

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,  
Plaintiff,**

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**CIVIL ACTION NO. 2:23-cv-00772**

**JUDGE GREG G. GUIDRY**

**Versus**

**STATE OF LOUISIANA, THROUGH,  
DEPARTMENT OF PUBLIC SAFETY  
AND CORRECTIONS, OFFICE OF  
STATE POLICE,  
Defendant.**

**MAGISTRATE JUDGE  
JANIS VAN MEERVELD**

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**MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION  
IN LIMINE TO EXCLUDE AND/OR LIMIT EXPERT TESTIMONY OF  
JOHN R. STELLY, II AND ANDREW BROADWAY**

MAY IT PLEASE THE COURT:

Plaintiff John R. Stelly, II (“Stelly”), by and through his undersigned counsel, hereby respectively submits this Memorandum in Opposition to Defendant State of Louisiana through Department of Public Safety and Corrections, Office of State Police (“Defendant” or “State Police” or “LSP”)’s Motion *In Limine* To Exclude and/or Limit Expert Testimony of John R. Stelly, II And Andrew Broadway.

Defendant claims that Stelly is not qualified to provide expert testimony and further, he and his other expert, Broadway, intend to offer opinions as to statistics that are not relevant and intend to impermissibly testify as to purported facts and are not based upon reliable methods. Defendant further claims that the proposed expert testimony will be impermissibly cumulative as Stelly and Broadway are providing the cumulative testimony. Defendant curiously is not claiming that Broadway is not qualified as an expert, therefore his testimony should be accepted as an expert by this Court.

**I. FACTUAL BACKGROUND**

Stelly was employed by the LSP for over 26 years, the last 17 of those years Stelly had the rank of lieutenant. During those 17 years he applied for promotion to captain 31 times and was denied

promotion every time. This occurred despite the fact that Stelly probably has more formal education than all the officers of the LSP. Stelly was a faculty member at the University of New Orleans (UNO) and taught math classes there. He holds three degrees from UNO. He has a bachelor's degree in mathematics, a bachelor's degree in computer science, and a master's degree in mathematics. Stelly was accepted into a PhD program on fellowship in computer science at Tulane University. He earned hours toward that degree in one semester before he was accepted to be a State Police trooper in 1995.<sup>1</sup>

Contrary to Defendant's erroneous statement that Stelly alleged he was not promoted for thirteen years because he is White<sup>2</sup>, he did not think that race was a factor in his not being promoted to captain until, as an eligible candidate for the position in Internal Affairs. That promotion was awarded on September 6, 2017, to Lt. Chavez Cammon, Black, who met the bare minimum eligibility of two years of time in grade as a lieutenant. At that time, Lt. Stelly had 13 years of time in grade. At that time, Lt. Stelly had 4.5 years more than Lt. Cammon in years of service and had served as Troop B executive officer for 4 years. Lt. Stelly was clearly more qualified than Lt. Cammon for this promotion for many reasons. The IA position was perfect for Stelly because of his unwavering trust from other state troopers and his impeccable record of honesty and fairness.<sup>3</sup>

Prior to this denial of promotion, Stelly was assigned by the then Superintendent Edmonson to conduct a study using statistics to determine if there was any racial or gender bias in the promotion system at the LSP. His study concluded that, as of that date April 5, 2013, there was no racial or gender discrimination in the promotional system.<sup>4</sup>

After this initial study, Stelly has authored a total of three statistical analyses of the promotional system at the LSP, to check for racial bias. He has concluded that there was race discrimination in the captain level promotions for a four-year period from 09-06-17 through 10-04-21. In his most recent

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<sup>1</sup> Exhibit A, Stelly Depo. p. 144.

<sup>2</sup> Defendant Memo (Rec. Doc. 120-2), p. 2.

<sup>3</sup> Exhibit B Melissa Depo, p. 26, 27. Exhibit F, LSP MAJ Donovan Archote Depo, pp 81-82. Exhibit G, Declaration of LSP MAJ Carl Saizan, par. 3,13.

<sup>4</sup> Exhibit 1, Study of Promotional Statistics dated April 5, 2013.

Amended report of Statistical Analysis of the use of Race in the Promotions to Captain by LSP dated May 31, 2024, Stelly concluded that there was racial discrimination in captain level promotions during Colonel Reeves's administration individually from 09-06-17, Colonel Davis's administration through 10-04-21, and during the combined period of 09-06-17 through 10-4-21.<sup>5</sup>

The middle two studies made by Stelly of the statistical significance of black and non-white candidates being promoted over white candidates were made for the EEOC on August 3, 2022, and for this case on January 19, 2024. These two reports did not have the advantage of the use of all of the available data that Stelly's last report had.

Broadways expert report shows that race of the certified eligible candidate was consistently the statistically significant factor in promotion. Also, given that no merit-based explanation for the differences in promotion were statistically significant, Broadway concluded that racial discrimination is the most likely factor in promoting certified candidates to captain in the LSP during the period 09-06-17 through 10-04-21.

Both experts, Stelly and Broadway, should be allowed to testify because they use different analyses.

## II. LAW AND ARGUMENT

Federal Rule of Evidence 702 governs the admissibility of expert testimony. This rule provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and

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<sup>5</sup> Exhibit 2, Stelly's Expert Report dated May 31, 2024.

methods reliably to the facts of the case.” As shown below Dr. Kovacs fails to meet the standards in all three areas.

Effective December 1, 2000, Rule 702 was amended to incorporate the principles first articulated by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, [509 U.S. 579](#), [113 S.Ct. 2786](#), [125 L.Ed.2d 469](#) (1993). See [FED. R. EVID. 702](#), Adv. Comm. Notes (2000). Under *Daubert*, expert testimony is admissible only if the proponent demonstrates that: (1) the expert is qualified; (2) the evidence is relevant to the suit; and (3) the evidence is reliable. See *Watkins v. Telsmith, Inc.*, [121 F.3d 984, 988-89](#) (5th Cir. 1997). *Thomas v. Deloitte Consulting LP*, No. 3-02-CV-0343-M, at \*2 (N.D. Tex. Sep. 2, 2004)

Defendant claims that Stelly should not be permitted to offer statistical evidence from promotional panels prior to July 2021 or testimony regarding same as this data is irrelevant to Plaintiff's claims against the State Police. (Rec. Doc. 120-2, p. 3) Stelly is presenting evidence of a pattern and practice of discrimination. Statistical evidence that Stelly presents shows a history of racially discriminatory promotional practices starting by 09-06-17 and continuing until at least 10-04-21. The two panels in question occurred during this period. The statistical evidence via multiple measures is statistically significant at the 95% level and sometimes at the 99% level.<sup>6</sup> In order to conduct statistical analysis, there must be sufficient data to analyze.

Stelly has always claimed from his initial complaint filed March 1, 2023, that his 18 promotion panels between 09-06-17 and 10-04-21 show a pattern of discrimination.<sup>7</sup> This initial complaint alleged that “The statistical analysis of this data is that the number of black candidates

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<sup>6</sup> Exhibit 2, pp 6, 8-10, 12. and Exhibit 3, Broadway's Amended Report pp 5-7.

<sup>7</sup> Initial Complaint (Rec. Doc. 2, p.5-6)

promoted from September 2017 through August 2021 deviated above the expected number by more than two standard deviations.”<sup>8</sup>

Defendant claims that Stelly and Broadway should be limited from opining as to what information was and was not considered by the promotional panels as these are questions of fact and, therefore, improper as the subject of expert testimony.<sup>9</sup> However, statistical evidence exists that almost none of the objective factors that LSP's own policy required it to consider in deciding promotions were actually used, leaving mostly only subjective factors that the panel actually considered.<sup>10</sup>

Defendant next claims that Stelly and Broadway should not be permitted to offer testimony as to their opinions that candidates with higher test scores were less likely to be promoted as this is irrelevant to the issue of whether State Police used race as a factor in its promotional decisions.<sup>11</sup> However, statistical evidence exists that the objective factor of exam scores played no role in LSP's deciding promotions despite the fact that all LSP personnel responsible for promotional decisions were aware of at least the score rank of all promotional candidates if not the candidates' actual scores.<sup>12</sup>

Defendant also claims that Broadway and Stelly should not be allowed to offer the same or overlapping opinions because such testimony would be cumulative.<sup>13</sup> Although both reports draw similar conclusions, they are methodologies are different. Broadway concentrated his analysis on Relative Risk and included confidence intervals.<sup>14</sup> Stelly initially concentrated on

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<sup>8</sup> Initial Complaint (Rec. Doc. 2, p.6)

<sup>9</sup> Defendant Memo, p. 3.

<sup>10</sup> Exhibit 2 Stelly's Report pp 5-9 and Exhibit 3 Broadway's Amended Report pp 4-5.

<sup>11</sup> Defendant Memo, p. 4.

<sup>12</sup> Exhibit 2, p.5-6, 8 and Exhibit 3 p. 3-6.

<sup>13</sup> Defendant Memo, p. 4.

<sup>14</sup> Exhibit 3, page 2. Exhibit C, par. 9.

binomial and Monte Carlo analysis.<sup>15</sup> Stelly's amended report calculated Relative Risk but did not provide confidence intervals. Here, Broadway's confidence intervals provide extremely valuable and insightful perspective of the extreme gross disparities in promotion rates that Stelly's analysis did not address.

**III. Stelly is qualified to as an expert.**

Stelly holds three degrees from UNO. He has a bachelor's degree in mathematics, a bachelor's degree in computer science, and a master's degree in mathematics. That Stelly earned his master's degree over 30 years ago is irrelevant. If anything, his earning his degrees long ago establish that his knowledge would have matured with his 30 years of practical experiences. The statistical concepts that Stelly learned to complete that master's degree were well established long before he earned his degree and continue to be the main standard on which the vast majority of studies in medicine, politics, and consumer affairs are based.<sup>16</sup>

The two graduate statistics courses that Stelly completed in pursuit of his master's in mathematics from the University of New Orleans are MATH 6311 and 6312, which are still taught there today. The UNO course catalog describes MATH 6311 as studying "theory of probability distributions, random variables and functions of random variables, multivariate and conditional distributions, order statistics, sampling distributions, theory of estimation and hypothesis testing." MATH 6311 is a prerequisite for MATH 6312 which has the same description in the catalog. These are the very topics that Stelly used in his reports to analyze LSP's promotional data.<sup>17</sup>

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<sup>15</sup> Exhibit 2, p. 3,4.

<sup>16</sup> Exhibit C, Stelly Declaration, par. 3.

<sup>17</sup> Exhibit D, Stelly Expert Deposition, p. 7, Exhibit C, par. 4.

To refute Stelly and his expertise, LSP paints a grossly inaccurate picture of Stelly. LSP contends that Stelly's law enforcement career somehow automatically negates any mathematical training that Stelly gained. However, that Stelly spent his career in law enforcement does not erase the knowledge that he gained when he studied these statistical topics. In fact, he used that statistical knowledge throughout his career in law enforcement to assist LSP in its mission and continues to use that knowledge in his post-LSP career, preventing its stagnation. LSP is fully aware of this as it was discussed in length during his depositions. For example, in 2013, LSP tasked Stelly to conduct a statistical analysis of its promotional practices from 2000 through early 2013. Stelly did so and concluded that LSP's promotional practices during that time exhibited no indicators of racial or gender discrimination.<sup>18</sup>

As another example, on his own, Stelly devised techniques to analyze various performance metrics of troopers' enforcement practices. All of Troop B supervisory staff adopted his methodologies to gauge the performance of their own personnel. All supervisory staff found that Stelly's techniques resulted in exceedingly fair and accurate measures of their subordinates' work product. Stelly continued to refine these statistical metrics until his retirement.

As another example, Stelly devised accountability software that used statistical measurements to detect anomalies in troopers' enforcement practices that were consistent with fraudulent enforcement. Stelly's work was in large part responsible for flagging multiple troopers' suspicious enforcement which resulted in the termination of at least three troopers, the criminal charging of at least two of those three, and numerous disciplinary actions against other troopers.<sup>19</sup>

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<sup>18</sup> Exhibit D, p. 22-24.

<sup>19</sup> Exhibit D, p. 30-37.

Furthermore, in his current role as an instructor in crash investigation and reconstruction for Northwestern University, Evanston, IL, Stelly teaches about using statistics to advance crash investigation. Northwestern even tasked him to co-author a chapter about statistics in its upcoming textbook on crash reconstruction. One of the techniques that Stelly used in his report is modeled after the very same technique to advance crash investigation about which he wrote.<sup>20</sup>

Lastly, unlike an outside expert, Stelly is intimately familiar with LSP, LSP's promotional procedures, and all the promotional data that he secured from LSP and the LSP Commission. This familiarity gives Stelly a leg up on interpreting such data. In other words, this data does not apply to a topic foreign to Stelly but applies to something through which Stelly lived during his almost 27-year career with LSP.

Rule 702 of the Federal Rules of Evidence does not mandate that an expert be highly qualified in order to testify about a given issue. Differences in expertise bear chiefly on the weight to be assigned to the testimony by the trier of fact, not its admissibility." *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009) (citing *Daubert*, 509 U.S. at 596).

When Defendant states that Stelly's only publication in the last ten years is in the field of traffic reconstruction, it conveniently forgets to mention that this publication is about statistics, specifically how statistics can be used to advance investigations into crashes. In fact, Stelly adapted the very same technique about which he wrote for Northwestern University for use in analyzing promotional data. The technique is the Monte Carlo technique which was developed more than 80 years ago to assist in the development of the atomic bomb during WWII. The technique is used today across a vast swath of fields.<sup>21</sup>

Contrary to Defendant's statement, Stelly did work as a mathematician. Stelly taught

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<sup>20</sup> Exhibit D, 11-20.

<sup>21</sup> Exhibit D, p. 11-20



mathematics classes for the University of New Orleans Mathematics Department from his earning his MS in mathematics in May 1993 until his becoming employed by LSP in January 1995.

That Stelly is not a member of a professional statistics organization does not preclude his ability to employ statistics to evaluate data. In contrast, LSP's expert is a member of a professional statistics organization. However, her analysis is critically flawed as indicated in Stelly's motion to strike her and her report from this case. Most telling is that LSP does not mention her analysis even once in its argument, ostensibly recognizing its absolute uselessness in countering the statistical analysis of Stelly and Broadway despite her ASA membership.

Stelly refuted LSP's claim during his deposition that he did not follow ASA's ethical guidelines. Stelly explained that, being unaware of the content of ASA's ethical guidelines, he could neither confirm nor refute his following them. LSP has not claimed that Stelly's ethics conflict with those of the ASA. Stelly stated that he ethically evaluated all data and reached ethically correct conclusions.<sup>22</sup>

Moreover, LSP did not provide a single example of how Stelly supposedly failed to ethically evaluate its promotional data. In fact, LSP barely questioned Stelly during his deposition how he arrived at his calculations with its only technical question being about statistical independence, which Stelly readily answered and later provided a corresponding textbook reference that perfectly matched his earlier answer.<sup>23</sup>

Defendant claims that that Stelly's time at the State Police provided him with no specialized knowledge, training, or expertise in the areas of statistics.<sup>24</sup> As previously mentioned,

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<sup>22</sup> Exhibit D, p. 125-139.

<sup>23</sup> Exhibit D, p. 54-56, 95-108.

<sup>24</sup> Defendant's Memo. p. 8.

Stelly testified at length about his regularly using statistics during his LSP career to advance the LSP mission. He also testified at length how he uses statistics to this day in his post-LSP career.

Defendant, in its attempt to show that Stelly is not qualified to be an expert witness in this case, claims that there is no indication that Plaintiff's mathematics degrees or experience applying "general mathematics" include statistical analysis, either generally or in the context of evaluating whether those statistics may be indicative of discriminatory hiring and promotional practices. Moreover, there is no evidence Plaintiff has any specialized knowledge, training, or expertise in conducting demographic analyses, binomial analyses, or Monte Carlo analyses, which are the methods used to form the opinions contained in his report.<sup>25</sup>

This is not true as has been explained above. LSP's argument would have merit if Stelly were seeking expert qualification in the field of use of force, for example. Although Stelly, like every commissioned trooper in LSP, received annual use of force training and did so for almost 27 years, that training would be insufficient to establish him as an expert in that field.

However, Stelly's BS (magna cum laude) and MS in mathematics establishes his sound reasoning skills. His employment as a faculty member of the UNO Mathematics Department indicates its confidence in his knowledge and abilities. Further, the structure of any branch of mathematics, including statistics, is based on definitions and the consequences that follow therefrom. The statistics in Stelly's reports, while not advanced, follow from fundamental statistical definitions but are still outside the scope of knowledge of those not so trained in the rigors of mathematical reasoning.<sup>26</sup>

#### **IV. STELLY AND BROADWAY HAVE RELIABLE METHOLOGIES AND THEIR TESTIMONY WILL ASSIST THE JURY**

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<sup>25</sup> Defendant Memo, p. 8

<sup>26</sup> Exhibit C, par. 5.

Defendant is inconsistent in its attempt to show that Stelly and Broadway have unreliable methodology. First it claims that only the data for two promotion panels on July 9, 2021, be used for the experts to prepare their expert report on racial bias in its promotion system.<sup>27</sup> Rule 702(1) states that (1) “the testimony is based upon sufficient facts or data.” Obviously, there is insufficient data to use statistical analysis if only two promotions to captain on the same day are analyzed.

On the other hand, Defendant claims that the time-period of four years for the statistical analysis of the promotional system to examine racial bias that was selected by Stelly was too short. “Stelly has clearly picked the beginning and endpoints of his data set to set up his arguments of purported discrimination in the best possible manner, rather than considering data before and after his chosen dates, which would have yielded a different answer to the statistical question posed – whether race was a factor in promotion.”<sup>28</sup>

In 2013, Stelly statistically analyzed promotions from 2000 through early 2013 for indicators of racial or gender discrimination and found none. Stelly submitted this report to LSP. From 2013 until 09-06-17, Stelly applied for promotion to captain only four times and, despite not being promoted, detected no indicators of racial discrimination.<sup>29</sup>

Stelly first suspected racial discrimination on the 09-06-17 promotion, so Stelly started his analysis at that point. Similarly, on 10-05-21, Stelly requested retirement due to his abject disgust that promotional panels were racially discriminatory, so he ended his analysis on that date because he certainly would not be applying for promotion to captain thereafter. Any panels

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<sup>27</sup> Defendant Memo, p. 3.

<sup>28</sup> Defendant Memo. p. 8.

<sup>29</sup> Exhibit 4, Stelly 00251, LSP Captain Promotion Data

outside 09-06-17 through 10-04-21 are irrelevant to Stelly's claim that panels during that period were racially discriminatory.

In contrast, LSP wishes to use the fact that Stelly did not detect indicators of racial discrimination prior to 09-06-17 to diminish any indicators of racial discrimination Stelly experienced and observed from 09-06-17 to 10-04-21. Even more ludicrously, LSP wishes to use panel data after Stelly's requesting retirement and even after Stelly's retirement to diminish his racially discriminatory experiences and observations from 09-06-17 until 10-04-21. In short, LSP wants to use data from periods outside the time frame of Stelly's accusations to diminish his experience and observations inside that time frame. In other words, LSP wants to mitigate or even erase evidence of discriminatory behavior by including irrelevant periods during which there were no indicators of discriminatory behavior.

Defendant claims that Stelly influenced Broadway's selection of the beginning and endpoints of the data sets.<sup>30</sup> That Broadway used the same dates that Stelly used is not evidence that Stelly influenced Broadway to use those dates. Stelly simply explained to Broadway why Stelly chose the beginning and ending dates that he did, and Broadway concurred. Broadway's concurrence does not imply influence by Stelly, rather Broadway's concurrence implies validation of Stelly's date choices.<sup>31</sup>

Contrary to Defendant's argument, Stelly's and Broadway's statistical evidence from promotional panels prior to July 2021 and opinions as to whether analysis of those statistics indicate that race was a motivating factor in the promotion during that period do aid the jury in determining the ultimate issue, whether race was a motivating factor in denying Stelly two promotions on July 9, 2021. Under Rule 704(a), "testimony in the form of an opinion or

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<sup>30</sup> Defendant Memo, p. 8, 9.

<sup>31</sup> Exhibit D, p. 111-113. Exhibit C, par. 6-8.

inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." [Fed.R.Evid. 704\(a\)](#); *United States v. Izydore*, [167 F.3d 213, 218](#) (5th Cir. 1999).

Defendant misstates the law when it states that the statistical analysis will not assist the jury in determining whether the reason Plaintiff was not promoted to captain on July 9, 2021 was because he was white.<sup>32</sup>

The Fifth Circuit in *Mackey v. Enventives, L.L.C.*, No. 19-10604, at \*3-4 (5th Cir. Mar. 2, 2020) stated:

“This brings us to the crux of the issue in this case. Once an employer produces a legitimate, non-discriminatory reason for the adverse employment action, the burden shifts back to the plaintiff to make one of two showings. At the summary judgment stage, the plaintiff must offer sufficient evidence to create a genuine dispute of material fact that either (1) the employer's proffered reason for the adverse action is not true but is instead pretext for discrimination (pretext inquiry) or (2) the reason, while true, is only one reason for the adverse action, another being that racial discrimination was a motivating factor (mixed motives inquiry). *Vaughn v. Woodforest Bank*, [665 F.3d 632, 636](#) (5th Cir. 2011). If the plaintiff succeeds on either ground, he will survive a motion for summary judgment. *See id. A. Pretext*

To establish pretext, an employee must show that his employer's "proffered explanation for his termination is false or 'unworthy of credence.'" *Id.* at 637 (quoting *Laxton v. Gap Inc.*, [333 F.3d 572, 578](#) (5th Cir. 2003)). "Such rebuttal evidence, combined with the prima facie case, will suffice to create a genuine [dispute] of material fact such that summary judgment is inappropriate." *Id.* at 637-38.”

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<sup>32</sup> *Mackey v. Enventives, L.L.C.*, No. 19-10604, at \*3-4 (5th Cir. Mar. 2, 2020)

The proper standard of proof for a Title VII case as stated above brings us to the improper use of *Sullivan v. Worley v. Catastrophe Services, LLC*, where the plaintiff's expert opined that a disparity between the median age of employees who were laid off and employees who were retained indicated a probability that the layoffs not random, but were motivated by age discrimination.<sup>33</sup> However this is a case under the ADEA and the plaintiff must prove that age was the "but for" cause of the decision to terminate him.

There is a distinction of the size of the pool of data for the *Sullivan* case and this case. Stelly's suit pertains to his treatment in 18 promotion attempts to captain from 09-06-17 through 10-04-21. Stelly's and Broadway's expert reports concentrate on all captain panels from 09-06-17 through 10-04-21 (regardless whether Stelly was a candidate) of which there were 18 with at least one black candidate and 25 with at least one non-white candidate.<sup>34</sup> This case stands in stark contrast to *Sullivan* in that *Sullivan* was based on statistical analysis of more than 500 workers. This case is based on the statistical analysis of a population less than 10% of the size of the pool of workers in *Sullivan*.

Then the Defendant compares the *Sullivan* outcome to a suggested outcome in this case by stating, "Like in *Sullivan*, overall employment statistics, even if they suggest a pattern of discrimination, will not establish that race discrimination was the reason for these particular decisions." This is incorrect because, as stated above, the standards of proof are different.

Also, the Fifth Circuit held that "A court may infer that an employer engaged in racial discrimination when promoting workers if statistics, when comparing the number of non-whites and whites promoted, demonstrate a gross statistical disparity. *Lewis*, [750 F.2d at 1271](#). Statistical evidence, however, must be meaningful in light of all the surrounding facts and

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<sup>33</sup> Defendant's Memo p. 10.

<sup>34</sup> Exhibit 2, p. 9-13. Exhibit 3, p. 3.

circumstances. *Pouncy*, [668 F.2d at 1275](#). "In establishing an inference of discrimination from statistical evidence, the `required comparison [is] to a *qualified* pool of employees *presumptively eligible* for promotion." *Lewis*, [750 F.2d at 1275](#) (quoting *Pouncy*, [668 F.2d at 803](#)).

*Anderson v. Douglas Lomason Co., Inc.*, 26 F.3d 1277, 1290 (5th Cir. 1994)

In the case at bar, Stelly used the qualified pool of lieutenants that are on the Certificates of Eligibility for promotion to the captain positions. There is a gross statistical disparity. In Broadway's report, it is clear that the chance of the number of Black candidates being promoted compared to the number of the White candidates promoted during the relevant period would occur less than 5% of the time. This is a large disparity, and the results are statistically significant.<sup>35</sup>

In Stelly's report concluded that large racial disparities favoring Black and non-White candidates over non Black and White candidates in LSP's promotion to captain from 9/06/17 through 10/4/21 would occur by chance less than 5% of the time. These large disparities in promotion of Black versus non-Black and non-White versus White lieutenants to captains show that there was race discrimination in the LSP promotion system.<sup>36</sup>

Also, this statistical evidence is meaningful in light of all the surrounding facts and circumstances. The surrounding facts and circumstances are that part of Colonel Davis' time as Superintendent was from October 30, 2020 until October 4, 2021, the day before Stelly signed his retirement papers. During that period, Davis, when Stelly applied for the position, promoted 8 lieutenants to captain. There were four promotion panels with no Blacks on the eligible list. On those panels, Whites were promoted. On the other panels, three Blacks were promoted, and one non-White was promoted (Asian). Whenever a Black was on a panel, he or she was promoted

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<sup>35</sup> Exhibit 3, p. 5.

<sup>36</sup> Exhibit 2, p.16.

(El-Amin is a Black promoted to Gaming on July 9, 2021, who was also on the eligible list to be promoted to Operational Development. However, the promotions to Gaming and Operational Development were both made on the same day, July 9, 2021, and it was impossible for El-Amin to be promoted into 2 positions.)<sup>37</sup>

Some surrounding circumstances are that Stelly had the highest score on the promotional exam than all of the candidates for these eight promotional panels (One candidate David Stelly had the same score as Stelly, and David Stelly was promoted). Stelly had the most years of service and the most time in grade than the other candidates. Stelly had more formal education than the other candidates. Combining the number of awards and commendations, Stelly had the most of any candidate.

Defendant claims that Plaintiff and Broadway offer opinions as to what information was and was not considered by the promotional panels.<sup>38</sup> However, Stelly and Broadway offer statistical evidence that refutes LSP's contention that panels used the objective factors enumerated in PO 229 in deciding promotions.<sup>39</sup> Broadway did analyze these factors in his second report.<sup>40</sup>

Defendant claims that Plaintiff is attempting to make factual assertions rather than issue an opinion based on the facts.<sup>41</sup> This is incorrect. Broadway and Stelly only offered statistical evidence that such factors were not considered. Defendant claims that these factual allegations are unsubstantiated given the contention that education, experience, annual evaluations, awards, and disciplinary history were not taken into account for promotions is contradicted by testimony from the Louisiana State Police. This is also untrue because Broadway and Stelly did not make

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<sup>37</sup> Exhibit E, Davis Depo, p. 147-153.

<sup>38</sup> Defendant Memo, p. 13

<sup>39</sup> Ex 5, Stelly's First Expert Report, p. 5-9

<sup>40</sup> Ex 3, p. 3-6.

<sup>41</sup> Defendant Memo, p. 14



factual allegations. While neither Stelly nor Broadway were on any of the promotional panels and have no personal knowledge of the use or non-use of these factors, they may still opine on the statistical significance of these factors as evidenced by LSP's own records.

Defendant claims that Stelly and Broadway are giving their opinions that the promotional test scores and years of service and other factors on P.O. 229 will not assist the trier of fact in determining whether race played a role in these LSP's promotional decisions.<sup>42</sup> LSP again mischaracterizes Stelly's and Broadway's analyses. Both show through different methods that the objective factors enumerated in LSP PO 229 that must be considered when deciding promotions actually played little if any role in doing so. The only reasonable conclusion is that promotional decisions were using race as a contributing factor in their decisions.

Defendant claims that scores alone are not relevant with regard to whether a candidate is qualified for a captain position.<sup>43</sup> This is another mischaracterization by LSP of Stelly's and Broadway's analyses. Neither Stelly nor Broadway claimed that scores alone were relevant with regard to whether a candidate is qualified for a captain position.

Regarding the promotional exam, Davis in his deposition stated that so far as competitiveness, "it doesn't state whether or not it needs to be competitive."<sup>44</sup> The Louisiana Constitution Article 10, Section 45 states "Permanent appointments and promotions in the classified state police service shall be made only after certification by the director under a general system based upon merit, efficiency, fitness, and length of service, as ascertained by examination which, so far as practical, shall be competitive."

## V. CONCLUSION

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<sup>42</sup> Defendant Memo, p. 14.

<sup>43</sup> Defendant Memo, p. 15.

<sup>44</sup> Defendant Memo, p. 15, footnote 48.

Stelly is qualified to be an expert witness in this case. Defendant did not challenge the qualification of Broadway to be an expert. Both Stelly and Broadway use reliable methodologies to show that statistically race was a motivating factor in LSP's decision to not promote Stelly. They both should be allow to testify as expert witnesses in this case.

Respectfully Submitted,

/s/Victor R. Farrugia

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 25th day of June 2024, a copy of the above and foregoing pleading has been served upon counsel of record for all parties via CM/ECF transmission through the United States District Court for the Eastern District of Louisiana.

/s/Victor R. Farrugia