Team 5678

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

LAKEVILLE DIVISION

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

Plaintiff,

vs.

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

Defendants.

_____/

Case No.: 2:20cv15994

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

Attorneys for Defendant

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INTRODUCTION AND REQUEST FOR RELIEF

Defendants Sheriff Derek Michaels and Deputy Eric Watson move to exclude Plaintiff's expert witness testimony pursuant to Federal Rules of Evidence 401, 403, and 702. Further Defendants request this Court deny Plaintiff's unfounded Motion to Strike Defendant's Affirmative Defense.

STATEMENT OF FACTS

Defendant Deputy Eric Watson ("Deputy Watson") is a police officer with over thirteen years of experience. (Deputy Watson's Affidavit ("Watson Aff.") ¶¶ 2, 5.) Deputy Watson began working for the Midland County Sheriff's Office ("MCSO") in March of 2017. (Watson Aff. ¶ 2.)

On February 14, 2019, Deputy Watson and Deputy Eddie Riviera ("Riviera") were dispatched to David Jordan Jr.'s ("Jordan") residence in response to a noise complaint for loud and vulgar music in potential violation of Fort Hampton Municipal Code. (Compl. ¶¶ 11-12.) The profanity-laden music was loud enough to be heard by the children in the elementary schoolyard, positioned just across the street from Jordan's home. (Watson Aff. ¶ 19.) Upon arriving at the residence, Deputy Watson and Riviera knocked on the front door, receiving no response. (*Id*. ¶ 21.) Deputy Watson proceeded to the side of the residence and knocked on the side door, while Riviera remained at the front door. (*Id*. ¶ 22.)

Suddenly, Deputy Watson heard the music grow louder, and as he turned back toward the front of the residence, he saw Jordan had partially opened the front door. (*Id*.

¶¶ 24-25); (Compl. ¶ 14.) As Deputy Watson got closer, he could see Jordan had something in his right hand. (Watson Aff. ¶¶ 24-25.) Riviera, standing just a few feet from Jordan, then began yelling that Jordan had a gun. (*Id.* ¶ 27.); (Compl. ¶ 15.) Deputy Watson observed Jordan simultaneously raising his right hand, with the object still in his grasp, as he began shutting the front door. (Watson Aff. ¶ 31.) Fearing for his and Riviera's life—believing Jordan was drawing a weapon in their direction—Deputy Watson fired four shots toward Jordan, killing Jordan. (*Id*. ¶ 32-36.) It was later learned Jordan did in fact have a gun on him, albeit unloaded (Compl. ¶ 17), as well as a blood alcohol level of 0.32, four times the legal limit to operate a vehicle. (Watson Aff. ¶ 54-57.)

As a result of these events, on February 2, 2020, Jordan's mother, Plaintiff Sheryl Jordan ("Plaintiff") filed a wrongful death action against Defendant Sheriff Derek Michaels ("Michaels"), in his official capacity as the Sheriff for Midland County, and Deputy Watson, in his individual capacity. (Compl. ¶¶ 9-10.) The complaint raised a claim against Deputy Watson pursuant to 42 U.S.C. § 1983, alleging that his use of deadly force against Jordan was excessive and violative of Jordan's constitutional rights. (Compl. ¶¶ 23-27.) Plaintiff also asserted a state tort claim of negligence against Michaels, claiming he is liable for the actions of his employee, Deputy Watson. (Compl. ¶¶ 28-32.)

Upon removing this case to federal court, Defendants filed an answer denying most of the allegations from Plaintiff's complaint as pled (Defendants' Answer ("Answer") ¶¶ 1-32) and raising several affirmative defenses, including Qualified

Immunity (Defendants' Affirmative Defenses ("Defenses") ¶ 6.) Plaintiff responded on March 30, 2020 by filing a Motion to Strike Deputy Watson's Affirmative Defense of Qualified Immunity ("affirmative defense") (Plaintiff's Motion to Strike ("Mot. to Strike") ¶ 2.) Plaintiff argues that the affirmative defense is strikable as, *inter alia*, an insufficient defense under Federal Rule of Civil Procedure 12(f). (Mot. to Strike ¶ 1-5.)

On August 1, 2020, Plaintiff submitted a Notice of Expert Witness, asserting their intent to call as a witness and qualify as an expert, Frank Edwards, Ph. D, to testify regarding alleged racial bias present at MCSO and its impact on Deputy Watson's action on the day in question. (Mot. in Limine ¶ 2.) Deputy Watson filed his First Motion in Limine to Exclude Plaintiff's Expert Witness pursuant to Federal Rules of Evidence 401, 403, and 702. (Mot. in Limine ¶¶ 1-6.)

Deputy Watson now files before this Court this memorandum of law in opposition in support of his Motion in Limine and in opposition to Plaintiff's Motion to Strike.

ARGUMENT

I. THIS COURT SHOULD EXCLUDE THE EXPERT TESTIMONY OF FRANK EDWARDS.

This Court should exclude the testimony of Plaintiff's expert witness Dr. Frank Edwards because it is irrelevant, any probative value it carries is substantially outweighed by the danger of unfair prejudice, and it will not help the jury understand the evidence or determine a fact at issue. The Supreme Court in *Daubert* instructed district courts to act as a "gatekeeper" to ensure expert testimony is relevant before it can be admitted under Federal Rules of Evidence 702 ("Rule 702"). *Daubert v. Merrell*, 509 U.S. 579, 597 (1993). Trial courts have broad discretion in its gatekeeping function and will only be reversed by an appellate court upon a finding that the ruling was "manifestly erroneous" and the trial court "abused its discretion." *U.S. v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004).

A. Edwards's Testimony is Inadmissible According to Fed. R. Evid. 402 Because It is Not Relevant Under Fed. R. Evid. 401.

Pursuant to Federal Rules of Evidence 402, irrelevant evidence is inadmissible. Federal Rules of Evidence 401 ("Rule 401") explains that evidence is only relevant if it has any tendency to make a fact of consequence more or less probable than it would be without such evidence. Before expert testimony can be admitted under Rule 702, which governs expert testimony, trial courts must first ensure the evidence is relevant.

Expert testimony is relevant only if it renders a fact in consequence to Plaintiff's State Negligence claim or § 1983 claim more or less probable than it would be without such evidence. In *Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cty., Fla.*, the

appellate court found the district court acted within is discretion in excluding the plaintiff's expert. 402 F.3d 1092 (11th Cir. 2005). In that case, the plaintiff, the decedent's estate, filed a § 1983 claim and state negligence claim against the sheriff in is official capacity following the decedent's suicide in pretrial detention. *Id.* The plaintiff's expert testified about three other suicides that had occurred in the same facility within a two-year period before decedent's death. *Id.* at 1104. The plaintiff argued that evidence of other suicides was relevant to show "knowledge" on the Sheriff's part or to show a "pattern" or "foreseeability." *Id.* at 1105.

As to the plaintiff's § 1983 claim, the appellate court found that evidence of other suicides was in no way probative of whether or not the sheriff had knowledge of the *decedent's* suicidal tendency. *Id*. As to the plaintiff's state negligence claim, the appellate court again found that the district court had not abused its discretion in excluding the evidence after noting that the record was devoid of evidence showing that the other suicides would be relevant to the sheriff's ability to foresee, or indifference to, the decedent's suicide. *Id.* at 1104. It further noted that the mere fact there were other suicides would not be probative because there were too many factors at play—the mental state and stability of those people, and where the jail population came from, among other factors. *Id.* The appellate court affirmed and reiterated that the "district court enjoys considerable leeway in making these determinations." *Id.* at 1105.

Dr. Edwards's testimony is not relevant because it does not make any fact in consequence to Plaintiff's state negligence claim or the § 1983 claim any more or less probable than it would be without his testimony. The percentage of Caucasian officers in

the MCSO who tend to draw their weapons on African American men, compared to the percentage who tend to draw it on Caucasian men is in no way probative of whether Deputy Watson's actions were unreasonable or excessive under Plaintiff's § 1983 claim. Like the record in *Cook*, which was devoid of evidence showing the other suicides were relevant to the sheriff's ability to foresee, or indifference to, the decedent's suicide, the record in the present case is devoid of any explanation of how racial bias statistics are relevant to whether Deputy Watson breached his duty to Jordan. Furthermore, there are too many variables that exist in Dr. Edwards's statistics for it to hold any probative value, just as the other suicides in *Cook* were not probative because of all the factors at play. His proffered testimony lacks any evidence showing that the 380 case files he analyzed were at all factually similar to the present case. He merely states he analyzed case files of non-traffic misdemeanor and ordinance violation stops. Because Dr. Edwards's testimony is not relevant, it must be excluded.

B. The Probative Value of Edwards's Testimony is Substantially Outweighed by the Factors in Fed. R. Evid. 403.

Evidence should be excluded if the probative value of the evidence is substantially outweighed by the danger of at least one of the following factors: "unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. Unfairness can be found in any form of evidence that has the potential to cause a jury to base its decision on something other than the established premises of the case. 2 Weinstein's Federal Evidence § 403.04 (2020); *see also Leopold v. Baccarat, Inc.*, 174 F.3d 261, 269 (2d Cir. 1999); *U.S. v.*

Conner, 583 F.3d 1011 (7th Cir. 2009). For example, evidence is unfairly prejudicial if it creates a risk that the jury will be "excited to irrational behavior" and that risk is substantially outweighed by the probative value of the evidence. *Morgan v. City of Chi.*, 822 F.3d 317, 339 (7th Cir. 2016). Jurors may give extraordinary weight to expert testimony in comparison to lay witness testimony, and thus courts must take great care in weighing the value of expert testimony against its potential to confuse the issues of a case or cause unfair prejudice. *Frazier*, 387 F.3d at 1263.

Dr. Edwards's testimony should be excluded because the danger of unfair prejudice and confusion of the issues is substantially outweighed by any probative value. Given the recent media coverage of police use of excessive force against people of color and demonstrations across the country in opposition of such, racial bias evidence has a great risk of inflaming the passions of the jury to hostility against Deputy Watson and the MCSO. Dr. Edwards's opinion that racial bias plays a statistically significant role in whether MCSO officers decide to draw their weapon during a stop depicts the MCSO as pervaded by racism. Further, his statistical analysis showing 77% of MCSO officers will draw their weapon on African American men during a stop, compared with the 33% who will draw it on Caucasian men during a stop, depicts the average MCSO officer as lawless and racist. Dr. Edwards's proffered testimony and analysis of MCSO data makes no distinction between *implicit* and *explicit* racial bias, which leaves open the opportunity for jurors to infer that MCSO officers are operating under an *explicit* racial bias—causing an even greater unfairly prejudicial effect. Dr. Edwards's racial bias statistics and opinion are far more likely to confuse the issues and create prejudice than to shed light on any

relevant issue. It will induce the jury to decide this case on morality and emotions, instead of the established legal premises of the issues in this case, and thus should be excluded.

C. Edwards's Testimony Will Not Help the Trier of Fact Understand the Evidence or Determine a Fact at Issue.

Dr. Edwards's racial bias testimony will not help the jury understand the evidence or determine a fact at issue because it is not factually linked to the case and does not aid the jury in its determination of whether Deputy Watson's actions were reasonable. Pursuant to Rule 702, the trial court may only admit expert testimony if, among other things, it will be helpful to the jury to understand the evidence or determine a fact at issue. *Cook*, 402 F.3d at 1107. The party offering the evidence, the Plaintiff in this case, has the burden of satisfying the elements of Rule 702 by a preponderance of the evidence. *Rink v. Cheminova*, Inc., 400 F.3d 1286, 1291–92 (11th Cir. 2005).

i. Edwards's Testimony is Not Factually Linked to This Case.

A court may exclude expert testimony where there is too great of an analytical gap between the data and the opinion proffered by the expert. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). The testimony offered by the expert must be factually linked to the case to satisfy the helpfulness requirement found in Rule 702. *Daubert*, 509 U.S. at 591. And where the only connection between the conclusion reached and the existing data is the expert's own assertions, the expert opinion will be deemed inadmissible. *Guinn v. AstraZeneca Pharm. LP*, 602 F.3d 1245, 1252 (11th Cir. 2010) (quoting *McDowell v. Brown*, 392 F.3d 1283, 1300 (11th Cir. 2004).

For example, in *Guinn*, the district court found that the plaintiff's expert witness testimony on causation was inadmissible, and the appellate court affirmed. *Id.* at 1249-59. The expert testified about existing data showing that a particular antipsychotic drug causes weight gain and gave her expert opinion that the drug did in fact cause the plaintiff's diabetes—the primary issue in the case. *Id.* at 1247. The court found that the expert testimony was inadmissible because there was no connection between the offered data and the expert's causation opinion. *Id.* at 1253. In reaching its conclusion, the court noted that the expert failed to offer any explanation as to *how* she concluded, based on medical probability, that the drug played a role in the plaintiff's development of diabetes in light of other possible explanations. *Id.* at 1255. The opinion testimony was connected to the existing data only by the *ipse dixit* of the expert. *Id.* at 1256. (citing *General Electric Co.*, 522 U.S. at 146).

Dr. Edwards's racial bias findings with regards to the Midland County Sherriff's office is not sufficiently connected to the facts of this case to be helpful to the jury. First, Dr. Edwards's proffered testimony offers zero evidence tending to show that Deputy Watson was part of the 380 case files Dr. Edwards analyzed in making his conclusions. Dr. Edwards cannot conclusively state that Deputy Watson is part of the 77% of Caucasian officers who tend to draw their weapon on African American men more often than on Caucasian men. Nor does Dr. Edwards proffered testimony offer any evidence tending to show Deputy Watson is within the 33% of Caucasian officers who tend to draw their weapon on Caucasian men. In fact, there is no testimony in the record tending

to show that Deputy Watson has ever drawn his weapon during a stop, whether on African American men or Caucasian men, prior to his encounter with Jordan.

Dr. Edwards's proffered testimony further states that the racial bias present at MCSO impacted Deputy Watson's actions when he shot and killed Jordan, however, Dr. Edwards fails to explain *how* he reached this opinion. Like the expert in *Guinn*, who analyzed data and gave an unsupported causation opinion based on such data, Dr. Edwards has merely gathered statistical data of the MCSO and offered the unsupported opinion that racial bias *did in fact* impact Deputy Watson's actions. There is too great of an analytical gap between Dr. Edwards's testimony that racial bias exists in the MSCO and his opinion that Deputy Watson's actions were in fact impacted by racial bias. Dr. Edwards's assertion that racial bias impacted Deputy Watson's actions amounts to little more than a commonsense interpretation of countless published studies on implicit bias. Therefore, his testimony will not assist the jury in determining a fact at issue or understanding the evidence.

ii. Edwards's Testimony Will Not Help the Jury Determine the Objective Reasonableness of Deputy Watson's Actions.

Claims involving allegations of excessive force by a police officer are analyzed under the "objective reasonableness" standard of the Fourth Amendment. *Graham v. Connor*, 490 U.S. 386, 388 (1989). The reasonableness of a police officer's use of force is judged from the perspective of a reasonable officer in light of the circumstances of the case and "without regard to their underlying intent or motivation." *Id.* at 397. A proper application of the reasonableness test in *Graham* requires a careful consideration of the

facts and circumstances in each particular case. *Id.* at 396. In *People v. Czahara*, the jury was tasked with determining whether the defendant's reaction to a provocation was reasonable. *People v. Czahara*, 203 Cal. App. 3d 1468, 1478 (Cal. Ct. App. 1988). In that case, the court noted that although sociologists may have empirical evidence regarding the reaction of a "statistically average" person in the community, that sort of information would not be helpful to jury. *Id.* The jury had to determine not whether the reaction was statistically average, but rather, whether it was *reasonable*. Reasonableness is not dependent on statistical averages. *Id.*

The central question in Plaintiff's § 1983 claim is whether Deputy Watson's use of force was excessive or unreasonable, but Dr. Edwards's testimony will not aid the jury in this determination. Dr. Edwards would testify regarding racial bias present at MCSO's Office and that this racial bias impacted Deputy Watson's decision to draw and fire his firearm. In doing so, Dr. Edwards offers opinion evidence on Deputy Watson's underlying motivation or intent, which is irrelevant in *Graham*'s objective reasonableness test. The jury in the present case will be tasked with determining whether Deputy Watson's actions were excessive and unreasonable, not whether his actions fall into the statistical category purporting to show Caucasian MCSO officers tend to draw their weapons on African Americans more often than on Caucasians.

Dr. Edwards's testimony is irrelevant, any probative value it carries is substantially outweighed by the danger of unfair prejudice, and it will not help the jury understand the evidence or determine a fact at issue, thus it should be excluded.

II. THIS COURT SHOULD DENY PLAINTIFF'S MOTION TO STRIKE DEPUTY WATSON'S QUALIFIED IMMUNITY DEFENSE.

Under Federal Rule of Civil Procedure 12(f), a court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). However, Rule 12(f) motions are viewed disfavorably by federal courts and are infrequently granted. See *Nankivil vs. Lockheed Martin Corp.*, 216 F.R.D. 689, 690-91 (M.D. Fla. 2003). Striking defenses from a pleading "is a drastic remedy to be resorted to only when" the stricken material has "no possible relation to the controversy." *Augustus v. Bd. of Pub. Instruction of Escambia Cty., Fla*., 306 F.2d 862, 868 (5th Cir. 1962). In evaluating a plaintiff's motion to strike an affirmative defense, the truth of the factual basis underlying the defense is assumed. *See Kelly v. Kosuga,* 358 U.S. 516 (1959). When a defense puts relevant and substantial legal and factual questions into issue, it is sufficient to survive a motion to strike. *Reyher v. Trans World Airlines. Inc.*, 881 F.Supp. 574, 576 (M.D.Fla.1995); *Corr. USA v. Dawe*, 504 F. Supp. 2d 924 (E.D. Cal. 2007) (Where there are "either questions of fact or disputed questions of law, the motion to strike must be denied").

A. Affirmative Defense is Sufficiently Pled to Apprise Plaintiff of the Factual and Legal Basis for the Defense.

Although a defendant must do more than merely list the name of an affirmative defense, an affirmative defense is considered to be sufficiently pled when it provides the plaintiff with fair notice of its grounds, which need only be described in general terms. *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015). Even when an affirmative defense is found to be insufficiently pled and is subsequently stricken, "the

defendant is not precluded 'from arguing its substantive merit later in the case.' Indeed, if an affirmative defense is valid as a matter of law, district courts may strike the technically deficient affirmative defense without prejudice, and grant the defendant leave to replead the stricken defense." *Microsoft Corp. v. Jesse's Comput. & Repair, Inc.*, 211 F.R.D. 681 (M.D. Fla. 2002). *E.g.*, *Daley v. Scott*, 2016 WL 3517697 at *4 (M.D. Fla. 2016) (striking blanket defense with leave to replead).

Deputy Watson's affirmative defense was procedurally sufficient to apprise the plaintiff of the defense being raised because it did far more than simply list the name of the affirmative defense. In fact, Deputy Watson addressed the necessary elements of qualified immunity as applied to the case at hand and clearly asserted his immunity from "any and all liability."

Considering the Supreme Court's ruling that qualified immunity applies to all but the "plainly incompetent, and those who knowingly violate the law," *Malley v. Briggs*, 475 U.S. 341 (1986), Deputy Watson's allegations sufficiently state a basis to put Plaintiff on notice of his qualified immunity defense. That defense being: if no reasonable officers in Deputy Watson's position could have known that the use of force in this context was a violation of Jordan's constitutional rights under clearly established law, then he did not act in a way that was "plainly incompetent."

Deputy Watson did not file a motion to dismiss or seek summary judgment on the defense and, thus, the assertions made in general terms were more than sufficient to put Plaintiff on notice of the defense. If, however, this Court should find that Deputy Watson

did not adequately plead this affirmative defense, then he respectfully submits that it should be stricken without prejudice and with leave to amend.

B. Affirmative Defense is Sufficient as a Matter of Law Because it Raises Substantial Questions of Fact and Law, Entitling Deputy Watson to Qualified Immunity.

This Court should also deny Plaintiff's motion to strike Deputy Watson's legally sufficient affirmative defense, because, at best, the facts alleged show his actions were reasonable and, at worst, they create a factual and legal dispute over reasonableness. Either way, Deputy Watson is entitled to immunity. Qualified immunity is an affirmative defense which creates an absolute bar to claims raised against state agents in their individual capacity under 42 U.S.C. § 1983 for an alleged violation of an individual's constitutional rights. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *See e.g. Lumley vs. City of Dade City*, 327 F. 3d 1186, 1193-94 (11th Cir. 2003). When determining whether an officer is entitled to qualified immunity, courts will look to see if plaintiff alleges facts sufficient to prove that the officer's actions make out a violation of a constitutional right that was "clearly established" at the time of the officer's alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223 (2009).

The qualified immunity inquiry turns on the objective reasonableness of an officer's action, assessed in light of legal rules that were clearly established at time it was taken. *Pearson*, 555 U.S. at 244. "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S.

386, 396-97 (1989). Thus, the reasonableness of a particular use of force in response to such a threat "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396 (citing *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968)). Even if the constitutional right of the citizen is clearly established in certain situations, a law enforcement officer is still entitled to qualified immunity if officers of reasonable competence could disagree as to the legality of the action at issue in its particular factual context. *See e.g., Cucuta v. N.Y.C.*, 25 F. Supp. 3d 400 (S.D. N.Y. 2014); *Wiley v. Doory*, 14 F.3d 993, 995 (4th Cir. 1994).

1. It is Clearly Established Law that Use of Deadly Force Does Not Always Amount to Constitutional Violation.

Deputy Watson's application of deadly force was objectively reasonable and did not violate a clearly established constitutional right as applied. Although individuals have the right to be free from unreasonable seizure under the Fourth Amendment, which includes deadly force, this right does not extend to situations in which the individual poses an imminent threat of serious physical harm to an officer or the public. *Tennessee v. Garner*, 471 U.S. 1 (1985). It follows that an individual's right to be free from excessive force is not always clearly established. *Winzer v. Kaufman Cty.*, 916 F.3d 464 (5th Cir. 2019).

Even using deadly force against a fleeing suspect does not always amount to a violation of an individual's constitutional rights. *Malone v. Hinman*, 847 F.3d 949 (8th Cir. 2017). In *Malone*, the court found that shooting an armed suspect was objectively reasonable even though he was fleeing at the moment, because he was in a crowd of

people, was running toward another officer with the weapon, and the entire event occurred within three to ten seconds. *Id.* So, although some law clearly establishes that shooting a fleeing suspect who no longer poses a threat is a violation of their Fourth Amendment rights, it is *not* clearly established that shooting a fleeing suspect who still poses a threat is also a violation of that right.

Even where an officer mistakenly, but reasonably, believes a suspect poses an imminent threat, they will be entitled to qualified immunity. *Saucier v. Katz*, 533 U.S. 194, 205 (2001). *See also Villegas v. City of Anaheim*, 823 F.3d 1252 (9th Cir. 2016) (officer was entitled to qualified immunity because it was not clearly established at the time that deadly force was excessive even though the weapon the individual was holding later turned out to be a BB gun). The qualified immunity inquiry acknowledges that reasonable mistakes can be made as to the legal constraints on police conduct in a given situation, because "it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Saucier*, 533 U.S. at 205.

2. At the Very Least, Reasonable Officers Could Disagree as to Whether Deputy Watson's Actions Violated a Clearly Established Constitutional Right.

Deputy Watson is entitled to qualified immunity because his use of deadly force was objectively reasonable under the facts known to him at the time. Much like the officer in *Malone*, Deputy Watson made a reasonable, split-second determination that Jordan, although closing the front door, still posed an imminent threat to the officers when deadly force was necessarily used against him. By raising his weapon in the

officers' direction against their orders, Jordan exhibited behavior that Deputy Watson could have reasonably believed posed an imminent threat to their safety, a fact sufficient to find that use of deadly force was justified according to *Garner*.

Deputy had no reason to know whether the gun in Jordan's hand was loaded. He had no reason to know whether Jordan was truly retreating or if he was simply closing the door to load his gun before opening back up and firing upon the officers. But Deputy Watson *did* know that in addition to himself and his partner, there were dozens of school children behind him who were also in shooting range of Jordan's weapon. The encounter between Deputy Watson and Jordan, just as the encounter in *Malone*, unfolded in a matter of seconds. Deputy Watson, faced with the very kind of "tense, uncertain, and rapidly evolving" situation contemplated in *Graham*, made the reasonable split-second judgment to preserve the lives of himself, his partner, and dozens of innocent children. *Villegas* makes clear that Deputy Watson's mistaken belief that the weapon was loaded is not detrimental to a finding of reasonableness.

There is no law that clearly establishes that the use of deadly force under these circumstances would amount to a violation of Jordan's constitutional rights. At the *very* least, reasonable officers could disagree as to the legality of Deputy Watson's judgment and, as such, Deputy Watson is entitled to immunity.

CONCLUSION

WHEREFORE, Defendants respectfully request this Court grant Defendant's Motion in Limine to Exclude Edwards's Expert Testimony on the grounds that it is irrelevant and inadmissible.

WHEREFORE, Defendants respectfully request this Court deny Plaintiff's Motion to Strike Defendant Watson's Affirmative Defense on the grounds that the defense was sufficiently pled and that he is entitled to claim Qualified Immunity as a matter of law.

Respectfully submitted,

/s/_____

Team 5678

Attorneys for Defendants

Dated: September 10, 2020