**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*.

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

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## INTRODUCTION

Sheryl Jordan, as personal representative of the Estate of David Jordan, Jr. respectfully files this memorandum of law in support of her Motion to Strike Defendant Eric Watson's Affirmative Defense of Qualified Immunity, and in opposition to Defendant's Motion in Limine to exclude Dr. Frank Edwards' testimony.

Jordan, a middle-aged, black male, was shot and killed in his home by Watson while responding to a noise complaint at Jordan's residence. Watson violated Jordan's Fourth and Fourteenth Amendment rights by shooting him when he did not exhibit threatening behavior. Further, Watson knowingly violated Jordan's clearly established constitutional rights by acting unreasonably under the circumstances. Dr. Frank Edwards' testimony will confirm the probability that racial bias was present when Watson drew his weapon and subsequently killed Jordan.

## STATEMENT OF FACTS

***The Noise Complaint.*** On February 14, 2019, at approximately 3:15 P.M., David Jordan, Jr. was listening to music in his home at 1501 58th Street South in Midland County. (Compl. ¶ 11.) Jordan was listening to music at a high volume, which led Lee McDonald, a teacher from the school across the street, to call in a noise complaint. (McDonald S.S. ¶ 5.) Loud, unauthorized music is not a criminal violation in Midland County. (Compl. ¶ 12.) Instead, it is only a civil municipal ordinance violation. (Compl. ¶ 12.)

***The Disturbance.*** Deputy Eric Watson and Deputy Eddie Rivera from the Midland County Sheriff's Office were dispatched to Jordan's residence to ask him to turn down the music. (Compl. ¶ 11.) Upon arrival, Watson and Rivera banged on the door several times,

failing to identifying themselves as officers. (Watson S.S. ¶ 21.) When nobody answered, Watson then walked to the side door, leaving Rivera alone at the front of the house. (Watson S.S. ¶ 22.) Watson drew his baton, repeatedly pounded on the door, and still failed to identify himself as an officer. (Watson S.S. ¶ 23.)

***The Fatal Blow.*** In response to the commotion, Jordan opened the front door. (Compl. ¶ 14.) Rivera claims he saw a gun in Jordan's hand when the front door opened, which prompted him to order Jordan to drop the object. (Rivera S.S. ¶ 26.) Upon hearing Rivera's exclamations, Watson rounded the corner and immediately drew his weapon. (Watson S.S. ¶ 28.) Jordan noticed Watson approaching and attempted to hastily close the front door. (Watson S.S. ¶ 31.) Watson, standing at a forty-five-degree angle from the house, rapidly fired his weapon four times into the closing door. (Compl. ¶ 16.) Jordan was hit three times through the front door in rapid succession; two of the bullets punctured Jordan's abdomen. (Roberts S.S. ¶ 6.) Because Watson fired in a vertical trajectory, the fatal shot passed through the door and into Jordan's skull, killing him instantly. (Roberts S.S. ¶ 6.)

***Dead on Arrival.*** After the shooting, the Sheriff's Office dispatched additional officers and a fully equipped SWAT team to Jordan's home, even though he was already dead. (Compl. ¶ 21.) The SWAT team discovered Jordan's body face down in the foyer of his home with an unloaded, stolen gun found tucked away in his back pants pocket. (Compl. ¶ 21.) It was later determined that Jordan's blood alcohol content was .32 when the shooting 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. *Id. See* 11th Cir. Pattern Jury Instr. § 5.3 (2020).

In the § 1983 action before this Court, Jordan argues Watson violated his Fourth Amendment rights. The Fourth Amendment protects individuals from "unreasonable searches and seizures." U.S. Const. amend. IV. All claims brought against law enforcement officers 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). The objective reasonableness standard calls for courts to 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 grant the Motion to Strike because Watson is not entitled to qualified immunity since he violated Jordan's clearly established constitutional rights when Watson shot and killed him.

Qualified immunity is an affirmative defense which protects government officials from liability when violating an individual's constitutional rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 815–818 (1982); *see Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Specifically, this doctrine shields public actors "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. Accordingly, qualified immunity balances a citizen's interests to receive damages for government intrusions against competing government interests. *Id.* at 800. Qualified immunity applies 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 defendant's misconduct. *Pearson*, 555 U.S. at 226; *see Anderson v. Creighton*, 483 U.S. 635 (1987); *Jackson v. Humphrey*, 776 F.3d 1232 (11th Cir. 2015).

### A. Watson acted unreasonably when he fired his weapon at Jordan and clearly violated Jordan's Fourth and Fourteenth Amendment rights.

A law enforcement officer is not entitled to qualified immunity when he unreasonably uses excessive and deadly force. A proper assessment of the reasonableness standard includes a detailed analysis of the facts surrounding each individual case and whether the seizure was justified in light of the "totality of the circumstances." *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985); *see Graham*, 490 U.S. at 396.

### 1. Because any threat that Jordan posed subsided when he attempted to retreat into his home, Watson's use of deadly force was excessive when he unreasonably seized Jordan.

Under the Fourth Amendment's objective reasonableness standard, Watson's use of deadly force against Jordan was clearly unreasonable because Jordan did not pose an imminent threat of harm to the officers. A seizure occurs when an officer intentionally restrains a person's freedom of movement. *Garner*, 471 U.S. at 7. The Supreme Court previously determined, "there can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Id*.

An officer may only use deadly force on a retreating suspect if that individual poses an imminent threat of serious physical harm to himself or others. *See Brosseau v. Haugen*, 543 U.S. 194 (2004). For example, in *Brosseau v. Haugen*, the Court held that the officer did not violate an individual's Fourth Amendment rights by deploying deadly force against a fleeing suspect. *Id.* at 200. The Court reasoned that the officer's use of deadly force against the suspect was reasonable because the suspect "had proven he would do almost anything to avoid capture." *Id*. at 197, 200; *see also Est. of Starks v. Enyart*, 5 F.3d 230 (7th Cir. 1993) (determining the danger created by a fleeing suspect must be *willful* to justify a reaction of deadly force) (emphasis added).

Additionally, some courts have recognized an individual's "right not to be shot" absent an imminent threat to others. *Dickerson v. McClellan*, 101 F.3d 1151, 1163 (6th Cir. 1996); *see Yates v. City of Cleveland*, 941 F.2d 444, 447 (6th Cir. 1991). For example, in *Lopez ex rel. v. Gelhaus*, the court held that a "reasonable jury could find a police officer's use of deadly force was not objectively reasonable" when a teenager was shot and killed in

broad daylight. 871 F.3d 998, 1013 (9th Cir. 2017). In that case, officers ordered a teenager, holding a toy gun at his side, to drop the object. *Id*. at 1002–03. The officer rapidly fired eight shots at the teenager—despite believing the gun was fake—killing him immediately. *Id.* at 1003–04. The court reasoned that the officer's use of deadly force was not objectively reasonable because the teenager did not exhibit either aggressive or threatening behavior. *Id.* at 1013; *see also Dickerson*, 101 F.3d at 1163 (finding the officers were not entitled to qualified immunity because the officers fatally shot a resident who was standing in his doorway with his hands at his side).

In this case, Jordan did not pose a threat of imminent harm to Rivera or Watson when he attempted to retreat from the officers. Unlike in *Brosseau*, Jordan never demonstrated that he was willing to put others in harm's way to evade the authorities. In fact, Jordan never exhibited a willful intent to threaten the officers when he raised his hand. Because Jordan never aimed the object at the officers, one could surmise that Jordan was in the process of yielding to Rivera. Any risk of harm that could befall Rivera or Watson immediately abated when Jordan closed the door and attempted to retreat into his home. Watson was the only individual who posed a deadly threat to others that day because he used excessive force after the perceived threat subsided.

Additionally, Jordan did not exhibit threatening behavior, yet Watson still utilized excessive force against him while in his home. Like in *Lopez*, Jordan was shot and killed despite exhibiting no aggressive behavior. Specifically, Jordan's hands were at his side when he answered the door, and he never raised his right hand higher than his hip. Moreover, Jordan did not directly aim the object at Rivera, nor did he threaten Rivera in

any way. Because the events transpired so quickly, Watson never gave Jordan an adequate opportunity to drop the object in his hand before opening fire on him. Considering Jordan's inebriated state, the alcohol likely hindered his ability to comply with the officer's demands. Thus, Watson's conduct was unreasonable because he failed to deescalate the situation by giving Jordan time to comply. Furthermore, if Watson had been shooting to eliminate the threat, he should have ceased fire after the first shot. Therefore, Jordan's conduct did not warrant Watson's use of excessive and deadly force.

Ultimately, Watson's conduct does not meet the objective reasonableness standard because he did not act as a reasonable officer would have in the same position. Here, Rivera was in almost the exact same situation as Watson, yet never fired his weapon. Rivera is in the best position to relate to the facts and circumstances that Watson experienced the day of the incident. If Jordan posed a threat, Rivera was arguably in greater danger because he was directly in front of Jordan, while Watson was further away. Although Rivera was in the process of reaching for his weapon when Watson shot Jordan, he likely would not have fired his gun because any threat Jordan posed subsided when he closed the door. Therefore, Rivera's actions show that Watson did not conduct himself in an objectively reasonable manner.

**2. Watson violated Jordan's Fourteenth Amendment rights by depriving Jordan of life and liberty without due process when he extinguished Jordan's life.**

Watson's actions constitute a violation of Jordan's Fourteenth Amendment rights because his conduct was so egregious that it shocks the conscience. *See Cnty. of Sacramento v. Lewis*, 532 U.S. 833, 836 (1998). 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, § 1. The intrusiveness of an officer's use of deadly force is unparalleled because it deprives an individual of his fundamental interest in his own life. *Garner*, 471 U.S. at 9; *Cnty. of Sacramento*, 532 U.S. at 833 (noting that "a touchstone of due process is protection against arbitrary government action"). 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; *see also Sitzes v. City of W. Memphis Ark.*, 606 F.3d 461, 475 (8th Cir. 2010) (Lange, J. dissenting) (explaining that an officer's deprivation of life implicated "the substantive due process protections of the Fourteenth Amendment").

Police conduct is scarcely deemed so egregious to warrant a substantive due process analysis. In contrast, there is no conduct more egregious than the unprompted shooting of a non-threatening man in his own home. The doctrine of qualified immunity has unhinged the intended balance between an officer's right to be free from liability against a victim's right to recourse from an officer's violation of his constitutional rights. *See Harlow*, 457 U.S. at 818. As a result, the officer's interests are upheld substantially more often than victims whom the officer's deprived of their right to life. Watson should not be entitled to qualified immunity because his unreasonable use of deadly force, when he shot and killed a non-threatening man in his home, was so egregious that it undoubtedly shocks the conscience. By extinguishing Jordan's life, Watson violated his inherent constitutional right to life and liberty.

### B. Jordan's rights were clearly established at the time Watson killed him because Watson should have known his actions would be a constitutional violation under existing precedent.

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*, 483 U.S. at 640. Indeed, an individual's Fourth Amendment rights to be free from unreasonable seizures and excessive force are clearly established in some circumstances. *Morton v. Kirkwood*, 707 F.3d 1276, 1282–83 (11th Cir. 2013); *Adams v. Metiva*, 31 F.3d 375, 386–87 (6th Cir. 1994).

Specifically, some courts have created a clearly established right which prevents an officer from shooting a victim unless an imminent threat exists. *See* Yates, 941 F.2d at 447. For example, in *Yates*, the court held that the victim had a clearly established right not to be shot by an officer. *Id.* Further, the court notes that it was evident that a reasonable officer would know that shooting the victim violates that right. *Id.* There, an officer acted unreasonably when he subjectively believed he was in danger. *Id.* at 447. Ultimately, the court determined the officer could not receive qualified immunity when he shot the victim because he violated the victim's clearly established rights. *Id.* at 449.

In this case, a reasonable officer in Watson's position would have understood he violated Jordan's clearly established constitutional rights when he shot and killed him. Watson was personally unable to identify the object in Jordan's hand, gave Jordan no time to heed Rivera's orders to drop the object, and proceeded to use deadly force against an individual who was not engaged in criminal activity. As such, Jordan's constitutional rights to be free from unreasonable seizure, excessive and unreasonable force, and deprivation of

life and liberty without due process were all clearly established at the time Watson shot and killed him.

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

Dr. Edwards' testimony is admissible under the Federal Rules of Evidence and will show that Watson's conduct was unreasonable under the Fourth Amendment. The Supreme Court held in *Graham*, that claims of excessive force should be analyzed under the totality of the circumstances because the Fourth Amendment requires a fact-intensive inquiry into in each case. 490 U.S. at 396 (citing *Garner*, 471 U.S. at 8–9). Under the Eleventh Circuit's reasonableness analysis, courts are required to consider the severity of the crime. *See id.* Courts should examine factors such as, "whether the suspect poses an immediate violent threat to others, whether the suspect resists or flees, the need for application of force, the relationship between the need for force and the amount of force used, and the extent of the injury inflicted." *See e.g.*, 11th Cir. Pattern Jury Instr. § 5.4 (2020). Here, Dr. Edwards should be allowed to testify because evidence of racial bias is relevant to the assessment of Watson's actions under the reasonableness requirements.

### A. Evidence of racial bias is relevant because Dr. Edwards' testimony makes it more probable that Watson used excessive force.

Dr. Edwards' reports suggest that white officers—both nationally as well as in Midland County—are more likely to act aggressively towards unarmed, non-violent minorities. Further, white officers in Midland County are more inclined to draw their weapons when interacting with black men as compared to white men. In this case, Watson's use of excessive force was unreasonable when he fired his weapon and killed

Jordan while responding to a noise complaint. Dr. Edwards' testimony will confirm that Watson is more likely to have used excessive force due to a statistical predisposition towards racial bias.

**1. Dr. Edwards' statistical evidence of racial bias has a greater tendency to make the fact that Jordan's race played a part in his death more probable.**

Federal Rule of Evidence 401 provides that evidence is relevant if "it has *any* tendency to make a fact more or less probable than it would be without the evidence." Fed. R. Evid. 401 (emphasis added). Moreover, "the word 'any' signals that evidence is relevant even if it only slightly or marginally alters the likelihood of a consequential fact." *United States v. Leonard-Allen*, 739 F.3d 948, 956 (7th Cir. 2013); *see also Price v. Kramer*, 200 F.3d 1237, 1251 (9th Cir. 2000) (discussing the relevancy of racial bias in the victim's excessive force claims). Accordingly, the bar for relevancy is extremely low, demanding only that evidence submitted advances a material aspect of the case. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 588 (1993); *Jones v. Ford Motor Co.*, 204 F. App'x 280, 283 (4th Cir. 2006).

Here, Dr. Edwards can provide empirical data on a local and national scale regarding racial bias within police departments and the effects that racial bias has on police interactions with minorities. Specifically, Dr. Edwards' data shows the high probability of a white officer drawing his weapon against a black man stopped for a non-traffic misdemeanor or a city ordinance violation. In this case, Watson, a white officer, drew and discharged his weapon against a black man while responding to a municipal ordinance violation. A deputy's statistical tendency to react to non-violent situations with excessive

and deadly force substantially increases the likelihood that Watson's conduct was also driven by racial bias, thereby making Dr. Edwards' testimony relevant.

**2. The evidence of racial bias directly relates to a fact of consequence because Dr. Edwards' statistical findings can show Watson's likely predisposition to draw his weapon.**

The second prong of the relevancy analysis depends on whether the fact is of consequence. Fed. R. Evid. 401; *see also Brown v. City of Hialeah*, 30 F.3d 1433, 1436– 37 (11th Cir. 1994) (concluding that evidence of the officer's use of racial slurs was relevant to the action). So long as a fact is materially related to the underlying dispute, it is relevant. Fed. R. Evid. 401; *see Daubert* 509 U.S. at 588. When determining excessive force violations, materially relevant facts should include the severity of the crime and the relationship between the need for force and the amount of force used. *See* 11th Cir. Pattern Jury Instr. § 5.4 (2020).

In this case, Dr. Edwards' reports directly relate to a fact of consequence in this action—that Watson's use of deadly force was both unreasonable and excessive. While Watson may argue that his actions were reasonable under the circumstances, this is not the case because the severity of the crime did not call for the gravity of his actions. Dr. Edwards' testimony will show Watson likely would not have drawn or discharged his weapon had Jordan been white. Therefore, racial bias is relevant to understanding whether Watson's conduct was objectively reasonable.

### B. Under Rule 403, evidence of racial bias is substantially more probative than prejudicial because it explains Watson's conduct when he responded to a noise complaint with deadly force.

Federal Rule of Evidence 403 creates an exception for the admissibility of relevant evidence. Fed. R. Evid. 403. 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 (emphasis added); *see Aycock v. R.J. Reynolds Tobacco Co.*, 769 F.3d 1063, 1069 (11th Cir. 2014). Here, the probative value is high because evidence of racial bias will demonstrate why Watson's use of force was excessive. Conversely, the prejudicial effect is low because Dr. Edwards' testimony has no tendency to suggest a determination of excessive force on an improper basis.

#### 1. The probative value of Dr. Edwards' testimony regarding racial bias is high because it offers empirical data to support Jordan's claims that Watson used unreasonable force.

Courts have established an understanding that Rule 403 favors the admission of evidence unless it is unduly prejudicial. *See United States v. Dennis*, 625 F.2d 782, 797 (8th Cir. 1980) ("[T]he general rule is that balance should be struck in favor of admission."); *United States v. Meester*, 762 F.2d 867, 875 (11th Cir. 1985) ("Rule 403 [is] an extraordinary remedy to be used sparingly . . . . ").

When evidence of racial bias is substantially related to the reasonableness of the officer's conduct, the evidence should be admissible. *See Brown,* 30 F.3d at 1435. In *Brown v. City of Hialeah*, officers conducting a "reverse sting" operation used racial epithets in the arrest of two individuals involved. *Id.* The Eleventh Circuit determined that the trial

court abused its discretion in excluding the evidence as it was probative to the officers' use of reasonable force. *Id*. at 1436. The court ultimately concluded the officer's use of racial epithets are facts "a jury should be allowed to consider in assessing the reasonableness of the officers' force . . . ." *Id.*; *see also Price*, 200 F.3d at 1251 (admitting evidence of the officer's racial bias because it was probative as to their actions of excessive force and was not outweighed by unfair prejudice); *United States v. Watson*, 409 F.3d 458, 463–64 (D.C. Cir. 2005) (discussing the probative and prejudicial value of evidence of an officer's tendency to conduct window tint stops and the correlation of the driver's race).

Here, evidence of Watson's racial bias is probative because it implicates that his use of force was unreasonable. Dr. Edwards' report shows significant evidence of racial bias within the Midland County Sheriff's Office. Like in *Brown*, the jury should be able to consider whether inherent bias played a role in Watson's conduct. For example, Dr. Edwards' testimony can offer insight as to why Watson not only drew his weapon when investigating a noise complaint, but also shot Jordan three times through the closed door, killing him instantly. In contrast, Rivera—experiencing the exact same situation—did not shoot Jordan. As such, Dr. Edwards' testimony is probative in demonstrating the likelihood that racial bias led to Watson's use of excessive force. Additionally, evidence of racial bias explains why Watson continued to fire his weapon after Jordan closed the front door and did not return fire.

### 2. The risk of unfairly prejudicing the jury with evidence of racial bias is low because Dr. Edwards' testimony is not being used to assess Watson's character.

The Federal Rules of Evidence only allow for the exclusion of evidence when the risk of unfair prejudice substantially outweighs its probative value. Fed. R. Evid. 403. This rule only protects against *unfairly* prejudicial evidence. *Id.* Furthermore, unfairly prejudicial evidence is evidence which "has an undue tendency to suggest a decision on an improper basis." Fed. R. Evid. 403 advisory committee's note. *See also United States v. McRae*, 593 F.2d 700, 707 (5th Cir. 1979) ("[r]elevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion.").

Dr. Edwards' testimony will not result in unfair prejudice or confuse the jury because the evidence of racial bias is not intended to call Watson's character into question. Rather, it is introduced to prove the unreasonableness of Watson's actions. While nothing in the record explicitly indicates that Watson holds racial animus against black men, Dr. Edwards' findings nevertheless indicate that the presence of an implicit racial bias affected Watson's conduct. Furthermore, admitting the evidence will not create a mini-trial designed to attack Watson's character; instead, the testimony is only offered to determine whether implicit racial bias played a role in Watson's conduct. Thus, Dr. Edwards' testimony will not unfairly prejudice the jury because it is only used to assess the reasonableness of Watson's actions.

### C. Dr. Edwards satisfies the requirements under Rule 702 and should be allowed to present evidence of racial bias because his testimony will assist the trier of fact in making an ultimate decision in this case.

Evidence of racial bias within the Midland County Sheriff's Office will assist the trier of fact in understanding why Watson's conduct was unreasonable under the Fourth Amendment. The Eleventh Circuit has outlined a three-part test to determine if evidence is admissible under Rule 702. *See Cook ex rel. Est. of Tessier v. Sheriff of Monroe Cnty.*, 402 F.3d 1092, 1106–07 (11th Cir. 2005). Watson has stipulated 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 solely 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.

When evidence of racial bias is prevalent, courts have determined the evidence is admissible to assist the jury in making an ultimate determination in the case. In *Price v. Kramer*, the court determined that evidence of racial bias by officers who stopped three teenage boys, was an appropriate subject to explore. 200 F.3d at 1251. The officers subsequently detained and injured the boys without probable cause. *Id*. at 1241–42. The court held, "the relevance of racial bias is readily apparent, . . ." noting specifically that racial bias was relevant for "proving the officers' actions were racially motivated." *Id.* at 1251. The court further determined racial bias could explain why the officers stopped the vehicle without probable cause and why the officer's used excessive force against unarmed teenagers. *Id*.; *see also Johnson v. Anhorn*, 416 F.Supp.2d 338, 360 (E.D. Pa. 2006)

(admitting evidence of racial profiling to assist the jury in determining whether the officers used excessive force).

Dr. Edwards' testimony regarding racial bias will assist the jury in assessing whether Watson's behavior was reasonable when he shot a black man in his home while responding to a noise complaint. This testimony will assist the trier of fact in understanding the broader context of the conflict in question. His reports indicate that white officers are 77% more likely to draw their weapons against—and 2.5 times more likely to kill—non-violent, unarmed black men. (Edward S.S. ¶ 9, Edward Rep. at 2.) Providing evidence of empirical data regarding the prevalence of racial bias in Midland County will assist the jury in determining whether Watson's use of deadly force was reasonable.

## CONCLUSION

For the foregoing reasons, Sheryl Jordan, as personal representative of David Jordan, Jr., respectfully requests that this Court grant the Motion to Strike because Defendant Eric Watson violated Jordan's Fourth and Fourteenth Amendment rights and is not entitled to qualified immunity. Further, Sheryl Jordan respectfully requests that this Court deny Watson's Motion in Limine and allow Dr. Edwards to testify.

Respectfully submitted,

/s/ Team 5000