UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

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

Plaintiff,

Case No. 2:20cv15994

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

Defendants.

DEFENDANT'S MEMORANDUM IN SUPPORT OF THE DEFENDANT'S MOTION IN LIMINE RE: FRANK EDWARDS AND IN OPPOSITION TO THE PLAINTIFF'S MOTION TO STRIKE THE AFFIRMATIVE DEFENSE

/s/7777D
7777D
Attorneys for the Defendant

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INTRODUCTION

Deputy Eric Watson and Sheriff Derek Michaels of the MCSO are the subjects of a baseless wrongful death action, levied by the estate of David Jordan Jr. On February 14th, 2019, Jordan was shot after raising a gun toward an officer when MCSO officers responded to a noise complaint. Jordan's estate is pursuing a civil action against Deputy Watson under 42 U.S.C. § 1983 for the violation of Constitutional rights, and a state law claim of negligence against Sheriff Michaels. This action was properly removed to the United States District Court, Middle District of Florida, Lakeville Division pursuant to Title 28 U.S.C. § 1441. Jurisdiction in the District Court is proper as to the claim against Watson under Title 28 U.S.C. §§ 1331 and 1343(a)(3) and as to the claim against Sheriff Michaels under Title 28 U.S.C. § 1441(c).

There are two motions before the Court. First, the Plaintiff's Motion to strike Watson's affirmative defense of qualified immunity, despite Watson performing a discretionary function in his official capacity as a government employee at the time of the shooting. The facts alleged show no constitutional violation and show no right so clearly established as to put Deputy Watson on notice that his actions could be unconstitutional. Therefore, this Court should deny the Plaintiff's Motion to Strike.

Second, this Court should grant the Defendants' Motion in Limine seeking to exclude Plaintiff's expert as his testimony regarding racial bias (1) is not relevant under F.R.E. 401, (2) is significantly more prejudicial than probative under F.R.E. 403, and (3) will not help the trier of fact understand the evidence or determine a fact in issue under F.R.E. 702. Edwards's testimony regarding racial bias does not have a tendency to make

the reasonableness of Watson's actions more or less probable. The danger of unfair prejudice substantially outweighs any probative value of Edwards's testimony. Edwards testimony also will not be helpful to the jury in understanding the evidence presented or determining Watson's reasonableness. Accordingly, this testimony should be excluded under Rules 401, 403, 702. For the reasons contained herein, Defendants Watson and Michaels respectfully ask the Court to deny the Plaintiff's Motion to Strike and grant the Defendants' Motion in Limine.

STATEMENT OF FACTS

On February 14, 2019, around 3:00 pm, Deputies Eric Watson ("Watson") and Eddie Rivera ("Rivera") of the Midland County Sheriff's Office (MCSO) in Midland County, Florida received their first call of the day, a noise complaint from the general area of Fort Hampton Elementary School (FHES). Watson Aff. ¶¶ 12, 13. Vulgar music erupting from a nearby home through the rolled-up windows of Watson's cruiser led Watson to immediately identify the source of the noise disturbance. Watson Aff. ¶¶ 18, 19. The source of the ear-splitting sound, David Jordan, Jr. 's ("Jordan") home was located directly across the street from FHES where children were lined up outside. Watson Aff. ¶ 19; McDonald Aff. ¶ 8.

After approaching the source of the overpowering vulgar music, Watson and Rivera made several attempts to contact the homeowner.

Both Watson and Rivera approached the front door and knocked multiple times, but no one came to the door. Watson Aff. ¶ 21. After receiving no answer, Watson walked along the sidewalk to the side door, while Rivera remained on the front porch

waiting for the homeowner. Watson Aff. ¶ 22. When Watson reached the side door, he knocked first with his hand, then with his police baton, hoping the homeowner could hear the knock over the booming volume of the inappropriate music. Watson Aff. ¶¶ 22, 23.

After multiple unsuccessful attempts to contact the homeowner, Watson walked back around to the front of the house, and as he turned the corner, Watson saw the front door begin to open. Watson Aff. ¶ 24. The door opened wide enough that Watson clearly saw Jordan standing in the foyer of the house. Watson Aff. ¶ 25. Rivera was still on the front walk, just a few feet from Jordan. Watson Aff. ¶ 26.

Watson protected Rivera and the schoolchildren across the street when he fired his service weapon toward Jordan's front door after Jordan aimed his gun toward Rivera.

Jordan opened the front door with his left hand and wielded a gun to his side in his right hand. Watson Aff. ¶ 26; Rivera Aff. ¶ 26. Rivera noticed the weapon a few feet away from him and yelled "gun, drop the gun!" Rivera Aff. ¶ 30. Instead of following the direct order to drop his weapon, Jordan began to raise the weapon toward Rivera while closing the door. Rivera Aff. ¶ 30. Noticing that Jordan was aiming his gun in the general direction of both Rivera and the schoolchildren across the street, Watson drew his service weapon and aimed at Jordan. Watson Aff. ¶¶ 28, 33.

When Jordan opened his front door and brandished a weapon, the situation changed from loud music to an armed suspect threatening a police officer. Watson Aff. ¶ 38. In an effort to prevent the dangerous situation from escalating, Watson discharged his service weapon four times in the direction of the closing door, shooting in a vertical trajectory, from low to high. Watson Aff. ¶¶ 36, 37.

Jordan's impaired state and stolen gun confirmed Watson's belief that Jordan posed a threat to others.

After firing his weapon, Watson ran around the side of the house to secure the area and ensure that no one exited through the backdoor in pursuit of the officers. Watson Aff. ¶ 42. When Watson found no one behind the home, both he and Rivera retreated behind their squad cars. Rivera Aff. ¶ 36. While the vulgar music continued to erupt from Jordan's home, Watson and Rivera remained hidden from the potential threat that Jordan posed until the SWAT team arrived and removed the officers. Rivera Aff. ¶¶ 37, 38. Jordan was found deceased near the front door with a stolen handgun on his person. Watson Aff. ¶¶ 53, 56. The toxicology report indicated Jordan was impaired by his blood alcohol content being 0.32, nearly four times the legal. Roberts Aff. ¶ 15.

ARGUMENT

I. This Court should deny Plaintiff's Motion to Strike the Affirmative Defense of Qualified Immunity because Watson acted reasonably under the circumstances.

The purpose of qualified immunity is to protect officers, like Watson, for their reasonable decisions in split-second circumstances. "The purpose of qualified immunity is to balance two important interests: (1) the need to hold public officials accountable when they exercise power irresponsibly; and (2) the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The Supreme Court has repeatedly stressed the importance of resolving immunity questions at the earliest possible stage. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (*per curiam).* In order to make this resolution, the

Court has established a two-factor test: (1) whether the facts alleged, taken in the light most favorable to the plaintiff, make out a violation of a constitutional right; and (2) whether that right was clearly established at the time of the misconduct. *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Pearson v. Callahan*, 555 U.S. 236. Further, the Court has made clear that the protection of qualified immunity applies regardless of whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson*, 555 U.S. at 231.

A. Plaintiff's Motion should be denied because Watson's reasonable actions did not amount to a constitutional violation.

The reasonable use-of-deadly-force, such as Watson's, is a necessary action in effective law enforcement and does not amount to a Constitutional violation. The Fourth Amendment establishes a right to be secure from *unreasonable* searches and seizures. U.S. Const. amend. IV (emphasis added). Indeed, the use-of-deadly-force is not prohibited in law enforcement; rather, the Supreme Court has held that "where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly-force." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

When determining the reasonableness of an officer's use-of-deadly-force, the Supreme Court has long established that the actions should be analyzed under the Fourth Amendment's "objective reasonableness" standard. *Graham v. Connor*, 490 U.S. 386, 388 (1989). This standard "turns on the 'facts and circumstances of each particular case.'" *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). This determination must be

made "from the perspective of a reasonable officer on the scene, not with the 20/20 vision of hindsight." *Id.* When an officer reasonably perceives a threat to himself or others, deadly-force is constitutionally reasonable. *Garner*, 471 U.S. at 11. This reasonable response is not undermined by failing to give infeasible warnings or a reasonable mistake of law or fact. *White*, 137 S. Ct. at 550; *Pearson*, 555 U.S. at 231. Moreover, the law does not require officers to wait until the moment a suspect uses a dangerous weapon to act to stop the suspect. *Mullinex*, 136 S. Ct. 305, 311 (2015).

In *White*, an officer was arriving to join officers at a suspect's house when he heard the suspect shout "we have guns." *White*, 137 S. Ct. at 550. The officer pulled his weapon and ducked behind a wall while shots rang out. *Id.* The officer then stood up and fired two shots, without warning, into the house, fatally wounding an armed occupant. *Id.* While the district and appellate courts held that it was unreasonable to use deadly-force without first warning the occupants, the Supreme Court vacated those decisions. *Id.* at 550-51. The Court noted that when a fellow officer approaches tan ongoing confrontation, a reasonable officer could assume proper protocol, such as warnings, had already been followed. *Id.* at 552. The Court held that his actions did not violate the Fourth Amendment and should not deprive the officer of qualified immunity. *Id.* at 553.

Even where the officer is mistaken about whether the suspect has a gun and is attempting to use it, courts have still found the use-of-deadly-force is objectively reasonable. *Anderson v. Russell*, 247 F.3d 125, 130 (4th Cir. 2001) (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 122 (1977). In *Anderson*, the police were alerted that the suspect

may be carrying a gun. *Id.* at 128. After observing a bulge on the suspect's side, the officers approached the suspect and ordered him to put his hands above his head. *Id.* While the suspect initially compiled, he then reached down towards the bulge. *Id.* Believing the suspect was reaching for the gun, the officers fired three shots, permanently injuring the suspect. *Id.* A later search of the victim revealed that the bulge in the victim's side was simply an eyeglasses case. *Id.* Despite this mistake of fact, the court ruled that the officer was objectively reasonable in his use-of-deadly-force because he perceived the bulge to be a weapon and believed the suspect was moving to use it. *Id.* at 131.

Just as *White* walked onto an confrontation where warnings about guns were being shouted, Watson arrived at the front of the house in time to hear his partner shout "Gun! Put down the gun!" He quickly assessed the situation, saw a small black object in Jordan's hand, and drew his weapon. It was not until he saw Jordan begin to raise the gun towards his partner that he fired shots in fear of his partner's and nearby children's safety. Like *White*, it was reasonable for Watson to assume his partner's warnings were sufficient. Moreover, unlike *Anderson*, the officers here actually observed the weapon in the suspect's hand and witnessed him begin to raise that weapon towards them. This observation clearly led Officer Watson to the reasonable belief that Jordan presented a danger to Officer Rivera and the students across the street. Accordingly, the facts alleged do not establish a clear constitutional violation, and this Court should deny the Plaintiff's Motion to Strike.

B. Plaintiff's Motion should be denied because Officer Watson's reasonable use-of-force did not violate a clearly established law.

Qualified immunity should only be denied when defendants, unlike Watson, were on notice their actions could violate the constitution. "[Q]ualified immunity operates to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful[.]" *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). This inquiry turns on the "objective legal reasonableness of the action, assessed in light of the legal rules that were *clearly established* at the time it was taken." *Wilson v. Layne*, 526 U.S. 603, 614 (1999) (emphasis added). "Existing precedent must have placed the statutory or constitutional question beyond debate." *White v. Pauly*, 137 S. Ct. 548, 551 (2017). A right can only be *clearly established* by: (1) case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law. *Long v. Slaton*, 508 F.3d 576, 584 (11th Cir. 2007).

The lack of authority governing these circumstances demonstrates the ongoing debate regarding the reasonable use-of-deadly-force. No broad principle exists to indicate Watson's specific response to a potential threat is a clearly established constitutional violation. Moreover, Watson's conduct was not so egregious that it was an outright violation of any right. Therefore, this Court should deny the Plaintiff's Motion to Strike the affirmative defense of qualified immunity.

1. Watson's actions are distinguishable from officers' actions in qualified-immunity decisions involving unreasonable deadly-force.

As here, a distinct lack of harmonious case law cannot clearly establish a right. In *White*, the Supreme Court reiterated the "longstanding principle that clearly established law should not be defined at a high level of generality." *White*, 137 S. Ct. at 552. The Court opined that "clearly established law must be particularized to the facts of the case." *Id.* In *White*, the Court vacated a denial of qualified immunity when the appellate court failed to identify a case where an officer acting under similar circumstances violated the Fourth Amendment. *Id.* The Court specifically noted that relying on *Garner* and *Graham* is not sufficient to show the right was clearly established. *Id.* at 552.

Considering this case through the circumstances known to the officers, it is clear that Watson was reacting to a potential threat with deadly-force. Watson was responding to a noise complaint in a high crime neighborhood and approached a house with rap music blaring expletives. Watson heard Rivera shout "Gun! Gun! Drop the Gun!" and saw Jordan raise a black object towards Officer Rivera. Fearing Jordan an imminent threat to Officer Rivera or the children behind him, Watson fired four shots.

As in *White*, there is a distinct lack case law relevant to the issues and facts of this case. No authority has clearly established a protocol for responding to a noise complaint in a high crime neighborhood and witnessing a suspect raise a gun toward a fellow officer and children after being told to drop it. Even the Plaintiff's loosely related cases would only serve to demonstrate that an officer's decision to use deadly-force is still very much in the realm of debate. Given *White's* holding that the circumstances must be out of the

realm of debate to be clearly established, it is clear Deputy Watson was in no way on notice that his reasonable reaction to a potential threat violated a clearly established right.

2. Given the courts' subjective holdings in use-of-deadly-force cases, Watson lacked notice that his conduct could even be considered unreasonable.

Given the debate surrounding officers' use of deadly-force, Watson could not have been on notice regarding his subjective reaction to a potential threat like this one. In 1791 the Fourth Amendment clearly established the right to be free from unreasonable seizure. U.S. Const. amend. IV. But, it was not until 1985 that the Supreme Court recognized deadly-force as a seizure subject to the reasonableness requirement of the Fourth Amendment. *Garner*, 471 U.S. at 7. Currently, the Supreme Court still debates whether uses of deadly-force are reasonable. *See Hernandez v. Mesa*, 140 S. Ct. 735, 736 (2020); *see also Kisela v. Hughes*, 138 S. Ct. 1148, 1151 (2018). In 2017, the Supreme Court highlighted a pattern of vacating lower courts' decisions to deny qualified immunity based on a lack of particularized case law to establish notice. *White*, 137 S. Ct. at 551. Indeed, the only thing clearly established in this body of case law is that officers should not be deprived of immunity because of the split-second decisions they must make regarding a potential threat. *Graham*, 490 U.S. at 396.

Given this ongoing debate, no broad principle making Watson's use-of-deadly-force objectively unreasonable had been clearly established. Just as in *White*, there is no authority deeming Watson's reaction to circumstances he face objectively unreasonable. Therefore, there was no broad principle that put Watson on notice of his conduct being potentially unreasonable.

3. Officer Watson's actions when faced with a potential threat were not so egregious as to put him on notice of a Constitutional violation.

Given the absence of harmonious case law, Watson's reasonable actions do not satisfy the level of egregious conduct necessary to put him on notice of an obvious constitutional violation. In order for the broad principles of *Graham* to be a sufficient source of clearly established law, the officer's conduct would need to be so egregious that he was inherently on notice. *A.M. v. Holmes*, 830 F.3d 1123, 1153 fn.17 (10th Cir. 2016); *see generally Graham*, 490 U.S. at 394-97. In *Holmes*, a teacher called the police on a thirteen-year-old student who fake-burped in class. *Id.* at 1130. The responding officer elected to search and arrest the student, rather than issue a citation, despite the student's cooperation. *Id.* The student was subsequently booked into juvenile detention. *Id.* On appeal, the Tenth Circuit noted that, despite the unusual circumstances, it would border on "fatuous" to suggest that the officer's actions constitute one of those "rare instances of "egregious conduct." *Id.* at fn.17. The court affirmed the district court's grant of qualified immunity. *Id.* at 1169.

Holmes demonstrates that the bar for establishing egregious conduct sufficient for notice is very high. Clearly if circumstances as novel like *Holmes* were not sufficient to establish egregious conduct, Officer Watson's reasonable reaction to the perceived threat were not egregious. The debate surrounding when to use deadly-force, including in circumstances far more egregious than those presented here, is ongoing. Therefore, the circumstances alone could not have served to put Watson on notice. Because Watson

was not put on notice by case law, a broad principle, or egregious circumstances, he could not violate a clearly established law and is subject to qualified immunity.

II. The testimony of Dr. Edwards regarding racial bias should be excluded as it is irrelevant under Rule 702, is not relevant under Rule 401, and is significantly more prejudicial than probative under Rule 403.

Federal Rule of Evidence 702 allows an individual who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue, (2) the testimony is based on sufficient facts or data, (3) the testimony is the product of reliable principles and methods, and (4) the expert has reliably applied the principles and methods of the facts of the case. Fed. R. Evid. 702. In *Daubert*, the Supreme Court emphasized that the admissibility of expert testimony focuses on the reliability and relevancy of expert testimony. *Daubert v. Merrell Dow Pharmaceuticals, Inc*. 509 U.S. 579, 590-91 (1993). The Rule 702 requirement that expert testimony must relate to "scientific knowledge" establishes evidentiary reliability, while the requirement that expert testimony "assist the trier of fact to understand the evidence or to determine a fact in issue" goes to the issue of relevance. *Id.* Consequently, the trial court bears the gatekeeping objective of "ensur[ing] the reliability and relevancy of expert testimony." *Kumho Tire Co., Ltd. V. Carmichael*, 526 U.S. 137, 152 (1992).

Though Rule 702 specifically controls expert testimony and its admissibility, the court "should also be mindful of other rules" controlling the admissibility of evidence. *Daubert*, 509 U.S. at 595. Specifically, evidence that is otherwise found to be admissible

under Rule 702 still must be analyzed under the rules governing relevance: Rules 401 and 403. Rule 401 states that "evidence is relevant if (1) it has any tendency to make a fact more or less probable than it would be without the evidence, and (2) the fact is of consequence in determining the action." Fed. R. Evid. 401. Rule 403, on the other hand, excludes relevant evidence if it's probative value "is substantially outweighed by the danger of [. . .] unfair prejudice, confusing the issues, [or] misleading the jury [. . .]." Fed. R. Evid. 403. Expert evidence that is found to be relevant under Rule 702 can still be excluded under Rules 401 or 403 if the evidence is not relevant or if the probative value of the evidence is substantially outweighed.

Dr. Edwards's proffered testimony concerning racial bias playing a statistically significant role in whether Midland County Sheriff's officers draw their weapons during a stop is inadmissible under all of these rules. While the reliability of Edwards's testimony is not at issue, the relevancy of it is. Under Rule 702, his testimony ultimately fails to assist the trier of fact in understanding the evidence at issue or to determine any fact at issue and is, therefore, inadmissible. Likewise, his testimony is inadmissible under Rule 401 because the role racial bias plays in the cases he reviewed does not make it more or less probable that Watson acted reasonably when choosing to draw his weapon in these specific circumstances. Finally, even if Edwards's testimony *is* found to be relevant under Rule 403, the danger of unfair prejudice, confusing the issues, and misleading the jury substantially outweigh any probative value offered by Edwards's testimony and is thus inadmissible. Because of this, the Defendant's Motion in Limine excluding Dr. Edwards's testimony should be granted.

A. Edwards's testimony is irrelevant because it will not be help the jury understand the evidence presented or determine Watson's reasonableness.

Dr. Edwards's proffered testimony will not assist a jury in determining the evidence of Officer Watson's actions, nor will it assist a jury in determining whether Officer Watson's use of deadly-force was reasonable. In determining whether an expert's testimony is admissible, the trial court must determine if it will "assist the trier of fact to understand the evidence or to determine a fact in issue." *Daubert*, 509 U.S. at 590-91. This goes primarily to the relevance of the testimony. *Id.* "Expert testimony which does not relate to any issue in the case is not relevant and, therefore, non-helpful." *Id*. at 591. Additionally, expert testimony is admissible only if it concerns matters beyond the understanding of the average layperson and will generally be unhelpful to the jury when if offers nothing more than what the lawyers for the parties can argue in closing arguments. *U.S. v. Frazier*, 387 F.3d 1244, 1262 (11th Cir. 2004).

Here, Edwards's testimony does not relate to any issue in the case. Edwards's proffered testimony is that "racial bias plays a statistically significant role in whether MCSO's officers decide to draw their weapons during a stop." However, the principal issue is whether Watson's use of deadly-force was objectively reasonable in these specific circumstances. This issue is separate from the overarching generalizations of "racial bias" that may or may not be present in the MCSO. In fact, Edwards's testimony is based on the randomly-selected 380 stops he reviewed, and not on these case-specific circumstances as the objective reasonableness standard requires.

This testimony likewise will not be helpful to the jury as the average layperson is able to understand what "racial bias" means and how it may be absent or present in circumstances analogous to the ones present here. Furthermore, the argument that racial bias was present in MCSO or played a role in Watson's actions is an argument that can certainly be made in closing arguments. Because Dr. Edwards's testimony will not be helpful to the jury in determining the reasonableness of Watson's actions in these circumstnaces, it is irrelevant under Rule 702 and should be excluded.

B. Edwards's testimony regarding racial bias is irrelevant because it does not have a tendency to make the reasonableness of Watson's actions more or less probable.

Edwards testimony is irrelevant as the presence of racial bias at MCSO does not shed light on whether Watson's use of deadly-force was unreasonable under the circumstances of February 14, 2019. Evidence is only relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) that fact is of consequence in determining the action. Fed. R. Evid. 401. In a claim against an officer for use of excessive-force, the fact of consequence is the "objective reasonableness" of an officer's actions in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation. *Kesinger ex rel. Estate of Kesinger v. Herrington*, 381 F.3d 1243, 1248 (11th Cir. 2004) (citing *Graham*, 490 U.S. at 397).

The fact of consequence in this case is whether Watson's use of deadly-force was reasonable. The remaining question is whether the presence of racial bias in the cases Edwards reviewed has any tendency to make Officer Watson's reasonableness that day

more or less probable. To come to his conclusion, Edwards "randomly selected and reviewed 380" non-traffic misdemeanors and ordinance violations. He analyzed the correlation between (1) the MCSO officer drawing a weapon and (2) the race and age of the detainee. This "study" revealed that "77% of Caucasian [MCSO] officers drew their weapon on African American men, ages 18-35" as compared to the "33% of Caucasian [MCSO] officers who drew their weapon on Caucasian men, ages 18-35." This generalized inquiry in no way considered the circumstances Watson confronted. Therefore, Edward's sweeping conclusion about racial bias playing a "statistically significant role" in MCSO has no bearing on the reasonableness of Watson's use of deadly force when drawing his weapon and shooting Jordan. Edwards's testimony regarding racial bias allegedly present in MCSO does not make Watson's *individual* reasonableness in using deadly force *that day* more or less probable. Because of this, Edwards's testimony is wholly irrelevant and the Defendants' Motion in Limine should be granted.

C. Notwithstanding, the Edward's testimony should be excluded because the danger of unfair prejudice substantially outweighs any probative value.

Any probative value found in Edwards's testimony regarding the statistics of racial bias in MCSO is substantially outweighed by the danger of unfair prejudice. Rule 403 allows courts 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, or misleading the jury. Fed. R. Evid. 401. When considering the admissibility of expert testimony, the inquiry of its probative value turns on the fact or question at issue in

a particular case. In excessive-force cases the question is whether the officer has used excessive-force reasonably in light of the particular facts and circumstances of the situation faced. *Thompson v. City of Chicago*, 472 F.3d 444, 458 (7th Cir. 2006).

In *Thompson*, the plaintiff challenged the 402 exclusion of expert testimony that the officer violated the Fourth Amendment by using excessive-force when apprehending the plaintiff. *Id.* at 457. The defendants argued that the probative value of the testimony was substantially outweighed by the danger of unfair prejudice and potential for jury confusion. *Id*. The Seventh Circuit reasoned that the Fourth Amendment reasonableness inquiry is "not capable of precise definition or mechanical application." *Id*. at 458. The court ultimately ruled to exclude the testimony, stating that whatever insight the expert witness might have into whether or why the officer used excessive-force would have been of little value except as to possibly causing confusion and bore a substantial risk of prejudice. *Id.* Further, the Court held that the jury, after reviewing the evidence and testimony, "*was in as good a position as the experts to judge whether the force used by the officers [. . .] was objectively reasonable given the circumstances in this case*." *Id.* at 458.

Like the expert testimony in *Thompson*, Edwards's testimony that racial bias plays a "substantially significant role" in whether MCSO's officers draw their weapons is of little to no value in determining whether Watson was reasonable in using deadly-force at the exact time in question. Admitting this testimony will undoubtedly conflate the issues of racial bias and "objective reasonableness" and cause the jury to be prejudiced against Watson. Additionally, admitting this testimony will mislead the jury. Edwards's

testimony speaks only to the presence or absence of racial bias within MCSO, *not* whether Watson was racially biased nor whether Watson acted unreasonable. Because the probative value Edwards's testimony is substantially outweighed by the danger of unfair prejudice, misleading the jury, and confusing the issues, it is not admissible and the Defendant's Motion in Limine should be granted.

CONCLUSION

Watson's decision to use deadly-force was based on a reasonably perceived threat that did not violate the Constitution or clearly established law. Accordingly, the Plaintiff's Motion to Strike should be denied.

Edwards's testimony is not relevant under F.R.E. 401; is significantly more prejudicial than probative under F.R.E. 403; and will not help the trier of fact understand the evidence or determine a fact in issue as required by 702. Therefore, the Defendants' Motion in Limine should be granted.

CERTIFICATE OF SERVICE

We, attorneys for the Defendants, Sheriff Derek Michaels and Deputy Eric Watson, do hereby certify that a true and correct copy of the foregoing memorandum of law has been served by electronic mail to all attorneys of record on this the 10th day of September 2020.

/s/7777D

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Attorneys for the Defendant