Team Number 9999

Case No: 2:20cv15994

IN UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA LAKEVILLE DIVISION

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

Plaintiff,

v.

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

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE THE AFFIRMATIVE DEFENSE OF QUALIFIED IMMUNITY AND IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO BAR THE TESTIMONY OF FRANK EDWARDS, PH.D.

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INTRODUCTION

On February 14, 2020, Deputy Eric Watson of the Midland County Sheriff's Department shot Mr. David Jordan, Jr. three times through his front door, killing him. Plaintiff Sheryl Jordan, as Personal Representative of the Estate of David Jordan, Jr., filed a claim seeking redress for the violations of Mr. Jordan's constitutional rights under 42 USC § 1983 and negligence of the Sheriff of Midland County under state law. The Defendants removed this action to federal court and asserted the affirmative defense of qualified immunity. Ms. Jordan, seeking a jury trial on the merits, has filed a motion to strike the affirmative defense. The Defense additionally moved to exclude the expert testimony of Dr. Frank Edwards, an assistant professor of criminal justice and expert on racial bias in policing, whom Ms. Jordan intends to call to testify to the racial biases in instances of weapon use at stops by officers of the Midland County Sheriff's Department.

Pursuant to the Court's order, Ms. Jordan now submits this memorandum of Law in support of her motion to strike the affirmative defense of qualified immunity and in opposition to the Defense's motion to exclude the testimony of Dr. Frank Edwards.

STATEMENT OF FACTS

On the afternoon of February 14, 2019, David Jordan Jr. was having a party at his home when a loud, forceful banging noise, coming from his front door, sounded above the music. McDonald Affidavit ¶ 11. Mr. Jordan quickly opened the door to find Deputy Eddie Rivera standing outside. McDonald Aff. ¶ 10. Before Mr. Jordan was told, or could piece together, why the unannounced man was at his door, a second man—Deputy Eric Watson—ran over from the side of the house. McDonald Aff. ¶ 12. Upon the opening of

the front door by Mr. Jordan, an African-American man, Watson jumped back surprised and startled. McDonald Aff. ¶ 13. Watson abruptly drew his gun and fired it at Mr. Jordan four times without warning. McDonald Aff. ¶ 14. Mr. Jordan quickly shut the front door, but to no avail. McDonald Aff. ¶ 14. Mr. Jordan was shot in the abdomen and head. Three of the bullets went through the solid closed door, including the fatal shot which severed his spinal cord. Roberts Aff. ¶¶ 8, 13. Mr. Jordan fell to the ground, immediately incapacitated. Roberts Aff. ¶¶ 10-13.

After Mr. Jordan was shot, the Midlands County Sheriff's Department dispatched a SWAT team and many personnel to Mr. Jordan's home to subdue the already-deceased Mr. Jordan. Plaintiff Complaint ¶ 21. They found Mr. Jordan's body, face down in the foyer, with an unloaded handgun in his back pocket. Plaintiff Complaint ¶ 17. The gun had been in Jordan's back pocket the entire time. Roberts Aff. ¶13. At no point did Jordan have the gun in his hand, much less threaten the two Midlands County Police Officers.

ARGUMENT

I. This Court should strike Watson's Affirmative Defense of Qualified Immunity.

Defendant Deputy Eric Watson's affirmative defense of Qualified Immunity is an insufficient defense and/or is redundant, immaterial, impertinent, and scandalous. Watson cannot prevail on his qualified immunity affirmative defense because Watson's actions on the afternoon of February 14, 2019 violated David Jordan Jr.'s clearly established constitutional rights.

In determining which party bears the burden of proof for Watson's affirmative defense of qualified immunity, the Fourteenth Circuit should follow First, Second, Third, Fourth, and Ninth Circuit precedent, which keeps the burden of proof on the defendant. If Watson faces the burden to prove his qualified immunity affirmative defense, Watson cannot meet that burden because he did not act as a reasonable officer when he violated David Jordan Jr.'s Fourth and Fourteenth Amendment rights. If, however, the Fourteenth Circuit finds that the burden of proof shifts to the plaintiff to disprove Watson's affirmative defense, the evidence nevertheless satisfies that burden.

A. This Court should place the burden of proof on Watson to prove the Qualified Immunity Affirmative Defense.

The burden of pleading a qualified immunity affirmative defense is on the defendant. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Circuits are split, however, as to which party bears the burden of proof and production. *Compare DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 35 (1st Cir. 2001) ("Qualified immunity is an affirmative defense, and thus the burden of proof is on defendants-appellants."), *Garcia v. Does*, 779 F.3d 84, 92 (2d Cir. 2015) (same), *Halsey v. Pfeiffer*, 750 F.3d 273, 288 (3d Cir. 2014) (same), *Henry v. Purnell*, 501 F.3d 374, 377-78 (4th Cir. 2007) (same), *Moreno v. Baca*, 431 F.3d 633, 638 (9th Cir. 2005) (same), *with Eversole v. Steele*, 59 F.3d 710, 717 (7th Cir. 1995) ("…[I]t is the plaintiff who bears the burden of proof…"). The Fourteenth Circuit should adopt the position held by the First, Second, Third, Fourth, and Ninth circuits because (a) qualified immunity is a defense raised by the defendant with no

obligation on plaintiff to anticipate and (b) shifting the burden of proof onto the plaintiff is flagrantly contrarian to the established practice for all other affirmative defenses.

While qualified immunity is a defense available to the official in question, it is not relevant to the existence of the plaintiff's cause of action, nor is there any basis for obligating the plaintiff to anticipate such a defense. *See Gomez*, 446 U.S. at 640. "It is for the official to claim that his conduct was justified by an objectively reasonable belief that it was lawful." *Id*. Given there is no obligation for the plaintiff to "anticipate" an affirmative defense, there should be no obligation on the plaintiff to bear the burden of its proof. *See id.* Moreover, if a defendant wishes to shield himself with qualified immunity, then he should—at the very least—be expected to bear the burden of doing so. There is no sense in making a plaintiff prove more in her case-in-chief, depending on a defendant's voluntarily asserted affirmative defense.

Shifting the burden of proof onto the plaintiff for qualified immunity runs contrary to the established practice for affirmative defenses. *See Dixon v. United States,* 548 U.S. 1, 8-9 (2006). No other affirmative defense creates burdens of proof for the plaintiff; no other affirmative defense requires the plaintiff to prove more than before the defense was pled. *See id.* Without explicit instruction from the Supreme Court declaring otherwise, qualified immunity should be treated no differently. Like all other affirmative defenses, the burden to prove qualified immunity should remain on the defendant.

B. Watson cannot meet the burden of proof for a Qualified Immunity Affirmative Defense.

Defendant Deputy Eric Watson is not entitled to rely upon the defense of qualified immunity because his egregious actions violated Mr. Jordan's clearly defined, established, and well-settled constitutional rights, specifically: the freedom from the use of excessive and unreasonable force; the freedom from unreasonable seizure; and the freedom from deprivation of life and liberty without due process of law. To prevail on a qualified immunity defense to Plaintiff's 42 U.S.C.§ 1983 claim, Watson must prove that his actions did not violate a statutory or constitutional right, or that the right in question was not clearly established at the time of the violation. *See Ashcroft v. al-Kidd,* 563 U.S. 731, 735 (2011). Watson cannot do so.

Watson's shooting of Mr. Jordan was entirely unjustified by any of Mr. Jordan's actions; it constituted an unreasonable seizure and excessive use of deadly force in an effort to intentionally acquire control over Jordan. The Fourth Amendment "reasonableness" inquiry is whether the officer's actions were "objectively reasonable" given the facts and circumstances confronting him, without regard to his underlying intent or motivation." *See Graham v. Connor*, 490 U.S. 386, 387 (1989). The "reasonableness" of a particular use of force is judged from the perspective of a hypothetical reasonable police officer on the scene, taking into account that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. *See id.*; *see also Smith v. City of Hemet,* 394 F.3rd 689, 701 (9th Cir. 2005) ("The question is not simply whether the force was necessary to

accomplish a legitimate police objective; it is whether the force used was reasonable in light of *all* the relevant circumstances."). Determining whether an officer used excessive force requires careful attention to the facts and circumstances of each particular case, including (a) the severity of the crime at issue, (b) whether the suspect poses an immediate threat to the safety of the officers or others, and (c) whether he is actively resisting arrest or attempting to evade arrest by flight. *See Graham*, 490 U.S. at 396. All of these factors support a finding that Watson's use of deadly force against Jordan was unreasonable.

First, Mr. Jordan neither committed a crime, nor was he suspected of committing a crime. The officers responded to a noise disturbance, a county ordinance violation, not a criminal offense. Watson Affidavit ¶ 15. The officers did not observe any illegal activity at the scene. Watson Aff. ¶¶ 1-59.

Second, Mr. Jordan did not pose an immediate threat to the safety of the officers or others. The fact that the officers believed Mr. Jordan to be armed is not dispositive. *See Glenn v. Washington County,* 673 F.3d 864, 872-73 (9th Cir. 2011) (explaining that whether a person is armed is an important consideration, but not dispositive; "otherwise that a person was armed would always end the inquiry," and courts have to consider the totality of the circumstances.). Mr. Jordan was not in a physical altercation with anyone; Mr. Jordan was not threatening anyone with a weapon; no one was trying to get away from Mr. Jordan; Mr. Jordan did not verbally threaten the officers; Mr. Jordan did not

take any steps toward the officers; Mr. Jordan did not *aim* or *point* any weapon at the officers. Watson Aff. ¶¶ 1-59.

Third, Mr. Jordan did not resist or evade arrest. There is significant doubt about whether any words were even exchanged between the officers and Mr. Jordan. At no point did the officers identify themselves as law enforcement. Watson Aff. ¶¶ 14-36.

Finally, the evidence suggests that Watson could have, but failed to, use less intrusive means before deploying deadly force. The absence of a warning or order to halt is an influencing factor in the "reasonableness" calculus because appropriate warnings comport with actual police practice. *See Deorle v. Rutherford*, 272 F.3d 1272, 1283-84 (9th Cir. 2001) (holding that shooting a person who is making a disturbance because he walks in the direction of an officer at a steady gait with a can or bottle in his hand is not objectively reasonable). Cases demonstrate that "officers provide warnings, where feasible, even when the force used is less than deadly." *See id.* Here, neither officer warned Mr. Jordan he would be shot if he did not "drop the gun." Watson Aff. ¶¶ 1-59.

Not only did Watson violate Mr. Jordan's constitutional rights, but the rights in question were clearly established at the time of the violation. To be clearly established, the contours of the right must be "sufficiently clear" that a reasonable official would understand his action violates that right. *See Anderson v. Creighton,* 483 U.S. 635, 640 (1987). This does not mean that the very action in question had to have previously been held unlawful; officials can still be on notice that their conduct violates established law "even in novel factual circumstances." *See Hope v. Pelzer,* 536 U.S. 730, 740-41 (2002)

(rejecting a requirement that previous cases involve "fundamentally similar" or even "materially similar" facts).

Sixth Circuit precedent, for example, confirms that Watson had fair notice when he violated Jordan's constitutional rights. *See Hermiz v. City of Southfield*, 484 F. App'x 13, 16 (6th Cir. 2012). In *Hermiz*, the police officer was not entitled to qualified immunity because he lacked justification to fire at least one of the shots that killed Hermiz. *Id.* The officer pulled Hermiz over for a traffic stop, and Hermiz's car stopped for about a second before turning around and driving off at about five to ten miles per hour "sort of" in the officer's direction. *Id.* at 14. Seconds after the car turned around, the officer fired three shots through the windshield and dashboard of Hermiz's car. *Id.* Similar to *Hermiz*, where it was unreasonable for the officer to fire his gun from about three to four feet away through the front of the car when he perceived a threat, it was unreasonable for Watson to shoot Mr. Jordan from a few feet away through the front door when he thought Mr. Jordan posed a threat to Rivera. *Id.* at 17. In both cases, the officers' actions are unreasonable, especially because the officers instantaneously escalated the course of events with no discussion, warning, or use of other non-lethal means first. Therefore, the fair and clear warnings that a case like *Hermiz* provides is sufficient to preclude Watson's defense of qualified immunity.

C. Even if this Court finds that Plaintiff bears the burden to disprove Watson's Affirmative Defense, the evidence satisfies that burden.

Sufficient evidence exists to demonstrate that Defendant Deputy Eric Watson did not act in good faith and took actions that he knew or should have known violated David

Jordan Jr.'s civil rights when he shot and killed Jordan in his own home on February 14, 2019. Qualified immunity is lost when plaintiffs point to cases such that a reasonable hypothetical officer could not have believed that his actions were lawful, or when certain actions "so obviously run afoul of the law" that an assertion of qualified immunity may be overcome even though court decisions have yet to address "materially similar" conduct. *See Ashcroft*, 563 U.S. at 746 (Kennedy, J., concurring); *Pelzer*, 536 U.S. at 753 (Thomas, J., dissenting). The evidence shows that Watson's actions egregiously violated Mr. Jordan's clearly defined, established, and well-settled constitutional rights and that Watson had fair notice that his conduct was unlawful. Regardless of which party bears the burden of proof, Watson is not entitled to qualified immunity.

II. Frank Edwards, Ph.D., may testify as an expert witness pursuant to Federal Rules of Evidence 401, 403, and 702.

Ms. Jordan, as personal representative of the estate of Mr. Jordan, timely provided notice to the court that she intends to call Dr. Frank Edwards, an assistant professor of criminal justice and expert on racial bias in policing. Plaintiff's Notice of Expert Witness, Case No. 2:20cv15994 (M.D. Fl. Aug. 1, 2020). The Defendant has stipulated that Dr. Edwards is qualified to be tendered as an expert witness before this court. Defendant's First Motion in Limine, Case No. 2:20cv15994 (M.D. Fl. Aug. 5, 2020). This court should deny the Defendant's motion to exclude the expert testimony of Dr. Edwards under Federal Rules of Evidence 401, 403, and 702 because Dr. Edwards' anticipated testimony is (A) relevant; (B) provides probative value not outweighed by any danger of unfair prejudice; and (C) assists the jury in understanding the evidence.

A. Dr. Edward's testimony is relevant under F.R.E. 401.

The testimony of Dr. Edward clearly satisfies the low standard for relevancy. FED. R. EVID. 401. *See also Douglass v. Eaton Corp.*, 956 F.2d 1339, 1345 (6th Cir. 1992) (trial courts "may not exclude the evidence [as irrelevant] if it has even the slightest probative worth"). The Rule states that "Evidence is relevant if: (a) it has *any tendency* to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." FED. R. EVID. 401. (emphasis added).

i. Dr. Edward's testimony makes the fact that Defendant Watson's actions were motivated by racial bias more probable.

The "any tendency" standard of F.R.E. 401(a) is met if evidence at all alters the probability a reasonable person would find the fact. FED. R. EVID. 401 advisory committee's notes. *See, e.g.*, *United States v. Amaya-Manzanares*, 377 F.3d 39, 43 (1st Cir. 2004). Courts have historically admitted evidence that provides background or context as having a tendency to assist the jury in determining facts. *See, e.g.*, *Lawson v. Trowbridge*, 153 F.3d 368 (7th Cir. 1998) (no error in admitting background evidence of dangerousness of knives); *United States v. Cazares*, 788 F.3d 956 (9th Cir. 2015) (no error in admitting information contextualizing gang structure and practices). *See also* FED. R. EVID. 401 advisory committee's notes (background and statistical information is "universally offered and admitted as an aid to understanding"). The testimony offered by Dr. Edwards falls into this category of background information. Dr. Edwards will testify that racial bias plays a statistically significant role in whether Midland County Sheriff's Department officers decide to draw their weapon during a stop. Sworn Statement of

Frank Edwards, Ph.D., Case No. 2:20cv15994 (M.D. Fl. May 14, 2020) (hereinafter "Edwards Aff."). Statistics cannot be so generalized as to be of no use to the jury in determining the facts at hand. *Compare Bell v. Environmental Protection Agency*, 232 F.3d 546 (7th Cir. 2000) (expert statistic based on appropriate regional sample improperly excluded) *with Lewis v. Ascension Parish School Board*, 806 F.3d 344 (5th Cir. 2015) (expert statistics properly excluded for being nonrepresentative and without statistical significance). While Dr. Edwards has conducted extensive research on nationwide police killings, the offered expert conclusion is properly limited to the sheriff's department responsible for Mr. Jordan's death and stops in the same severity classification as the stop which resulted in Mr. Jordan's death. *See* Edwards Aff., Attach. 2 "Risk of being killed by police use of force in the United States by age, race-ethnicity, and sex." Information of racial bias within Defendant Watson's department and in substantially similar situations has a tendency to make it more likely that race played a role when Watson drew his weapon, shot, and killed Mr. Jordan on February 14, 2019. That tendency is sufficient to meet F.R.E. 401(a).

ii. The fact of Watson's racial bias is of consequence in the action at hand.

An objectively reasonable person does not act based on racial bias. Whether Watson acted unreasonably in killing Mr. Jordan is an element of both Count One and Count Two of the Complaint. Complaint ¶¶ 24, 31. In Count One, Plaintiffs allege that Watson unreasonably shot and seized Mr. Jordan, violating his Fourth and Fourteenth Amendment rights. *Id*. Mr. Jordan's Fourteenth Amendment right was violated if

discriminatory purpose was a motivating factor in the officer's decision to fire his weapon. *C.f. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 270 (1977). In Count Two, Plaintiffs allege that Watson negligently and unreasonably fired his firearm. *Id*. The objectively reasonable person does not hold racial animosity or base actions on racial bias. *See, e.g.*, *Floyd v. The City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (racial profiling cannot provide reasonable suspicion for a *Terry* stop). *See generally* Ariela Rutbeck-Goldman & L. Song Richardson, *Race and Objective Reasonableness in Use of Force Cases: An Introduction to Some Relevant Social Science*, 8.1 ALA. CIVIL RIGHTS & CIVIL LIBERTIES LAW REV. 145 (2017).

B. Dr. Edward's testimony should not be excluded pursuant to F.R.E. 403.

Relevant evidence is presumptively admissible. Under F.R.E. 403, relevant evidence may only be excluded "if its probative value is *substantially outweighed* by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." FED. R. EVID. 403 (emphasis added).

i. The danger of unfair prejudice to Defendant Watson is minimal.

The Federal Rules of Evidence only weigh the impact of "unfair" prejudice, which the Advisory Committee defined as "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." FED. R. EVID. 403 advisory committee's notes. In *United States v. Cerno*, 529 F.3d 926, 935 (10th Cir. 2008), the court held that "Evidence is unfairly prejudicial if it makes a conviction more

likely because it provokes an emotional response in the jury or otherwise tends to affect the jury's attitude toward the defendant wholly apart from its judgment as to his guilt or innocence of the crime charged." However, emotionally evocative evidence is not unfairly prejudicial if it relates to the alleged charges in a case. Introducing evidence of racially inflammatory language is not unfair in an employment discrimination case. *See Robinson v. Runyon*, 149 F.3d 507, 510 (6th Cir. 1998). As the estate of Mr. Jordan bears the burden of proof, it is entitled to present evidence to prove its case. Mr. Jordan's estate is advancing a theory that Defendant's actions in shooting Mr. Jordan three times were influenced by racial bias, making them unreasonable. *See* Plaintiff's Notice of Expert Witness. Notably, Dr. Edwards presents this evidence of existing racial bias at the sheriff's office in the least prejudicial way possible – numbers on a page, instead of graphic photos of other African-American victims or sensationalized quotes. *See, e.g.*, *United States v. Pace*, 10 F.3d 1106, 1115 (5th Cir. 1993) (unfairly prejudicial to call parole officer to establish a defendant's address when the address could have been proven other, less prejudicial, ways).

ii. The other dangers are minimal.

None of the other dangers enumerated in F.R.E. 403 merit any weight in the evidentiary balancing. The testimony of Dr. Edwards will not serve to confuse the issues because it goes toward an element of the alleged offense, reasonableness. See FED. R. EVID. 403; Complaint ¶ 24,31. By the time Dr. Edwards testifies at trial, the jury will be familiarized with the claims presented and able to recognize how Dr. Edward's testimony fits into those claims. Similarly, Dr. Edwards is unlikely to mislead the jury in any way.

Juries understand the meaning of statistics and probabilities, such that they will understand Dr. Edward's testimony does not necessitate a finding that the Defendant acted based on racial bias. Finally, Dr. Edward's testimony will not unduly delay the trial or waste time because he will testify to a single expert opinion that is not presented elsewhere in the case. *See* Edwards Aff. ¶ 8.

iii. The probative value of the evidence is not substantially outweighed by the minimal dangers.

The probative value of Dr. Edwards' testimony lies in providing the jury context and background for interpreting the reasonableness of Watson's actions. *See supra* Part II.A. While generally referred to as a balancing test, F.R.E. 403 places a finger on the scale in favor of admissibility. The dangers must not only equal or balance the probative value; they must "substantially outweigh" it. FED. R. EVID. 403. The possibility that the jury will be swayed to believe Watson possesses racial bias is not unfair. Even if this court finds some danger of unfair prejudice, that minimal danger taken together with the other enumerated 403 dangers fails to match the probative value, let along substantially outweigh it.

C. Dr. Edwards' testimony is permitted according to F.R.E. 702.

The Defense has stipulated to the qualifications of Dr. Edwards and the reliability of Dr. Edwards research and methods as applied to this case, satisfying three prongs under F.R.E. 702. Defendant's First Motion in Limine ¶ 4. The only remaining prong for analysis is F.R.E. 702(a), whether "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." *See* Amended Order Scheduling Hearing, 1.b.iii.3. Case No. 2:20cv15994 (M.D. Fl. Sept. 2, 2020).

i. Specialized knowledge of Dr. Edwards about racial bias will provide context for the trier of fact.

Evidence does not have to present complex mathematical calculations or explain an esoteric topic to qualify as specialized knowledge; instead, it must merely be beyond the knowledge of the average juror. Unfortunately, racial bias in policing is pervasive enough in our country to have entered the ordinary understanding. *See* Kat Stafford & Hannah Fingerhut, *AP-NORC poll: Sweeping change in US views of police violence*, Associated Press (June 17, 2020), apnews.com/728b414b8742129329081f7092179d1f. Six in ten Americans say that police are more likely to use deadly force against a black person than a white person, and that figure has increased by twelve percentage points in the past five years. *Id.* Stafford and Fingerhut write that the increase was likely driven by the number of recent high-profile cases and protests nationwide. *Id*. However, the racial bias of any particular police department is not within common knowledge. Local practices vary across the country and between each police department. Dr. Edwards is able to go beyond the general national knowledge of police racial bias by presenting statistics on the local level; specifically, that white Midland's County Sheriff's officers were more than twice as likely to draw their weapons on African American men at stops conducted between February 2016 and February 2019. Edwards Aff. ¶ 9. In *United States v. Ledbetter*, 929 F.3d 338, 349 (6th Cir. 2019), the court upheld introduction of testimony from both an expert discussing national gang culture and a police lieutenant

discussing the local gangs. The court found that the testimony equipped the jury with a general understanding and the information to determine whether the general understanding applied to the local gang. *Id.* Similarly, Dr. Edwards' specialized knowledge on local police practice contributes the jury's existing ordinary understanding of racial bias in policing and provides context for the jury's reasonableness determination.

ii. Context about racial bias will help the trier of fact to determine whether Defendant Watson acted reasonably in killing Mr. Jordan.

Providing the context of existing racial bias in the Midland's Country Sheriff's Department will help the jury to understand the evidence of Watson's reasonableness in drawing his weapon and shooting Mr. Jordan three times. Specifically, Watson will likely testify that he drew his gun and pointed it at Mr. Jordan after seeing a small object in Mr. Jordan's hand that he believed was a gun. Watson Aff. ¶ 32. Part of the jury's determination will involve the reasonableness of that belief. While a statistic alone, such as the one provided by Dr. Edwards, does not independently support a finding of unreasonableness, it "can be used in conjunction with other evidence." *Bell,* 232 F.3d at 552. For example, the medical examiner who conducted the autopsy of Mr. Jordan is anticipated to testify that Mr. Jordan could not have held a gun or placed a gun into a back pocket after Watson shot his head, immediately severing his spinal cord. Roberts Aff. ¶ 10. The context provided by Dr. Edwards assists the jury in weighing evidence such as that of the medical examiner in addition to providing potential alternate explanations to Watson's stated reasons for drawing and firing his gun.

CONCLUSION

For the reasons stated above, (I) Defendant Watson is not entitled to argue an affirmative defense of qualified immunity and (II) Dr. Edwards' testimony is admissible pursuant to the Federal Rules of Evidence. WHEREFORE, Sheryl Jordan, as personal representative of the estate of David Jordan, Jr., respectfully asks this court to grant Plaintiff's Motion to Strike Defendant's Affirmative Defense of Qualified Immunity and deny Defense's Motion in Limine to prohibit the testimony of Dr. Frank Edwards.

Respectfully submitted,

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