TEAM 9000

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA LAKEVILLE DIVISION

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: 2:20cv15994

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

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INTRODUCTORY STATEMENT

This Court should grant the Plaintiff's Motion to Strike Defendant Watson's Affirmative Defense of Qualified Immunity and deny Defendant's Motion Limine allowing expert witness testimony. The Defendant shot an unarmed, nonthreatening black man while in the comfort of his own home, who, at most, violated a city noise ordinance.

This Court should grant Plaintiff's Motion to Strike Defendant Eric Watson's ("Defendant Watson") Affirmative Defense of Qualified Immunity because he was not acting within his discretionary function and violated David Jordan's ("Mr. Jordan") clearly established constitutional right. It is unreasonable for an officer responding to a noise complaint to shoot a man standing in his home three times. Defendant Watson's use of deadly force is a clear violation of Mr. Jordan's Fourth Amendment right and bars the protection of qualified immunity.

This Court should admit Dr. Frank Edwards' ("Dr. Edward") expert testimony because his research and opinion are relevant. Dr. Edwards' expert opinion is relevant because his testimony sufficiently fits the expert's opinion and the facts the jury is asked to consider.

STATEMENT OF FACTS

On the afternoon of February 14, 2019, Defendant Watson of the Midland County Sheriff's Office responded to a noise complaint at the residence of Mr. Jordan. (Watson Statement ¶¶ 13, 14.) With Deputy Eddie Rivera ("Rivera"), responding as back up, the deputies parked on the street in front of the residence, where they overheard music echoing

from inside the home. (Watson Statement ¶¶ 16, 18); (Rivera Statement ¶ 17.) Without any initial investigation or identification of the homeowner, Defendant Watson and Rivera approached Mr. Jordan's front door and knocked, failing to announce their presence. (Watson Statement ¶ 21); (Rivera Statement ¶ 23.) When no one answered the door, Defendant Watson walked around to the side door and knocked again. (Watson Statement ¶ 22); (Rivera Statement ¶ 22.) Still, he did not announce his presence, and when no one answered, Defendant Watson beat at the side door with his baton. (Watson Statement ¶ 23.)

As Defendant Watson walked back around to the front of the house, the noise got louder as the home's front door opened. (Watson Statement ¶ 24.) When Mr. Jordan opened the door, Rivera stood outside the front door on the porch of the house. (Watson Statement ¶ 26.) After forcefully beating on both the front and side doors of the home located in a high crime area, it was not until Mr. Jordan opened the door that Rivera finally announced their presence by screaming, "Sherriff's Office, Sherriff's Office." (Rivera Statement ¶ 24.); (McDonald Statement ¶ 11.) As Defendant Watson approached the front door, Mr. Jordan opened the door wide enough for the officers to clearly see into the foyer. (Watson Statement ¶ 25.)

Mr. Jordan stood at the threshold of his entryway with his left hand rested on the door while his right hand lingered at his side clutching a black object. (Watson Statement ¶¶ 26, 30.) Defendant Watson never saw did not see whether Mr. Jordan holding a gun or point this black object at anyone. (Watson Statement ¶¶ 32, 35.) Defendant Watson never

testified to witnessing Mr. Jordan raise his right hand or point anything at anyone. (Watson Statement ¶ 35.) All Defendant Watson heard was Rivera screaming over the loud music, "gun, drop the gun." (Watson Statement ¶¶ 27, 41); (Rivera Statement ¶ 27.) From across the street, Lee McDonald ("McDonald") saw a white officer, Defendant Watson, draw his gun from his holster while Mr. Jordan hurried to shut his front door. (McDonald Statement ¶ 14-15.) But before Rivera even had the opportunity to take out his gun, it was too late, Defendant Watson screamed "hey," and rapidly fired four shots, striking Mr. Jordan three times and killing him. (Watson Statement ¶ 36); (Rivera Statement ¶ 35.)

The SWAT team responded to the house where they found a deceased Mr. Jordan. (Rivera Statement ¶ 38.) The front door exhibited three holes from Defendant Watsons' firearm, which he deliberately fired upon Mr. Jordan through the door. (Front Door Illustration.) Defendant Watson's bullets struck Mr. Jordan twice in the abdomen and once in the head. (Roberts Statement ¶ 6-7.) The medical examiner, Dr. Taylor Roberts, explained that the shot to Mr. Jordan's skull instantly cut off all motor and sensory function, leaving him without the ability to make any purposeful movement moments before his death. (Roberts Statement ¶ 9-10.). The bullet to the head struck Mr. Jordan through an entirely shut door before killing him. (Roberts Statement ¶ 6.) The two recovered bullets also had traces of wood fragments from the door. (Roberts Statement ¶ 8.)

Defendant Watson is a Midland County Sheriff's Officer, working under Defendant Derek Michaels ("Defendant Michaels"), who, at all material times, was the Sheriff for

Midland County, Florida. (Compl. ¶¶ 8, 10.) The Midland County Sheriff's Office placed Defendant Watson on a ten-day administrative leave. (Watson Statement ¶ 50.)

Procedural History. Plaintiff Sheryl Jordan, Mr. Jordan's mother and personal representative, filed a civil rights action under Title 42 U.S.C. § 1983, against Defendant Watson in his individual capacity. (Compl. ¶¶ 23–27, 30–32.) The complaint alleged that Defendant Watson exceeded the use of force in violation of the Fourth Amendment. (Compl. ¶ 23.) In his answer to the complaint, Defendant Watson asserted qualified immunity. (Defs.' Answer & Defenses ¶ 6.) Plaintiff Sheryl Jordan moves to strike Defendant Watson's affirmative defense because he is not entitled to qualified immunity. (Pl.'s Mot. to Strike.)

Plaintiff filed a Notice of Expert Witness providing her intent to call expert witness, Frank Edwards, Ph.D. ("Dr. Edwards"); (Pl.'s Notice of Expert Witness.) Plaintiff anticipates Dr. Edwards will testify regarding the racial bias present at Midland County Sheriff's Office and its effect on Defendant Watson. (Pl.'s Notice of Expert Witness.)

Dr. Edwards' opinion is that racial bias plays a statistically significant role in whether the Midland County Sheriff's officers decide to draw their weapon during a stop. (Edwards Statement ¶ 8.) Dr. Edwards' research focuses on how systems of social control produce and reinforce inequality and explores how outside factors affect the relationships between families and the state. (Edwards Statement ¶ 3.) Dr. Edwards studied police stops between February 2016 and February 2019, discovering 650 stops based upon reasonable suspicion where an officer drew their weapon. (Edwards Statement ¶ 7.) Dr. Edwards

randomly selected 380 and analyzed the correlation between instances where an officer drew a weapon to the race, age, and gender of the detainees. (Edwards Statement ¶ 7.) The data revealed that 77% of white officers drew a weapon on African-American men ages 18-35, while 33% of white officers drew a weapon on white men ages 18-35. (Edwards Statement ¶ 9.) Defendant Watson filed a Motion in Limine, moving to exclude Dr. Edwards' testimony at trial. (Mot. in Lim. ¶¶ 3–6.)

ARGUMENT

I. DEFENDANT WATSON IS NOT ENTITLED TO QUALIFIED IMMUNITY BECAUSE HIS ACTIONS WERE UNAUTHORIZED AND UNREASONABLE, VIOLATING MR. JORDAN'S FOURTH AMENDMENT RIGHT.

Qualified immunity is an affirmative defense that must be pled and proven by the official asserting it. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980); *Blissett v. Coughlin*, 66 F.3d 531, 538 (2nd Cir. 1995). Qualified immunity does not protect police officers from damage actions when their conduct is considered unreasonable. *Elder v. Holloway*, 510 U.S. 510, 512 (1994). Government officials, like police officers, may be protected by qualified immunity when acting within their discretionary functions. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

It is undisputed that the officer bears the initial burden of establishing the conduct involved was exercised in his or her discretionary function. *Mitchell v. City of New York*, 841 F.3d 72, 79 (2d Cir. 2011); *Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009). The First and Second Circuits place the burden of establishing all the elements of qualified immunity on the defendant. *See DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 35

(1st Cir. 2001); *Tellier v. Fields*, 280 F.3d 69, 84 (2d Cir. 2000). However, in the Fifth, Sixth, Seventh, Tenth, and Eleventh Circuits, the burden shifts to the plaintiff—after the officer has satisfied the initial burden—to show the injured party suffered an underlying constitutional violation and the official's conduct violated a clearly established right. *See Rohas v. Anderson*, 727 F.3d 1000, 1003 (10th Cir. 2013); *Collier v. Montgomery*, 569 F.3d 214, 217 (5th Cir. 2009); *Garczynski v. Bradshaw*, 573 F.3d 1158, 1166 (11th Cir. 2009); *Gardenhire v. Schubert*, 205 F.3d 303, 311 (6th Cir. 2000); *Erwin v. Daley*, 92 F.3d 521, 525 (7th Cir. 1996). This Court should grant Plaintiff's Motion to Strike because Defendant Watson was not acting within his discretionary function when he violated Mr. Jordan's clearly established constitutional right by using unjustified excessive deadly force.

A. Defendant Watson did not act within his discretionary function because he acted in an unauthorized manner by failing to properly announce himself when he knocked on the house's doors in response to a noise complaint.

Police officers may be protected by qualified immunity when acting within their discretionary functions. *Harlow*, 457 U.S. at 818. The officer must prove he was engaged in a discretionary function when performing the facts alleged. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004). Discretionary functions are job-related tasks involving judgments that "almost inevitably are influenced by the decisionmaker's experiences, values, and emotions." *Harlow*, 457 U.S. at 816.

In determining whether an officer acted within their discretionary function, the Eleventh Circuit first looks to whether the officer was performing a legitimate job-related function when the alleged violation occurred. *Holloman*, 370 F.3d at 1265–66. Then, the court determines whether the officer exercised a job-related function in an authorized

manner. *Id.* When an officer's job function requires their presence at an individual's home, the officer must knock and announce their presence, unless they have reasonable suspicion that knocking would be dangerous or inhibit their investigation. *United States v. Ramirez*, 523 U.S. 65, 71 (1998).

Defendant Watson was not acting within his discretionary function because he was not performing a legitimate job-related function in an authorized manner. Defendant Watson and Rivera responded to a non-criminal noise complaint at Mr. Jordan's home. (Watson Statement ¶ 15); (Rivera Statement ¶ 12.) Defendant Watson approached the home with the intent to request that the owner lower the volume of the music. (Rivera Statement ¶ 15.) When Defendant Watson initially knocked on the front door, he failed to announce their presence as police officers. (Watson Statement ¶ 21); (Rivera Statement ¶ 23.) Then, Defendant Watson failed to announce the officer's presence when he walked to the side of the home and banged on the side door. (Watson Statement ¶ 22.) And when Defendant Watson continued to beat on the side door with his baton, he still failed to announce their presence for a third time. (Watson Statement ¶ 23.)

Defendant Watson had no reason to believe announcing their presence would impose a significant danger in responding to a noise complaint with no knowledge of who owns the home. (Watson Statement ¶ 45.) Instead, due to the failure to identify themselves as police officers, the Defendants' consistent and forceful banging on the door likely made Mr. Jordan, who lives in a high crime area, fearful that he was about to be a victim of a home invasion. (McDonald Statement ¶ 11.) Therefore, because Defendant Watson acted

in an unauthorized manner, he was not acting within his discretionary function when he violated Mr. Jordan's constitutional right.

B. Defendant Watson violated Mr. Jordan's Fourth Amendment right by shooting Mr. Jordan in his own home without any threat of harm to the officers or others.

An officer is not entitled to qualified immunity when he or she violated a constitutional right. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). In excessive force claims under § 1983, the specific constitutional right which was violated by the application of force must be identified. *Graham v. Connor*, 490 U.S. 386, 394 (1989). The Fourth Amendment protects individuals from unreasonable government seizures. U.S. Const. amend. IV. The Fourth Amendment protects individuals from unreasonable seizures by safeguarding their privacy and personal security from arbitrary and oppressive police interference. *I.N.S. v. Delgado*, 466 U.S. 210, 215 (1984); *see also* U.S. Const. amend. IV. "This basic principle is founded on 'the very core' of the Fourth Amendment: the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Bashir v. Rockdale Cnty., Ga.*, 445 F.3d 1323, 1327 (11th Cir. 2006) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). Defendant Watson unreasonably seized Mr. Jordan when he shot at him four times without any threat of harm to the officers or others, thus violating his Fourth Amendment right.

An officer seizes an individual when a reasonable person in the same or similar circumstance would not feel free to end the encounter with the police. *Florida v. Bostick*, 501 U.S. 429, 434 (1991). An officer initiates a seizure when physical force is applied. *California v. Hodari D.*, 499 U.S. 621, 625 (1991) (holding the respondent was seized

when he was tackled by one of the officers). The use of deadly physical force is a seizure subject to a Fourth Amendment analysis. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). In *Garner*, the Supreme Court held that a seizure occurred when the officer shot the defendant; therefore, the encounter was subject to a Fourth Amendment reasonableness analysis. *Id.*

Any claim against an officer involving excessive force must be judged using the Fourth Amendment's reasonableness approach. *Graham*, 490 U.S at 395. To determine whether the officer used excessive force, the court weighs "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id*. at 396; *see also Garner*, 471 U.S. at 8. In Graham, the court set forth three factors to consider when determining the governmental interest: 1) the severity of the crime at issue, 2) the immediate threat to the safety of the officers or others, and 3) whether the individual actively resisted or attempted to evade arrest. *Graham*, 490 U.S at 396.

In *Bryant v. Mascara*, the court found the defendants' use of deadly force violated the plaintiff's Fourth Amendment Right. 723 F. App'x 793, 797 (11th Cir. 2018). The Eleventh Circuit determined whether the defendant-officer had probable cause to believe that the Plaintiff posed a threat of serious physical harm to the officers or others. *Id.* at 796-797. The record did not support the allegation that the plaintiff had a gun or that he attempted to flee or evade arrest. *Id.* at 796. Nor did the record show that the defendant-officer attempted to warn before using deadly force. *Id.* Accordingly, the court found that the defendant violated plaintiff's Fourth Amendment right because it was unreasonable to

shoot an unarmed and nonthreatening man in his own home. *Id.* at 797; *see also Garner*, 471 U.S. at 11 (holding that "a police officer may not seize an unarmed, nondangerous suspect by shooting him dead.").

Similar to the facts in *Bryant*, the record here does not support that Mr. Jordan was armed or attempting to evade arrest at the time he was shot in his home by Defendant Watson. The record does not support that Mr. Jordan shut his door in an attempt to flee or evade arrest, as he was not subject to any criminal liability. Instead, Mr. Jordan exercised his right to retreat into his home in an effort to be free from Defendant Watson's unwarranted intrusion by closing his front door. (Rivera Statement ¶ 23.) The record does not support that Defendant Watson observed Mr. Jordan possess a gun. (Watson Statement ¶ 38.) From across the street, McDonald saw Defendant Watson draw his gun, and then Mr. Jordan quickly shut the door. (McDonald Statement ¶ 14.) McDonald then saw a white officer, Defendant Watson, fire his gun at the closed door. (McDonald Statement ¶ 15.) The front door exhibited three holes from Defendant Watsons' bullets, which he shot at Mr. Jordan through the door. (Front Door Illustration.) Mr. Jordan was found dead inside his home with an unloaded gun in his back pocket. (Watson Statement ¶ 54.)

Further, the record does not show that the Defendant properly announced their presence, nor did he attempt to warn before using deadly force. (Watson Statement ¶ 21–23.) Therefore, Defendant Watson unreasonably seized Mr. Jordan because there was no governmental interest to justify shooting an unarmed, nonthreatening man. Defendant Watson violated Mr. Jordan's Fourth Amendment right, which was clearly established at the time of the shooting.

C. Defendant Watson violated a clearly established right because a reasonable officer in the same circumstance would have known shooting without immediate threat of harm violated Mr. Jordan's Fourth Amendment right.

The doctrine of qualified immunity does not protect officers from liability when their conduct violates clearly established constitutional rights of which a reasonable officer would have known. *Harlow*, 457 U.S. at 818. A constitutional right is clearly established if its contours make it "sufficiently clear that a reasonable official would understand that what he [was] doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Meaning, prior decisions place the right beyond debate. *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). However, it is not required that precedent is entirely analogous to the facts alleged. *White v. Pauly*, 137 S. Ct. 548, 551–52 (2017). Courts often limit the inquiry to whether the defendant violated a clearly established right, skipping the constitutional right analysis, which prevents the development of clearly established law governing future Section 1983 cases. JOANNA R. LAMPE, LSB10486, CONGRESSIONAL RESEARCH SERVICE (CRS) REPORTS (2020); *see also* Reforming Qualified Immunity Act, S. 4036, 116 Cong (2020).

The Fourth Amendment protects individuals from unreasonable seizures, which historically includes the protection against the use of unreasonable deadly force. *Garner*, 471 U.S. at 9; *Graham*, 490 U.S. at 396; *Ludwig v. Anderson*, 54 F.3d 465, 471 (8th Cir. 1995). In *Bryant*, the defendant-officer responded to a noise complaint ending in the shooting of the plaintiff in his own home. 723 F. App'x at 796. The record does not indicate the plaintiff was armed or trying to evade arrest at the time the defendant shot him; therefore, the court held that defendant violated a clearly established right because a

reasonable officer would have known shooting an unarmed and nonthreatening man in his own home would violate his Fourth Amendment right. *Id.* at 797. In *Bennett v. Murphy*, police officers confronted the plaintiff's son, who was holding a shotgun with the barrel pointed at his head. 120 F. App'x 914, 916 (3d Cir. 2005). The son never pointed the gun at any of the officers; however, as he became agitated, he moved toward the officers. *Id.* The defendant-officer shot the son from behind about four seconds after the son had stopped moving toward the group. *Id.* The court recognized that the officer violated a clearly established right because under the Fourth Amendment officers cannot use deadly force without immediate threat of harm, just because the individual is armed. *Id.* at 918; *Harris v. Roderick*, 126 F.3d 1189, 1204 (9th Cir. 1997).

Similar to the facts in *Bryant*, Defendant Watson testified that he did not see Mr. Jordan holding a gun or point anything at anyone. (Watson Statement ¶ 35.) Defendant Watson fired his gun through the door at Mr. Jordan, despite Mr. Jordan's attempt to end the violent encounter by closing the door. (Watson Statement ¶ 35.) As in *Bennett*, even if the black object in Mr. Jordan's hand had been a gun, Defendant Watson did not see him point the gun at anyone, and merely possessing a gun does not warrant the use of deadly force. (Watson Statement ¶ 35.) A reasonable officer in a similar circumstance would have known not to shoot Mr. Jordan because he was unarmed and nonthreatening. Defendant Watson violated Mr. Jordan's clearly established Fourth Amendment right by using excessive deadly force without any immediate threat to the safety of the officers or others. Therefore, Defendant Watson is not entitled to qualified immunity.

This Court should grant Plaintiff's Motion to Strike because Defendant Watson was not acting within his discretionary function when he violated Mr. Jordan's clearly established Fourth Amendment right. Plaintiff intends to provide circumstantial evidence regarding Defendant Watson's use of excessive force by calling an expert witness, Dr. Edwards, to testify to racial bias within the Midland County Sheriff's Office.

II. DR. FRANK EDWARDS' EXPERT OPINION IS RELEVANT BECAUSE IT WILL HELP THE JURY UNDERSTAND A FACT AT ISSUE BY PROVIDING CIRCUMSTANTIAL EVIDENCE IN THE ABSENCE OF THE ONLY NON-SELF SERVING WITNESS, MR. JORDAN.

Exclusion of expert testimony is considered an extreme remedy and should only be permitted under the utmost compelling circumstances. *Claire v. Perry*, 66 So. 3d 1078, 1080 (Fla. 4th Dist. Ct. App. 2011). Expert testimony is admissible if: 1) the expert is qualified, 2) the expert's methods are reliable, and 3) the expert's testimony is relevant. *See* Fed. R. Evid. 702. The parties have stipulated that Dr. Edwards is qualified and his testimony is reliable, therefore, the remainder of this response will address the relevance of his testimony.

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. Evidence may be excluded if the probative value substantially outweighs dangers such as unfair prejudice or confusion of the issues. Fed. R. Evid. 403. Expert testimony is relevant if it helps the trier of fact understand the evidence or determine a fact in issue. Fed. R. Evid. 702(a). Testimony helps the trier of fact when there is a sufficient "fit" between the expert's opinion and the facts the jury is asked to consider.

Daubert, 509 U.S. at 591. Therefore, the court must determine whether the expert's "reasoning or methodology properly can be applied to the facts in issue." *Id.* at 592–93. Dr. Edwards' testimony is relevant because it will help the trier of fact understand the evidence and facts at issue.

Dr. Edwards' testimony demonstrates the racial bias embedded in the Midland Sheriff's Office and the racial bias instilled in Defendant Watson on the afternoon he killed a black man, Mr. Jordan. (Pl. 's Notice of Expert Witness.) Rather than accepting what may be a self-serving tale by the police officer who killed the only witness capable of refuting the officer's testimony, the judge must determine whether the officer's story is consistent with the facts. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014); *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994). Circumstantial evidence is relevant in determining whether to discredit the officer's story. *Scott*, 39 F.3d at 915; *Santos v. Gates*, 287 F.3d 846, 852 (9th Cir. 2002) (finding a jury's judgment for a plaintiff in an excessive force case may unquestionably rest on inferences drawn from circumstantial evidence).

In *Williamson v. Ortiz*, the court found that expert testimony providing circumstantial evidence concerning the defendant-officer's state of mind is relevant. No. 14-CV-6397, 2018 WL 3344592, at *4-5 (N.D. Ill. July 9, 2018). Such circumstantial evidence is relevant in establishing the defendant acted in a manner inconsistent with his training and sound judgment, but it may not establish the defendant was required to use all alternatives to the use of deadly force. *Id.* at 5. In *Thompson v. City of Chicago*, the defendant-officer engaged in a car chase with the plaintiff, ending in the plaintiff crashing his car. 472 F.3d 444, 448 (7th Cir. 2006). To prevent escape, the defendant tackled and

choked the plaintiff to death. *Id.* The plaintiff intended to admit expert's opinion that the defendant violated the plaintiff's Fourth Amendment by using excessive force. *Id.* at 457. The court excluded the expert testimony because it would induce the jury to decide the case on an improper basis and unfairly prejudice the jury. *Id.* at 458.

Unlike the expert testimony excluded in *Thompson*, Dr. Edwards' expert opinion does not draw a definitive conclusion linking racial bias in the Midland County Sheriff's Office to Defendant Watson. Dr. Edwards' expert opinion serves as circumstantial evidence to which the jury can weigh and draw reasonable inferences as they see fit because Dr. Edwards does not draw any conclusions regarding Defendant Watson's use of force; Rather, he provides his opinion which is based upon statistical data finding that the Midland County Sheriff's Officers have a strong tendency to draw their guns more frequently in stops with African American men. Dr. Edwards' testimony, circumstantial evidence, will not unfairly prejudice the jury given the only witnesses capable of testifying to the specific circumstance surrounding the encounter are two white Midland County Sheriffs Officers. Ultimately, excluding Dr. Edwards' reliable testimony would not unfairly prejudice the Defendant, but it would unfairly prejudice the Plaintiff, Sheryl Jordan, because Defendant Watson killed her son, the only non-self serving witness capable of testifying to the circumstances surrounding the encounter.

Because the officers are the only witnesses, Dr. Edwards' testimony is relevant because circumstantial evidence is necessary to determine police conduct. Dr. Edwards' opinion is that racial bias plays a statistically significant role in whether the Midland

County Sheriff's Officers decide to draw their weapon during a stop. (Edwards Statement ¶ 8.) Like *Williamson*, the expert opinion will allow the jury to give weight to statistical data relating to the Sheriff's Office, which employs Defendant Watson, a white male officer. The data revealed that 77% of white officers drew a weapon on African-American men of ages 18-35, while only 33% of white officers drew a weapon on white men of ages 18-35. (Edwards Statement ¶ 9.) Dr. Edward's testimony is relevant for the jury to consider the Midland County Sheriff's Office's potential influence on Defendant Watson's perception of African American men and his use of deadly force on Mr. Jordan, an African-American man. The testimony sufficiently fits between the expert's opinion and the facts regarding Defendant Watsons' drawing of a weapon on an African-American man, Mr. Jordan. Therefore, this Court should deny Defendant Watson's Motion in Limine because Dr. Edwards' expert testimony is relevant.

CONCLUSION

This Court should grant the Plaintiff Sheryl Jordan's Motion to Strike Defendant's Affirmative Defense of Qualified Immunity. Defendant Watson is not entitled to qualified immunity because he was not acting within his discretionary function when he violated a clearly established constitutional right. This Court should deny Defendant Watson's Motion In Limine because Dr. Edwards' testimony is admissible because his testimony is relevant to Defendant Watson's use of excessive force.

Respectfully Submitted,

/s/ Team 9000