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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
LAKEVILLE DIVISION

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

**Case No. 2:20cv15994**

Plaintiff,

v.

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

Defendants.

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DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION OF  
PLAINTIFF'S MOTION TO STRIKE DEFENDANT ERIC WATSON'S  
AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY AND IN SUPPORT  
TO DEFENDANT'S FIRST MOTION IN LIMINE

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*County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998)

*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 (1993).

### **US Circuit Courts Cases**

*Simmons v. Bradshaw*, 879 F.3d 1157, 1162 (11th Cir. 2018).

*Pearson v. Callahan*, 555 U.S. 223, 231 (11th Cir. 2009)

*Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002)

*Habert Intern., Inc. v James*, 157 F.3d 1271, 1282 (11th Cir. 1998).

*Kesinger ex rel. Kesinger v. Herrington*, 381 F.3d 1243 (11th Cir. 2004)

*Penley v. Eslinger*, 605 F.3d 843, 850 (11th Cir. 2010)

*L.T. by Snorton v. Owens*, 808 Fed.Appx. 814, 821 (11th Cir. 2020)

*Hammett v. Paulding County*, 875 F.3d 1036, 1050 (11th Cir. 2017)

*Carr v. Tatangelo*, 338 F.3d 1259, 1270-71 (11th Cir. 2003).

*Corbitt v. Vickers*, 929 F.3d 1304, 1312 (11th Cir. 2019).

*Griffin Indus., Inc v. Irvin*, 496 F.3d 1189, 1199 (11th Cir. 2007).

*Ayers v. Harrison*, 650 Fed.Appx. 709, 716 (11th Cir. 2016).

*Campbell v. Keystone Aerial Surveys, Inc.*, 138 F.3d 996 (5th Cir. 1998)

*Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 503 (9th Cir.1994);

*Stahl v. Sun Microsystems, Inc.*, 19 F.3d 533, 539 (10th Cir. 1994);

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*12-Year-Old Boy Dies After Police in Cleveland Shoot Him*, N.Y. Times, Nov. 24, 2014, at A12.

## INTRODUCTION

Sheryl Jordan, as Personal Representative of the Estate of David Jordan, Jr. (“Plaintiff”) asserts that Eric Watson’s (“Defendant”) actions taken in regard to the death of David Jordan, Jr. constitute a violation of 42 U.S.C. § 1983 thus barring a qualified immunity defense for Defendant. The shooting of Mr. Jordan in response to the imminent and severe threat he posed to Deputies does not constitute excessive force under the Fourth Amendment. Furthermore, Plaintiff’s motion fails to assert that a right was clearly established at the time of the alleged misconduct.

Additionally, Defendant has brought a motion in limine to bar Plaintiff’s expert testimony. Defendant moves this Court to prohibit the testimony at trial of Plaintiff’s expert witness, Frank Edwards, Ph.D. (“Dr. Edwards”). Defendant acknowledges Dr. Edwards is qualified as an expert by knowledge and education, but asserts Plaintiff has failed to show that Dr. Edwards’s specialized knowledge will help the jury as the trier of fact to understand the evidence and determine a fact in issue. Dr. Edwards’s testimony would only serve to confuse and bias a jury against Defendant.

Defendant respectfully moves for the Court to strike the motion in opposition of Defendant’s affirmative defense. Defendant seeks such relief on the grounds that Deputy Watson acted reasonably and did not violate any clearly established rights. Furthermore, Defendant respectfully requests the Court grant its

motion in limine to prohibit Dr. Edwards's expert testimony. In support of this motion, the Defendant states as follows.

### **STATEMENT OF FACTS**

Deputy Eric Watson is an officer with the Midland County Sheriff's Office. Watson Aff. ¶ 1. Deputy Watson has worked in the line of duty for over 20 years with experience in road patrol and special investigation for narcotics and gangs. *Id.* ¶¶ 2, 5-6. Deputy Watson is nearsighted but wears contacts in the line of duty to ensure his vision is ideal. *Id.* ¶ 4. Deputy Watson was assigned to a noise complaint call on February 14, 2019 as the first call of the day. *Id.* ¶¶ 12, 14. The noise complaint was called in by Lee McDonald, a school teacher at Fort Hampton Elementary School. McDonald Aff. ¶ 4. Per the complaint, as faculty lined up students, inappropriate music blasted from a nearby house. *Id.* ¶ 6. The vulgar and inappropriate words such as the "F" word and "N" word were audible to the children. *Id.* ¶¶ 6-7. Deputy Watson arrived on scene with Deputy Rivera in two squad cars, in full uniform. Watson Aff. ¶ 17.

Upon arrival, the Deputies quickly identified the house in question due to the distinctly loud and inappropriate music emanating from 1501 58<sup>th</sup> Street South. *Id.* ¶ 18-19. As the music continued to emanate from the house, Deputy Watson notified dispatch of the house number where the music was coming from. *Id.* ¶ 20. Both Deputies parked their vehicles on the street and walked up to the front door.

*Id.* ¶ 21. Deputy Rivera knocked on the front door loudly with his hand. Rivera Aff. ¶¶ 21, 23. With no answer, Deputy Watson walked the perimeter of the house to knock on the side door with his baton, in an attempt to announce their presence more effectively. Watson Aff. ¶¶ 22-23. Simultaneously, Deputy Rivera continued to bang on the front door shouting “Sheriff’s Office.” Rivera Aff. ¶ 24. With no answer at the side door, Deputy Watson began to return to the front door when he heard the volume of the music increasing as the front door opened. Watson Aff. ¶ 24. Noting the door had begun to open, Deputy Rivera identified himself, loudly shouting “sheriff’s office, sheriff’s office.” Rivera Aff. ¶ 24. The door opened wide enough to reveal Mr. Jordan’s entire figure. *Id.* ¶ 25. Mr. Jordan stood 6 feet 1 inch tall and weighed 221 pounds. Summ. Autopsy Report. Deputy Rivera immediately spotted a small black handgun in the right hand of Mr. Jordan, which he thought to be a Glock. Rivera Aff. ¶ 26. Deputy Rivera yelled “gun, gun, gun” and proceeded to yell at the suspect to drop the weapon multiple times. *Id.* ¶ 30.

As Deputy Watson returned to the front door, he noted that Deputy Rivera was standing a few feet away from Mr. Jordan and visually confirmed the suspect had something in his right hand. Watson. Aff. ¶¶ 23-26. Despite numerous orders from Deputy Rivera, the suspect did not drop the weapon. Rivera Aff. ¶ 28. Deputy Watson aligned himself to the right of his partner at a 45-degree angle from the suspect, drawing his weapon. Watson Aff. ¶¶ 28-29. Mr. Jordan looked at Deputy

Watson then began to close the door with his left hand, while raising the object in his right hand. *Id.* ¶ 34. As the suspect raised the weapon, Deputy Rivera drew his weapon and began to retreat, fearing for his life. Rivera Aff. ¶¶ 32-34. Deputy Watson thought Mr. Jordan would shoot Deputy Rivera through the door, based on the way Mr. Jordan's raised his hand. Watson Aff. ¶ 33. To eliminate this threat to Deputy Rivera and the 50 schoolchildren behind the deputy, Deputy Watson fired his service pistol. *Id.* ¶¶ 33, 36, 38. Deputy Watson fired four rounds in an upward trajectory at the door as he lost sight of the suspect. *Id.* ¶¶ 36-37. Fearing the armed suspect was still in the house, Deputy Watson ran behind the house to ensure the suspect did not run out behind them. *Id.* ¶ 42. Following the shots being fired, both Deputy Watson and Deputy Rivera took cover behind their patrol cars and called the situation in. Rivera Aff. ¶ 36. Jordan's body was found in the foyer of his house, with an unloaded handgun in his back pocket. Compl. Wrongful Death ¶ 17

## ARGUMENT

### **I. This Court Should Hold That Deputy Watson is Entitled to the Affirmative Defense of Qualified Immunity as an Officer Acting Reasonably Within the Scope of his Discretion Who Did Not Violate Any Constitutional Rights**

The Defendant asks this Court to deny Plaintiff's motion to strike the affirmative defense of qualified immunity. The Defendant relies on the Plaintiff's inability to establish a violation of a constitutional right. Furthermore, the Defendant relies on the fact that Deputy Watson's actions were reasonably pursued

within the scope of his discretion. Deputy Eric Watson worked in the field of law enforcement for over twenty years, making discretionary calls each shift. In those many years of practice, Deputy Watson gained a great deal of experience regarding protection of the general public. Although to many, a noise complaint call may seem benign, Deputy Watson was dutifully aware that the violence in the area, poverty, and proximity of the complaint to a school, would impact any actions taken in the line of duty. Deputy Watson should be granted qualified immunity as a public official acting reasonably within his discretion. The court should strike the motion to deny the affirmative defense of qualified immunity.

**A. Qualified Immunity Applies to Deputy Watson as a Government Official Who Acted Reasonably Within the Scope of his Employment**

**1. Qualified Immunity Applies to Deputy Watson Because the Need to Protect Enforcement Agent's Reasonable Actions is Paramount**

The Plaintiff's claims against Deputy Watson in his individual capacity are barred by qualified immunity. A government official charged with a civil rights claim brought pursuant to 42 U.S.C. § 1983 is entitled to raise the affirmative defense of qualified immunity. *Simmons v. Bradshaw*, 879 F.3d 1157, 1162 (11th Cir. 2018). Qualified Immunity is immunity from suit rather than a mere defense to liability. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Therefore, the immunity from suit is effectively lost if a case is erroneously permitted to go to trial. *Id.* citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Given the need for officers to

perform their duties without fear of liability, the Court should hold the affirmative defense in this case is not prohibited for Deputy Watson.

The interests underlying qualified immunity require that Deputy Watson's justified and responsible use of force outweighs the need to hold public officials responsible. The primary competing interests of qualified immunity are: (1) the need to hold public officials accountable when they exercise power irresponsibly and (2) the need to shield officers from harassment, distraction and liability when they perform their duties reasonably. *Id.* In balancing the two interests of qualified immunity in this case, the court should hold that the need to shield officers is supreme. Deputy Watson acted reasonably in firing his weapon when faced with the perceived threat of a weapon being drawn to fire. Even if the court holds that the exercise of power was irresponsible, the need to preserve officers' ability to safely enforce the law should be supreme. If the court held officers in the defendant's situation liable, there would be a number of unintended and harmful consequences. Due to the immediacy of situations involving officer self-defense shootings, fear of liability could cause crucial pause resulting in harm to officers and bystanders.

## **2. Deputy Watson Was Acting Reasonably Within the Scope of His Discretionary Authority When the Wrongful Acts Occurred.**

Deputy Watson's actions were reasonable in responding to a fatal threat, and his use of a firearm was within his discretionary authority. An official asserting

entitlement to the affirmative defense of qualified immunity must establish that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002) (quoting *Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir.1991)). The Eleventh Circuit applies a two-prong test to determine if the actions were within the discretionary authority of the government official. First, the defendant must prove the actions were undertaken pursuant to the performance of his duties. Second, the defendant must prove the actions were within the scope of his authority. *Habert Intern., Inc. v James*, 157 F.3d 1271, 1282 (1998).

Under the first prong, Deputy Watson's reasonable use of force was within the perimeter of an official's duties. The court must consider "whether the act complained of, if done for a proper purpose, would be within, or reasonably related to, the outer perimeter of an official's discretionary duties." *Id.* citing *In re Allen*, 106 F.3d 582, 594 (4th Cir. 1995). Deputy Watson and his partner were originally called to the house for a noise complaint, while on duty. Deputy Watson's actions in addressing the noise complaint, reacting to a threat, and firing upon Mr. Jordan are all within an officer's scope of authority. *See Kesinger ex rel. Kesinger v. Herrington*, 381 F.3d 1243 (11th Cir. 2004) (noting under Florida Law, officer and even private actors are justified in deadly force when there is reasonable belief such force is necessary to prevent imminent harm). Because Deputy Watson has

met the burden of proof in establishing that he was acting within his discretionary authority, the burden shifts to the plaintiff to establish that qualified immunity is not appropriate. *Lee*, 284 F.3d at 1194.

**B. The Actions Taken by Deputy Watson Do Not Violate Any Clearly Established Constitutional Rights Because the Actions Were Objectively Reasonable and Case Law Supports That a Clearly Established Right Did Not Exist at the Time of the Incident**

**1. Actions Taken by Deputy Watson Did Not Violate Any Constitutionally Established Rights**

Deputy Watson’s use of force in response to Mr. Jordan’s threat of harm was objectively reasonable. The Fourth Amendment guarantees citizens the right “to be secure in their persons ... against unreasonable ... seizures” U.S. Const. amend.

IV. Constitutionally established rights protect citizens from unreasonable seizure by authorities. The Fourth Amendment’s freedom from unreasonable searches and seizures also encompasses the right to be free from use of excessive force.

*Kesinger*, 381 F.3d at 1248.

Mr. Jordan did not have any constitutional rights violated by unreasonable action of Deputy Watson. Under the “reasonableness” standard, a court must determine whether an officer’s actions are objectively reasonable in light of the facts and circumstances. *Id. See also Terry v. Ohio*, 392 U.S. 1, 22-23 (1968) (noting that any standard less intrusive would “invite intrusions upon constitutionally guaranteed rights based on nothing more than inarticulate

hunches”). In past cases, the Eleventh Circuit has employed a totality of circumstances test featuring three factors in determining reasonableness of an officer’s conduct. *See Penley v. Eslinger*, 605 F.3d 843, 850 (11th Cir. 2010); *L.T. by Snorton v. Owens*, 808 Fed.Appx. 814, 821 (11th Cir. 2020); *Hammett v. Paulding County*, 875 F.3d 1036, 1050 (11th Cir. 2017).

The totality of circumstances test weighs the facts and circumstances of each particular case including (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. *Penley*, 605 F.3d at 850. From the objective perspective of Deputy Watson, Mr. Jordan was seen raising a small object that resembled a gun in his hands as his partner repeatedly shouted “gun.” As Deputy Watson raised the weapon, Mr. Jordan began to close the door, shielding some of his body from sight but leaving the object in his hand exposed. Presuming it was a loaded gun and noting that the suspect was an imminent threat to safety, Deputy Watson aimed his weapon in an upwards trajectory to eliminate the threat posed to himself, his partner and the children behind them at the nearby school. With the suspect beginning to move out of sight behind the door, there was a possibility that the perceived threat was still active. The Eleventh Circuit has held that it is reasonable for an officer to use deadly force when he has probable cause that his own life is in peril. *Hammett*, 875

F.3d at 1048 (holding that officers did not violate substantive due process rights in a justified use of deadly force). In *Hammett*, the Eleventh Circuit concluded that the split-second judgements of officers firing fatal shots at an armed suspect were the actions of reasonable officers thus entitling them to qualified immunity.

*Hammett*, 875 F.3d at 1054. The critical facts in this case, like *Hammett*, is the officers announcing their presence, a refusal to obey commands, and a perceived weapon being raised towards police. Because Mr. Jordan presented an immediate threat to the officers' safety, Deputy Watson had an objectively reasonable right to use deadly force.

Any further claim to violation of constitutional rights under the Fourteenth Amendment right to due process should fail. The U.S. Constitution states “[n]o State shall ... deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. A claim to substantive due process is appropriate in scenarios lacking physical force. *See Carr v. Tatangelo*, 338 F.3d 1259, 1270-71 (11th Cir. 2003). A substantive due process claim is inappropriate in a case if respondents' claim is encompassed by the Fourth Amendment. *County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998). Because the incident involved the physical shooting of Mr. Jordan the claim should properly rise under the Fourth Amendment.

## **2. Fair Warning of a Clearly Established Right Did Not Exist at the Time of the Shooting**

At the time of the shooting, fair warning did not exist for Deputy Watson because his actions did not violate clearly established law. In *Corbitt*, the Eleventh Circuit ruled fair warning of a clearly established right is determined in a three-part test. *Corbitt v. Vickers*, 929 F.3d 1304, 1312 (11th Cir. 2019). The plaintiff can show (1) a materially similar case has already been decided, (2) a broader clearly established principle should control the novel facts of a particular situation, or (3) the case fits within the exception of conduct which so obviously violates the constitution that prior case law is unnecessary. *Id.* The plaintiff has failed to meet the elements as required in *Corbitt*. Because there is a materially similar case the court does not need to address the remaining two prongs. *See Corbitt*, 929 F.3d at 1312.

Under the first prong, the plaintiff will fail to show a materially similar case has already been decided that held against the government official's actions. In evaluating this element, the court looks to "judicial decisions of the United States Supreme Court, the United States Court of Appeals for the Eleventh Circuit, and the highest court of the relevant state." *Griffin Indus., Inc v. Irvin*, 496 F.3d 1189, 1199 (11th Cir. 2007). In *Kesinger*, the Eleventh Circuit held that a case involving the shooting of a mentally ill suicidal man was reasonable given the officer's incorrect belief that he had been fired upon twice. *Kesinger*, 381 F.3d at 1249-50. Like *Kesinger*, Deputy Watson was also faced with the

duty to protect vulnerable parties near the threat. Given the circumstances of the case, the court should hold that Deputy Watson's actions were objectively reasonable. Here, Deputy Watson was faced with a split-second decision to fire his weapon in defense of himself, his partner, and the children lined up across the street at the elementary school. Despite the fact that the gun was unloaded, Deputy Watson was under the impression he was faced with a loaded weapon and rightfully reacted in self-defense with equivalent response to the perceived threat.

The Eleventh Circuit denied the affirmative defense of qualified immunity to cases that differ from the facts of this case in lack of reasonable risk of imminent harm. In *Ayers*, the court denied qualified immunity because the officer did not have reason to believe the suspect presented an imminent risk. *Ayers v. Harrison*, 650 Fed.Appx. 709, 716 (11th Cir. 2016). Unlike *Ayers*, Deputy Watson objectively and reasonably believed his partner was faced with a loaded weapon, presenting an imminent risk of fatal harm. Furthermore, the *Ayers* decision placed emphasis on the officers lack of identification, the suspect's small size, and lack of weapon. *Id.* at 715. In this case, officers attempted to identify themselves despite loud music and also arrived on scene in full uniform in marked squad vehicles. Because Mr. Jordan's intoxication was unknown to officers it cannot be considered under the objective standard.

Mr. Jordan presented as a 6 foot 1 inch male, weighing 212 pounds, in his early 30s. Of greatest consequence was Mr. Jordan's perceived weapon in hand, warranting the fatal response. The facts and circumstances in the shooting of Mr. Jordan vary substantially from cases where qualified immunity has been denied.

**II. This Court Should Prohibit the Testimony of Dr. Edwards as the Plaintiff's Expert Witness.**

Defendant asks this Court to prohibit the testimony of Plaintiff's expert, Frank Edwards, Ph.D. because his testimony would not assist a jury in understanding the evidence and would serve a prejudicial effect His testimony would not help a jury to understand the evidence because his research has not been reliably applied to the facts of this case. *See* Fed R. Evid. 702. His testimony would fail to consider alternative factors and make false equivalency between his research and the facts of case. Dr. Edwards's testimony's probative value is substantially outweighed by the danger that it would unfairly prejudice a jury. *See* Fed. R. Evid. 403. Therefore, Dr. Edwards should not be permitted to testify as an expert.

**A. Dr. Edwards's Testimony Fails to Consider a Clear Alternative Reason for Use of Force.**

Dr. Edwards's expert testimony overlooks a clear alternative reason for Deputy Watson's use of force, Mr. Jordan's gun. In *Claar v. Burlington Norther R. Co.*, the Ninth Circuit Court upheld a decision by the District Court not to admit

expert affidavits into evidence when it was clear the experts had failed to make any effort to rule out other possible causes. *See Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 503 (9th Cir.1994); Fed. R. Evid. 702 (2000 Amendments). There, the testimony of an expert was excluded because alternative, more likely, causes were not fully considered. *See id* at 503. Here, Dr. Edwards's testimony similarly fails to make any effort to account for Deputy Watson's use of force beyond racial bias. Dr. Edwards's testimony focuses on the deadly force used against black men as a trend in the United States and suggests Deputy Watson's use of force was motivated by the same racial animosity. However, in this case, there is a more likely alternative reason for which Dr. Edwards's testimony fails to account.

A more likely, alternative reason for the use of force in this case is the perceived threat of a gun. Deputy Rivera established that he believed this to be a gun by repeatedly shouting "gun" and ordering Mr. Jordan to put down the object in his hand. Mr. Jordan's refusal when ordered to do so by a police officer and instead raising it to said officer presents a clear alternative explanation for Deputy Watson's use of force. Moreover, the presence of approximately fifty children in the immediate surroundings amplified the need for Deputy Watson to act decisively, upon hearing his partner, Deputy Rivera, call out that there was a gun. Not only did Deputy Watson act in protection of his partner, he also acted in protection of the nearby schoolchildren, likely to be caught in crossfire if Mr.

Jordan were to shoot. Deputy Watson actions were more likely motivated by the belief Mr. Jordan had a gun and the schoolchildren's presence than a bias against black men. Dr. Edwards's testimony fails to take any other factors than race into consideration, overlooking clear alternative reasons, and therefore he should not be permitted to testify.

**B. The Evidence Presented in Dr. Edwards's Testimony Is Too Dissimilar to This Case to Be Relevant.**

Dr. Edwards's testimony presents evidence so dissimilar from this case, it could not aid a jury in understanding this case. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the Court states the trial judge must determine "whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 (1993). In order for Edwards's research to assist a jury in determining a fact at issue, that research must be relevant to the details of this case. Here, the research Dr. Edwards presents is so dissimilar that it could not assist a jury to determine a fact in issue. In the article by Dr. Edwards, submitted as evidence, he lists five black people who were killed by police officers recently, four male and one female. None of these people were found with guns on their person after they were shot. In contrast, Mr. Jordan was an armed 33-year-old man, weighing over 200 pounds and standing over 6 feet. Dr. Edwards's testimony would compare Mr. Jordan raising what appeared to be a gun at a uniformed police

officer to Tamir Rice, a twelve-year old child playing in a park. Emma G. Fitzsimmons, *12-Year-Old Boy Dies After Police in Cleveland Shoot Him*, N.Y. Times, Nov. 24, 2014, at A12. Dr. Edwards's false equivalency would not serve a probative purpose to a jury here. His testimony's lack of consideration for various factors such as the presence of weapons, obscure any insights a study like this could provide. Based on the potential to obscure the facts of the case with unrelated social trends, Dr. Edwards's research is too dissimilar to be applied to the facts of this case reliably.

**C. Any Probative Value Dr. Edwards's Testimony Has Is Substantially Outweighed by the Danger that It Would Unfairly Prejudice a Jury.**

Any probative value Dr. Edwards's testimony has is substantially outweighed by the danger that it would unfairly prejudice a jury. In *Stahl v. Sun Microsystems*, the Court wrote that "even assuming this evidence was relevant to credibility, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." *Stahl v. Sun Microsystems, Inc.*, 19 F.3d 533, 539 (10th Cir. 1994); Fed. R. Evid. 403. Additionally, in *Campbell v. Keystone Aerial Surveys, Inc.*, the Court stated "the Advisory Committee's Note to Rule 403 specifically notes the risk that proffered evidence will induce a decision on a purely emotional basis as a circumstance that may require the exclusion of relevant evidence under Rule 403." *Campbell v. Keystone Aerial Surveys, Inc.*, 138 F.3d 996, 1004 (5th Cir. 1998); Fed.R.Evid. 403 advisory committee's note. A court

may omit relevant evidence when it would serve a substantially greater prejudicial effect than probative. *See Campbell*. The effect of including Dr. Edwards's testimony here, would be too inflammatory and distract from the facts of the case.

Dr. Edwards's testimony takes focus away from the objective factual merits of the case to pull on the heartstrings of jurors. If Dr. Edwards's testimony is admitted, that moment, when what appeared to be a gun was raised at Deputy Watson's partner, in the vicinity of dozens of schoolchildren, is no longer the focus of jurors' attention anymore. Instead, Dr. Edwards's testimony would elicit an emotion-based reaction that would obscure the objective facts of the case and bias the jury with the inflammatory subject matter. Presented here, the emotional effect of likening Mr. Jordan's death to the death of Tamir Rice, a child, would take away from the reality of the perceived threat to approximately fifty children, present in the facts of this case. Any probative value Dr. Edwards's testimony might have is substantially outweighed by the danger it poses by obscuring the facts of this case and inflaming a jury. Dr. Edwards's testimony should be excluded because its probative value it has is outweighed by its likelihood of causing a substantial prejudicial effect on a jury.

### **CONCLUSION**

The Plaintiff has failed to establish that Deputy Watson is not entitled to a defense of qualified immunity for his actions taken in defending his partner and the

community. In responding to an imminent threat of a weapon being drawn on himself and his partner, Deputy Watson acted as a reasonable officer would have in the line of duty.

Furthermore, the Defendant has proved the Court should prohibit the testimony of Dr. Edwards as the Plaintiff's expert witness under Federal Rules of Evidence 401, 403, and 702. Because Dr. Edwards testimony and research misleads the jury and fails to reliably apply Dr. Edwards's research to the circumstances of the case, the motion in limine for Defendant should prevail.

Therefore, Defendant respectfully requests that the Court deny Plaintiff's motion to strike Defendant's affirmative defense of qualified immunity. Defendant also respectfully requests that the Court grant its motion to prohibit the testimony of Frank Edwards, Ph.D.

Respectfully submitted,  
/s/ Team 6666  
Team 6666  
*Attorneys for Defendant*