Team #5555_____

Case No. 2:20cv15994

IN THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA, LAKEVILLE DIVISION

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

v.

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

Non-Movant's Memorandum of Law

Counsels for Defendants
Sheriff Derek Michaels and Eric Watson
COUNSEL A
COUNSEL B

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INTRODUCTION WITH REQUEST FOR RELIEF

This court should deny the Plaintiff's Motion to Strike Defendant Eric Watson's affirmative defense of qualified immunity because Plaintiff cannot show that a "Clearly Established law" was violated.

This court should grant Defendant Watson's motion to preclude Plaintiff's proposed expert witness, Frank Edwards, Ph.D., because his testimony is inadmissible under the Federal Rules of Evidence 401, 702, and 403.

STATEMENT OF FACTS

Defendant Deputy Eric Watson[1] is a 40-year-old native Floridian who "always wanted to be a police officer." (C.1)[2] From 1999 to 2009, Deputy Watson worked for the Fort Hampton Police Department as a road patrol officer for a year and a half, then he worked in the Special Investigations Unit for narcotics and gangs for eight years as a detective. (C.1) Deputy Watson also worked for the Florida Division of Alcoholic Beverages and Tobacco in Fort Hampton from 2009 to 2013. (C.1) In March 2017, Deputy Watson began his current employment with the Midland County Sheriff's Office.[3] (C.1) He is assigned to the road patrol unit. (C.2)

On February 14, 2019 at 3:00 PM, Deputy Watson and Deputy Eddie Rivera[4] began their shifts at the Sheriff's Office. (C.2, D.1) Deputy Rivera was assigned to the same squad as Deputy Watson. (C.2, D.2) Deputy Watson's received a call for a noise complaint near Fort Hampton Elementary School.[5] (C.2, D.2) Lee McDonald, a teacher at the School, called in the complaint because he

[1] Hereinafter, "Deputy Watson"
[2] Parenthetical references are to the pages of the pleadings, sworn statements, and exhibits: "A" – Complaint; "B" – Answer and Affirmative Defenses; "C" – Deputy Sheriff Eric Watson; "D" – Deputy Sheriff Eddie Rivera; "E" – Lee McDonald; "F" – Summary of Autopsy Examination; "G" – Frank Edwards, Ph.D.; "H" – Plaintiff's Notice of Expert Witness
[3] Hereinafter, "the Sheriff's Office"
[4] Hereinafter, "Deputy Rivera"
[5] Hereinafter, "the School"

clearly heard loud, vulgar music playing across the street while young students were outside. (E.1)

Deputy Watson and Deputy Rivera[6] drove their squad cars to area of the noise complaint. (C.2, D.2) Both Deputies wore their Sheriff's uniforms. (C.2, D.2) The Deputies could hear rap music coming from 1501 58th Street South, Fort Hampton, Florida 33705.[7] (A.2, C.2, D.2) Deputy Watson explained, the "music was so loud," he could hear the music with his car windows rolled up and police radio on. (C.2)

The Deputies pulled up in front of the residence, exited their vehicles, and knocked on the front door, but received no answer. (C.2, D.2) Then, Deputy Watson walked up a sidewalk to the residence's side door. (C.3, D.2) Both the front and side doors were "solid without any windows." (A.3) Deputy Watson used his police baton to bang on the side door "so someone could hear [him]" over the loud music. (C.3) No one answered the side door, so Deputy Watson "started back toward the front door." (C.3)

Meanwhile, Deputy Rivera continued to knock on the front door with his hand. (D.2) Finally, David Jordan, Jr.,[8] a black 33-year-old, opened the door. (D.2,

[6] Hereinafter collectively, "the Deputies"
[7] Hereinafter, "the residence"
[8] Hereinafter, "the decedent"

F.1) Deputy Rivera yelled, "'Sheriff's Office, Sheriff's Office'" over the music. (D.2)

The front door opened wide enough that Deputy Rivera could see the decedent's entire body. (D.3) Deputy Rivera noticed that the decedent held a "small black handgun in his right hand." (D.3) Deputy Rivera immediately began shouting "'gun, gun, gun, drop the gun, drop the gun, drop the gun.'" (D.3) The decedent raised the gun at Deputy Rivera, who was "almost directly in front" of the decedent. (D.3) In response, Deputy Rivera "started to draw [his] gun and retreat" from the decedent. (D.3) Deputy Rivera "felt threatened," and "thought he was going to get shot." (D.3)

Deputy Watson "drew his service weapon, and aimed" at the decedent as he came around the corner of the house in response to Deputy Rivera's yells for the decedent to "drop the gun." (C.3) Deputy Watson yelled, "hey," and the decedent quickly glanced over to Deputy Watson. (D.3) Then, the decedent began closing the front door with his left hand, while still raising the gun in his right hand. (C.3, D.3) Deputy Watson thought the decedent "was going to shoot" Deputy "Rivera through the front door," and if the decedent "missed Deputy Rivera," then the shot could hit one of the 50 children standing behind the Deputies at the School. (C.3) Deputy Watson fired his weapon "rapidly four times" in a "vertical trajectory from bottom to the top" at the decedent through his front door. (C.3) The front door was

not completely closed when the first shot was fired. (D.3) This was the first time in Deputy Watson's career that he had shot someone. (C.4) After the shots were fired, the Deputies took cover behind Deputy Rivera's patrol car while the "music continued to play loudly." (D.3) The Deputies waited behind the car "until the SWAT team took position." (D.3) Then, the Deputies were removed from the scene. (D.3)

The decedent died at the scene from multiple gunshot wounds. (C.4, F.1) His body was found in the foyer with the unloaded, stolen gun he had pointed at Deputy Rivera in the back pocket of his shorts. (C.5)

Deputy Watson "believed he did not know anything about" the decedent because he did not conduct a background check or pull up a call history prior to knocking on the decedent's door. (C.4) After the incident, Deputy Watson discovered that the decedent was one of several people Deputy Watson arrested "on a curfew violation" in 2004. (C.4)

ARGUMENT

I. PLAINTIFF'S MOTION TO STRIKE DEFENDANT DEPUTY WATSON'S AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY SHOULD BE DENIED, AS HIS USE OF FORCE AGAINST PLAINTIFF WAS REASONABLE AND DID NOT VIOLATE ANY CONSTITUTIONAL RIGHT.

Deputy Watson is entitled to the affirmative defense of qualified immunity pursuant to 42 U.S.C. § 1983. The doctrine of qualified immunity shields public

officials from damage actions except where said public officials' conduct is found unreasonable in light of clearly established law. See 42 U.S.C. § 1983. No constitutional violation occurred because Deputy Watson acted in defense of himself, Deputy Rivera, and the public when he fired his service weapon and shot the decedent. Even if a constitutional violation can be found, the plaintiffs cannot show that a clearly established law was violated because there is no judicial precedent with facts materially similar to the instant case. Therefore, this court should deny Plaintiff's motion to strike and allow Deputy Watson to raise the affirmative defense of qualified immunity under 42 U.S.C. § 1983.

A. The Legal Standard When Raising Qualified Immunity.

The doctrine of qualified immunity shields government officials from civil liability for constitutional violations. See 42 U.S.C. § 1983. While there are narrow exceptions to this rule, none are applicable to the instant case. The United States Supreme Court ruled that qualified immunity applies to "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986).

The Court previously held that determining whether a government official is entitled to the qualified immunity defense should be examined under a two-part test. See Saucier v. Katz, 533 U.S. 194 (2001). First, the court must determine whether the facts indicate that a constitutional right has been violated. Id. If the

answer is yes, then the second inquiry is whether that right was clearly established at the time of the alleged conduct. Id.

In Pearson v. Callahan, 555 U.S. 223 (2009), the Court modified the previous qualified immunity tests from Saucier and Harlow. See Id. The Court in Pearson held that it was within the trial courts' discretion to choose the appropriate test discussed in previous Supreme Court decisions. See Id. The Court also suggested that Saucier's mandatory sequence of inquiries could be less rigid, and that trial courts could either discuss the second "clearly established law" inquiry initially, or the courts could completely skip the first "constitutional right" inquiry. Id. at 236. Moreover, government officials remain entitled to qualified immunity where their actions did not violate any clearly established law. Kisela v. Hughes, 138 S. Ct. 1148 (2018).

Accordingly, the Pearson standard should be applied to the instant case, and this court should skip the first part of the Saucier test.

B. Deputy Watson Should Be Permitted to Raise the Affirmative Defense of Qualified Immunity Because He Did Not Violate Plaintiff's Fourth or Fourteenth Amendment Rights.

To determine whether Deputy Watson should be allowed to raise the affirmative defense of qualified immunity, there are two separate analyses depending whether this court applies the Pearson or Saucier analyses. While it is Deputy Watson's position that the Pearson test should be used due to the nature of

the decedent's actions and the lack of any established law violation, this section will use the Saucier inquiry to avoid redundancy.

The court must begin a Saucier inquiry "by identifying the specific constitutional right allegedly infringed." Graham v. Connor, 490 U.S. 386, 394 (1989). Here, Plaintiff may argue Deputy Watson violated the decedent's Fourth and Fourteenth Amendment rights. This argument has no merit. No constitutional right of the decedent was violated as Deputy Watson's actions did not constitute a seizure of the decedent.

When evaluating a claim of seizure under an excessive force theory, the court must determine whether to analyze same under the Fourth or Fourteenth Amendment. For the claim to be evaluated under the Fourth Amendment, the law enforcement officer must have "used excessive force in the course of making an arrest, investigatory stop, or other 'seizure' of his person." Graham, 490 U.S. at 394. If analyzed under the Fourteenth Amendment, plaintiff must establish that excessive force was "against arrestees and pretrial detainees." JW ex rel. Tammy Williams v. Birmingham Bd. of Educ., 904 F.3d 1248, 1259 (11th Cir. 2018).

Here, the decedent was never arrested, rather the Deputies were responding to his home to issue a verbal warning for a Municipal Code violation. Moreover, when the decedent answered the door holding a firearm the situation escalated so quickly that there was no contemplation of placing the decedent under arrest.

Therefore, the decedent was not an arrestee and the Fourteenth Amendment is inapplicable here.

Next, the court must determine whether the decedent was seized in violation of the Fourth Amendment by considering whether Deputy Watson used excessive force under Graham's test. See Graham, 109 S. Ct.. This test examines the "'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." Id at 396. To decide this test, the Court established a three factor analysis, wherein these factors need not all be met: "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id.

Further, "[working as a police officer] a dangerous task that requires making quick decisions in circumstances that are tense, uncertain, and rapidly evolving." See Graham, 109 S. Ct.. Therefore, the actions of law enforcement officers are assessed using objective standards of reasonableness. Nieves v. Bartlett, 139 S. Ct. 1715, 1725 (2019).

First, we must examine the severity of the crime committed. Here, within seconds the decedent escalated his conduct to a multitude of felony crimes, such as possession of a firearm, menacing, reckless endangerment, and attempted murder. Second, there was clearly an immediate threat as the decedent threatened the lives

of defendants and approximately fifty schoolchildren by brandishing a firearm in their direction. If the decedent had fired said firearm, he could have killed multiple people. Finally, the decedent was evading arrest because the decedent's actions are indicative of an individual who would not peacefully surrender into police custody. Therefore, after analyzing the test under Graham, no Fourth Amendment Violation for seizure of the decedent occurred.

Accordingly, plaintiff's motion to strike must be denied as no constitutional violation can be established.

C. Deputy Watson Should Be Permitted to Raise the Affirmative Defense of Qualified Immunity Because No Clearly Established Law Was Violated.

A clearly established right is one that "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). Furthermore, an "official's awareness of the existence of an abstract right … does not equate to the knowledge that his conduct infringes the right." Coffin v. Brandau, 642 F.3d 999, 1015 (11th Cir. 2011); Smith v. Mattox, 127 F.3d 1416, 1419 (11th Cir.1997). For a right to be "clearly established," it "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right … to say that in the light of pre-existing law, the unlawfulness must be apparent." Hope v. Pelzer, 536 U.S. 730, 739 (2002). Importantly, "if case law, in factual terms, has not staked out a bright

line, qualified immunity almost always protects the defendant." See, e.g., Oliver v. Fiorino, 586 F.3d 898, 907 (11th Cir. 2009).

The standard is high for what constitutes a clearly established law. A claim under 42 U.S.C. § 1983 will fail if it cannot "show that a materially similar case has already been decided." Mercado v. City of Orlando, 407 F.3d 1152, 1159 (11th Cir. 2005). Absent this, we must look toward judicial precedents and, in that precedent, find particular facts that tie it to the current one. Loftus v. Clark-Moore, 690 F.3d 1200, 1204 (11th Cir. 2012). Here, no judicial precedent supports plaintiff's meritless contention that a clearly established law was violated by Defendant Watson. In fact, Government Agents are entitled to qualified immunity where their use of force did not violate any clearly established law. See Kisela, 138 S. Ct. at 1150 (2018).

In Hughes, plaintiff threatened police officers with a knife. Id. When plaintiff advanced toward defendant's partner, defendant shot plaintiff. Id. The Court held, "although the [defendant officer] [himself was] in no apparent danger, [defendant] believed [plaintiff] was a threat" and had "seconds to assess the potential danger to [defendant's partner]." Id. at 1153. The Court held that plaintiff did not commit a crime. Id. The officers responded to a "check welfare" call, which reported no criminal activity." Id. at 1157. The Court found defendant failed to meet all three factors under Graham. Id. However, "[r]ather than defend the

conduct's reasonableness, the court only focused on the "clearly established" prong of the qualified immunity analysis." Id at 1158. The instant case is analogous to Hughes because Deputy Watson should not be barred from a qualified immunity defense for choosing to save Deputy Rivera's life.

Accordingly, Plaintiff's motion must be denied because no clearly established law was violated.

II. FRANK EDWARDS, PH.D., SHOULD NOT BE PERMITTED TO TESTIFY AS AN EXPERT WITNESS UNDER FEDERAL RULES OF EVIDENCE 401, 702, AND 403.

The Court should exclude the testimony of Frank Edwards, Ph.D., under Federal Rules of Evidence 401, 702, and 403. Dr. Edwards's testimony is irrelevant under Federal Rule of Evidence 401 because it does not have any tendency to make a fact more or less probable than it would be without his testimony. See Fed. R. Evid. 401. If this court determines that the testimony is relevant under Federal Rule of Evidence 401, Dr. Edwards's testimony should be excluded under Federal Rule of Evidence 702 because his testimony is not beyond the understanding of the average lay person and, therefore, would not assist the trier of fact in understanding the evidence or determining a fact at issue. See Fed. R. Evid. 702. Finally, even if this court determines Dr. Edwards's testimony is admissible under Federal Rule of Evidence 702, it should be excluded under Federal Rule of Evidence 403 because the prejudicial effect of the testimony

substantially outweighs any probative value that the testimony may have. See Fed. R. Evid. 403.

A. Dr. Edwards's Testimony Should Be Excluded Pursuant to Federal Rule of Evidence 401 Because His Testimony Is Irrelevant.

Under Federal Rule of Evidence 401, "[e]vidence is relevant if" the evidence "has any tendency to make a fact more or less probable than it would be without the evidence" and if "the fact is of consequence in determining the action." Fed. R. Evid. 401. Irrelevant evidence is inadmissible. See Fed. R. Evid. 402.

Plaintiff states that "Dr. Edwards will testify regarding the racial bias present at the Sheriff's Office and the impact the racial bias had on" Deputy Watson's actions on February 14, 2019. (H.1) Dr. Edwards's testimony is irrelevant because alleged racial bias at the Sheriff's Office would not have any tendency to make a fact at issue more or less probable than it would be without the testimony. See Fed. R. Evid. 401. Additionally, any fact elicited regarding alleged racial bias at the Sheriff's Office or any impact the alleged bias had on Deputy Watson's actions is not of consequence to determining the action.

Therefore, Dr. Edward's testimony should be excluded because it is irrelevant under Federal Rule of Evidence 401.

B. Dr. Edwards's Testimony Should Be Excluded Under Federal Rule of Evidence 702 Because His Testimony Will Not Help the Trier of Fact Understand the Evidence or Determine a Fact in Issue.

Federal Rule of Evidence 702 states:

> "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 to determine a fact at 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. Federal Rule of Evidence 702, "assign[s] to the trial judge the task of ensuring that an expert's testimony" is both relevant and reliable. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The trial court judge's "'gate-keeping' obligation" ensuring that expert testimony is relevant and reliable "applies not only to testimony based on 'scientific knowledge,' but also to testimony based on 'technical' and 'other specialized' knowledge." Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999). The role of the district court "is especially significant since the expert's opinion 'can be both powerful and … misleading because of the difficulty in evaluating'" the expert's opinion. United States v. Frazier, 387 F.3d 1244, 1260 (11th Cir. 2004).

In evaluating the admissibility of expert testimony under Federal Rule of Evidence 702, the trial court must determine "whether:

> (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in Daubert; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue."

Id. The proponent of the expert opinion carries the "burden of establishing admissibility." Bachmann v. Hartford Fire Ins. Co., 323 F. Supp. 3d 1356, 1359 (M.D. Fla. 2018).

The court should focus on the third requirement for admissibility of expert testimony under Federal Rule of Evidence 702, that the expert testimony "assist[s] the trier of fact." Id. at 1262. Under such requirement, "expert testimony is admissible if it concerns matters that are beyond the understanding of the average lay person." Id. Typically, "proffered expert testimony … will not help the trier of fact when it offers nothing more than what lawyers for the parties can argue in closing arguments." Id.

In Edwards v. Shanley, 580 Fed. Appx. 816 (11th Cir. 2014), "plaintiff fled on foot from" defendant police officers, and during the course of the chase a police K-9 bit plaintiff's leg. Id. at 817. Plaintiff brought a 42 U.S.C. § 1983 action and claimed the police officers used excessive force when arresting him. See Id. Plaintiff offered an expert in "canine … behavior and … dog bite wound evaluation." Id. at 819-20. The expert opined that plaintiff's wounds were a result of a "prolonged attack." Id. The expert came to this conclusion after reading over 500 studies on dog bite wounds and dog attacks, while examining over 6,000 photographs of bite wounds. Id. The court determined that plaintiff's expert's opinion was inadmissible under Federal Rule of Evidence 702 because it would not

assist the trier of fact in understanding the evidence. Id. at 821. The court reasoned that the expert's opinion was "no more than a characterization" and "stated too vaguely to assist the jury in determining the duration of the encounter." Id.

Similarly, Dr. Edwards bases his conclusion off of studies that are intended to generalize a certain group of people to align with certain behaviors. The studies that the expert in Edwards based his conclusion off of characterized dog bites to paint a certain picture of what happened in that plaintiff's situation. In the case at bar, this is essentially what Dr. Edwards's testimony would do. What Dr. Edwards's testimony amounts to is that Deputy Watson's action was based predominantly on the individual's race and ignores the totality of the circumstances at play (i.e. the decedent holding a gun and escalating the situation). Dr. Edwards's opinion should be considered no more than a characterization by assuming that Deputy Watson's actions were undoubtedly performed out of racial bias and not blind defense as it is analogous to Edwards.

In Bostick v. State Farm Mut. Auto Ins. Co., 321 F.R.D. 414 (M.D. Fla. 2017), plaintiff sued defendant insurance company, "seeking payment of underinsured motorist benefits" from a car accident." Id. at 415. Plaintiff "retained a professional engineer to offer expert testimony at trial." Id. Plaintiff's expert was going to testify about "'the forces involved in the collision impact.'" Id. at 417. Defendant moved to strike plaintiff's expert's testimony because the testimony

would not assist "the trier of fact to understand or determine a fact" at issue. Id. at 415. The court denied defendant's motion to strike the expert testimony. See Id. The court determined that plaintiff's expert's testimony would assist the trier of fact because it was "unlikely that the average lay person possess[ed] the education and training necessary to understand the forces and physics involved in a collision, and the jury" could use the testimony to evaluate the testimony of the medical doctors offered in the matter. Id. at 418.

Here, Dr. Edwards's testimony is offered to discuss alleged racial bias at the Sheriff's Office and the impact the alleged bias had on Deputy Watson's actions. (H.1) Dr. Edwards's testimony is distinguishable from the expert in Bostick because the statistics that Dr. Edwards would offer are not beyond what the average lay person would understand, particularly considering the charged political climate and awareness of racial inequalities in the United States today. See Bostick, 321 F.R.D. at 418. It is likely that the average juror has a basic understanding of the potential for racial bias in police forces due to the intense media coverage of such issues. Additionally, Dr. Edwards's testimony offers nothing more than what can be argued on closing argument: whether or not Deputy Watson was impacted by the alleged racial bias propounded by Dr. Edwards's testimony, which does not lend itself to any issue of fact in the case at bar.

Therefore, Dr. Edwards's testimony is inadmissible under Federal Rule of Evidence 702 because his testimony is not helpful to the trier of fact in understanding the evidence or determining any facts at issue.

C. Dr. Edwards's Testimony Should be Excluded Under Federal Rule of Evidence 403 Because the Probative Value of Dr. Edwards's Testimony Is Substantially Outweighed By Its Prejudicial Effect.

Due to "the powerful and potentially misleading effect of expert evidence, sometimes expert opinions that" are otherwise admissible can be excluded under Federal Rule of Evidence 403. Frazier, 387 F.3d at 1263. Federal Rule of Evidence 403 states that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury…." Fed. R. Evid. 403. Unfair prejudice "within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Old Chief v. United States, 519 U.S. 172, 180 (1997). All relevant evidence "is inherently prejudicial." United States v. Meester, 762 F.2d 867, 875 (11th Cir. 1985).

However, "it is only *unfair* prejudice, *substantially* outweighing probative value" that allows relevant evidence to be excluded under Federal Rule of Evidence 403. Id. "Unless trials are to be conducted on scenarios, on unreal facts tailored and sanitized for the occasion, the application of" Federal Rule of Evidence 403 "must be cautious and sparing." Id. Federal Rule of Evidence 403's

chief "function is limited to excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect." Id. Federal Rule of Evidence 403 is used to "permit the trial judge to preserve the fairness of the proceedings by exclusion despite its relevance." Id.

The trial judge "exercises more control over experts than over lay witnesses" when balancing unfair prejudice against probative value under Federal Rule of Evidence 403. Frazier, 387 F.3d at 1263. Expert testimony "may be assigned talismanic significance in the eyes of lay jurors, and, therefore, the district courts must take care to weigh the value of such evidence against its potential to mislead or confuse." Id.

Here, Dr. Edwards's testimony has limited probative value and is substantially outweighed by the risk of unfair prejudice, misleading the jury, and confusing the issues. Dr. Edwards's testimony has little probative value in that it broadly states the actions by Sheriff Michaels and Deputy Watson were solely motivated by race. To the extent that there is any probative value whatsoever, it is substantially outweighed by the risk of unfair prejudice because the average lay person has the ability to understand that racial bias may exist within some officers, especially considering the immense amount of media coverage that this issue is receiving today. If the jury were to hear Dr. Edwards's testimony, the jury will likely confuse the issues. Due to the "talismanic significance" a jury may give to

expert testimony, the jury will likely take the knowledge gained through Dr. Edwards's testimony concerning the alleged basis for Deputy Watson's actions and focus on the alleged racial bias that is being injected into the matter without any actual evidence indicating that Deputy Watson acted in accordance with any alleged bias.

Further, Dr. Edwards's testimony is unduly prejudicial because there is no evidence indicating that Deputy Watson's actions were motivated by racial bias on February 14, 2019. (H.1) In fact, Deputy Watson stated that he did not pull up a call history or conduct a background check prior to knocking on the decedent's door, so he could not develop a pre-conceived notion about the decedent. (C.4) Additionally, there were no windows on the decedent's doors, so Deputy Watson could not see who occupied the home when he went to check the noise complaint. (A.3) Dr. Edwards's testimony would only inflame the jury by bringing up such a hot topic in today's media. Moreover, Dr. Edwards's statistics fail to consider the specific factual scenario that led to Deputy Watson's actions. If the jury were to follow the premise, based on Dr. Edwards's statistics, that Deputy Watson's actions were impacted by the alleged racial bias at the Sheriff's Office, then the jury may be misled to believe that he acted in accordance with the proffered statistics rather than out of defense of himself and others.

Therefore, Dr. Edwards's testimony should be excluded under Federal Rule of Evidence 403 because his testimony's probative value is substantially outweighed by its prejudicial effect.

CONCLUSION WITH PRAYER FOR RELIEF

For the foregoing reasons, Defendant Deputy Watson respectfully contends this court should deny Plaintiff's motion to strike and permit Defendant Deputy Watson to raise qualified immunity as an affirmative defense at trial. Defendant Deputy Watson further contends that this court should grant Defendant Deputy Watson's motion to preclude Dr. Edwards's testimony.

Dated: Fort Hampton, Florida
September 10, 2020

Respectfully Submitted,

By
/s/_____
Counsel A
ATTORNEY FOR DEFENDANT
1401 Gulfport Boulevard, Suite 1300
Fort Hampton, Florida 33705

/s/_____
Counsel B
ATTORNEY FOR THE DEFENDANT
1401 Gulfport Boulevard, Suite 1300
Fort Hampton, Florida 33705