**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**LAKEVILLE DIVISION**

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| SHERYL JORDAN, as Personal Representative of the Estate of DAVIS JORDAN, JR., *Plaintiff,* | § | |
| v. | § | Case No. 2:20cv15994 |
| SHERIFF DEREK MICHAELS in his Official Capacity as Sheriff of Midland County, and ERIC WATSON, an individual *Defendants*. | § | |

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

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## I. Introduction

Before the Court are Plaintiff's Motion to Strike Defendant Eric Watson's Affirmative Defense of Qualified Immunity and Defendant Eric Watson's First Motion in Limine- Plaintiff's Expert Witness Frank Edwards, Ph.D. Plaintiff's Motion to Strike should be granted because Eric Watson's use of force was excessive and such force was clearly established as excessive at the time of the shooting. Defendants' First Motion in Limine should be denied because Dr. Edwards's testimony is relevant, helpful to the trier to fact, and is not unfairly prejudicial.

## II. Statement of Facts

On February 14, 2019, Officer Watson and Deputy Rivera responded to a noise complaint at the home of Mr. Jordan. (Sworn Statement of Deputy Eric Watson 12–16.) According to both Officer Watson and Deputy Rivera, Mr. Jordan lived in a "troubled neighborhood," or "high crime kind of town." (Sworn Statement of Deputy Eddie Rivera 19; Sworn Statement of Deputy Eric Watson 7.) Deputy Rivera and Officer Watson arrived at Mr. Jordan's home around 3:15 P.M. (Sworn Statement of Deputy Eric Watson 18.)

Deputy Rivera knocked on the front door. (Sworn Statement of Deputy Eddie Rivera 21.) Officer Watson went to the side of the house to knock, banging on the door with his police baton. (Sworn Statement of Deputy Eric Watson 23.) Neither officer announced they were with the Sheriff's Department or that they were responding to a noise complaint while knocking. (Sworn Statement of Deputy Eddie Rivera 23.) Mr. Jordan opened the front door, remaining inside his home. (*See* Sworn Statement of Eddie Rivera 25–30.) Upon seeing Mr. Jordan, Deputy Rivera immediately drew his weapon, and yelled "gun, gun, drop the

gun." (*Id*. at 32.) Fearing for his safety, Mr. Jordan began to close the door. (*Id*. at 30.) Lee McDonald stated that when he heard the gun shots, there was no music playing. (Sworn Statement of Lee McDonald 18.) As the door shut, Officer Watson, not "certain" if Mr. Jordan even had a gun, shot four times through the closed door of Mr. Jordan's home. (Sworn Statement of Deputy Eric Watson 32–36.)

Officer Watson hit Mr. Jordan three times through the closed door. (Sworn Statement of Taylor Roberts, M.D. 6). Officer Watson shot Mr. Jordan in the lower right abdomen, penetrating his bladder and pelvic cavity. (Med. Examiner. Rep., Final Anatomic Diagnoses.) Officer Watson shot Mr. Jordan a second time in the right abdomen, perforating his small bowel and mesentery. *Id*. Wood fragments were found in the wound. *Id*. Officer Watson fatally shot Mr. Jordan in the head, resulting in Mr. Jordan's death and severing all of his motor functions. *Id.* Wood fragments were found in Mr. Jordan's head. *Id*. Having no motor functions, Mr. Jordan was physically incapable of placing the gun back in his shorts where it was found by police. (Sworn Statement of Taylor Roberts, M.D. 13.) A noise complaint, in Fort Hampton, has a maximum penalty of $500.00 and can only result in jail time after receiving a third complaint. (Compl. for Wrongful Death 12.)

## III. Argument

### A. Officer Watson is Not Entitled to Qualified Immunity as the Affirmative Defense is Impertinent and Immaterial.

Qualified immunity is an affirmative defense that offers protection to government officials if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Vinyard v. Wilson*, 311 F.3d 1340,

1346 (11th Cir. 2002). The threshold inquiry for qualified immunity is a two-part test: (1) whether the plaintiff's allegations, if true, establish a constitutional violation and (2) whether the right was clearly established. *Id.* (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). In ruling upon qualified immunity, the facts are taken in the light most favorable to the injured party. *Saucier*, 533 U.S. at 201. Here, taking the facts in the light most favorable to Mr. Jordan, Officer Watson violated Mr. Jordan's right against the use of excessive force and that right was clearly established prior to Officer Watson shooting Mr. Jordan. Thus, Officer Watson's decision to raise the defense of qualified immunity is both impertinent and immaterial.

**i. Officer Watson's Lethal Shots at Mr. Jordan Constituted Excessive Force**

Officer Watson's decision to fire four rounds into the home of David Jordan Jr.'s front door immediately after Mr. Jordan Jr. shut the door constitutes excessive force. The Fourth Amendment protects against unreasonable searches and seizures. U.S. CONST. amend. IV. The right against unreasonable seizures includes the right to be free from the use of excessive force when interacting with police. *See Saunders v. Duke*, 766 F.3d 1262, 1266–67 (11th Cir. 2014). A claim for excessive force is analyzed under the Fourth Amendment's 'objective reasonableness' standard. *Salvato v. Miley,* 790 F.3d 1286 (11th Cir. 2015).

"[T]o determine whether the use of force is 'objectively reasonable,' we carefully balance 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against 'the countervailing governmental interests at stake' under the facts of the

particular case." *Graham v. Connor*, 490 U.S. 386, 396 (1989). In balancing these interests, we consider "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether the suspect actively resisted arrest or attempted to evade arrest by flight." *Salvato*, 790 F.3d at 1293 (quoting *Penley v. Eslinger*, 605 F.3d 843, 850 (11th Cir. 2010)). Also, a court should consider the need for the application of force, the relationship between the need and the amount of force used, the extent of the injury inflicted, and whether the force was applied in good faith. *Slicker v. Jackson*, 215 F.3d 1225, 1232–33 (11th Cir. 2000).

However, the factors should not be mechanically applied. *Penley*, 605 F.3d at 850. Rather, the objective question that needs to be answered is whether the officer's actions were objectively reasonable in light of the facts and circumstances that confronted him. *Graham*, 490 U.S. at 397. Generally, "more force is appropriate for a more serious offense and less force is appropriate for a less serious one." *Salvato*, 790 F.3d at 1293 (quoting *Lee v. Ferraro*, 284 F.3d 1188, 1198 (11th Cir. 2002)).

Officer Watson's use of force overstepped the bounds of objective reasonableness. First, Officer Watson and Deputy Rivera were responding to a noise complaint. (Compl. for Wrongful Death 11.) Such a violation in the municipality is a mere citation for the first three offenses. *Id.* at 12. Only after the third offense does a noise complaint rise to a $500 fine with up to 60 days in jail time. *Id.* Also, a noise complaint is a nonviolent complaint. Lee McDonald, the elementary school teacher who called the police to report the noise, was concerned that his students would hear potentially vulgar language. (Sworn Statement of Lee McDonald 4–7.) To address a noise complaint, no application of force is necessary.

Second, in comparing the force necessitated by the noise complaint and the force exercised, Officer Watson acted excessively. After hearing Deputy Rivera and Officer Watson pound on two separate doors, on different sides of Mr. Jordan's home, Mr. Jordan opened his front door to an armed deputy. (Sword Statement of Deputy Eddie Rivera 24). Mr. Jordan then began to close the door out of fear for his well-being as he could not comply with Deputy Rivera's commands to "drop the gun,"—he was not holding a gun. (Sworn Statement of Deputy Eric Watson 31). Officer Watson responded to Mr. Jordan's retreat by firing four shots through Mr. Jordan's front door. *Id.* at 36. Three of which hit Mr. Jordan; those three hits proved to be lethal. *Id.* at 53. Thus, what should have been a forceless discussion over a noise complaint, came to be Mr. Jordan's last moments.

Further, no threat to Officer Watson nor Deputy Rivera existed. A search of Mr. Jordan's body uncovered an unloaded pistol in his back pocket. (Compl. for Wrongful Death 17). According to the medical examiner, Dr. Taylor Roberts, it would have been impossible for Mr. Jordan to have the weapon drawn when the door was open and place it in his back pocket after being shot in the head by Officer Watson, as the bullet caused Mr. Jordan to lose all motor functions of his body. (Sworn Statement of Taylor Roberts, M.D. 13). Rather, it is more likely the Mr. Jordan had a remote in his hand when he opened the door to turn off the music. This is evidenced by the statement of Lee McDonald that no music was playing when the shots rang out. (Sworn Statement of Lee McDonald 18.

Finally, Mr. Jordan never attempted to flee or resist arrest. Mr. Jordan decided to return to the safety of his home after having an armed officer yell at him to drop a gun, when he had no gun. Invading the constitutionally protected sanctity of his home, Officer

Watson fired his weapon into Mr. Jordan's home with no regard for what or who may have been behind that door. (Sworn Statement of Deputy Eric Watson 36.) Mr. Jordan has three minor children. (Compl. for Wrongful Death 3.) Instead of allowing Mr. Jordan to close the door and then trying to address him without hostility, Officer Watson instead fired into Mr. Jordan's home. Mr. Jordan did not give any signs of flight. As soon as the interaction between Mr. Jordan, Deputy Rivera, and Officer Watson began, Mr. Jordan had directions hurled at him and weapons being brandished before any greeting had been exchanged. (Sworn Statement of Deputy Eddie Rivera 24–30.)

In these circumstances, Mr. Jordan's Fourth Amendment interests greatly outweigh the competing governmental interests. The force employed by Officer Watson, the lack of need for such force, and the lack of threat or flight from Mr. Jordan all press heavily on the scale for Mr. Jordan's Fourth Amendment interests. With all those considerations, Officer Watson used force that cannot be described as reasonable in light of the circumstances.

**ii. The Right to be Free from Excessive Force was Clearly Established prior to the time of the Shooting.**

There are three ways to show that a constitutional right is clearly established for purposes of qualified immunity: (1) pointing to a materially similar case under the Supreme Court or the relevant state's high court that had previously decided that the conduct at issue was unlawful; (2) showing a "broader, clearly established principle [that should control the novel facts in the plaintiff's] situation"; or (3) arguing that the conduct at issue is so obviously what the Constitution prohibits that the unlawful conduct of the official was readily apparent despite the lack of case law. *Robinson v. Rankin*, 815 F. App'x 330, 343

(11th Cir. 2020) (citing *Morton v. Kirkwood*, 707 F.3d 1276, 1282 (11th Cir. 2013)). Here, Officer Watson's conduct violated a broader, clearly established principle that using deadly force, without warning, on an unarmed, retreating suspect is clearly unreasonable. *Id*. at 1294 (citing *Tennessee v. Garner*, 471 U.S. 1, 5–6 (1985)).

Established precedent finds that firing a weapon at an unarmed, non-threatening, retreating suspect is clearly established as constitutionally unreasonable. *Id.* at 341. In *Robinson*, an officer fired a set of shots aimed at the passenger of a car who was allegedly reaching for a weapon. *Id*. at 332. In viewing the facts most favorable to the injured party, the court declared the passenger unarmed despite a gun being in the console between the two front seats. *Id.* at 338. As the driver attempted to pull away, an officer aimed his weapon at the passenger and fired two shots, which killed the passenger. *Id.* at 338. The court held that the officer's conduct was constitutionally unreasonable as the passenger presented no immediate threat to the officer, nor did he pose a threat to others. *Id.* at 342. Because of the dispute of what the passenger may have been doing in the car, the court declined to decide which set of facts would be controlling. *Id.* at 338. Instead, the court found that should the jury decide otherwise, qualified immunity could be back on the table. *Id.* at 343.

In this case, Mr. Jordan had not presented himself as a threat to the officers, nor did he present himself as a threat to anyone else. Mr. Jordan could not have been holding a gun when he opened the door. Medical testimony shows he did not have the ability to put a gun in his back pocket where it was found upon his death had he been raising it when the defense claims he was. (Sworn Statement of Taylor Roberts, M.D. 13.) Officer Watson,

acting on false information from Deputy Rivera, decided to shoot blindly through the door of Mr. Jordan's home without warning. (*See* Sworn Statement of Deputy Eric Watson 36.) In taking the facts in favor of the injured party, those shots at were directed to an unarmed, non-threatening Mr. Jordan, which caused him to lose his life.

Similarly, deadly force is clearly established as excessive when an officer, without warning, fires on a suspect that is not an immediate threat, even after resisting arrest. *See Salvato*, 790 F.3d at 1293. In *Salvato*, the officers were investigating a person who had been yelling and cussing at passing cars; a nonviolent violation. *Id.* Originally, a single officer confronted the suspect with no problems. *Id.* at 1290. But, a second officer arrived on the scene, drew his weapon, and proceeded to place the suspect under arrest. *Id.* As the arrest carried on, the suspect resisted and broke free from the officers and knocked one to the ground. *Id.* One of the officers then pulled out their weapon and shot the suspect in the abdomen without warning. *Id.* The court held that deadly force, without warning, on an unarmed, retreating suspect was clearly excessive. *Id*. at 1295.

In this case, Officer Watson peeled around the corner of Mr. Jordan's house and saw Deputy Rivera ask Mr. Jordan to "drop the gun." (Sworn Statement of Deputy Eric Watson 27.) Without seeing any weapon on Mr. Jordan, Officer Watson brandished his weapon and aimed it at Mr. Jordan as Mr. Jordan closed the front door to his home. *Id.* at 28. Before blindly firing, the only word Officer Watson exchanged with Mr. Jordan was "hey." (Sworn Statement of Deputy Eddie Rivera 30.) Thus, without warning, Officer Watson, discharged his weapon multiple times at non-threatening suspect attempting to retreat into his home.

Officer Watson violated Mr. Jordan's clearly established right to be free from excessive force. By firing blindly into Mr. Jordan's home, not providing any warning, and failing to announce himself, Officer Watson used excessive force. As a result, the affirmative defense of qualified immunity is impertinent and immaterial and should be struck.

### B. Dr. Frank Edwards's Testimony is Admissible Because it is Relevant, Helps the Trier of Fact, and Is not Unfairly Prejudicial

Dr. Frank Edwards's expert testimony will help show the trier of fact that Officer Watson shooting four times into a closed door, killing Mr. Jordan, was unreasonable and in violation of both 42 U.S.C. §1983 and the tort of negligence in Florida. Dr. Frank R. Edwards is an established, undisputed expert in the field of Sociology. (Defendant Eric Watson's First Motion in Limine – Plaintiff's Expert Witness Frank Edwards, PhD 4.) He has testified on five other occasions in federal court and published over a dozen peer-reviewed papers. (Sworn Statement of Frank Edwards, PhD 4; C.V. of Frank R. Edwards.) His most relevant publication is the 2019 article, *Risk of being killed by police use of force in the United States by age, race—ethnicity, and sex.* (Sworn Statement of Frank Edwards, PhD 10.) The defense does not dispute the methods used in gathering the information or the reliability of Dr. Edwards's statistical analysis in this publication. (Defendant Eric Watson's First Motion in Limine – Plaintiff's Expert Witness Frank Edwards, PhD 4.) Dr. Edwards's testimony is based on a related study focusing solely on the Midland County Sherriff's department. (Sworn Statement of Frank Edwards, PhD 5.) Dr. Edwards found that "racial bias plays a statistically significant role in whether Midland County Sheriff's

officers decide to draw their weapon during a stop." (Sworn Statement of Frank Edwards, PhD 8.)

The defense asks this Court to exclude Dr. Edwards's testimony pursuant to Federal Rules of Evidence 401, 403, and 702. (Defendant Eric Watson's First Motion in Limine – Plaintiff's Expert Witness Frank Edwards, PhD.) However, excluding Dr. Edwards's testimony would deprive Plaintiff of the opportunity to prove a critical component of claims at issue. Dr. Edwards's expert opinion and statistical analysis of the Midland County Sheriff's department will show that Officer Watson, surrounded by a racial-biased culture, was *unreasonable* in both his decision to draw his weapon, and his use of deadly force, which deprived Mr. Jordan of not only his rights under the Fourth and Fourteenth Amendments, but his life.

> Expert testimony is admissible if
>
> (a) 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; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

FED. R. EVID. 702; see also *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 590 (1993). The burden of showing these elements is a preponderance of the evidence. *Daubert*, 509 U.S. at 592 n. 10. Additionally, to be admissible, expert testimony must be relevant. FED. R. EVID. 402. Testimony is relevant if "(a) it has any tendency to make a fact more or less probable that it would be without the evidence; and (b) the fact is of consequence in determining the action." FED. R. EVID. 401. However, even relevant

testimony can be excluded by the Court if "its probative value is substantially outweighed by… unfair prejudice." FED. R. EVID. 403.

In evaluating expert testimony, the Court's "gatekeeper role under Daubert 'is not intended to supplant the adversary system or the role of the jury.'" *Maiz v. Virani*, 253 F.3d 641, 666 (11th Cir. 2001) (quoting *Allison v. McGhan*, 184 F.3d 1300, 1311 (11th Cir. 1999). "A review of the caselaw after *Daubert* shows that the rejection of expert testimony is the exception rather than the rule." FED. R. EVID. 702 advisory committee's note to 2000 amendment. And "the trial judge must have considerable leeway" in the admission of expert testimony. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

**i. Dr. Edwards's Testimony Is Relevant and Helps the Trier of Fact**

To be relevant, Dr. Edwards's testimony must make a fact in the case more or less probable. FED. R. EVID. 401. All of Dr. Edwards's testimony is relevant to the particular facts of this case. Dr. Edwards exclusively evaluated stops for non-traffic misdemeanors and ordinance violations. (Sworn Statement of Frank Edwards, PhD 6.) Mr. Jordan was killed during a stop for a noise complaint, an ordinance violation. While the analysis is not particular to Officer Watson, it is specific to the Midland County Sheriff's department. (Sworn Statement of Frank Edwards, Ph.D. 5). Officer Watson is a member of Midland County Sheriff's department, and surrounded by the culture of that department. (Sworn Statement of Deputy Eric Watson 5.) Dr. Edwards's proposed testimony speaks directly to facts at issue for both claims in this case. His testimony will help the jury decide not only

the true version of events that took place, but also whether Officer Watson acted reasonably in the eyes of the law.

### 1. Dr. Edwards's Testimony is Relevant and Helpful as Applied to Count 1: Claim Against Eric Watson Pursuant to 42 U.S.C. § 1983

In order to prove a claim under 42 U.S.C. § 1983, the plaintiff "must prove that (1) defendants deprived him of a right secured under the Constitution or federal law, and (2) such deprivation occurred under the color of state law." *Arrington v. Cobb County*, 139 F.3d 865, 872 (11th Cir. 1998). Plaintiffs will show that Officer Watson deprived Mr. Jordan of his Fourth and Fourteenth Amendment rights when Officer Watson used excessive force, shooting and killing Mr. Jordan. (Compl. for Wrongful Death 21.) "Any claim that a law enforcement officer used excessive force—whether deadly or not—during a seizure of a free citizen must be analyzed under the Fourth Amendment's 'reasonableness' standard." *Garczynski v . Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009). The reasonableness of Officer Watson's actions must be viewed "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Dr. Edwards's testimony will help the jury determine if Officer Watson was acting reasonably, or alternatively, if he drew his weapon not out of fear for his life or his partner's life, but because the Midland County Sheriff's department has a pattern of drawing their weapons in a racially-biased, *unreasonable* manner.

The United States District Court for the Southern District of Florida found it relevant for an expert to testify "whether Defendant Officers' decision to use deadly force was

objectively reasonable." *Knight v. Miami-Dade Cty.*, No. 0923462-CIV-TORRES, 2014 U.S. Dist. LEXIS 199511, *19, (S.D. Fla. May 14, 2014). In *Knight* police officers shot into a fleeing car after an alleged traffic violation. *Id.* at *2. The officers stated they feared the car chase might harm themselves or others. *Id*. Two of the three occupants of the car were killed and the other was injured. *Id*. at *3. Expert testimony was offered to address the reasonableness of the decision to use deadly force of the officers. *Id.* Defendants filed a motion to exclude. *Id*. The court found the expert testimony appropriate, and even that the expert testifying to just "the *possibility* that racial profiling can be a factor," was admissible, without any underlying facts or data other than personal experience of the expert. *Id*. at *24.

Dr. Edwards's analysis of the Midland County Sheriff's department, along with cross-examination of Officer Watson and Deputy Rivera, will highlight the inherent unreasonableness of Officer Watson's actions in drawing his weapon at the scene of a noise complaint. Just as in *Knight*, this is a valid topic for experts to discuss. Dr. Edwards's testimony will show that the Midland County Sheriff's department has pattern of drawing guns on African American men, as compared to Caucasian men, at a statistically significantly higher rate. (Sworn Statement of Frank Edwards, Ph.D. 9.) This is far more evidence than the expert proffered in *Knight*, and as such is admissible. The reliability of this data is not disputed by the defense. (Defendant Eric Watson's First Motion in Limine – Plaintiff's Expert Witness Frank Edwards, Ph.D. 4.) Officer Watson, as part of the Sherriff's department thought that drawing a gun when addressing an African American person was reasonable behavior. As a Caucasian member of the Sheriff's Department,

confronted with a male, African American suspect, Officer Watson thought it was reasonable to draw his weapon. This then led to Officer Watson using that weapon to shoot at Mr. Jordan four times, hitting him three times, ultimately killing him. (Sworn Statement of Taylor Roberts, M.D. 6.) It is the job of the jury to determine not whether or not Officer Watson thought his actions were reasonable, but whether an objective, reasonable, un-biased police officer responding to a noise complaint would have taken the same action. *See Graham*, 490 U.S. at 396; *See also Bryant v. Mascara*, 800 Fed. Appx. 881, 886 (11th Cir. 2017).

**2. Dr. Edwards's Testimony is Relevant and Helpful as Applied to Count 2: State Law Claim of Negligence Against Sheriff Derek Michaels**

Dr. Edwards's testimony is relevant to the claim of negligence brought against Sheriff Michaels and will help the jury decide whether Officer Watson exercised reasonable care. Under Florida State law, an element of a claim of negligence is that the defendant breached a duty he owed to the plaintiff. *Foster v. United States*, 858 F. Supp. 1157, 1162 (M.D. Fla. 1994) (citations omitted). "The standard of care applicable to negligence actions is one of *reasonable* care." *Id*. (emphasis added). The Middle District of Florida recognizes that there is a duty for a police officer to use "reasonable care in his decision to use deadly force." *Thomas v. City of Jacksonville*, No. 3:13-cv-776-J-39PDB, 2015 U.S. Dist. LEXIS 190550, at *105 (M.D. Fla. Feb. 17, 2015). In deciding to use deadly force against Mr. Jordan, Officer Watson failed to exercise reasonable care.

Dr. Edwards's testimony will show that Officer Watson was not motivated by the circumstances of the situation, a noise complaint, but instead by the statically-proven racial

bias of the Sheriff's department. Acting out of racial bias, conscious or not, is never *reasonable*. At least as far back as 1886, the Supreme Court found that police discrimination against persons in the United States "in the eye of the law is not justified." *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886).

The reasonableness standard is an element of both claims at issue in this case, therefore Dr. Edwards's testimony about the underlying racial-bias of the Midland-County Sherriff's Department is both relevant and helpful the trier of fact.

**ii. Dr. Edwards's Testimony is Not Unfairly Prejudicial**

Dr. Edwards's testimony does not violate Rule 403 because the probative value of the testimony far outweighs any potential prejudice. Dr. Edwards can testify to evidence that would not otherwise be available to the jury. Dr. Edwards's analysis is based off of a catalogue of 650 stops that were similar in nature to Officer Watson's stop of Mr. Jordan. (Sworn Statement of Frank Edwards, Ph.D. 7.) Each stop analyzed by Dr. Edwards was not based on a warrant, and was for a misdemeanor (non-traffic related) or ordinance violation. (Sworn Statement of Frank Edwards, Ph.D. 6.) Dr. Watson then analyzed a random 380 of these stops, revealing the underlying racial bias of the Midland County Sherriff's Department's Caucasian officers in drawing weapons against African American men. (Sworn Statement of Frank Edwards, Ph.D. 8.) Even if every one of the 650 stops cataloged, and 380 stops analyzed by Dr. Edwards were presented in court, the jury would not understand the data without expert testimony. Dr. Edwards, having performed statistical calculations on the data, using uncontested scientific methods, is uniquely able to explain the results.

Further, the results are not *unfairly* prejudicial. While there is the chance a jury could attribute the statistics of the Midland County Sherriff's department onto Officer Watson as an individual, the defense has no intention of trying to show Officer Watson himself is racist. The defense will be able to thoroughly examine Officer Watson and cross-examine Dr. Edwards to this effect. Dr. Edwards's testimony is not offered to prove that Officer Watson is racist, but only that Officer Watson's actions were unreasonable in light of the circumstances of the stop.

## IV. Conclusion

Eric Watson's use of force was excessive and such force was clearly established as excessive at the time of the shooting, therefore Plaintiff prays the Court grant the Motion to Strike Defendant Eric Watson's Affirmative Defense of qualified Immunity. Further, Dr. Edwards's testimony is relevant, helpful to the trier to fact, and is not unfairly prejudicial. Plaintiff's prays the Court deny Defendants' First Motion in Limine.

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