Team 7000

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

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

Plaintiff,

v.

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

Defendants.

CASE NO. 2:20cv15994

DEFENDANT WATSON'S MEMORANDUM

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

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INTRODUCTION

Defendant Eric Watson submits this Memorandum of Law to address both motions scheduled for hearing on October 9, 2020: (1) Plaintiff's Motion to Strike Defendant Watson's Affirmative Defense of Qualified Immunity, and (2) Defendant Watson's First Motion in Limine as to the Plaintiff's expert, Frank Edwards, Ph.D.

In opposition to the Plaintiff's Motion to Strike, Watson's qualified immunity defense properly shields him from the Plaintiff's § 1983 claim. Based on the application of qualified immunity here, Defendant Watson requests that the Court deny Plaintiff's Motion to Strike.

In support of the Defendant's Motion in Limine, the Plaintiff's expert testimony fails admissibility requirements in Federal Rules of Evidence 401, 403, and 702. Testimony from the Plaintiff's expert witness, Frank Edwards, should be excluded. Accordingly, the Court should grant the Defendant's First Motion in Limine.

STATEMENT OF FACTS

Facts of the Case. Deputy Eric Watson, a Defendant, began his career in law enforcement by attending the police academy in 1999. Watson Aff. ¶ 3. Watson spent ten years with the Fort Hampton Police Department, then worked for the Florida Division of Alcoholic Beverages and Tobacco in Fort Hampton. *Id.* ¶ 5.

He began working for the Midland County Sheriff's Office in March 2017. *Id.* ¶ 2. Prior to the instant case, Deputy Watson received no excessive force complaints. *Id.* ¶ 49.

Deputy Watson and Deputy Eddie Rivera responded to a noise complaint soon after starting their 3 p.m. shifts at the Midland County Sheriff's Office. Rivera Aff. ¶¶ 7-11. The noise complaint pointed to loud, vulgar music within the hearing range of Fort Hampton Elementary School. *Id.* Deputy Rivera often responded to similar daytime noise complaints, which qualified as county ordinance violations. *Id.* ¶ ¶ 12-13. The house blared music so loud a teacher, Lee McDonald, could hear the "F" and "N" words from the school. McDonald Aff. ¶ 6.

Around 3:15 p.m., as the deputies pulled up to the house where the music was playing, young elementary-aged children lined up outside the nearby school for pickup. *Id.* ¶¶ 8-9. Both deputies knocked on the front door, but there was no answer. Rivera Aff. ¶ 21. Deputy Watson walked around to the side of the house and knocked on the side door, using his baton to knock louder than the music. Watson Aff. ¶ 23. Watson left the side door when no one answered, and he returned to the front yard just as the door opened. *Id.* ¶ 23.

Rivera announced himself as a police officer as soon as the front door began to open, yelling, "Sheriff's Office! Sheriff's Office!" above the music. Rivera Aff. ¶ 24. As Jordan stood inside the open doorway, Rivera saw a gun in Jordan's hand

and started shouting, "gun, gun, drop the gun!" *Id.*

As Deputy Watson turned the corner of the house, the front door opened, with Rivera screaming at the top of his lungs, "gun, gun, drop the gun!" *Id.* ¶ 27. Watson drew his service weapon and saw Jordan in the doorway. *Id.* ¶ 29.

Deputy Watson saw a small black object in Jordan's right hand, which Watson believed to be a gun. *Id.* ¶¶ 31-32. Jordan raised his right hand, and he started to shut the door with his left hand. *Id.* ¶¶ 31, 34. Watson knew young children still stood in lines at the elementary school behind Rivera. *Id.* ¶ 33.

Rivera drew his gun and sought to retreat. Rivera Aff. ¶ 32. Meanwhile, Watson fired his first shot as the door started to close, and his three other shots passed through the door. *Id.* ¶ 31. One bullet hit Jordan in the head, and two struck his abdomen. Roberts Aff. ¶ 7.

Jordan's body was found in the foyer with an unloaded handgun. Compl. ¶ 17. The post-mortem toxicology report indicated intoxication, as Jordan's blood-alcohol level was between .32 and .39. Roberts Aff. ¶ 15.

Procedural History. Plaintiff Sheryl Jordan, as Personal Representative for the Estate of David Jordan, Jr., sued Defendants for Wrongful Death. Plaintiff sued Deputy Eric Watson under 42 U.S.C. § 1983. She claimed negligence against Sheriff Derek Michaels, as Sheriff of Midland County and Deputy Watson's employer. Plaintiff filed in the Circuit Court of the Thirtieth Judicial Circuit in

Midland County, Florida. Defendants removed the case to the United States District Court, Middle District of Florida, Lakeville Division, and then filed Defendants' Answer and Defenses to Plaintiff's Complaint. On September 1, 2020, this Court set a hearing to consider the motions set out in the above Introduction.

ARGUMENT

The following discussion addresses each motion separately. First, Defendant Watson opposes the Plaintiff's Motion to Strike Defendant Watson's Affirmative Defense. Second, Defendant Watson presents the legal basis for his Motion in Limine as to the Plaintiff's expert, Frank Edwards.

I. This Court Must Deny the Plaintiff's Motion to Strike Defendant Watson's Affirmative Defense of Qualified Immunity.

The Plaintiff's Motion must not destroy Defendant Watson's shield of qualified immunity. Under Federal Rule of Civil Procedure 12(f), "the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." To refute the Plaintiff's motion, Watson will demonstrate the viability of his qualified immunity defense.

The United States Supreme Court repeatedly enforces qualified immunity as a valid affirmative defense for qualifying government officials attacked for civil liability under § 1983. *E.g.*, *Gomez v. Toledo*, 446 U.S. 635 (1980); *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Mitchell v. Forsyth*, 472 U.S. 511 (1985); *Crawford-El v. Britton*, 523 U.S. 574 (1998); *Saucier v. Katz*, 533 U.S. 194 (2001);

Pearson v. Callahan, 555 U.S. 223 (2009). To qualify, the official must be acting in the performance of discretionary functions. *Crawford-El*, 523 U.S. at 588. Under the qualified immunity doctrine, an official is protected "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818.

While the Plaintiff acknowledges Watson's qualifications as a government official, the Plaintiff claims Watson's conduct precludes protection. The Parties agree that when Watson responded to the noise complaint, Watson acted as a deputy employed by the Midland County Sheriff's Office. Compl. ¶¶ 10-11. In this role, Defendant Watson served in a discretionary function by making decisions based on "experiences, values, and emotions." *See Harlow*, 457 U.S. at 816.

A. The Qualified Immunity Doctrine Protects Watson from Liability.

To determine whether to deny qualified immunity to an official, courts apply a two-part analysis: "(1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was 'clearly established' at the time of the defendant's alleged misconduct." *Pearson*, 555 U.S. at 224. Judges may use their discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first. *Id.* at 236. Unless the official's conduct violated a clearly established constitutional right, qualified immunity applies. *Id.*

1. Defendant Watson's Defensive Actions Did Not Violate a Constitutional Right Because His Use of Deadly Force Was Reasonable.

Plaintiff alleges that Watson's use of deadly force constituted an "excessive use of force" in violation of the Fourth and Fourteenth Amendments. Compl. ¶ 23. Apprehension using deadly force constitutes a "seizure" subject to the reasonableness requirement of the Fourth Amendment. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). The Fourth Amendment's "objective reasonableness standard" should guide all claims that law enforcement officials have used excessive force during a "seizure." *Graham v. Connor*, 490 U.S. 386, 388 (1989). If Defendant Watson acted with objective reasonableness when using deadly force, there is no constitutional violation.

The "objective reasonableness" standard depends on the perspective of a reasonable officer on the scene, rather than "the 20/20 vision of hindsight." *Id.* at 396. In other words, the test only considers the information the officer had at the time the conduct occurred. *Cty. of L.A. v. Mendez*, 137 S. Ct. 1539, 1542 (2017). Here, any facts learned by Defendant Watson after the shooting will not affect the reasonableness of his conduct while at the scene.

Graham provides a non-exhaustive list of factors to consider in each situation: (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect

actively resisted arrest or attempted to escape. *Graham*, 490 U.S. at 396. A police officer may use deadly force to prevent the escape of a fleeing suspect if the officer has a good-faith belief that the suspect poses a significant threat of death or serious physical injury to the officer or others. *Garner*, 471 U.S. at 1 (applying *Graham* to a police officer's use of deadly force).

Here, all three considerations in *Graham* support the objective reasonableness of Watson's reaction to the situation. Watson walked around the corner of the house just as Jordan opened the door. Watson Aff. ¶ 24. Watson heard Deputy Rivera, who had a clear view of Jordan standing in the open doorway, yelling, "Gun! Drop the gun!" *Id.* ¶ 27. Rivera testified that he was frightened and thought he was going to get shot. River Aff. ¶ 32. Furthermore, Watson considered the proximity and threat of harm to fifty young children across the street at Fort Hampton Elementary School. Watson Aff. ¶ 33. Rather than comply with Rivera's command to drop the gun, Jordan raised his gun-holding hand. *Id.* Jordan then closed the door, obstructing the officers' view of him. *Id.* ¶ 35. Defendant Watson's use of deadly force appears reasonable to stop an immediate threat of death to both police officers and young children.

Further, when a police officer is justified in using deadly force, the officer need not stop until the threat is eliminated. *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014). In *Plumhoff*, the Court determined an officer reasonably acted when firing

fifteen shots toward a suspect in a dangerous car chase. *Id.* The Court reflected that the case would be different if an initial shot incapacitated the suspect, ended any threat, or if the suspect clearly gave up. *Id.* With the threat still present, police acted reasonably in using deadly force to end a "grave public safety risk." *Id.* Jordan's autopsy report shows three bullets struck Jordan, but this fact may not be considered in an "objective reasonableness" evaluation because Watson did not know at the time. Roberts Aff. ¶ 6.

Here, Watson acted in an objectively reasonable manner, especially considering the rapidly evolving scenario. When Jordan shut the door, Watson considered Jordan to be a threat who intended to shoot through the door. Watson Aff. ¶ 33. When Watson fired rapidly four times, he was attempting to eliminate a deadly threat. *Id.* ¶ 38. Like the officer in *Plumhoff*, Watson justifiably fired each of his shots with no indication that the deadly threat ended. When an officer carries out a reasonable seizure, taking the relevant circumstances into account, there is no valid excessive force claim. *Mendez,* at 1547.

2. Even if Defendant Watson's Conduct Violated a Constitutional Right, Watson Did Not Violate a "Clearly Established" Constitutional Right.

Qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate *clearly established* statutory or constitutional rights of which a reasonable person would have known." *Harlow,*

457 U.S. at 818 (emphasis added). Officials need "fair warning" that conduct will infringe on another's federal rights. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). "Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015).

As a police officer, Watson acted within the law and relied on Florida statutes permitting deadly force. When making an arrest, a law enforcement officer may use any force "he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm." Fla. Stat. Ann. § 776.05. Because Watson believed Jordan threatened harm to Rivera and the children, he did not knowingly violate any law by using deadly force. Watson Aff. ¶ 33.

The Supreme Court recently, and repeatedly, instructed courts—and the Ninth Circuit in particular—not to define "clearly established" law too broadly, especially in a Fourth Amendment context. *E.g.*, *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011); *White v. Pauly*, 137 S. Ct. 548, 552 (2017); *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018). The Court recognized the unreasonable difficulty imposed if an officer must determine how a relevant legal doctrine will apply in a specific factual situation. *Kisela*, 138 S. Ct. at 1153. Police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue. *Id.*

Recently the Court expressly declined to answer whether controlling circuit precedent should constitute "clearly established" law. *City of Escondido v.*

Emmons, 139 S. Ct. 500, 503 (2019) ("Assuming without deciding that a court of appeals decision may constitute clearly established law for purposes of qualified immunity…"). Given that this case is of first impression in the Fourteenth Circuit, Watson lacked notice of a "clearly established" constitutional right.

B. Plaintiff's Motion to Strike the Defendant's Feasible Defense Must Be Denied.

Federal district courts generally have broad discretion to grant motions to strike whenever the pleadings contain allegations or defenses that have no possible relation to the controversy, confuse the issues in the case, or cause unfair prejudice to one of the parties. *Harty v. SRA/Palm Trails Plaza, LLC*, 755 F. Supp. 2d 1215, 1218 (S.D. Fla. 2010). An affirmative defense will be held insufficient as a matter of law only if it appears that the defendant cannot succeed under any set of facts that he could prove. *Reyher v. Trans World Airlines. Inc.*, 881 F. Supp. 574, 576 (M.D. Fla. 1995) (citing *Equal Employment Opportunity Comm'n v. First Nat'l Bank*, 614 F.2d 1004, 1008 (5th Cir. 1980)).

The Plaintiff does not meet the high standard required to prevail on a motion to strike this affirmative defense. The qualified immunity defense presents a genuine issue of material fact for the jury; the Defendant may prove facts confirming he acted on the good-faith belief that Jordan was armed and posed a significant threat. Plaintiff's allegation of "egregious actions" does not eliminate the disputed fact issues for the jury. Mot. Strike ¶ 5.

In the Middle District of Florida, courts deny a motion to strike unless the allegations "have no possible relation to the controversy and may cause prejudice to one of the parties." *E.g.*, *Seibel v. Society Lease, Inc.*, 969 F. Supp. 713, 715 (M.D. Fla. 1997); *Story v. Sunshine Foliage World, Inc.*, 120 F. Supp. 2d 1027, 1030 (M.D. Fla. 2000). A motion to strike is considered a "draconian sanction," and courts typically exercise their discretion sparingly. *Fabing v. Lakeland Reg'l Med. Ctr., Inc.*, 2013 WL 593842, at *3 n.2 (M.D. Fla. Feb. 15, 2013).

At trial, the Defendant may prove the use of deadly force was reasonable given the totality of the circumstances, or that the conduct did not violate a "clearly established" right. Thus, this Court should not strike the Defendant's affirmative defense of qualified immunity.

II. This Court Should Grant the Defendant Watson's First Motion in Limine to Prohibit Testimony of Plaintiff's Expert Witness.

The Federal Rules of Evidence and the Supreme Court charge courts with the responsibility to act as gatekeepers of expert testimony through preliminary hearings outside the presence of the jury. This role allows Courts to hold pretrial hearings, under Rule 104(a), and prohibit expert testimony lacking "scientific knowledge that will assist the trier of fact to understand or determine a fact in issue." *Daubert v. Merrell Dow Pharm., Inc*., 509 U.S. 579, 592 (1993). After *Daubert*, the Court expanded trial judges' gatekeeping function to apply to all expert testimony, not just expert testimony based on scientific knowledge. *Kumho*

Tire Co. v. Carmichael, 526 U.S. 137, 142 (1999). In 2000, amendments to the Federal Rules of Evidence incorporated the principles of *Daubert* and *Kumho* into mandatory expert witness requirements outlined in Rule 702.

As gatekeepers, district courts may exclude expert witnesses because of several defined reasons. Although Rule 704 permits an expert's opinion on the ultimate issue, "Expert testimony must still meet the criterion of helpfulness expressed in Rule 702." *United States v. Scavo*, 593 F.2d 837, 844 (8th Cir. 1979). General requirements for evidence also apply, such as relevance under Rule 401 and exclusion under Rule 403. *Id.* These pretrial determinations for expert testimony are critical to protecting the jury from inadmissible evidence at trial.

A. The Plaintiff's Proffered Expert Testimony Fails to Meet the Criteria for Admissible Expert Testimony Under Rule 702.

Although Edwards is generally a qualified expert in his field, he still must meet minimum legal criteria for admissible expert testimony. This Court should prohibit Edwards's testimony because it fails to meet the mandatory standards of admissibility set out in Federal Rule of Evidence 702 and established case law.

1. Edwards's Expert Testimony Fails to Reliably Apply His Expert Principles and Methods to the Facts of the Case.

Expert testimony must use reliable principles and methods, and the expert must also apply those principles and methods to the facts of the case in a reliable way. Fed. R. Evid. 702(d). The expert's principles and methodology used

must be able to produce reliable results with the facts in this case. *Kumho*, 526 U.S. at 154. The evidence establishes Edwards's testimony does not reliably apply his expert knowledge to the facts here.

Edwards based his conclusions on data not similarly situated to the facts of this case. The testimony in Edwards's affidavit explained his review of data on stops based on reasonable suspicion by the Midland County Sheriff's department. Edwards's reviewed "only stops for non-traffic misdemeanors and ordinance violations." Edwards Aff. ¶ 6. He analyzed the "correlation of these stops where the Sheriff's officer drew his/her weapon, to the detainee's race and age." *Id.* ¶ 7. None of the cases Edwards analyzed explicitly involved the Defendants.

Edwards never explained how his opinions and conclusions relate to the issues before the jury as the finder of fact. Here, Deputy Watson first knocked at Jordan's door to investigate a county ordinance violation. Watson Aff. ¶ 14. He did not draw his weapon until after he heard Rivera scream, "gun, drop the gun!" *Id.* ¶¶ 27-28. When Watson drew his gun, the incident was no longer a stop for a non-traffic misdemeanor or ordinance violation, but an arrest for the crime of aggravated assault against a police officer. *Id*. ¶¶ 38, 59. Despite the inherent discrepancies between Edwards's research and the facts in this case, Edwards does not apply his knowledge to the facts here.

To further complicate the Plaintiff's expert testimony, Edwards's opinions are overly generalized and not applied to the issues of the case. Edwards concludes, "it is my professional opinion that racial bias plays a statistically significant role in whether Midland County Sheriff's officers decide to draw their weapon during a stop. Edwards Aff. ¶ 8. Edwards reveals that in the stops he reviewed, "77% of Caucasian Midland County Sheriff's Officers drew their weapon on African American men, ages 18-35." *Id.* ¶ 9. However, he does not try to apply his research to particular facts of this case.

Edwards's opinions lack contextual data to give credibility to his opinion. Edwards opines about the racial biases within the Midland County Sheriff's department. *Id*. ¶ 8. However, he does not specify the racial demographics of Midland County, nor explain how many of the 380 cases he reviewed involved a detainee of those relevant ages and races. Edwards never relates the findings directly to the Defendants. Because Edwards does not reliably apply the principles and methods in his testimony to the facts of this case, the testimony violates the requirements of Rule 702.

2. Edwards's Expert Testimony Fails to Help the Jury to Understand the Relevant Evidence or Determine a Fact in Issue.

The failure under Rule 702 to reliably apply Edwards's expert knowledge to the evidence of the case invites the dangers of misperception and misapplication by the jury. As a result, the Plaintiff's expert fails the "helpfulness" requirement set

out in Rule 702(a). A qualified expert may testify if the expert's specialized knowledge will "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). The *Daubert* Court established the necessity that expert testimony sufficiently "fit" the factual disputes in the case, since "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." 509 U.S. at 591.

Edwards's conclusions about certain stops by the Sheriff's Department are not germane to this specific case. Edwards's testimony about his research and analysis of the Midland County Sheriff's department will likely create confusion because he provides no application to the Defendants' actions in question here.

As previously explained, the criteria of Edwards's research do not address the facts of this case, and he does not explain the relevance to the Plaintiff's claims against the Defendants. *See* Edwards Aff. Because the research and conclusions lack an application to this case, the expert testimony will likely confuse, not help, the jury.

Although Edwards does not apply his observations of the Midland County Sheriff's department data to the situation of the case, he does correlate the local findings to his research about the nationwide risk of being killed by police use of force. Edwards Aff. ¶ 10; *See also* Frank Edwards, Michael H. Esposito & Hedwig Lee, *Risk of Police-Involved Death by Race/Ethnicity and Place, United*

States, 2012-2018, 108 Am. J. Pub. Health 1241 (2018). The general nationwide statistics found in Edwards's article neither help the jury to understand the facts of this case, nor determine a fact in issue. Edwards's testimony fails the mandatory criteria of Rule 702. As a result, the Court should prohibit the testimony.

B. Even if Edwards's Testimony Is Relevant Under Rule 401, Its Probative Value Is Substantially Outweighed by Unfair Prejudice Under Rule 403.

This Court should safeguard the jury from improper influence by dangerous evidence. Under Rule 401, the initial test for relevant evidence evaluates if evidence "has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401. The Court holds discretionary authority to exclude evidence even if it is relevant: "The court may 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..." Fed. R. Evid. 403. Some evidence, such as Edwards's testimony, should be excluded even if it meets the low threshold for relevance.

A Rule 403 determination compares the probative value of relevant evidence against each danger. While the test for relevance under Rule 401 needs only "any tendency" affecting the probability of a fact of consequence, probative value quantifies how much evidence influences the likelihood of those facts in issue.

Here, Edwards's evidence holds little, if any, probative value. The testimony in Edwards's affidavit forms broad conclusions using only data from stops based on reasonable suspicion by the Midland County Sheriff's department. Edwards Aff. ¶ 8. Even more generically, the expert's article, "Risk of Police-Involved Death by Race/Ethnicity and Place, United States, 2012-2018," reviews only nationwide data occurring before the situation at issue here. Edwards never refers to the Defendants or events preceding Jordan's death. *See* Edwards Aff. Without applying his general knowledge to a fact of consequence, Edwards's opinions hold only minimal probative value for this action.

1. The Dangers of Confusing the Issues and Misleading the Jury Substantially Outweigh the Probative Value of Edwards's Evidence.

Despite Edwards's qualifications as an expert witness, he only offers general opinions and conclusions without application to the specific facts of consequence. Edwards's failure to reliably apply his knowledge presents two significant hazards: confusing the issues and misleading the jury.

Edwards's testimony will focus the jury on broader issues and concerns about racial bias and police-involved deaths, instead of the facts of consequence to this case. The Plaintiff's Complaint for Wrongful Death involves two claims: one against Watson under 42 U.S.C. § 1983, and the other against the Sheriff Derek Michaels as Sheriff of Midland County, Watson's employer. *See* Compl. All

general allegations for both claims involve the events on February 14, 2019. *Id.* ¶ 11-32. Without a link between the expert's over-arching opinions and application to this particular case, the evidence holds a significant danger of confusing the relevant issues with overall apprehension about racial bias influencing police decisions.

The lack of guidance in relating Edwards's opinions to the facts in dispute creates a danger for the jury to jump to faulty conclusions. While Edwards's review of Midland County Sherriff's department's data spans from February 2016 to February 2019, the only relevant facts occurred February 14, 2019. Edwards Aff. ¶ 5-9. Midland County Sheriff's department did not employ Watson until March 2017. Watson Aff. ¶ 2. Additionally, Edwards's reviewed data does not clarify if events escalated, as they did here, from misdemeanor and ordinance violation stops to serious felony incidents. Edwards Aff. ¶ 5-8.

Even though the stops reviewed by Edwards are factually distinctive from this case, the jury will likely associate Edwards's opinion about racial bias affecting police officers to Watson's decision to draw his weapon in this specific case. Edwards's overbroad opinions and conclusions must not sidetrack the jury.

2. The Danger of Unfair Prejudice Substantially Outweighs the Probative Value of Edwards's Testimony.

Perhaps the greatest danger of Edwards's testimony concerns the unfair prejudice sparked by the emotionally charged, controversial topics intrinsic to his

opinions and conclusions on racism. "'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *Old Chief v. United States*, 519 U.S. 172, 180 (1997) (citing Fed. R. Evid. 403 advisory committee's note). Edwards focused his statements on the general racial bias of police. He explained, "it is my professional opinion that racial bias plays a statistically significant role in whether Midland County Sheriff's officers decide to draw their weapon during a stop." Edwards Aff. ¶ 8. He compares his findings with his article on police-involved death risks nationwide. *Id*. ¶ 10.

Here, the Plaintiff does not make a direct allegation of racial bias. *See* Compl. Over his career of 20 years as a police officer, Watson does not know of any excessive force complaints against him, much less any claims of excessive force based on racial bias. Watson Aff. ¶ 49.

Allowing the jury to hear Edwards's opinions about local and national police racial bias promotes the tendency to negatively react to a broad theme of racism, instead of Watson's individual situation. According to Edwards's article, "The killings of Oscar Grant, Michael Brown, Charleena Lyles, Stephon Clark, and Tamir Rice, among many others, and the protests that followed have brought sustained national attention to the radicalized character of police violence against civilians." *Risk of Being Killed*, at 1. Considering the national attention on the issue

of race, the jurors will have an undue tendency to react emotionally to the mere suggestion of racially motivated police violence, rather than decide the facts at issue. Edwards's testimony presents a substantial danger of undue prejudice against the Defendants based on an improper basis. The Court should prohibit his testimony and grant the Defendant Watson's First Motion in Limine.

CONCLUSION

This Court should deny Plaintiff's Motion to Strike Defendant Watson's Defense of Qualified Immunity, because Deputy Watson acted reasonably based on his situation and did not violate a clearly established constitutional right.

This Court should grant the Defendant's Motion in Limine, as the Plaintiff's expert testimony is inadmissible under Rule 702 and subject to exclusion under Rule 401 and Rule 403. Professor Frank Edwards's testimony should not be permitted as a matter of law.

Respectfully submitted,

/s/ *Team 7000*
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Attorneys for Defendant