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.

MOVANT'S MEMORANDUM OF LAW

Counsels for Plaintiff Sheryl Jordan,
as Personal Representative of the Estate of David Jordan, Jr.
COUNSEL A
COUNSEL B

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INTRODUCTION WITH REQUEST FOR RELIEF

This court should grant the Plaintiff's Motion to Strike Defendant's affirmative defense to qualified immunity because his use of excessive force violated the Plaintiff's Fourth and Fourteenth amendment rights.

This court should deny Defendant's motion to preclude the Plaintiff's proposed expert witness because his testimony is permissible under the Federal Rules of Evidence.

STATEMENT OF FACTS

On February 14, 2019 at 3:00 P.M., Lee McDonald[1], a teacher at Fort Hampton Elementary School, prepared students for pickup outside of school (C.1).[2] McDonald heard what she described as loud, vulgar music coming from across the street (C.1). Concerned McDonald made a noise complaint to the Midland County Sheriff's Department (C.1).

Deputy Sheriff Eric Watson[3], a White male officer in the Road Patrol Unit, responded to the call (A.2). Although a noise disturbance is only a county ordinance violation, Deputy Sheriff Eddie Rivera[4] accompanied Deputy Watson as back-up (A.2). Both Defendant Watson and Deputy Rivera[5] responded in two (2) separate vehicles at approximately 3:15 p.m. (A.2). Upon arriving, the Deputies heard loud music and determined it was coming from 1501 58th Street South (A.2). The deceased, David Jordan, Jr.[6], lived at said address. (C.1). Both Deputies stated they believed Fort Hampton to be troubled and ridden with drugs, violence, and gang activity (A.1, B.2).

Then the Deputies approached the front door of the home and knocked forcefully, but received no response (A.3, B.2, C.2). Deputy Rivera remained by the front door, and Defendant Watson walked to the side-door of David's home, located on the right side of the house (A.3). When Defendant Watson knocked on the side door, there was no response

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[1] Hereinafter, "McDonald".
[2] Parenthetical references are to pages of the sworn statements of the witnesses: "A" - Deputy Eric Watson; "B" - Deputy Eddie Rivera; "C" Lee McDonald.
[3] Hereinafter, "Defendant Watson".
[4] Hereinafter, "Deputy Rivera".
[5] Together, "the Deputies".
[6] Hereinafter, "David".

(A.3). Defendant Watson then took out a police baton and used it to bang on the side-door (A.3). Neither deputy looked through any windows of the home, nor did they have any knowledge if anyone was home (A.4). Additionally, neither Deputy announced their identities after knocking on any door (B.2). It was only while the front door opened, that Deputy Rivera yelled, "Sheriff's Office," over what he described was loud music (B.2).

When David's front door opened, Defendant Watson stated that he observed David holding an unknown object in his right hand, but he could not confirm whether the object was a gun (A.3). Deputy Rivera alleged that he observed David holding a small black handgun in his right hand and began shouting, "gun" and "drop the gun" repeatedly (B.3.). The Deputies were each standing approximately three (3) feet away from David, with Deputy Rivera standing toward the front of David and Defendant Watson standing to the right of Deputy Rivera (B.3). David stood near his front door, inside of the foyer (B.3). After hearing Deputy Rivera, Defendant Watson immediately drew his firearm and aimed it directly at David, who remained inside his home (A.3).

David began to close his front door, retreating into his home (A.3). McDonald, still standing across the street, saw Defendant Watson jump back and pull out his gun as soon as the front door opened (C.2). According to McDonald, Defendant Watson seemed "surprised and startled by the door opening." (C.2). As David retreated back into his home and closed his door, Defendant Watson fired his gun rapidly four (4) times at David, through David's closed front door, firing vertically from bottom of the door up to the top (A.3). After Defendant Watson shot at David four times through his closed front door, he did not immediately call for back-up or medical assistance, or look through any windows

to see if anyone else was in the home or hurt. Instead, Defendant Watson stated that he ran to the back of the house, although Deputy Rivera does not remember Defendant Watson securing the side or back portion of the house after the shooting (A.3, B.3). McDonald did not hear any music playing while the shots were fired, contrary to what the Deputies now recall (C.2). Deputy Rivera did not fire his own firearm, because by the time he withdrew his firearm, Defendant Watson had already shot and killed David (B.3).

David was struck three (3) times by Defendant Watson (Midland County M.E. Department, Summary Report of Autopsy Report by Sally Odell, M.D.). The bullets struck David twice in his lower and mid right abdomen, and once in his brain (Summary of Autopsy Report). David's autopsy indicated his death was a homicide (Summary of Autopsy Report). After killing David, Defendant Watson, a self-proclaimed advocate of the Second Amendment, received paid administrative leave (A.2, A.3).

ARGUMENT

I. DEFENDANT ERIC WATSON SHOULD BE BARRED FROM RAISING THE AFFIRMATIVE DEFENSE TO QUALIFIED IMMUNITY BECAUSE DEFENDANT'S USE OF EXCESSIVE FORCE VIOLATED THE DECEDENT'S CONSTITUTIONAL RIGHTS.

Defendant Watson's conduct in his wanton disregard for David's life bars him from raising the affirmative defense to qualified immunity. Plaintiff has raised an excessive force claim under 42 U.S. Code § 1983 for the wrongful death of David Jordan, Jr.. Section 1983 provides the right to sue state government employees acting "under color of state law" for civil violations, and stands to enforce an individual's already existing civil rights. 42 U.S. Code § 1983. The judicial doctrine of qualified immunity provides a complete defense against suit and liability for government officials who are sued in their individual capacities for the performance of their discretionary functions. *Bakri v. City of Daytona Beach*, 716 F. Supp. 2d 1165, 1171 (M.D. Fla. 2010). Because Defendant Watson's unwarranted use of excessive force violated David's Fourth and Fourteenth Amendment rights, this court should grant Plaintiff's motion to strike Defendant Watson's affirmative defense to qualified immunity.

A. It is Within This Court's Discretion to Decide Which Standard Applies in Determining Whether Defendant Watson is Entitled to Qualified Immunity.

In certain instances, the doctrine of qualified immunity shields government officials from civil liability for constitutional violations. However, it is well-established that qualified immunity does not protect officials who violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808, 821, 172 L.Ed. 2d 565 (2009); *Brown v. City of*

Huntsville, 608 F. 3d 724, 734 (11th Cir. 2010). The Supreme Court has established that an inquiry into whether qualified immunity is applicable is done under an objective standard. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Thus, the first inquiry is to determine whether a plaintiff has satisfied their burden of showing that a defendant violated a clearly established law, viewing the facts in the light most favorable to the plaintiff. *Hope v. Pelzer*, 536 U.S. 730, 736, 122 S.Ct. 2508, 2513, 153 L.Ed. 2d 666 (2002); *Grider v. City of Auburn*, Ala., 618 F.3d 1240, 1254 (11th Cir. 2010); citing *Saucier*, 533 U.S. at 201, 121 S.Ct. at 2156; *Anderson v. City of Tampa*, 555 F. Supp. 2d 1268, 1272 (M.D. Fla. 2008).

In identifying circumstances where an official would not be permitted to raise the qualified immunity defense under this objective test, the *Harlow* Court examined past decisions involving qualified immunity where it was established that, "[t]he objective element involves a presumptive knowledge of and respect for 'basic, unquestioned constitutional rights'". 457 U.S. 800, 815 (1982) (citing *Wood v. Strickland*, 420 U.S. 308 (1975)). There are two situations where a defendant would be prohibited from raising the defense: (1) where an official "knew or reasonably should have known that the action he took within the sphere of official responsibility would violate the constitutional rights of the plaintiff" or (2) if an official "took the action with the malicious intention to cause a deprivation of constitutional rights or other injury." *Id.*

In *Saucier v. Katz,* the issue was whether a government official raising a qualified immunity defense should be examined under a two-part test. First, the court must look at whether the facts indicate that a constitutional right has been violated. *Saucier v. Katz* 533 U.S. 194, 200 (2001). If yes, the second inquiry is whether that right was clearly established

at the time of the alleged conduct. *Id.* The Court addressed qualified immunity again in *Pearson v. Callahan,* and modified their tests. Rather than effectuating a mandatory new test for determining whether qualified immunity is appropriate, the Supreme Court decided it was ultimately within the trial courts' discretion to choose the appropriate test discussed in prior decisions. The *Pearson* Court allowed courts the option to apply either the more structured *Saucier* test or the modified test from *Pearson. Id.*

Since *Pearson,* courts have split on whether the *Pearson* test arbitrarily favors government officials. This court must analyze facts under the first inquiry of whether a right has been violated from the *Saucier* test, because Defendant Watson's conduct clearly violated David's Fourth and Fourteenth Amendment rights. However, should this court decide to analyze the facts of this case under a *Pearson* analysis, it is still clear that Defendant Watson violated an established right when he shot and killed David while David was innocently inside of his home.

B. The Constitution Protects Against Excessive Force and Unlawful Seizures.

Under the *Saucier* test, the first step of a qualified immunity inquiry is determining whether a constitutional right was violated. Defendant Watson violated David's Fourth and Fourteenth Amendment guaranteed rights by using excessive force when shooting David multiple times, while David stood behind the closed front door of his home. In assessing a Fourth Amendment use of excessive force claim, the court must determine from the facts of the case whether the officer's actions are reasonable, viewing those facts in the light most favorable to the plaintiff. *Graham v. Connor,* 490 U.S. 386, 397 (1989).

Excessive force claims are analyzed under the Fourth Amendment's objective reasonableness test. *Graham*, 490 U.S. at 388. The test requires balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. *Id* at 396. Courts must assess the facts of the case and determine: (1) the severity of the crime at issue; (2) whether the defendant posed any immediate threat; and (3) whether the targeted individual was attempting to evade arrest. *Id.;* see also *Tennessee v. Garner*, 471 U.S. 1 1, 8 (1985). The reasonableness of the use of force must be judged from the perspective of a reasonable police officer on the scene. *Graham,* 490 U.S. at 396.

In *Bryant v. Nassau County,* the plaintiff sustained a broken arm during her booking for disorderly intoxication at the Nassau County Jail. *Bryant v. Nassau County*, U.S. Dist. LEXIS 62199 *, 3 (D. Fla. 2005). After arriving at the station, officers forced the plaintiff to the ground to restrain her and broke the plaintiff's arm. *Id* at 4. The complaint alleged officers violated her constitutional rights because the process constituted excessive force under the Fourth and Fourteenth amendment. *Id* at 10. Disorderly intoxication was minor and the defendant placed no safety threat to the officers. Therefore, the officers were not entitled to raise the qualified immunity defense.

Applying *Graham*, Defendant Watson is not entitled to qualified immunity. The offense is minimal because noise complaints are county ordinance violation and not arrestable. Second, David posed no threat to the Deputies or anyone else in the vicinity. Defendant Watson is unable to confirm whether the small object he allegedly observed David holding, was a gun. Deputy Rivera stated he saw David holding what appeared to

be a gun, however he did not withdraw his firearm and begin shooting at David. Further, David was not pointing this object at either Deputy Rivera or Defendant Watson. Defendant Watson stated that David raised his right arm while closing the door behind him. David's conduct was not dangerous. While it may be argued that David was ultimately found to have a firearm in his back pocket, the firearm allegedly recovered from David's back pocket was unloaded. Viewing the facts in the light most favorable to the plaintiff, even if David was holding a loaded firearm, he posed no *immediate* threat to the deputies. David simply closed the door and went inside his home.

Because all three *Graham* factors are not met, it is clear that no reasonable officer would shoot a firearm through a closed door, knowing that an individual was standing directly behind it. This is further supported by the fact that Deputy Rivera, who was standing the same proximity from David as Defendant Watson and believed the object David was holding may have been a gun, did not discharge his weapon.

When asserting an excessive force claim, it is the plaintiff's burden to show a seizure occurred within the meaning of the Fourth Amendment. *Vaughan v. Cox*, 343 F. 3d 1323 (11th Cir. 2003). A Fourth Amendment seizure occurs when "there is a governmental termination of freedom of movement through means intentionally applied." *Beshers v. Harrison*, 495 F. 3d 1260, 1265 (11th Cir. 2007). The right for individuals to be free from excessive police force is clear from both the Constitution and precedent. For a Fourth Amendment excessive force claim to survive, a plaintiff must establish: (1) that a seizure occurred; and (2) that the force used to effect the seizure was unreasonable. *Tennessee v.*

Garner, 471 U.S. 1, 2 (1985). The facts in this case support both of those elements, as it is clear David was seized in his own home when Defendant Watson shot him multiple times.

In *Galvez v. Bruce*, the plaintiff brought an §1983 Fourth Amendment claim against an officer for using excessive force. *Galvez v. Bruce*, 552 F. 3d 1238, 1240 (11th Cir. 2008). There, officers dragged the plaintiff out of his office and slammed him against a wall several times, causing injuries. *Id* at 1241. The court held that the police officers' use of force was not proportionate and barred the defendant officer from raising a qualified immunity defense. None of the *Graham* factors were met and the defendant's conduct violated the plaintiff's constitutional rights. *Id* at 1245.

David posed no immediate risk to the safety of the Deputies or anyone else in the vicinity. The Eleventh Circuit in *Fils v. City of Aventura* stated, "[u]unprovoked force against a non-hostile and non-violent suspect who has not disobeyed instructions violates that suspect's rights under the Fourth Amendment." 647 F. 3d 1272, 1289 (11th Cir. 2011). David retreated back into his home and closed his door when Defendant Watson began shooting his firearm. Defendant Watson's conduct is grossly disproportionate to any possible safety threat that the deputies felt existed. Defendant Watson's violent conduct was a direct violation of David's Fourth Amendment rights. Thus, he should not be afforded the qualified immunity defense.

Defendant Watson also deprived David of his due process rights to liberty and life when he used excessive force by shooting multiple times through David's closed door, resulting in David's death. The Fourteenth Amendment preserves the constitutional freedom from deprivation of life and liberty without due process of the law. U.S. Const.

amend. XIV. David's autopsy report further supports the conclusion that David was shot behind a closed door and seemingly posed no immediate risk to the officers. Therefore Defendant Watson acted unreasonably and with wanton disregard when taking David's life.

The due process clause of the Fourteenth Amendment prevents Government officials like Defendant Watson from abusing their power or depriving citizens of constitutional protections. *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846. David's Fourteenth Amendment right guarantees substantive due process. The reason for Defendant Watson's visit to David's home was for a noise complaint. Florida Local Ordinance Law indicates the proper procedures deputies to follow when responding to noise complaints, yet Defendant Watson ignored protocol and abused his power by taking David's life, violating his constitutional right to liberty.

A Fourteenth Amendment due process violation has occurred if there was "a purpose to cause harm unrelated to the legitimate object of arrest". *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 836 (1998). Purpose to cause harm has been found to shock the conscience of the court. *Id.* In the latter case, a motorcycle passenger was killed in a high-speed chase. The estate of the deceased sued alleging the chasing police officers deprived the deceased of his substantive due process rights. *Id*. The court stated, "high-speed police chases with no intent to harm suspects physically do not give rise to liability under Fourteenth Amendment". *Id* at 833.

The facts of this case indicate Defendant Watson's conduct was not an accident or mistake. Defendant Watson fired his gun multiple times through the closed door of David's home. Even if it was Defendant Watson's intention to merely shoot David to seize him

inside of his own home, the two additional shots to the upper portion of David's front door were unnecessary, excessive, and unreasonable. Defendant Watson's conduct shows intent to shoot and kill David.

II. THE PROPOSED TESTIMONY OF DR. FRANK EDWARDS IS PERMISSIBLE UNDER F.RE. 401, 403, AND 702 AS IS RELEVANT TO THE ISSUES AT HAND AND THE PROBATIVE VALUE OF THE TESTIMONY OUTWEIGHS ANY PREJUDICE.

David Jordan, Jr., was shot and killed by Defendant Watson, who is implicitly biased against Black individuals. The Plaintiff's proposed expert witness, Dr. Frank Edwards will testify that the implicit bias in the Midland County Sheriff's Office is the reason behind why Defendant Watson withdrew his service firearm, shot, and killed David.

A. The Testimony of Dr. Frank Edwards is Relevant Under F.R.E. 401. and its Probative Value Outweighs Any Danger of Prejudice to Defendant Watson.

Admission of evidence is solely within the trial court's discretion, and its ruling must be affirmed absent abuse of discretion. *Williams v. State* 967 So. 2d 735, 747-48 (Fla. 2007); *Alston v. State*, 723 So. 2d 148, 156 (Fla. 1998); *Kearse v. State*, 662 So. 2d 677, 684 (Fla. 1995); *Blanco v. State*, 452 So. 2d 520, 523 (Fla. 1984). Relevant evidence has any tendency to make "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. When an objection is made to the relevance of evidence, the court must decide if the evidence offered tends to prove the matter it seeks to prove. If so, the evidence is admissible. All relevant evidence is admissible unless otherwise provided by the

Constitution, by Act of Congress, by the Federal Rules, or by other rules prescribed by the Supreme Court. Fed. R. Evid. 402.

Defendant Watson is a White Deputy Sheriff, who shot and killed David, an unarmed Black man who was merely standing behind the closed front door of his home. Dr. Frank Edwards, a Sociologist, will testify that data[7] review of the Sheriff's Office revealed racial bias plays a statistically significant role in whether an officer decides to draw their weapon during a stop. His testimony is consistent with the nationwide research he conducted regarding the same correlation. The testimony will help show that on February 14, 2019, Defendant Watson, acted on the institution's racial bias, and was among the 77% of White officers to draw his weapon on a Black male between the age[8] 18-35.

The probative value of Dr. Edwards's testimony substantially outweighs any prejudicial effect it may have by the fact that reasonable jurors already have a conception of law enforcement racially profiling Black men, as it occurs nationwide. An expert witness is necessary to aid fact finders in understanding the biases found within local police departments, specifically, the Midland County Sheriff's Office. This expert testimony would negate any danger of unfair prejudice to Defendants, as it would prevent the jury from speculating based on their own beliefs about policing and racial bias.

Federal Rule of Evidence 403 allows the exclusion of relevant evidence only if its probative value is substantially outweighed by a danger of one or more of the following:

[7] A shocking 77% of White Midland County Sheriff's Officers drew their weapon on Black men aged 18-35, as compared to 33% of White Midland County Sheriff's Officers who drew their weapon on White men, aged 1835.

[8] At the time of his death, David was thirty-three years old.

unfair prejudice, confusing the issues, misleading the jury, or needlessly presenting cumulative evidence. Fed. R. Evid. 403. In context of Rule 403, courts must view the evidence "in the light most favorable to admission, maximizing its probative value and minimizing its undue prejudicial impact." *United States v. Bradberry*, 466 F. 3d 1249, 1253 (11th Cir. 2006). The court's discretion to exclude evidence under Rule 403 is narrowly circumscribed because it is a remedy which should be used sparingly since it allows courts to exclude concededly probative evidence. *State v. Gerry*, 855 So. 2d 157, 163 (Fla. 5th DCA 2003) (quoting *United States v. Norton*, 867 F. 2d 1354, 1361 (11th Cir. 1989). Balancing the interests of Rule 403, courts must also consider the need for the evidence and the effectiveness of a limiting instruction. *United States v. Meester*, 762 F. 2d 867, 875 (11th Cir. 1985). Rule 403 is notably applied strictly to proposed expert testimonies because of the "potential impact on the jury of expert testimony." *Allison v. McGhan Med. Corp.*, 184 F. 3d 1300, 1310 (11th Cir. 1999).

Recently, in *United States v. Reyes-Garcia*, 798 Fed. Appx. 346 (11th Cir. 2019), the issue was whether the defendants conspired to possess with intent to distribute cocaine, while aboard a vessel subject to the jurisdiction of the United States. An expert testified that the price of cocaine increases in the northern hemisphere. The defendants appealed on the grounds that the expert's testimony at trial was irrelevant and highly prejudicial under Rule 403. *Id.* at 351. The Eleventh Circuit affirmed the convictions, finding the probative value of the expert's testimony far outweighed any prejudice to the defendants; it made it more likely that the defendants had an incentive to pick up cocaine and travel north with

illegal drugs. *Id.* Additionally, prejudice could have been mitigated through vigorous cross examination of the expert.

While Dr. Edwards's testimony references terms including "kill," "race," and "police," they are not prejudicial and will not pose any unfair prejudice to the Defendants. The possible prejudice can be addressed through curative instruction to the jury. In fact, a court affirmed a trial court's decision to deny a defendant car-corporation's motion to preclude the plaintiff's use of the term "defect" because the plaintiff was not attempting to lead the jury astray. The term was used to describe the inability of the plaintiff's passenger seat to recline. *Mitsubishi Motors Corp. v. Laliberte*, 52 So. 3d 31 (Fla. 4th DCA 2010). Further, the court highlighted the trial court's attempts of avoiding "prejudice" by providing a curative instruction to the jury.

Even in cases where the potential for prejudices are high, courts have admitted evidence argued to be potentially extremely kinetic to emotions. In *Henninger v. State,* an appeal from a murder conviction, three gruesome photographs of the deceased victim were admitted at trial. 251 So. 2d 862, 864 (Fla. 1971). The photos depicted extremely gruesome images, but were admitted into evidence because they were used in connection with testimony regarding the cause of death, and to refute the defendant's claim of self-defense. *Id.* The court held that any prejudice was outweighed by their probative value, and thus properly admitted. *Id.*

Dr. Edwards's testimony will be used in connection with his nationwide study on the correlation between policemen, race/ethnicity, sex, and the high probability of police officers causing the death of detainees based on racial biases. If Defendant Watson is

permitted to raise the qualified immunity defense at trial, this evidence will be imperative for the Plaintiff to rebut any claims that Defendant Watson's conduct was accidental and not intentional. Dr. Edward's testimony is necessary as the data speaks to the probability of biased, improper, and unreasonable policing.

B. The Testimony of Dr. Frank Edwards is Admissible Under F.R.E. 702.

This court should allow Dr. Edwards's testimony because structural inequality and the correlation between age, sex, and race/ethnicity will assist the trier of fact in understanding the consequences those correlations had in leading to David's death. While racial bias and prejudice are simple terms, "structural inequality" is not. Nearby jurisdictions have addressed the need for experts even for the explanation of the simplest terminologies. The repercussions of prohibiting Dr. Edwards from testifying is that the jury will be left to speculate both on the meaning of "structural inequality," and its relevance to the issue.

A witness qualified an expert by knowledge, skill, experience, or education may testify in the form of an opinion. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). In reviewing the admissibility of expert testimony, the court does not take the role of the adversary system or the role of the jury; cross-examination, presentation of contrary evidence, and careful instructions on the burden of proof are all traditional means of attacking "shaky but admissible evidence." *Allison v. McGhan Med. Corp.*, 184 F. 3d 1300 (11th Cir. 1999).

Dr. Edwards's qualifications are not at issue. Still, his testimony must survive the inquiry of whether it will assist the trier of fact through "application of scientific, … or

specialized expertise, to … determine a fact in issue." *United States v. Frazier*, 387 F. 3d 1244, 1260 (11th Cir. 2004). This inquiry requires analyzing whether the opinion concerns matters that are "beyond the understanding of the average lay person" because testimony will not assist the trier of fact if it offers no more than what counsel may argue during trial. *Id*. at 1263.

Sociologists' testimonies have been admitted in race-based causes of action because they are relevant to claims regarding discrimination and the practices of policemen. *NAACP v. Fla. Dep't of Corr.*, 2002 U.S. Dist. LEXIS 27835 *, (M.D. Fla. 2002). In *NAACP*, the court found a sociologist's testimony - that the alleged racial discrimination at the defendant facility was systemic - was permissible because it was relevant to the plaintiffs' claims of racial discrimination on an institutional level. *Id*.

To understand the relationship between race, age, and gender and police brutality, the triers of fact must be presented with Dr. Edwards's testimony. It will show how officers perceive Black men and produce perceptions of criminality. While racism and discrimination are prevalent, expert testimony is still necessary to aid the jury in connecting these concepts to the facts. Courts have admitted expert testimony to explain even the simplest concepts, including why elders tend to congregate and enjoy senior living communities. In *Pomerantz v. Woodlands Section 8 Asso.*, the appellants challenged a judgement granting injunctive relief to appellee homeowners association after appellants

(due to having a newborn) violated the age restriction in their deed.[9] 479 So. 2d 794 (Fla. 4th DCA 1985). The experts for the association were a sociologist and a psychotherapist.

In *Pomerantz,* the sociologist testified that people who relocate to retirement communities tend to share a specific culture and that there is a sense of trust and responsibility for one another. *Id* at 795. The psychotherapist testified that psychological needs change as the body ages, and that an age-restricted community is a way to increase the morale of elders. *Id.* Both testimonies in *Pomerantz* are accepted by the public. Yet the court acknowledged the need for them and admitted the testimonies because the appellant's criticisms only bore on the weight of the testimonies and courts must not "substitute its judgement for that of the trier of fact." *Id.*

Even when an expert's testimony is similar to what the public may view on television, courts have admitted expert testimonies to cure speculation. For example, in the bustling city of New York, where police brutality is arguably most often protested, a court held that an expert sociologist may testify to the existence of police misconduct because it is not a subject that would surprise reasonable jurors residing in the district. *Katt v. City of New York*, 151 F. Supp. 2d 313 (S.D.N.Y. 2001). The defendants contended periodic investigations of police misconduct and "cover-ups" are reported by media, and therefore expert testimony would not be necessary to aid the jury. Precisely because the latter

[9] The deed restrictions barred permanent residents under the age of sixteen in the area where appellants' home was located**.** *Pomerantz v. Woodlands Section 8 Asso.,* 479 So. 2d 794 (Fla. 4th DCA 1985).

behaviors are known via the media, the *Katt* court reasoned jurors would not be inflamed. *Id*.

CONCLUSION

This court should: (1) grant the Plaintiff's Motion to Strike Defendant Watson's request to raise the qualified immunity defense; and (2) find Plaintiff's expert testimony admissible.

_____/s/_____
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