did not act egregiously, his behavior was not shocking to the conscience; therefore, Watson did not violate Jordan's Fourteenth Amendment rights.

B. Even if Watson violated Jordan's constitutional rights, he is nevertheless entitled to qualified immunity because the violation was not clearly established at the time of Watson's alleged misconduct.

The Supreme Court has outlined that for a constitutional right to be clearly established, "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483

U.S. 635, 640 (1987); *see White v. Pauly*, 137 S.Ct. 548 (2017) (demonstrating that the only facts that should be considered are those that a reasonable officer could have known).

When determining whether a right is clearly established, courts must closely examine the facts in each individual case. *See Cooper v. Rutherford*, 503 F. App'x 672, 674 (11th Cir. 2012) (quoting *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005) (explaining the officer's conduct did not violate clearly established laws when the individual failed to prove "that a materially similar case [had] already been decided")). For example, in *James v. New Jersey State Police*, the court held that the state trooper did not violate a clearly established right after using deadly force against a suspect who disregarded the trooper's orders to drop his gun. 957 F.3d 165, 166–67 (3rd Cir. 2020). The court analogized the factual circumstances in that case to Supreme Court precedent and determined that the trooper's actions were consistent with the actions of other officers in similar circumstances. *Id.* at 171. The court, therefore, reasoned that the trooper did not violate the suspects clearly established constitutional rights, and instead acted in accordance with legal precedent. *Id.*; *see Malley v. Briggs*, 475 U.S. 335 (1986) (indicating that qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law").

Here, Jordan's constitutional rights were not clearly established at the time of the incident because materially similar precedent does not exist. In contrast, factually similar case law does provide that Watson acted in accordance with legal precedent. Accordingly, a reasonable officer in Watson's position would not have known he was violating Jordan's

constitutional rights if he responded in the same manner. Therefore, Watson did not violate Jordan's clearly established rights and is entitled to qualified immunity.

II. This Court should grant the Motion in Limine because Dr. Edwards' testimony is inadmissible under the Federal Rules of Evidence.

Dr. Edwards' testimony is inadmissible under the Federal Rules of Evidence because it is irrelevant, prejudicial, and will not assist the trier of fact. Racial bias has no bearing on Watson's actions because the examination of an officer's conduct must balance the "intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Crenshaw v. Lister*, 556 F.3d 1283, 1293–94 (11th Cir. 2009) (quoting *Graham*, 490 U.S. at 396). Factors courts may consider in determining the reasonableness of the officer's conduct include: the severity of the crime, whether the individual poses an immediate threat to the safety of the officers or others, the amount of force to be applied in light of the nature of the need, and the severity of the injury. *See* 11th Cir. Pattern Jury Instr. § 5.4 (2020).

A. Under Rule 401, Dr. Edwards' testimony fails to satisfy the relevancy requirements for admissibility because racial bias does not relate to a fact of consequence.

Evidence is admissible under the Federal Rules of Evidence 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 (emphasis added). Here, the testimony does not meet either requirement, and this Court should exclude any evidence of racial bias.

1. Dr. Edwards' testimony regarding racial bias will not make Jordan's claims more or less probable because Jordan created a dangerous situation that justified Watson's actions.

Relevancy is a low bar that only requires evidence which makes a fact more or less probable. Fed. R. Evid. 401. It is, nevertheless, a bar that must be met. *See* Fed. R. Evid. 401; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). The Ninth Circuit is the only court that has held that, "evidence of racial animus is not relevant to whether a particular use of force is excessive." *Hunter v. City of Fed. Way*, 806 F. App'x 518, 521 (9th Cir. 2020). Comparatively, no other circuit has determined—on a *pro se* basis—that evidence of racial bias is irrelevant. *Shaw v. City of Selma*, 884 F.3d 1093, 1100–01 (11th Cir. 2018); *S.B. v. Cnty. of San Diego*, 864 F.3d 1010, 1013 (9th Cir. 2017). In many courts, however, the safety of the officers has continuously emerged as one of the most relevant factors. *Shaw*, 884 F.3d at 1100–01.

In this case, Dr. Edwards' testimony will not change the fact that Jordan was uncooperative and exhibited threatening behavior towards Watson and Rivera. Watson's use of deadly force was reasonable due to the dangerous situation Jordan created when he pointed the object in his hand at Rivera. When examining the totality of the circumstances, evidence of racial bias does not make Watson's use of force more or less reasonable; therefore, Dr. Edwards' testimony is irrelevant.

2. Evidence of racial bias is irrelevant and does not relate to a fact of consequence because no evidence exists suggesting that racial bias affected Watson's conduct.

The Fourth Amendment's reasonableness requirements are examined without regard to the officer's underlying intent or motivation. *Graham*, 490 U.S. at 397 (citing

Scott v. United States, 436 U.S. 128, 137–39 (1978)); *see also Brown v. City of Hialeah*, 30 F.3d 1433, 1436 (11th Cir. 1994) (explaining the officer's underlying intent should not be considered, but the use of racial epithets could be considering in determining reasonableness). Further, an officer must use a reasonably proportionate amount of force when seizing a suspect. *Stephens v. DeGiovanni*, 852 F.3d 1298, 1324 (11th Cir. 2017). The Eleventh Circuit has determined that an officer's use of excessive or deadly force is reasonable when an officer "has probable cause to believe that the suspect poses a threat of serious physical harm." *Rankin*, 815 F. App'x at 339.

Here, evidence of racial bias does not relate to Watson's use of deadly force. The record is silent as to whether racial bias affected Watson's actions. Jordan refused to cooperate with the officers and, instead, pointed what appeared to be a gun at Rivera; Watson simply reacted to Jordan's threatening behavior. Therefore, Jordan's race had nothing to do with Watson's conduct. Unlike situations where the presence of racial bias is explicit—such as in *Brown*, where the arresting officers use racial epithets to refer to the suspects—this case is devoid of even a modicum of evidence of racial bias. Thus, Dr. Edwards' testimony is both inadmissible and irrelevant because it does not relate to excessive force.

B. Even if evidence of racial bias is relevant, this Court should nevertheless exclude the testimony of Dr. Edwards because it is both prejudicial and likely to mislead the jury.

Relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of more than one of the following: unfair prejudice, confusing the issues, [and] misleading the jury, . . ." Fed. R. Evid. 403. Here, this Court should exclude

Dr. Edwards' testimony regarding racial bias because it will result in unfair prejudice against Watson and confuse the jury.

1. The risk of prejudice is high and will likely confuse the jury because any evidence of racial bias will unduly call Watson's character into question.

Though expert testimony is a powerful tool, when erroneously admitted, it can mislead the jury; this is why courts may exclude relevant testimony under certain circumstances. Fed. R. Evid. 403. *See also Old Chief v. United States*, 519 U.S. 172, 180– 181 (1997)*; Cook ex rel. v. Sheriff of Monroe Cnty.*, 402 F.3d 1092, 1111 (11th Cir. 2005). Because lay jurors may assign expert testimony undue merit, "courts must take care to weigh the value of such evidence against its potential to mislead or confuse." *Cook*, 402 F.3d at 1111. Courts are wary to introduce evidence of past criminal conduct due to the potential to unfavorably influence the jury's perception of the defendant. *See Bryant v. Mascara*, 800 F. App'x 881, 887–88 (11th Cir. 2020) (discussing the inherent danger with the admission of prior criminal records or the probationary status of the defendant). Similar to the probation status of an individual, evidence of racial bias is likely to have a substantial prejudicial effect upon the jury. *See id.* The danger of such evidence is that juries are prone to hold individuals responsible based on an erroneous belief of their character, rather than violations of the law. *Id.* at 888.

The admission of Dr. Edwards' testimony will cause the proceeding to devolve from a trial determining the reasonableness of Watson's conduct, into a mini-trial questioning his moral character and his subjective intent at the time of the shooting. Watson's moral character is clearly outside the scope of evidence the jury is called to rule upon. It is the

duty of this Court to exclude any evidence which might confuse the issues, mislead the jury, or prejudice Watson. The inclusion of Dr. Edwards' testimony on racial bias will undoubtedly cause all of these results.

2. The probative value of Dr. Edwards' testimony is low because it is unrelated to any of the material disputes in this case.

In determining whether to exclude relevant evidence, courts must balance the probative value of the evidence with the prejudicial effect on the jury. Fed. R. Evid. 403. For example, in *United States v. Watson*, the court examined the admissibility of evidence related to the racial bias of an officer after he stopped an individual for excessively tinted windows. 409 F.3d 458, 463–64 (D.C. Cir. 2005). The court determined that evidence of the officer's racial bias was not logically probative. *Id*. Had the suspect provided additional evidence to show that the officer either knew the defendant's race before he stopped him or had a known record of profiling members of the same racial demographic, the evidence likely would have been admissible. *Id*.

Though Jordan may allege the probative value of the evidence is high, the probative value of the evidence is, in fact, strikingly low because it will pull focus away from Jordan's failure to comply with law enforcement. No evidence exists which suggests that Watson or Rivera hold implicit or explicit racial bias—or that racial bias affected Watson's actions that day. Upon discovering Jordan's uncooperative and intoxicated state, Watson determined he needed to ensure Rivera's life was not in harm's way. Evidence of racial bias has no impact on the reasonableness of Watson's conduct. Further, Dr. Edward's testimony purporting the widespread racial bias in the Sheriff's Office has no bearing on

this case. Instead, this case is about the unfortunate shooting of Jordan. The two ought not be equated, as testimonial evidence regarding racial bias is irrelevant.

C. Dr. Edwards' testimony regarding racial bias will not assist the trier of fact in determining the reasonableness of Watson's behavior.

Although Dr. Edwards is a qualified expert, his testimony does not meet the necessary qualifications for admissibility outlined in *Daubert*. *See Daubert*, 509 U.S. at 579. The Eleventh Circuit has outlined a rigorous three-part test to determine if evidence is admissible under Rule 702. *See Cook*, 402 F.3d at 1106–07; Fed. R. Evid. 702. It is acknowledged, however, that Dr. Edwards' testimony satisfies the first two prongs, in that he is both qualified to testify as an expert and that his research meets the reliability requirements under *Daubert*. (Am. Order ¶ (1)(b) (i).) In this case, the admissibility of Dr. Edwards' testimony depends on the third prong, whether "the testimony assists the trier of fact, . . . to understand the evidence or to determine a fact in issue." *Id*. at 1107; *see also Daubert*, 509 U.S. at 579. Consequently, Dr. Edwards' testimony will not assist the trier of fact in ultimately deciding this case.

Testimony of potential racial bias within an entire police department will not assist the trier of fact in determining if the actions of a single officer were unreasonable. *Compare Hunter*, 806 F. App'x at 521 *with Brown*, 30 F.3d at 1433. Generally, expert testimony will not assist the trier of fact when it only reiterates what jurors will hear in closing arguments. *Cook*, 402 F.3d at 1111. For example, evidence of severe physical injuries may assist the trier of fact in determining whether the officer's force was objectively reasonable. *Hinson v. Bias*, 927 F.3d 1103, 1117 (11th Cir. 2019). In contrast, evidence of racial bias will not

assist the trier of fact because it does not explain why Watson's behavior resulted in Jordan's death.

If Plaintiff believes racial bias played a role in Jordan's death, that is evidence they can attempt to elicit in cross-examination and elude to in closing arguments. Unlike the physical injuries in *Hinson*, statistical evidence of racial bias introduced by Dr. Edwards will not explain whether Watson's actions were reasonable. What will assist the jury in determining whether Watson's use of force was reasonable is a close examination of Jordan's threatening behavior on the day of the incident. Ultimately, this Court should exclude Dr. Edwards' testimony because it will not assist the trier of fact.

CONCLUSION

For the foregoing reasons, Eric Watson respectfully requests that this Court deny the Motion to Strike because he is entitled to qualified immunity and grant the Motion in Limine to prevent Dr. Edwards' inadmissible testimony.

Respectfully submitted,

/s/ Team 5000