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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
LAKEVILLE DIVISION

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

Plaintiff,

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

Defendants.

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

/s/7777P
7777P

Attorneys for the Plaintiff

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INTRODUCTION

Sheryl Jordan, on behalf of David Jordan, brings this action against Deputy Eric Watson ("Watson") for the excessive-use-of-force against David and the violation of his Due Process and Civil Rights. Sheryl also brings a claim against Sheriff Derek Michaels for liability in the negligent actions of his employee. 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).

The Court has requested briefing on two motions made in this proceeding: First, on the Plaintiff's Motion to Strike, the Court has asked if Watson's affirmative defense of qualified immunity should be granted. Qualified immunity should not be granted here because Watson's use-of-deadly-force violated David Jordan's Fourth Amendment rights and his actions were objectively unreasonable. David's Fourth Amendment right to be free from unreasonable seizure was clearly established in the Constitution and case law when he was killed by Watson. Watson acted unreasonably because (1) David did not pose an immediate threat, (2) David was not attempting to evade arrest, (3) a noise complaint is not a severe criminal act, and (4) he failed to warn David and before shooting him three times in the back. Accordingly, this Court should grant Plaintiff's Motion to Strike.

Second, on the Defendant's Motion in Limine, the Court has asked whether Frank Edwards, Ph.D., should be permitted to testify as an expert witness pursuant to Federal Rules of Evidence 401, 402, and 702. Edwards's expert testimony will recount his research showing racial bias present in the Midland County Sheriff's Office ("MCSO").

The expert testimony of Edwards should be accepted because (1) his testimony of Edwards will help the jury in understanding the evidence presented of Watson's reasonableness and should not be excluded under Rule 702, (2) Edwards's research showing racial bias has a strong tendency to show the unreasonableness of Watson's actions and therefore is relevant under Rule 401, and (3) the probative value of Edwards's anticipated testimony substantially outweighs any danger of unfair prejudice and should not be excluded by Rule 404. Accordingly, this Court should deny Defendant's Motion in Limine.

Because the Plaintiff brings a valid claim while the Defendant's claim is not meritorious, the United States respectfully asks the Court to grant the Plaintiff's Motion to Strike and deny the Defendant's Motion in Limine.

STATEMENT OF FACTS

Plaintiff Sheryl Jordan is the mother and duly authorized representative of David Jordan, Jr. ("David"), a victim of police brutality, who was gunned down by a Midland County Sheriff's Officer ("MCS Officer") just inside his own front door. Compl. ¶¶ 2, 16. Prior to his murder at the hand of law enforcement, David resided at 1501 58th Street South in Fort Hampton, Midland County, Florida with his three minor children, D.J., A.J., G.J. Compl. ¶ 3.

Watson responded to a call near David's residence for an ordinary noise disturbance.

On February 14, 2019, around 3:15 p.m., Deputies Watson and Eddie Rivera ("Rivera") were dispatched to David's residence in response to a noise disturbance. Compl ¶ 11. Lee McDonald, a schoolteacher at Fort Hampton Elementary

School, called in a noise complaint to MCSO about loud music he heard across the street from the school. McDonald Aff ¶¶ 1-6.

Watson and Rivera approached David's home and banged on the front door without announcing themselves as police. Watson Aff. ¶ 21. Despite the fact that a noise disturbance is a county ordinance violation and not a criminal violation, when David did not immediately answer the front door, Watson crept around to the side door of the house while Rivera covered the front door. Watson Aff. ¶ 15, 22.

Rivera pounded the front door three times—so loud that the bangs could be heard from across the street. McDonald Aff. ¶¶ 11, 12. The front door swung open, revealing David comfortably in the foyer of his own home, and Watson darted back to the front of the house where Rivera stood. Watson Aff. ¶ 24. The two failed to announce themselves as police. Rivera Aff. ¶ 23. Instead, Rivera began to yell "gun, gun, drop the gun." Watson Aff. ¶ 27.

Watson shot David three times as he cowered behind his front door from the weapons aimed toward him.

As he rounded the corner, Watson pulled his gun, aiming it squarely at David. McDonald Aff. ¶ 13. Rivera began backing away from the door. Rivera Aff. ¶ 32. David began shutting the door, shielding himself from their drawn weapons. Watson Aff. ¶ 31. Despite being unable to identify a gun in David's hand, Watson opened fire, sending several bullets through the front door and into David's head and abdomen, killing him instantly. Watson Aff. ¶ 32, 36; Roberts Aff. ¶¶ 7, 9. By the time Rivera drew his weapon, Watson had fired multiple shots toward David. Rivera Aff. ¶ 35.

David died in a vain attempt to protect himself from a barrage of bullets with his own front door. Watson Aff. ¶ 53. David's body was discovered face down, with an unloaded gun tucked into the back pocket of his shorts. Watson Aff. ¶¶ 54, 56.

Watson's fatal shot to David's head would have made it impossible for him to hide the gun in his pocket after being shot.

Taylor Roberts ("Roberts") is a board-certified pathologist working as a forensic pathologist consultant for the past seven years. Roberts Aff. ¶¶ 1-3. Upon his review of the medical examiner's records, Roberts concluded that David could not have hidden the unloaded gun in his back pocket after being shot. Roberts Aff. ¶¶ 5, 6.

Roberts explained in his report that the bullet that entered David's head passed through the closed front door, into David's skull, and traveled down David's brain stem. Roberts Aff. ¶¶ 8, 9. Roberts even found fragments of the front door material inside David's skull. Roberts Aff. ¶ 8. As a result, the bullet's trajectory immediately incapacitated David, causing him to lose all motor and sensory function. Roberts Aff. ¶9.

According to Roberts, it would have been impossible for David to make any purposeful movements after the bullet's impact. Roberts Aff. ¶ 10. After the impact of the fatal gunshot, David would have fallen to the ground and would not been able to hold a gun, let alone hide a gun in his back pocket. Roberts Aff. ¶ 12, 13.

Statistical research shows evidence of racial bias inherent in the MCSO.

Frank Edwards ("Edwards") is an assistant professor in the School of Criminal Justice at Rutgers University with a Ph.D. in Sociology. Edwards Aff. ¶¶ 1, 2. Edwards's research focuses on how systems of social control produce and reinforce

inequality. Edwards Aff. ¶ 3. In the course of his research, Edwards reviewed the MSCO department data on stops for non-traffic misdemeanors and ordinance violations where an officer drew a weapon. Edwards Aff. ¶¶ 5, 6.

Edwards reached the conclusion that racial bias plays a statistically significant role in MCS Officers drawing their weapons during stops. Edwards Aff. ¶¶ 7, 8. The research showed that 77% of Caucasian MCS Officers drew their weapons on African American men, ages 18-35. Edwards Aff. ¶ 9. But, only 33% of Caucasian MCS Officers drew their weapons on Caucasian men, ages 18-35. Edwards Aff. ¶ 9.

As an African-American 33-year-old male, David has a 77% chance of a MCS Officer drawing a weapon on him. Sally O'Dell, M.D., Autopsy Report of David Jordan, Jr. (2020). Although the area David lived in was full of hard-working citizens that get along with law enforcement, the officers describe the area as a bad part of town with drugs, gangs, and violence. Watson Aff. ¶ 7; Rivera Aff. ¶ 19. Further, the officers took special note that David was listening to rap music and had dreads. Rivera Aff. ¶¶ 20, 25.

ARGUMENT

I. This Court should grant Plaintiff's Motion to Strike Watson's Affirmative Defense of Qualified-Immunity because Defendant acted unreasonably under the circumstances.

Qualified immunity does not protect the unreasonable use-of-deadly-force as such action violates the Fourth Amendment and freedom therefrom was a clearly established right at the time in question. **"**The doctrine of 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 v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Court has established a two-factor test: (1) whether the facts alleged 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).

The Fourth Amendment to the Constitution establishes the right to be free from unreasonable seizures. U.S. Const. amend. IV. It is also clearly established that "apprehension by the use-of-deadly-force is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Tennessee v. Garner*, 471 U.S. 1, 7 (1985).

The facts here, taken in the light most favorable to the plaintiff, clearly establish an unreasonable use-of-deadly-force. Watson was on notice of this clearly established right at the time he killed Jordan. Given these circumstances, Watson should not be entitled to qualified immunity and this Court should grant Plaintiff's Motion to Strike.

A. Watson's use-of-deadly-force was objectively unreasonable, violating David Jordan's Fourth Amendment rights.

The Fourth Amendment has long protected individuals from "unreasonable search and seizure" by the government. U.S. Const. amend. IV. A citizen's claim that an officer used deadly-force is subject to the Fourth Amendment's objective reasonableness requirement. *Graham*, 490 U.S. at 388. The operative question in excessive-force cases is whether the totality of the circumstances justifies a particular use of force based on the perspective of "a reasonable officer on the scene under the same conditions." *Graham*, 490 U.S. at 396-97; *County of Los Angeles, California v. Mendez*, 137 S. Ct. 1539, 1546

(2017) (quoting *Garner*, 471 U.S. at 8-9). But, the facts must be considered in the light most favorable to the plaintiff. *Anderson v. Creighton*, 483 U.S. 635, 638-41 (1987). Reasonableness depends on: (1) whether the suspect posed an immediate threat; (2) whether the suspect evaded or attempted to resist arrest; and (3) the severity of the crime at issue. *Graham*, 490 U.S. at 396.

The application of these factors reveal that Watson's actions were unreasonable and preclude Watson from qualified immunity. David was not pointing a weapon at the officers, he was not attempting to evade arrest, and the officers were simply responding to a noise complaint when David was killed. Moreover, Watson did not warn David. Therefore, a reasonable jury could find Watson did not act reasonably under the circumstances and this Court should grant the Plaintiff's Motion to Strike.

1. Watson's use of deadline force was unreasonable because David did not pose an immediate threat.

David's possession of a weapon did not make him a threat. Mere possession of a weapon does not justify the use-of-deadly-force. *Hayes v. County of San Diego*, 736 F.3d 1223 (9th Cir. 2013). In fact, where a different, reasonable officer may not objectively perceive an individual as a threat, deadly-force is unreasonable. *Curnow By and Through Curnrow v. Ridgecrest Police, 952 F.2d 321, 325 (9th Cir. 1991).* The most recent holdings that an officer's use-of-deadly-force was reasonable involve unquestionable threats to officers or public safety. *See Kisela v. Hughes*, 138 S. Ct. 1148, 1151 (2018) (holding that responding to an emergency call and shooting a knife-wielding suspect was reasonable).

In *Curnow*, the police responded to a domestic disturbance, forced their way into the plaintiff's home, and shot him for allegedly raising his firearm towards an officer. *Id.* at 323. As the plaintiff fled, a second officer fatally shot the plaintiff for allegedly raising his weapon again. *Id.* The officers failed to warn the plaintiff of their intent to use deadly-force and their testimony was contradicted by eyewitness accounts saying the plaintiff was not raising his weapon. *Id.* The Ninth Circuit reasoned that a jury could determine that a reasonable officer would not have chosen to use deadly-force in holding that the officers were not entitled to qualified immunity.

Like in *Curnow*, David was in his own home when Watson responded to a noise complaint at his residence. David opened the door and Rivera began to shout "Gun!" David noticed Watson and attempted to hide behind his door. At the same time, without any warning, Watson quickly fired four shots. Just as in *Curnow*, this case presents startling contradictions in eyewitness testimony. While the officers maintain that the door was still open and David was "raising the small black object towards Rivera," the eyewitness maintains that the door closed quickly and was fully closed as the shots fired. Also, a gun was found tucked in David's back pocket when he was found dead, lying face down, on the other side of the door.

This case can be distinguished from *Kisela* since David presented no imminent threat to the officers or public safety. Rather, David was attempting to shield himself from the officers behind the door and was gunned down. A reasonable jury could find that David was not an objectively reasonable threat, and a reasonable officer would not

have resorted to deadly-force without warning. Therefore, this Court should grant the Plaintiff's Motion to Strike.

2. Watson's use-of-deadly-force was unreasonable because David was not attempting to evade arrest.

The Supreme Court established that using deadly-force to seize a non-dangerous or non-fleeing suspect is unreasonable for the purposes of the Fourth Amendment. *Garner*, 471 U.S. at 11-12. Even common law only warranted the use-of-deadly-force against a fleeing felon. *Id.* at 12. Therefore, deadly-force is only justified in those circumstances necessary to prevent the escape of a dangerous suspect. *Id.*

No evidence suggests that David was fleeing the scene. Simply shutting his door does not amount to attempting to evade arrest. Notwithstanding, David still would need to be considered dangerous to the level necessary to justify the use-of-deadly-force without warnings. Contradicting evidence exists concerning whether David was even holding the firearm, much less pointing it towards the officers. Opening and closing a door, even in possession of a weapon, does not amount to being a violent criminal evading arrest. Therefore, Watson was unreasonable in immediately responding with deadly-force and without warning and this Court should grant Plaintiff's Motion to Strike.

3. Watson's use-of-deadly-force was unreasonable because a noise complaint is not a severe criminal act.

The severity of the crime is also relevant to reasonableness. *Graham*, 490 U.S. at 396; *S.R. Nehad*, 929 F.3d at 1136. In *Browder*, an officer shot the plaintiff for walking aggressively towards him with something in his hand. *Browder*, 292 F.3d at

1131. Varying accounts existed as to whether the officer ever identified himself, ordered the plaintiff to stop, or ordered the plaintiff to drop the object. *Id.* at 1137-39. The Ninth Circuit reasoned that, since the plaintiff was not committing a severe crime, even if the plaintiff was armed, the officer acted in undue haste and unreasonably. *Id.* at 1135.

Here, Watson was responding to a simple noise complaint when he discharged his weapon four times at a closed door, killing David. Similar to *Browder*, Watson unreasonably used deadly-force against an individual that, even if armed, was not committing a dangerous crime. Just as in *Browder*, Watson acted with undue haste and unreasonably used deadly-force.

Rivera's argument that Jordan was in the commission of an aggravated assault is unavailing. Jordan was found lying face down with the gun tucked in the back of his pants. Dr. Taylor concluded that David would have died immediately after sustaining the shot to the head. In light of this evidence, the officers would have us believe that Watson had time to close the door and conceal the weapon in his last moments of life. Evidence shows Watson was in no way in the commission of a severe criminal act. Therefore, Watson's actions were unreasonable and his affirmative defense of qualified immunity should be stricken from the record.

4. Watson's actions were unreasonable because he failed to warn David.

Watson's failure to give warnings and David's attempted retreat make Watson's actions all the more unreasonable. The Second and Eleventh Circuits have held that, when feasible, an officer failing to give proper warning of the impending use-of-deadly-force weighs against reasonableness for the purposes of an excessive-force analysis. *See*

Browder, 929 F.3d at 1137-38; *See generally Mighty v. Miami-Dade County*, 728 Fed. Appx. 974 (11th Cir. 2018). The Ninth Circuit has held that where a suspect does not point a gun directly at the officers or is facing away during the time of the first shot, officers are not entitled to qualified immunity for the use-of-deadly-force. *Curnow*, 952 F.2d at 325.

Here, Watson was coming around the side of the house when the door began to open. Watson heard Rivera shout "gun!" Instead of showing aggression towards the officers, David attempted to hide behind the door, cutting off the threat. Without issuing any warning of imminent use-of-deadly-force, Watson fired four shots into the door. As in *Curnow*, David never raised his weapon directly towards the officers. Moreover, he was found inside, face down, and with three shots to the right side of his body. This direct evidence indicates that Jordan was attempting to retreat and turn away from the door as Watson killed him.

David posed no imminent threat, was not a dangerous felon fleeing arrest, and was not committing a dangerous criminal activity. Accordingly, he had a right to be free from this type of unreasonable seizure clearly established at the time in question, and the Plaintiff's Motion to Strike should be granted.

B. Plaintiff's Motion should be granted because David's Fourth Amendment rights were clearly established when he was murdered by Watson.

Qualified immunity serves no valid purpose in situations where an officer knowingly violates a constitutional right. The second prong of qualified immunity asks whether the violated constitutional right was clearly established under the circumstances

in question. *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). This analysis operates "to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful[.]" *Id.* 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). The Court's case law "does not require a case directly on point for a right to be clearly established." *White v. Pauly*, 137 S. Ct. 548, 551 (2017). Rather, "existing precedent must have placed the statutory or constitutional question beyond debate." *Id.*

"A right may be clearly established for qualified immunity purposes in one of three ways: (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); *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005); *Lewis v. City of West Palm Beach, Fla.*, 561 F.3d 1288, 1291-92 (11th Cir. 2009). Notwithstanding, the Supreme Court has noted that officials can still be on notice that their conduct violates established law even in novel factual circumstances. *Pelzer*, 536 U.S. at 741. The Tenth Circuit assesses excessive-force claims using a sliding scale, where the more egregious the violation is in light of the constitutional principles, the less specificity is required from case law to clearly establish the violation. *A.M. v. Holmes*, 830 F.3d 1123, 1135-36 (10th Cir. 2016)

Applying these principles, we see broad principles of the Constitution and sufficiently specific case law support David's right to be free from this type of unreasonable seizure was clearly established when Watson shot him. The broad Constitutional principle that an individual should be free from unreasonable seizure and has existed since 1791. U.S. Const. amend. IV. *Graham* established that apprehension by the use-of-deadly-force is a seizure clearly subject to the reasonableness requirement of the Fourth Amendment. *Graham*, 471 U.S. at 7. As noted, case law has specifically recognized that shooting a nonviolent individual in the back without warning is an unreasonable use-of-deadly-force. Moreover, even without this supporting case law, shooting a resident several times through their front door on a noise complaint call is so egregious that it clearly violates an individual's right to be free from unreasonable seizure by deadly-force. For these reasons, this Court should grant the Plaintiff's Motion to Strike.

II. The testimony of Edwards should be admitted because it will assist the trier of fact under Rule 702, is relevant under Rule 401, and the factors of Rule 403 do not substantially outweigh its probative value.

Federal Rule of Evidence 702, which provides that an individual 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 jury 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 to the facts of the case. Fed. R. Evid. 702.

With Rule 401, the inquiry is one of reliability and relevance: the requirement that an expert's testimony pertain to scientific knowledge establishes a standard of evidentiary reliability, while the requirement that the testimony "assist the trier of fact to understand the evidence or to determine a fact in issue" goes to relevance. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590-91 (1993).

Rule 702 is not the only rule controlling the admissibility of expert testimony, as the threshold question of evidence admissibility is that of relevance under Federal Rule of Evidence 401. Rule 401 provides 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.

Additionally, Rule 403 is implicated when the probative value of relevant evidence "is substantially outweighed by the danger of [. . .] unfair prejudice [or] misleading the jury." Fed. R. Evid. 403. Expert testimony found admissible under Rule 702 may still be excluded under Rules 401 or 403 if the evidence is irrelevant or substantially more prejudicial than probative due to expert evidence having the effect of being "powerful and potentially misleading." *U.S. v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004).

The anticipated testimony of Edwards satisfies all requirements of Federal Rules of Evidence 401, 403, and 702 and is, therefore, admissible. Edwards is anticipated to testify regarding the statistically significant role that racial bias plays in the MCSO. This testimony is relevant under Rule 401 because, in determining the objective reasonableness of Watson's actions, the presence of racial bias has a tendency to make it

more probable that he acted unreasonably and that unreasonableness is a fact of consequence in determining this action.

Further, any probative value of Edwards's testimony regarding the presence of racial bias in the MCSO is not substantially outweighed by this prejudice. As such, Edwards's testimony is admissible.

A. Edwards's testimony will help the trier of fact to understand the evidence or to determine a fact in issue and thus should not be excluded under Rule 702.

Edwards's testimony is essential for the jury to understand whether Watson's actions were objectively reasonable in drawing his weapon and shooting David; "Rule 702 [. . .] requires that the evidence or testimony 'assist the trier of fact to understand the evidence or to determine fact in issue.' This condition goes primarily to relevance." *Daubert*, 509 U.S. 579 at 591. As the "gatekeeper," the court must "ensure that the proposed expert testimony is 'relevant to the task at hand,' [. . .] i.e., that it logically advances a material aspect of the proposing party's case." *Allison v. McGhan Medical Corp.*, 184 F.3d 1300, 1312 (11th Cir. 1999) (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1315 (9th Cir. 1995)). Additionally, expert testimony admissible if it "concerns matters that are beyond the understanding of the average lay person." *Rivera v. Ring*, 810 Fed. Appx. 859, 863 (11th Cir. 2020) (citing *Frazier*, 387 F.3d at 1260).

In *Rivera*, the plaintiff claimed that the district court erred in admitting the defendant's expert testimony about the officer's actions aligning with Florida police practices and procedures, on the ground that his testimony was not helpful to the jury and

a matter of common sense, not requiring any expertise. *Id*. at 863. When considering whether the testimony was helpful, the court considered the knowledge and understanding of the average lay person: "[a] lay juror would not know Florida's practices and procedures regarding the use of force and whether [the defendant]'s actions were consistent with those practices and procedures. [The expert]'s testimony provided such knowledge [. . .] and helped the jury determine the ultimate fact at issue: whether [the defendant]'s actions were reasonable." *Id*. at 863-64.

The court found that this expert's testimony was helpful to the jury under Rule 702. Just as the jurors in *Rivera* would not, absent expert testimony, understand or know of Florida's practices and procedures regarding use of force, jurors in this case would not, absent Edwards's testimony, know whether racial bias played a role in Watson's decision to draw his weapon.

Edwards's testimony will assist the jury as testimony relating to racial bias being statistically significant in police departments is not something within the purview of a lay juror. Though a lay juror may have an inclination as to how white police officers treat African-American men, Edwards's testimony will help a juror fully understand the relationship between Caucasian police officers and African-American detainees.

Because Edwards's testimony logically advances a material aspect of the instant litigation, and because his testimony will assist a lay juror in understanding racial statistics that are beyond the average understanding, it will assist the jury in understanding the evidence or determining a fact at issue and is admissible.

B. Edwards's testimony is relevant under Rule 401 because it has a tendency to make a fact of the instant litigation more or less probable than it would be without the evidence and it is of consequence in determining the action.

The presence of racial bias within the MCSO makes Watson's reasonableness less probable; therefore, Edwards's testimony as to this racial bias is relevant under Rule 401. In making an excessive-force claim, the fact in issue is the reasonableness of the police officer; specifically, "the question is whether the officer's actions are 'objectively reasonable' 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 (11th Cir. 2004).

Rule 401 states evidence is relevant if "it 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 bar for relevant evidence is "an extremely low one." *In re Ford Motor Co.*, 98 F. Supp. 3d 919, 925 (N.D. Ohio 2014). The inquiry here, then, is whether Edwards's testimony detailing racial bias in the MCSO has any tendency to make Watson's "objective reasonableness" more or less probable than it would be without the evidence. We argue that it does.

The fact at issue is whether Watson's use of excessive-force is "objectively reasonable." In considering Edwards's testimony of racial bias playing a factor in the Midlands County Sheriff's Department – and considering the fact that Watson, a Caucasian man, drew his weapon on David, an African-American man – the presence of racial bias within the MCSO is inherently relevant under Rule 401. Any racial bias on the part of Watson calls into question whether his actions were reasonable.

In other words, Watson drawing his weapon and shooting Jordan based solely on racial bias rather than the basis of a perceived threat would make his actions unreasonable, and testimony from an expert witness calling into question the presence of racial bias within the Sheriff's Department makes the question of Watson's reasonableness less probable. Because Edwards's testimony has *any* tendency to make Watson's reasonableness less probable it is admissible under Rule 401 and should be admitted.

C. The probative value of Edwards's testimony and conclusions outweigh any danger of unfair prejudice and therefore pass the balancing test found in Federal Rule of Evidence 403.

Even if the requirements of Rules 702 and 401 are met, the court must also analyze the testimony under Federal Rule of Evidence 403 and may exclude the testimony "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Fed. R. Evid. 403. This inquiry must be made as expert evidence tends to have "powerful and potentially misleading effects" upon juries. *Frazier*, 387 F.3d at 1263.

Here, the probative value of Edwards's testimony goes to the question of whether Watson acted reasonably or if he acted in a racially motivated manner in drawing his weapon and firing. Furthermore, none of the factors found in Rule 403 substantially outweigh this probative value. Though there may be some prejudicial effect, this prejudice does not substantially outweigh the probative value that Edwards's testimony has on the issue that is to be determined at trial: Watson's reasonableness.

The danger of confusing the issues additionally does not outweigh the probative value of Edwards's testimony. In fact, the issue of racial bias in the Sheriff's department is directly related to the issue of whether Watson acted reasonably and, therefore, is not confusing at all.

Finally, the danger of misleading the jury is again outweighed by the probative value of allowing the jury to consider a factor directly related to Watson's reasonableness. Because Edwards's testimony is not substantially outweighed by any factor of Rule 403 and its probative value is higher than any prejudicial effect, it is admissible.

CONCLUSION

Watson's decision to use deadly-force was unreasonably based on his own racial biases, and the decision to shoot violated David's clearly established Constitutional rights. Accordingly, the Motion to Strike should be GRANTED.

Dr. Edwards's testimony is relevant under F.R.E. 401; is significantly less prejudicial than probative under F.R.E. 403; and will help the trier of fact understand the evidence or determine the facts in issue. Therefore, the Defendant's Motion in Limine should be DENIED.

CERTIFICATE OF SERVICE

We, attorneys for the Plaintiff, Ms. Sharyl Jordan as Personal Representative of the Estate of David Jordan, Jr., 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/7777P
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Attorneys for the Plaintiff