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.
_____/

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

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INTRODUCTION AND REQUEST FOR RELIEF

Plaintiff, Sheryl Jordan, as Personal Representative of the Estate of David Jordan, Jr. moves to strike the insufficiently pleaded and improperly asserted affirmative defense for qualified immunity in Defendants' Answer and Defenses to Plaintiff's complaint. Further, Plaintiff requests this Court deny Defendant's First Motion in Limine.

STATEMENT OF FACTS

Prior to his death, David Jordan Jr. ("Jordan") was an unmarried adult residing in Fort Hampton, Midland County, Florida. (Compl. ¶ 3.) He leaves behind his two minor daughters and a minor son. (*Id.*)

On the afternoon of February 14, 2019, Defendant Eric Watson ("Deputy Watson") and Eddie Riviera ("Riviera"), officers for Midland County Sheriff's Office ("MCSO") arrived at Jordan's home in response to a noise complaint. (Compl. ¶ 11.) Deputy Watson and Riviera knocked on Jordan's front door, then Deputy Watson proceeded to the side of the home and knocked on the side door with a baton. (Watson Aff. ¶¶ 21-22.) Jordan then opened the front door and Deputy Watson returned toward the front of the residence. (*Id.* ¶¶ 23-25.) As Jordan proceeded to shut the door, Riviera suddenly began to shout "gun, gun! Drop the gun!" (*Id.* ¶¶ 27, 34.) Deputy Watson approached and immediately fired four shots through the closed door, killing Jordan instantly. (Compl. ¶ 14.) Riviera never fired his weapon. (*Id.* ¶ 20.) After Jordan was shot and killed, the MCSO dispatched a SWAT team to Jordan's home in an effort to subdue

an already deceased man. (*Id.* ¶ 21.) Jordan was found dead faced down on the floor of his foyer, with an unloaded gun inside his back pocket. (*Id.* ¶ 17.)

On February 2, 2020, Jordan's mother Sheryl Jordan ("Plaintiff") filed a wrongful death action against Deputy Watson and Defendant Sheriff Derek Michaels ("Sheriff Michaels") in his official capacity as the Sheriff for Midland County, Florida. (Compl. ¶ ¶ 23-32.) Plaintiff brings a claim against Deputy Watson pursuant to 42 U.S.C. § 1983 for his unreasonable seizure and entirely unjustified excessive use of deadly force to intentionally acquire control over Jordan. (*Id.* ¶¶ 23-27.) Plaintiff also brings a state law claim of negligence against Sheriff Michaels for the negligent actions of his employee Deputy Watson. (*Id.* ¶¶ 28-32.) Defendants Michaels and Deputy Watson denied all liability and asserted several affirmative defenses, including Qualified Immunity. (Answer ¶¶ 1-32, Defenses ¶¶ 1-10.)

Upon removal of this case to federal court, Plaintiff filed a Motion to Strike Deputy Watson's Affirmative Defense of Qualified Immunity for insufficiency and because Deputy Watson did not act as a reasonable officer and took actions he knew or should have known violated Jordan's civil rights. (Plaintiff's Mot. To Strike ¶¶ 3-4.) Upon Plaintiff's Notice of Expert Witness, Defendants filed their First Motion in Limine to Exclude Plaintiff's Expert Witness pursuant to Federal Rules of Evidence 401, 403, and 702. (Def's Mot. in Limine ¶¶ 1-6.)

Plaintiff's expert witness Frank Edwards, Ph.D. ("Dr. Edwards") will testify regarding the racial bias present at MCSO and the impact the racial bias had on Deputy

Watson's actions on the day he shot and killed Jordan. (Edwards Aff. ¶ 8.) Dr. Edwards, a professor with a Ph.D. in sociology, conducted a review of 380 MCSO case files of stops for non-traffic misdemeanors and ordinance violations where the officer drew his/her weapon. (*Id.* ¶¶ 5-7.) He analyzed the correlation of these stops where the officer drew his/her weapon, to the detainee's race and age. (*Id.* ¶ 7.) His research revealed 77% of Caucasian MCSO officers drew their weapon on African American men, as compared to 33% of Caucasian men. (*Id.* ¶ 9.)

Plaintiff now files before this Court a Supplemental Memorandum of Law in support of its Motion to Strike Deputy Watson's Qualified Immunity Defense and in opposition of Defendant's First Motion in Limine.

I. THIS COURT SHOULD GRANT PLAINTIFF'S MOTION TO STRIKE DEFENDANT WATSON'S AFFIRMATIVE DEFENSE BECAUSE IT IS INSUFFICIENT AS A MATTER OF BOTH LAW AND PLEADING.

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). Courts may strike an affirmative defense that is insufficient as a matter of law, meaning "it appears that the defendant will not be able to succeed on the defense under any set of facts which it could prove." *Reyher v. Trans World Airlines, Inc.*, 881 F. Supp. 574, 576 (M.D. Fla. 1995). An affirmative defense may also be stricken as insufficient as a matter of pleading when it fails to comply with the appropriate pleading requirements. *Microsoft Corp. v. Jesse's Comput. & Repair, Inc.*, 211 F.R.D. 681 (M.D. Fla. 2002). When an affirmative defense comprises no more than "bare bones conclusory allegations" it fails to provide sufficient notice of the defense and "it must be stricken." *Id.* In evaluating a motion to strike, the general rule is that it is improper to consider materials outside of the pleadings. *Carlson Corp./Southeast v. Seminole County School Bd.*, 778 F.Supp. 518 (M.D.Fla.1991).

The affirmative defense raised by Defendant Watson is insufficient as both a matter of law and a matter of pleading. The defense, as raised, relies upon immaterial and impertinent matter and comprises no more than "bare bones conclusory allegations," thus failing to give adequate notice of the defense. Even if the affirmative defense had been sufficiently pled, it would still be insufficient as a matter of law, because there are no set of facts under which Defendant Watson could succeed in claiming qualified immunity in

this case. For these reasons, this Court should grant Plaintiff's motion and strike the affirmative defense with prejudice.

A. Affirmative Defense Fails to Assert an Adequate Factual or Legal Basis for the Defense and Should be Stricken as Insufficient as a Matter of Pleading.

This court should strike the affirmative defense as procedurally deficient because it fails to give fair notice of the factual or legal basis of the defense being asserted. A party must specifically identify the claim to which the raised defense applies in order to give plaintiffs fair notice of the defense. *Gates v. D.C.*, 825 F. Supp. 2d 168, 170 (D.D.C. 2011). Additionally, an affirmative defense must include sufficient relevant facts to apprise the plaintiff of the factual basis for the defense. *See Microsoft Corp.*, 211 F.R.D. at 683-84. A court should strike defenses which do not respond to any particular claim or allegation in a complaint as insufficiently pled. *Morrison v. Exec. Aircraft Refinishing, Inc.*, 434 F. Supp. 2d 1314, 1318 (S.D. Fla. 2005).

Defendant Watson's affirmative defense is insufficient as a matter of pleading to the extent it employs a boilerplate approach to pleading by stating merely that "he is immune from any and all liability." This assertion is procedurally deficient, because it is fails to specify against which claims Defendant Watson asserts the defense. Further, to the extent the defense omits any supporting factual basis whatsoever, it comprises nothing more than the type of "bare bones conclusory allegations" which courts will strike. The affirmative defense should be stricken because fails to give Plaintiff fair notice of the defense Defendant Watson seeks to raise.

B. Affirmative Defense Should be Stricken as Immaterial and Impertinent Matter Because It Relies on Inapplicable Standards for Qualified Immunity.

The affirmative defense may also be stricken under Rule 12(f) on the grounds that it contains immaterial and impertinent matter. Fed. R. Civ. P. 12(f). "Immaterial" matter is "that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 972 (9th Cir. 2010) (quoting 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1382 (3d ed.)). "Impertinent" matter consists of statements that do not pertain to the issues in question. *Harrison v. Perea*, 168 U.S. 311 (1897).

The affirmative defense should be stricken as immaterial and impertinent to the extent it asserts that Defendant Watson was subjectively acting in "good faith," because "any affirmative defense founded on subjective 'good faith' must be stricken…." *See Jaeger v. Dubuque County*, 880 F. Supp. 640, 645, 651 (N.D. Iowa 1995); *see also Clement v. Gomez*, 298 F.3d 898, 903 (9th Cir. 2002) ("a defendant's subjective intent is usually not relevant to the qualified immunity defense..."); *Nemo v. City of Portland*, 910 F. Supp. 491, 498 (D. Or. 1995) ("The qualified immunity defense ... requires objective good faith rather than a subjective belief of good faith..."). The Supreme Court eliminated the subjective "good faith" component of qualified immunity in 1982 and any reliance on that standard bears no relationship to or otherwise pertain to the issues in question. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Therefore, this Court should find Defendant Watson's affirmative defense is impertinent and immaterial and grant this Motion to Strike.

C. Affirmative Defense Should be Stricken as Insufficient as a Matter of Law Because There are no Provable Set of Facts Under Which Officer Watson Could Successfully Claim Qualified Immunity.

Even if Defendant Watson had sufficiently pled the affirmative defense, his claim to qualified immunity as to either the state tort claim or the § 1983 claim would fail substantively as a matter of law and, thus, must be stricken. Courts may strike a pleading as legally insufficient when the defendant could not successfully claim the defense under any set of facts. *Rayher*, 881 F. Supp. at 576.

1. Affirmative Defense is Legally Insufficient as to State Tort Claim.

Defendant Watson's qualified immunity defense is insufficient as a matter of law to the extent it is raised against the state tort claim, because "the doctrine of qualified immunity does not shield defendants from state law claims." *Johnson v. Bay Area Rapid Transit Dist.*, 724 F.3d 1159, 1171 (9th Cir. 2013). Although it is unclear whether Defendant Watson even intended to assert this defense against the state tort claim, Defendant could not do so successfully under any set of facts given the principle that qualified immunity does not apply to state claims. *Id*.

Thus, this Court should strike the affirmative defense as it pertains to the state tort claim, because it is insufficient as a matter of law and cannot be salvaged by amending the pleadings.

2. Affirmative Defense is Legally Insufficient as to § 1983 Claim.

The affirmative defense is legally insufficient to the extent it is raised against the § 1983 claim, because Defendant Watson could not successfully claim qualified immunity

under any set of facts. When an affirmative defense of qualified immunity is raised, courts will look to see if, under the facts alleged by the plaintiff, 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). This 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. *Id*. at 244. Near factual identity between cases is not required to find that a law is clearly established. *See e.g., Hicks v. Feeney*, 770 F.2d 375, 379-80 (3d Cir. 1985); *Doe v. State of La.*, 2 F.3d 1412, 1418 (5th Cir. 1993); *Backlund v. Barnhart*, 778 F.2d 1386, 1389 (9th Cir. 1985).

Contrary to Defendant Watson's assertions, any reasonable officer should and would have known shooting Jordan was an act committed in derogation of his constitutional rights, because an individual's "fundamental interest in his own life need not be elaborated upon." *Tenn. v. Garner*, 471 U.S. 1, 29 (1985). The Fourth Amendment guarantees citizens the right "to be secure in their persons… against unreasonable seizures" and "there can be no question that apprehension by the use of deadly force is a seizure." *Id*. at 7. The Supreme Court has held that "the use of force is contrary to the Fourth Amendment if it is excessive under the objective standards of reasonableness." *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001) (modified by *Pearson v. Callahan*, 555 U.S. 223 (2009)) (holding district courts have discretion as to the order of inquiry). Thus, if this Court finds Defendant Watson's use of deadly force in this case was excessive in light of objective standards of reasonableness and clearly established law, there can be no

question Defendant Watson and any reasonable officer should and would have known such force was a violation of Jordan's constitutional rights. The question then becomes whether Defendant Watson's actions violated a constitutional right under clearly established law at the time of the shooting. Put another way, it must be determined whether Defendant Watson reasonably believed shooting Jordan was within the bounds of appropriate police responses according to clearly established standards at the time. *Saucier*, 553 U.S. at 208.

It is clearly established law that deadly force cannot be used against an individual who is fleeing and does not pose a threat of serious physical harm to anyone. *See Garner*, 471 U.S. at 11. Only when an individual poses an imminent threat of serious physical harm may deadly force be used. *Id*. The Sixth Circuit, for example, has held an officer was not entitled to qualified immunity where the suspect had physically struggled with the officer before attempting to steal his cruiser and escape, because the law clearly established that shooting the fleeing suspect, who no longer posed a threat, in the back multiple times was an excessive use of force. *Foster v. Patrick*, 806 F.3d 883 (6th Cir. 2015). *See also Estate of Smart by Smart v. City of Wichita,* 951 F.3d 1161 (10th Cir. 2020) (clearly established law put officer on notice that use of deadly force against a suspect who was reasonably believed to be armed and had been shooting into a crowded public street, but posed no threat at the moment deadly force was used was unconstitutional). Similarly, in *Eberhardinger v. City of York*, the court found the officer was not entitled to immunity for firing four shots at a non-violent suspect during a

vehicle pursuit. 341 F. Supp. 3d 420 (M.D. Pa. 2018). In that case, where the officer was clearly out of harm's way because the suspect had already driven past the officer, the court found the officer was on notice under clearly established law that using deadly force was unconstitutionally excessive, because it was not justified by any objectively reasonable fear of imminent personal harm. *Id*.

It is also clearly established law that mere possession of a gun alone cannot justify the use of deadly force. *Curnow By and Through Curnow v. Ridgecrest Police*, 952 F.2d 321, 324–25 (deadly force was unreasonable where the suspect possessed a gun but was neither pointing it at the officers nor facing the officers when they shot); *Nunez v. Santos*, 427 F. Supp. 3d 1165 (N.D. Cal. 2019) (officer not entitled to immunity for shooting victim who had not threatened officers with gun and thus did not pose an immediate threat). *See also Glenn v. Wash. Cty.*, 673 F.3d 864, 872 (9th Cir. 2011) (suspect's mere possession of a weapon is "not dispositive" on immediate-threat issue). By contrast, courts have upheld qualified immunity for officers only when deadly force was used against armed suspects who were actively posing a threat to officer or public safety. *See e.g.*, *James v. N.J. State Police*, 957 F.3d 165 (3d Cir. 2020) (deadly force was not excessive under clearly established law as applied against armed, mentally ill suspect who ignored officer orders to drop his weapon after suspect had brandished firearm while violating a restraining order); *Malone v. Hinman*, 847 F.3d 949 (8th Cir. 2017) (not clearly established that use of deadly force was excessive as used against a suspect who opened fire in a crowd of 40 to 50 people before running with gun in the direction of

another police officer and was within several feet of other officer when suspect was shot and the entire episode happened within seconds).

No reasonable officer would have believed Jordan presented an imminent threat of serious harm because he was retreating from the officers at the time he was killed. Unlike the cases of *James* and *Malone* where courts upheld qualified immunity, in this case, Jordan had not earlier brandished a firearm or fired into an open crowd or made any other overtly threatening gestures towards the officers to suggest he posed a threat to them or to anyone around. Officers were only at Jordan's residence to respond to a noise complaint and had no reason to believe he was dangerous or that any object he may have held in his hand upon opening the door was a loaded gun.

Even assuming, *arguendo*, Defendant Watson's belief that Jordan was wielding a loaded gun was reasonable, that does not equate to a reasonable belief that Jordan posed an imminent threat of serious physical harm at the time he was shot. Much like the victims in *Foster* and *Eberhardinger*, Jordan was in the process of retreating from the officers at the time deadly force was employed against him. Just as it was unreasonable in *Foster*, there can be no question that firing four shots that ultimately killed Jordan was objectively unreasonable because the door was fully closed and any "threat" he arguably posed at any point was no longer present, let alone imminent.

Defendant Watson's act of shooting a fleeing Jordan was not objectively reasonable, because he was on notice by clearly established law that use of deadly force under these particular circumstances as they were known to him at the time was excessive

in violation of Jordan's Fourth Amendment rights. There are no set of facts Defendant Watson could show that would entitle him to successfully claim qualified immunity and, as such, this Court should strike the defense as insufficient as a matter of law.

II. THIS COURT SHOULD DENY DEFENDANT'S FIRST MOTION IN LIMINE BECAUSE THE TESTIMONY SATISFIES FED. R. EVID. 401, 403, AND 702.

This Court should deny Defendant's First Motion in Limine because Dr. Edwards's testimony is relevant, its probative value is not substantially outweighed by its prejudicial effect, and it will help the jury determine a fact at issue. Courts are generally less receptive to motions in limine because admissibility questions are more appropriately considered and determined at trial as they arise. *Hawthorne Partners v. AT & T Technologies*, 831 F.Supp. 1398, 1400 (N.D.Ill.1993). Denial of a motion in limine does not necessarily mean the evidence contemplated within the motion will be admissible, but rather, the court is unable to make a determination of admissibility at that time. *U.S. v. Connelly*, 874 F.2d 412, 416 (7th Cir. 1989). Furthermore, the Fed. R. Evid. 702 advisory committee's note to the 2000 amendments mention the case law following *Daubert* demonstrates rejecting expert testimony is the exception, not the rule.

A. Dr. Edwards's Racial Bias Testimony is Relevant Under Fed. R. Evid. 401 Because it Goes to Deputy Watson's Perception and the Accuracy of His Account of Events.

In excessive force cases, evidence of an officer's perceptions during his encounter with the plaintiff is relevant in determining the reasonableness of force used. *Davis v. Duran*, 276 F.R.D. 227, 232 (N.D. Ill. 2011). Under Federal Rules of Evidence 401, evidence is relevant if it has any tendency to make a fact of consequence in determining the action more or less probable than it would be without such evidence. Proof of bias is almost always relevant because the jury is entitled to assess evidence which bears on the accuracy or truthfulness of a witness's testimony. *U.S. v. Abel,* 469 U.S. 45, 52 (1984).

While the proposition in *Abel* more refers to impeachment evidence, the same is applicable where evidence of bias relates to a police officer's perception. For example, in *Davis*, the court found expert testimony explaining the decedent's alcohol impairment just prior to the incident at issue was relevant for two reasons. First, it tended to make it more probable that the police officer's account of the decedent's behavior during their encounter was truthful and accurate. Second, despite the fact that the officer did *not* know the decedent had been drinking, evidence of such would tend to show the decedent behaved in a way that did in fact place the officer reasonably in fear of his life. Davis, 276 F.R.D. at 232.

Dr. Edwards's testimony is relevant because it tends to show Deputy Watson's use of force was excessive or unreasonable and provides context to Deputy Watson's account of how he perceived Jordan. Whether implicit or explicit, racial bias can impact a police officer's perception of events during an encounter. Like the court in *Davis*, which found that evidence pertaining to the officer's perception of the decedent's behavior was relevant, evidence pertaining to how Deputy Watson perceived Jordan during their encounter is also relevant. Dr. Edwards's expert testimony directly relates to how racial bias impacts an officer's decision to draw his weapon. Like the impairment testimony in *Davis*, which helped explain the officer's perception of the decedent's behavior, racial bias testimony can help explain Deputy Watson's perception of Jordan and his decision to draw and fire his weapon.

B. The Probative Value of Dr. Edwards's Testimony is Not Substantially Outweighed by the Factors in Fed. R. Evid. 403 Enough to be Properly Excluded Before Trial.

The court's gatekeeping function of screening expert testimony should not supplant the adversary system. Fed. R. Evid. 702 Advisory Committee's Note. Juries are regularly exposed to expert testimony carrying varying degrees of prejudicial impact, but the existence of such impact is not sufficient to render expert testimony inadmissible. *Richardson v. Marsh*, 481 U.S. 200, 206 (1987). The court can exclude relevant evidence if the probative value of the evidence is *substantially* outweighed by the danger of one or more of the factors listed in Federal Rules of Evidence 403 ("Rule 403"). But all evidence is prejudicial, and thus it is not sufficient to say that evidence should be excluded merely because it has a prejudicial effect. *Old Chief v. U.S.*, 519 U.S. 172, 193 (1997). To be excludable under Rule 403, the evidence in question must be *unfairly* prejudicial, and its probative value must be *substantially* outweighed by the danger of unfair prejudice. Because of this high bar for exclusion, other avenues of limiting evidence are more appropriate in this case.

Courts have many tools to limit the prejudicial impact of expert testimony aside from disposing of the evidence in a motion in limine. Evidence should only be excluded by motions in limine when it is *clearly* inadmissible on *all* potential grounds. *Luce v. U.S.*, 469 U.S. 38, 41 (1984). But courts are limited in their ability to make such a finding when lacking the factual context afforded at trial. *Id.* Under a Rule 403 challenge, evidence is *unfairly* prejudicial only if it induces the jury to decide the case on an improper basis rather than on the evidence presented. *Old Chief*, 519 U.S. at 193. In *Katt*

v. City of New York, the court used a host of tools to limit potential Rule 403 issues. 151 F. Supp. 2d 313, 362. For example, the court amended questions to limit the prejudicial impact of the expert witness testimony, sustained objections to questions eliciting irrelevant answers or excessive details, cautioned counsel when the witness's answers went beyond the questions asked, and gave the jury an extensive curative instruction. *Id.* The curative instruction in *Katt* narrowed the basis for which the expert's testimony was to be used, if at all. *Id*. The instruction directed the jurors to use the expert's testimony about the conditions of the NYPD solely in determining whether the plaintiff was reasonable in not using the established complaint procedures of the NYPD. *Id.*

Further, the advisory committee's note to Rule 403 suggests courts can use limiting instructions to avoid danger of unfair prejudice. It explicitly instructs court to consider the probable effectiveness of a limiting instruction in its determination of whether to exclude evidence for unfair prejudice. Fed. R. Evid. 403 advisory committee's note. The law properly assumes jurors are capable of not being so swayed by testimony that they would refuse to follow instructions from the court. *See Richardson v. Marsh*, 481 U.S. 200, 206 (1987); *U.S. v. Jakobetz*, 955 F.2d 786, 797 (2nd Cir. 1992).

This Court can use the tools available to it to limit Dr. Edwards's testimony should it find it necessary, instead of granting Defendant's motion. Like the court in *Katt* which sought to avoid confusion of the issues by sustaining objections to irrelevant questions and answers with excessive details, this Court can avoid confusion of the issues by likewise limiting Dr. Edwards's testimony. This Court can limit the danger of prejudice

by using a limiting instruction to narrow the context by which the jury can use Dr. Edwards's testimony, like the court in *Katt* and consistent with the advisory committee's note to Rule 403. The probative value of Dr. Edwards's testimony outweighs the danger of unfair prejudice, and therefore any concerns should go to weight, not admissibility, and be dealt with during trial.

C. Dr. Edwards's Testimony Will Help the Trier of Fact Understand the Evidence and Determine a Fact at Issue.

Expert testimony should not be excluded if it will help the trier of fact. The Federal Rules of Evidence are designed to be inclusionary and is "notably liberal" with respect to expert testimony. *Krist v. Eli Lilly & Co.*, 897 F.2d 293, 298 (7th Cir. 1990). Concerns over the usefulness of expert testimony should be resolved in favor of admissibility, absent strong factors suggesting exclusion. *U.S. v. Finch*, 630 F.3d 1057, 1062 (8th Cir. 2011). If the expert testimony concerns a matter beyond the knowledge and experience of an average person, it is helpful to the jury. *See, e.g., U.S. v. Young*, 316 F.3d 649, 656–59 (7th Cir. 2002).

Expert testimony is helpful to a jury even when the jury has general knowledge of the subject matter, if their knowledge on the subject is lacking or incomplete as applied to the present case. *See, e.g.*, *U.S. v. Amuso*, 21 F.3d 1251, 1264 (2d Cir.1994); *Katt*, 151 F. Supp. 2d at 358–59. In *Katt*, the court found expert testimony about police retaliation and cover-ups in the NYPD helpful to the jury is determining whether the plaintiff was reasonable in not taking advantage of the established complaint procedures of the NYPD. *Katt*, 151 F. Supp. 2d at 358–59. The defendants in *Katt* argued police retaliation and

cover-ups were topics easily understood by the average juror because it had been the focus of media attention at that time, and thus should be excluded. *Id.* at 358. The court in its reasoning noted, however, that jurors may be reluctant to rely on what they had seen in the media as accurately portraying reality. *Id.* Therefore, the plaintiff could properly offer expert testimony to complete or correct whatever preconceptions the jurors had regarding police retaliation and cover-ups. *Id*. The court further noted just as plaintiff could offer expert testimony to support her view of the conditions existing in the NYPD, the defendant would have been entitled to offer evidence to rebut it. *Id.* at 359.

Dr. Edwards's testimony will help the jury understand the evidence and determine whether Deputy Watson's use of force was excessive and unreasonable. Evidence of racial bias can assist the jury in understanding the conditions existing at the MCSO in February of 2019, just as the retaliation evidence in *Katt* was helpful to the jury in understanding the conditions that existed in the NYPD at that time. Just as evidence on the conditions of the NYPD was helpful to the jury in *Katt* to determine if the plaintiff was reasonable in not using the established departmental complaint procedures, Dr. Edwards's expert opinion about how racial bias at MCSO impacted Deputy Watson's actions will be useful to the jury in determining the reasonableness of his actions.

Defendant's concerns with Dr. Edwards's testimony should be tested by the court's adversarial process, through cross examination or rebuttal expert testimony, rather than be excluded from the province of the jury. *See generally Daubert*, 509 U.S. at 596. Dr. Edwards's testimony is relevant, its probative value is not substantially outweighed

by its prejudicial effect, and it will help the jury determine a fact at issue, as such, we ask this Court to deny Defendant's First Motion in Limine.

CONCLUSION

WHEREFORE, Plaintiff respectfully request this Court grant Plaintiff's Motion to Strike the affirmative defense on the grounds that it is procedurally and legally insufficient.

WHEREFORE, Defendants respectfully request this Court deny Defendant's Motion in Limine on the grounds that Plaintiff's expert's testimony is relevant and admissible.

Respectfully submitted,

/s/_____

Team 5678

Attorneys for Plaintiff

Dated: September 10, 2020