Team Number: 6666P

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

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.

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

/s/ Team 6666
Attorneys for the Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Statutes

Supreme Court Cases

US Circuit Court Cases

District Court Cases

INTRODUCTION

Plaintiff SHERYL JORDAN, brings this claim pursuant to 42 U.S.C. § 1983, on behalf of her son DAVID JORDAN JR. ("Mr. Jordan"), who was shot and killed by Defendant, Deputy ERIC WATSON ("Watson") inside of his home on February 14th, 2019. The intentional shooting of Mr. Jordan was entirely unjustified and constituted an unreasonable seizure, excessive use of deadly force, and violated his rights under the Fourth and Fourteenth Amendments to the United States Constitution.

As the evidence stated below confirms, Mr. Jordan was shot three times through a door while he was incapable of posing a threat. As an officer of Midland County Sheriff's Department, Watson brought an Affirmative Defense of Qualified Immunity. Facts submitted by the Plaintiff show sufficient evidence exists to demonstrate that Watson did not act as a reasonable officer, did not act in good faith, and took actions that he knew, or should have known, violated Plaintiff's civil rights. Defendant's affirmative defense is insufficient, redundant, immaterial, impertinent, and/or scandalous, and as a result, Plaintiff respectfully moves for the Court to strike Watson's affirmative defense pursuant to Federal Rule of Civil Procedure 12(f).

Additionally, Watson has brought a motion of limine to prohibit Plaintiff's expert witness testimony. Plaintiff intends to call Dr. Frank R. Edwards to testify on Caucasian officers of Midland County Sheriff's

Department's statistically proven proclivity to draw weapons on Black American men. As Mr. Jordan was a black man who was shot by a Caucasian officer, this testimony is relevant and highly probative; Plaintiff respectfully requests that the Court deny Defendant's motion.

STATEMENT OF FACTS

Decedent, David Jordan, Jr. is represented by his mother, Sheryl Jordan, who seeks compensation before this Court on behalf of her deceased son and his three surviving children after decedent's life was taken from him by the actions of Defendant. Compl. ¶ 26-27.

On February 14, 2019, around 3:00 p.m., elementary school teacher Lee McDonald called in a noise complaint due to music coming from a house across the street, at 1501 58th Street South in Fort Hampton. McDonald Aff. ¶ 2-5. Defendant Watson, and Deputy Eddie Rivera ("Rivera"), received the call and arrived at the location approximately fifteen minutes later. Watson Aff. ¶ 14-18. A noise complaint is not a criminal violation but a county ordinance violation. *Id*. ¶ 15. Both deputies arrived in separate cars and parked on the street. *Id*. ¶ 20. The deputies walked up to the house where the music was coming from to knock on the front door. *Id*. ¶ 21. After there was no immediate answer, Defendant went around to the house's right side door to knock while Rivera stayed to knock at the front door. Rivera Aff. ¶ 21-23. Rivera did not say anything or announce himself while knocking. *Id*. ¶ 23.

As Defendant walked back towards the front of the house, Mr. Jordan, opened the front door. Watson Aff. ¶ 24-25. As soon as the door began to open, Rivera yelled "Sheriff's Office, Sheriff's Office." Rivera Aff. ¶ 24. Rivera asserts that he saw a gun in Mr. Jordan's right hand and saw him raise his hand. *Id*. ¶ 30. Watson heard Rivera yell "gun" and for Mr. Jordan to drop it. Watson Aff. ¶ 27. However, at no point could Defendant confirm what was in Mr. Jordan's hand. *Id*. ¶ 32. Defendant saw Mr. Jordan's hand raised by his hip, and the front door began to close. *Id*. ¶ 35. At the time Defendant lost sight of Mr. Jordan's hand, Defendant stated, "I did not see it specifically aimed at anybody." *Id*.

The only thing Rivera heard Watson say prior to shooting was "hey." Rivera Aff. 30. Additionally, a toxicology report showed that Mr. Jordan had a blood alcohol content between .32 and .39, which would have caused significant motor and sensory dysfunction. Roberts Aff. ¶ 15. As the door was closing, Defendant fired rapidly four times at Mr. Jordan through the door. Watson Aff. ¶ 36. All of Defendant's shots were fired in the space of time it took for Rivera to draw his weapon. Rivera Aff. ¶ 35. Mr. Jordan was struck and killed by three bullets. Roberts Aff. ¶ 6 . Two of which struck his right abdomen, while the third bullet hit his head. *Id*. Watson said he then ran behind the house to check if anyone came out behind them. Watson Aff. ¶ 42. Rivera does not remember Watson securing the side or back of the house afterward. Rivera Aff. ¶ 39.

Watson and Rivera then waited behind Watson's patrol car until a SWAT team arrived. Watson Aff. ¶ 38. An unloaded gun was found on Mr. Jordan's body in his back pocket. *Id.* ¶ 54.

Dr. Taylor Roberts ("Dr. Roberts") conducted a forensic review of the evidence. Roberts Aff. ¶ 5. Dr. Roberts confirmed that Mr. Jordan was shot three times and that the fatal shot was to his skull, which spattered his brain. *Id.* ¶ 6. Wood fragments in the wounds indicate that at least two bullets, the bullet to the head and one to the abdomen, passed through the front door. *Id.* ¶ 7. The location of the head wound and the bullet hole on the door show that Defendant fired the fatal bullet through the closed door. *Id.* ¶ 8. The bullet to Plaintiff's skull passed through the right frontal cerebrum, basal ganglia, and then the brain stem, cutting off all of Mr. Jordan's motor function and sensory function immediately. *Id.* ¶ 8-9. Dr. Robert concluded that after the third bullet struck Mr. Jordan, he would have been immediately incapacitated and unable to hold a gun or put a gun into his back pocket. *Id.* ¶ 10-14.

Notably, Mr. Jordan was a Black man, while Watson was a white officer. Plaintiff hired Frank Edwards ("Dr. Edwards"), a Ph. D. holder in sociology and Criminal Justice professor, to testify on the racial bias within Midland County Sheriff's Office. Edwards Aff. ¶ 8. Dr. Edwards found a statistically proved proclivity for white officers of the department to draw their weapons on Black American men. *Id.*

ARGUMENT

I. Defendant's Affirmative Defense Of Qualified Immunity Should Be Stricken

Plaintiff's Constitutional rights guaranteed under the Fourth and Fourteenth Amendments have been violated and Plaintiff seeks justice under 42 U.S.C.A. § 1983, which holds state actors who violate such rights liable to injured parties. Plaintiff now moves for this Court to dismiss Defendant Watson's affirmative defense of qualified immunity. Pursuant to Fed. R. Civ. P. 12(f), "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Additionally, this motion is proper as qualified immunity is a question for the judge to decide at the earliest possible stage of litigation. *Hunter v. Bryant,* 502 U.S. 224, 227 (1991).

To determine whether or not a defendant is entitled to qualified immunity, the Supreme Court requires courts to use a two part test. *Saucier v. Katz,* 533 U.S. 194, 201 (2001). The first issue courts must consider is: "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Id.* The second step is to determine whether or not the right was clearly established. *Id.* Although the Supreme Court in *Saucier* created these steps as sequential, the Court later held that the exact sequence of steps is no longer mandatory, however, it remains "often appropriate." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

A. Taken in the light most favorable to the injured party, the facts show Defendant violated Mr. Jordan's Constitutional rights.

The Fourth Amendment to the United States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The Fourteenth Amendment adds, "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Through excessive use of force, Defendant's actions took Mr. Jordan's life, violating his rights granted by both of these amendments.

In resolving questions of qualified immunity, when a plaintiff alleges excessive force during an investigation or arrest, the federal right at issue is the Fourth Amendment right against unreasonable seizures. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014). *"[A]ll* claims that law enforcement officers have used excessive force -deadly or not- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." *Graham v. Connor,* 490 U.S. 386, 395 (1989).

Reasonableness of an officer's actions depends on not only when a seizure is made, but also how it is carried out. *Tennessee v. Garner,* 471 U.S. 1, 8 (1985). In the current case, Defendant arrived at Mr. Jordan's home over a noise complaint. A noise complaint is not a criminal violation but a county

ordinance violation. Watson Aff. ¶ 15. Watson had not pulled up a call history nor completed a background check of Mr. Jordan. *Id*. ¶ 44-45. Watson stated that at that time, he did not know anything about Mr. Jordan. *Id*. ¶ 44. Mr. Jordan was in no way under arrest. Defendant's escalated the situation leading to Mr. Jordan being shot and killed through his door while he was standing inside his own home. "The United States Supreme Court has made it clear that physical entry of the home is the chief evil against which the ... Fourth Amendment is directed." *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984). Additionally, the Supreme Court held that "[t]he intrusiveness of a seizure by means of deadly force is unmatched. The suspect's fundamental interest in his own life need not be elaborated upon." *Tennessee v. Garner*, 471 U.S. at 9. When deadly force was used inside of Mr. Jordan's home, his Fourth Amendment protection was at its highest.

To determine whether a police officer's amount of force was proper, a court must ask "whether a reasonable officer would believe that this level of force is necessary in the situation at hand." *McCullough v. Antolini*, 559 F.3d 1201, 1206 (11th Cir. 2009) Factors the court should consider when determining the reasonableness of the officer's conduct include: "the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively

resisting." *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). Qualified immunity allows for a government official to make mistakes as long as they are reasonable. *Saucier v. Katz*, 533 U.S. at 205.

Watson's actions were unreasonable. Defendant argues that he acted to protect himself and Rivera. However, Watson admitted that at no point could he say for certain what was in Mr. Jordan's hand. Watson Aff. ¶ 32. When Watson opened fire, he testified that "I did not see it specifically aimed at anybody." *Id*. ¶ 35. Despite this, Watson fired his weapon rapidly four times. *Id*. ¶ 36. Dr. Roberts, after a forensic review, concluded that the fatal shot impacted Mr. Jordan's skull and severed the Decedent's basal ganglia, cutting all motor function and sensory function immediately. Roberts Aff. ¶ 6-9. Dr. Roberts opined that this bullet would have ended all of Mr. Jordan's perception of consciousness and voluntary motor function, rendering him immediately incapacitated. *Id*. ¶ 12-14. Dr. Roberts' conclusion, to a reasonable degree of medical certainty, is that the Plaintiff would not have been able to hold on to a gun, or put it in his back pocket after being struck by this bullet. *Id*. ¶ 14. Additionally, Mr. Jordan was intoxicated with a blood alcohol level at the time between .32 and .39, which would have resulted in significant motor and sensory dysfunction. *Id*. ¶ 15. Defendant rapidly opened fire when he saw the object in Mr. Jordan's hand. Since the bullet to the head paralyzed Mr. Jordan, and the unloaded pistol was found in the back pocket of his jeans, Plaintiff

submits that, based on the medical evidence, Mr. Jordan could not have had the gun in his hand at the time he was shot.

The medical evidence submitted by Plaintiff ultimately contradicts Rivera's statement that he saw Mr. Jordan holding a gun. When ruling on whether qualified immunity applies, a court must take the facts alleged in the light most favorable to the party asserting injury. *Siegert v. Gilley*, 500 U.S. 226, 232 (1991). *Cantrell v. White* shows a very similar situation in which a plaintiff's evidence and a defendant's evidence conflicted. 669 F. App'x 984, 985 (11th Cir. 2016). In *Cantrell*, the decedent was shot and killed by the defendant, an officer, while the officer attempted to arrest him for domestic assault. *Id*. The defendant claimed that the decedent attempted to grab his gun and that the weapon fired accidentally while the two struggled. *Id.* The plaintiff submitted medical evidence that the decedent was shot from behind after he already surrendered. *Id.* The Eleventh Circuit held that, because the medical examiner's report disagreed with the defendant's testimony, there was a question of fact as to whether the decedent posed a serious threat, and as a result, the defendant was not entitled to qualified immunity. *Id*.

When viewed in a light most favorable to the non-moving party, the evidence shows that Defendant shot an unarmed man from behind a door. This is not a reasonable mistake. Mr. Jordan's rights were violated. At the very least,

there is a question of facts which should be submitted to a jury requiring qualified immunity to be stricken.

B. Defendant violated rights that were clearly established

For dismissal of qualified immunity, Plaintiff, in addition to proving a violation of a right, must also prove that the right was clearly established. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).

The law at the time established that the shooting of Mr. Jordan would violate the Constitution. The Supreme Court long ago held that deadly force is unjustified where the suspect poses no immediate threat to an officer and no threat to others. *Tennessee v. Garner*, 471 U.S. at 11. "Even in cases where a suspect engages in a struggle, police officers are still required to properly assess whether the suspect is a *genuine* threat based on the information available to them at the time." *Ayers v. Harrison*, 650 Fed.Appx. 709, 715 (11th Cir. 2016). A plaintiff can show that his constitutional rights were clearly established by "pointing to a materially similar case decided by the Supreme Court, this Court, or the highest court of the relevant state that clearly establishes the unlawfulness of the police conduct." *Hunter v. Leeds, City of*, 941 F.3d 1265, 1278 (11th Cir. 2019).

Courts have held that officers are not entitled to qualified immunity in cases materially similar to the present one. In *Foster v. City of Indio*, the defendant, a police officer, was charged with a violation of the decedent's

Fourth Amendment rights after using deadly force while attempting to stop the decedent's escape. 908 F.3d 1204, 1207 (9th Cir. 2018). The officer testified that as he was chasing the decedent, he turned around with a gun in his hand, which prompted the officer to open fire. *Id*. at 1208. Witness accounts both supported and contradicted the officer. One witness testified that he saw the decedent holding something in his hand as he ran. *Id.* Another testified seeing a gun lying next to where the plaintiff fell. *Id.* But two other witnesses testified that they saw him holding no gun. *Id*. at 1209. The court held that because a reasonable jury could find that the defendant was unarmed at the time he was shot, the defendant would have violated clearly established rights. *Id*. at 1211.

In another case with disputed facts, the court held that because the facts alleged by the plaintiff support the finding that the plaintiff did not pose a threat when shot, the defendant was not entitled to qualified immunity. *Lundgren v. McDaniel*, 814 F.2d 600 (11th Cir. 1987). In *Lundgren*, the decedent and his wife were sleeping behind their store counter at night when two officers entered the store believing a robbery had taken place. *Id*. at 602. The decedent rose from behind the counter with a gun in his hand and was shot three times by an officer. The officers testified they believed they were fired at. *Id*. Lint inside the decedent's gun barrel, as well as the decedent's wife's testimony, contradicted the officer's statements. *Id*. Even though the decedent held a weapon, the court held the defendants were not entitled to qualified immunity because "[t]he jury

could have reasonably believed that the officers were neither threatened by a weapon, nor appeared to be threatened by a weapon, nor were fired upon, but rather that the officers without provocation shot at a nondangerous suspect." *Id.* at 603.

The granting or denial of qualified immunity is not an evaluation of the correctness of the plaintiff's version of facts, but rather a legal issue of "whether the facts alleged (by the plaintiff, or, in some cases, the defendant) support a claim of violation of clearly established law." *Johnson v. Jones,* 515 U.S. 304, 313 (1995). In the current case Plaintiff alleges that Watson shot a man who, based on the medical evidence, had a gun in his back pocket, not his hand. By shooting a man who was not posing a threat, Defendant violated a clearly established law.

II. Defendant's Motion In Limine Should Be Denied

Plaintiff offers Dr. Edwards' expert testimony, a highly educated witness prepared to provide his expert opinion on the presence of racial bias in the Midland County Sheriff's department, in support of their claims against Defendants. Dr. Edwards' testimony is probative of the nature of Watson's unreasonable conduct. However, Defendants object to Dr. Edwards' testimony in their motion in limine, arguing that Fed. R. Evi. 401, 702, 403 prohibit his testimony. Defendants' motion in limine overlooks that Dr. Edwards' testimony is material and relevant to understanding why Watson recklessly, maliciously,

and deliberately deprived Mr. Jordan of his Fourth and Fourteenth Amendment rights. The Court should admit Dr. Edwards' testimony since the probative value of understanding why Watson unreasonably killed Mr. Jordan outweighs the dangers of unfair prejudice and jury confusion under Fed. R. Evi. 403.

A. Dr. Edwards' expert testimony is relevant and admissible

Dr. Edwards' expert testimony is relevant to prove that Defendants violated Plaintiff's Constitutional rights under the Fourth and Fourteenth Amendments. His studies demonstrate a pattern in the Midland Sheriff's Department's excessive use of force against Black Americans, which also transpired in this case, resulting in the death of Mr. Jordan.

Fed. R. Evid. 401. makes it clear that relevant evidence is any evidence "having the 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." In *U.S. v. Clifford*, the Third Circuit stated, "the test of relevancy used by a trial judge to determine the admissibility of a single piece of evidence is less stringent than the standard the judge must later use under Fed. R. Crim. P. 29 to determine whether all the government's evidence is sufficient to allow the case to the jury." *U.S. v. Clifford*, 704 F.2d 86, 90 (3rd Cir. 1983). The relevance threshold is "very low". *U.S. v. Mandoka*, 869 F.3d 448, 454 (6th Cir. 2017). "Courts cannot employ a precise, technical, legalistic test for relevancy; instead they must apply logical standards applicable in

everyday life." *U.S. v. Allison*, 474 F.2d 286 at 289 (5th Cir. 1973). For example, evidence is admissible if it logically relates to the cause of action and if the jury may draw a logical inference to determine the likelihood of a fact at issue. (*see U.S. v. Craft*, 407 F.2d 1065, 1069 (6th Cir. 1969), (stating, "The proper test for the admissibility of evidence ought to be, we think, whether it has a tendency to affect belief in the mind of a reasonably cautious person, who should receive and weigh it with judicial fairness.").

Moreover, in *City of Tuscaloosa v. Harcros Chemicals, Inc.*, the court states that expert testimony is admissible if "the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue." *City of Tuscaloosa v. Harcros Chemicals, Inc.,* 158 F.3d 548 (11th Cir. 1998). Similarly to the Fed. R. Evi. 401, Fed. R. Evi. 702 "requires that the evidence or testimony 'assist the trier of fact to understand the evidence or to determine a fact in issue.' This condition goes primarily to relevance." *Daubert v. Merrell Dow Pharmaceuticals, In.,* 509 U.S. 579, 591 (1993); *see also U.S. v. Downing*, 753 F.2d 1124, 1242 (3rd Cir. 1985), stating, "an additional consideration under Rule 702 - and another aspect of relevancy- is whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute."

Dr. Edwards' testimony contributes to the fact that Watson unreasonably seized Mr. Jordan by demonstrating that there is a likelihood that Watson had a racially biased preconceived notion about Mr. Jordan. When considering whether a police officer has seized an individual within the meaning of the Fourth Amendment, courts determine whether "in the view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988) (quoting *INS v. Delgado*, 466 U.S. 210, 215(1984)). "The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation." *Id* at 574. (see also, *Gardiner v. Incorporated Village of Endicott*, 50 F.3d 151, 155(2nd Cir. 1995)). Watson did not verify if Mr. Jordan had a Glock in his hand before shooting Mr. Jordan. Watson Aff. ¶ 32. He only yelled out, "hey" before firing the four shots. Watson Aff. ¶ 36; Rivera Aff. ¶ 29. Dr. Edwards' testimony is probative of why Watson unreasonably seized Mr. Jordan. One can argue that because of the racial bias against Black men in Midland County, Watson expected Mr. Jordan to act violently, which led him to act unreasonably.

Dr. Edwards' testimony has the tendency to make it more probable that Watson acted offensively and brutally toward the Decedent. To examine whether Defendants were liable for violating Plaintiff's Fourteenth Amendment,

the Supreme Court has applied two tests: 1) "the plaintiff must prove that the governmental body's conduct 'shocks the conscience;'" and 2) "the plaintiff must demonstrate a violation of an identified liberty or property interest protected by the due process clause." *Mercer v. Brunt*, 272 F. Supp.2d 181, 186 (D. Conn. 2002) (quoting *DeLeon v. Little*, 981 F. Supp. 728, 734). The court stated that the Second Circuit has established that the "'shocks the conscience' test that acts must do more than offend some fastidious squeamishness or private sentimentalism. They must be such as to offend even hardened sensibilities, or constitute force that is brutal and offensive to human dignity." *Id.* To demonstrate the violation of substantive due process, Plaintiff must demonstrate that Defendant's conduct was "so brutal" and "so offensive" to human dignity. *Rochin v. California*, 342 U.S. 165, 172- 174 (1952). Because Rivera and Watson referred to Mr. Jordan's neighborhood as a "troubled neighborhood" and "high crime kind of town," Dr. Edwards' testimony will make it more likely that Watson expected Mr. Jordan to act violently based on his race. Rivera. Aff. ¶ 27; Watson. Aff. ¶ 7.

Although Defendants stipulated that Dr. Edwards is qualified to be an expert witness in this case, Defendants wrongfully argue that Dr. Edwards' testimony will not assist the trier of fact in understanding the evidence or determining a fact at issue. When assessing whether Watson's actions were reasonable under the Fourth Amendment, Dr. Edwards' testimony will attest to

the factors a court must consider to determine whether Defendant's actions were reasonable. (see *Kingsley*, 576 U.S. at 397; *McCullough v. Antolini*, 559 F.3d at 1206). Specifically, Dr. Edwards' testimony will make it more probable that racial bias influenced "the relationship between the need for the use of force and the amount of force used" and "any effort made by the [Watson] to temper or limit the amount of force." *Kingsley,* 576 U.S. at 389. Dr. Edwards conducted a review of Midland County Sheriff's officers' excessive use of force during stops, from February 2016 to February 2019, a period in which the Midland County Sheriff's Office employed Watson. Watson Aff. ¶ 2; Edwards Aff. ¶ 7. Dr. Edwards' testimony makes it probable that the Midland County Sheriff's Office tolerated excessive force on Black Americans in Midland County when stopping them for ordinance violations. In this case, the excessive use of force happened through Mr. Jordan's door in his home, resulting in Mr. Jordan's death.

B. Dangers of unfair prejudice and confusion do not substantially outweigh the probative value

Contrary to Defendant's argument, the probative value of Dr. Edwards' testimony is not substantially outweighed by the dangers under Fed. R. Evi. 403. In determining any preliminary questions regarding the admissibility of evidence, according to Fed. R. Evi. 403, the Court must consider whether or not to "exclude relevant evidence if its probative value is substantially outweighed

by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

If the evidence does pose a danger of unfair prejudice or confusion of the jury, "the judge would go on to evaluate the degree of probative value and unfair prejudice not only for the item in question but for any actually available substitutes as well." *Old Chief v. U.S.*, 519 U.S. 172, 182 (1997). "In reviewing challenges to evidence based on Rule 403, [the Court] must give 'the evidence its maximum reasonable probative force and its minimum reasonable prejudicial value." *U.S. v. Seymour,* 468 F.3d. 378, 386 (6th Cir. 2014) (quoting *U.S. v. Schrock,* 855 F.2d 327, 333 (6th Cir. 1988)). Defendants cannot establish that both dangers substantially outweigh the probative value of Dr. Edwards' testimony, which is probative of the unreasonableness of Watson's conduct toward Mr. Jordan due to racial bias.

Dr. Edwards' testimony offers a unique and thorough review of Midland's County Sheriff's department data on reasonable suspicion stops by Midland County Sheriff's officers where officers drew their weapon. Edwards Aff. ¶ 5-7. The likelihood of this review confusing the jury is extremely low since it solely focuses on the Midland's County Sheriff's office. Since the testimonial evidence's probative value substantially outweighs the dangers of

unfair prejudice and jury confusion, Dr. Edwards' testimony should be admissible pursuant to Fed. R. Evi. 403.

CONCLUSION

Plaintiff has established Watson is not entitled to a defense of qualified immunity for his egregious and reckless actions. By shooting Mr. Jordan three times through his front door and killing him inside his house while he was unable to pose a threat, Watson unreasonably took actions that he knew or should have known violated decedent's civil rights. Deputy Watson did not act as a reasonable officer. Pursuant to Federal Rule of Evidence 12(f), Plaintiff moves this court to strike Defendant's affirmative defense of qualified immunity. Additionally, since the evidence supports the finding that Dr. Frank R. Edwards's testimony is relevant and highly probative, Plaintiff requests the Court deny Defendant's motion to prohibit Dr. Edwards's testimony.

Respectfully submitted,
/s/ Team 6666
Team 6666
Attorneys for Plaintiff