

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BEN BAKER AND CLARISSA GLENN,)	
)	Case No. 16 CV 8940
<i>Plaintiffs,</i>)	
)	
-vs-)	Judge Franklin U. Valderrama
)	
CITY OF CHICAGO, ET AL.,)	Magistrate Judge Shelia M. Finnegan
)	
<i>Defendants.</i>)	
)	(This case is part of <i>In re: Watts</i>
)	<i>Coordinated Pretrial Proceedings,</i>
)	Master Docket No. 19-cv-1717)
)	

**DEFENDANTS’ JOINT RESPONSE TO
PLAINTIFFS’ MOTION TO BAR TESTIMONY OF KEVIN HUGHES**

All Defendants, by and through their respective counsel, pursuant to Federal Rule of Civil Procedure 26(a)(2)(A) and Federal Rule of Evidence 702, hereby respond to Plaintiffs’ Motion to Bar Testimony of Kevin Hughes (Dkt. 297). In support thereof, Defendants state as follows:

INTRODUCTION

Plaintiffs’ Second Amended Complaint (Dkt. 238) contains a malicious prosecution claim in Count II, and alleges that they “lived in a Chicago public housing complex that was heavily policed by corrupt Chicago police officers . . . [that] sought bribes, planted drugs, and accused residents like [Plaintiffs] of possessing drugs they did not possess.” Dkt. 238 at pp. 32-33, ¶¶ 2, 3. The “Chicago public housing complex” is the Ida B. Wells housing complex (“IBW”), and the “corrupt Chicago police officers” are the Defendants, in addition to Defendants Ronald Watts (“Watts”) and Kallatt Mohammed (“Mohammed”). Thus, Plaintiffs filed the present action because they claim they were wrongfully framed and arrested by the Defendants, and Defendants

Watts and Mohammed, and that they were ultimately wrongfully convicted of crimes they did not commit. *See* Dkt. 238.

Throughout this case, including expert discovery, Plaintiffs have critiqued the police reports authored by the Individual Defendants. Plaintiffs' expert Dr. Jon Shane opines that the reports underlying Plaintiffs' arrests are "not useful aid[s] to prosecutors in conducting criminal proceedings," and "not sufficiently detailed or complete," which is problematic because, in his opinion, if the reports had properly documented "all of the relevant information," those reports would have been given to the prosecution, turned over to the Baker/Glenn defense team, and used as exculpatory evidence. "Exhibit A," Expert Opinions of Dr. Jon M. Shane, pp. 107-112.

Defendants' proposed expert, former Cook County Assistant State's Attorney ("ASA") Kevin Hughes ("Hughes"), has been disclosed to proffer opinions to combat Dr. Shane's opinions. Specifically, both his report and his testimony demonstrate the propriety and normality of the investigative and arresting techniques utilized by Defendants when arresting Plaintiffs, in addition to the subsequent prosecutions of Plaintiffs, in comparison to the techniques utilized by other officers throughout Cook County, including other narcotics operations within IBW, and other narcotics prosecutions. *See* Dkt 297-1, pp. 1-5; "Exhibit B," Deposition of Kevin Hughes. This testimony is reliable based upon Hughes' experience as a career Cook County ASA who has personally prosecuted over 1,000 narcotics cases and reviewed thousands of police reports (Dkt. 297-1, pp. 1-2), and it is relevant because it refutes Plaintiffs' theory, corroborates Defendants' defenses, and it will aid the jury in understanding the status quo of narcotics sales and activities within IBW in the early aughts, in addition to assisting a jury in understanding the routine nature of the Defendants' actions during their arrests of Plaintiffs for narcotics crimes. Consequently, Plaintiffs' Motion to Bar Hughes should be denied.

LEGAL STANDARD

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), guides the admission of expert testimony under Fed. R. of Evid. 702, which allows a witness to testify in the form of an opinion and be qualified as an expert by knowledge, skill, experience, training or education, upon a district court's determination that "(1) the proposed witness would testify to valid scientific, technical, or other specialized knowledge and (2) his testimony will assist the trier of fact." *Trustees of Chicago Painters and Decorators Pension, Health and Welfare, and Deferred Savings Trust Funds v. Royal International Drywall and Decorating, Inc.*, 493 F.3d 782, 787 (7th Cir. 2007); *Ammons v. Aramark Uniform Services*, 368 F.3d 809, 816 (7th Cir. 2004) (internal citations omitted). As the "gatekeeper," it is the district court's "special obligation," not the parties, to ensure that expert testimony is relevant and reliable. See *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999).

Addressing the first prong of a court's inquiry, the Seventh Circuit "has 'recognized that expert testimony [is] not limited to scientific testimony,'" and noted that while "'the *Daubert* Court identified a number of factors to be considered when evaluating the admissibility of expert testimony . . . these factors do not establish a definitive checklist.'" *Trustees of Chicago*, 493 F.3d at 787 (quoting *United States v. Cruz-Velasco*, 224 F.3d 654, 660 (7th Cir. 2000)). Further, the Seventh Circuit has recognized that "'Rule 702 specifically contemplates the admission of testimony by experts whose knowledge is based on experience.'" *Id.* (quoting *United States v. Parra*, 402 F.3d 752, 758 (7th Cir. 2005)). The Northern District has further noted that "[t]he Seventh Circuit has cautioned that 'the test for reliability for nonscientific experts is flexible.'" *Fletcher v. Doig*, 196 F. Supp. 817, 823 (N.D. Ill. 2016, Feinerman, J.) (quoting *United States v. Romero*, 189 F.3d 576, 584 (7th Cir. 1999) (internal citations omitted)). A proposed expert's

testimony will be deemed sufficiently reliable under Rule 702 and *Daubert* so long as it is “based on specialized knowledge as opposed to subjective beliefs or speculations.” *Trustees of Chicago*, 493 F.3d at 788. Under the second prong, whether the expert’s testimony “would assist the trier of fact,” a district court “evaluates the testimony’s relevance,” and ultimately its helpfulness to a jury. *Ammons*, 368 F.3d at 816. Because Hughes’ testimony is based upon specialized knowledge, and is reliable and relevant, he is qualified to provide expert testimony, and his testimony should be permitted.

ARGUMENT

I. Hughes has disclosed opinions that are based upon his specialized knowledge.

“[T]he distinction between statements of fact and opinion is, at best, one of degree.” *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 168 (1988). While Plaintiffs’ counsel cleverly cites to a 2-page range¹ within the 201-page transcript to argue that Hughes has not disclosed any opinions in this case, this gamesmanship should not be permitted. Both Hughes’ report and his testimony demonstrate that although he is undeniably testifying to *facts* based upon his thirty years as a Cook County ASA, he is ultimately *opining* about the significance, or lack thereof, of: the substance within and the police reports generally for Plaintiffs’ underlying arrests in this matter, including his opinion that there is nothing untoward in these police reports that would deem them to be problematic or not useful in narcotics prosecutions; that it is unremarkable that none of the drugs recovered from Plaintiffs, in any of their respective arrests, were forensically tested; the normality of the investigative techniques used by the Defendants within IBW, in comparison to the techniques used by other police officers across Cook County, including within IBW, when investigating narcotics sales and activities; that the primary method of identification when

¹ More precisely, he cites to Hughes’ one word answer, “no,” when asked whether he has disclosed opinions in any of the Watts cases. Ex. B, 18:5-7.

prosecuting individuals for narcotics-related crimes is police officers' testimony; and the process by which Cook County ASAs prosecuting narcotics crimes would utilize police reports to aid them during the prosecutions of those specific offenses. *See* Dkt. 297-1, pp. 1-2, 4-5.

Tribble v. Evangelides, 670 F.3d 753, 758 (7th Cir. 2012), is instructive to the case at bar. In *Tribble*, the Seventh Circuit found that an ASA was not properly disclosed and testified as an expert, improperly offering opinion testimony, when she was asked “to *summarize* her experiences . . . and *draw conclusions* about how, in general, [a branch court] operated.” *Tribble*, 670 F.3d at 758 (emphasis in original). The court further found that “[b]road generalizations and abstract conclusions are textbook examples of opinion testimony.” *Id.* Unlike lay testimony, expert testimony provides “specialized explanations or interpretations that an untrained layman could not make if perceiving the same acts or events.” *Id.* The *Tribble* ASA gave a “prosecutor’s-eye view” of how a branch court worked, and was proffered as a witness to explain the routineness of a narcotics case being dismissed at the preliminary hearing stage based upon the weight of the recovered narcotics. *See id.* at 758-59. The Seventh Circuit additionally found that the *Tribble* ASA’s testimony had “the familiar syllogistic structure of much expert testimony . . . [in that] she presented a general theory . . . offered a case-specific minor premise . . . and guided the jury to a conclusion,” but “hasten[ed] to add, [the ASA] did not spell out that conclusion herself.” *Id.* at 759.

Here, Hughes will likewise be providing the jury with a “prosecutor’s-eye view” of narcotics arrests and criminal prosecutions, including Plaintiffs, in the “syllogistic structure” of

expert testimony: he is presenting his general theories², offering case-specific minor premises³, and he will be allowing the jury to determine what conclusions, if any, to glean from for his theories and premises.

Plaintiffs theorize that they were framed and convicted by corrupt police officers, and will argue at trial, vis-à-vis Dr. Shane, that evidence of this corruption is found in the “problematic,” insufficient, and inaccurate police reports. Hughes’ report and testimony squarely counter this theory by explaining how the reports in this case are no different from any of the other thousands of police reports he has reviewed, from officers across the City of Chicago, including during the exact time period when and in the same geographic location where Plaintiffs were arrested. Dkt. 297-1, pp. 1-2, 5; Ex. B., 93:8-20, 155:17-22, 158:19-25. Based on this, had Defendants disclosed Hughes as a fact witness, Plaintiffs likely would move for this Court to bar his report and testimony based upon its “broad generalization and abstract conclusions.” *See id.* at 758.

Hughes report and testimony will assist a jury in their fact finding because Hughes provides specialized explanations and interpretations of the police reports, investigative techniques, lack of forensic testing, methods of identification in and progression of the prosecutions of Plaintiffs’ criminal cases, in addition to providing specialized explanations of narcotics sales and activities within IBW during the relevant time frame of 2004-2005, and the investigations and prosecutions stemming therefrom. Because Hughes’ report and testimony on the aforementioned topics are

² E.g., it is not uncommon for certain details to be lacking in police reports; forensic testing is conducted on recovered narcotics only on very rare occasions; the primary methods of identification during narcotics prosecutions come from police officers’ testifying to their observations; and the processes by which Cook County ASAs are able to utilize police reports in their prosecution of narcotics offenses, among others.

³ E.g., the police reports in this case are not problematic; the underlying criminal cases for this matter were not cases in which forensic testing would have been performed on the recovered narcotics; the Defendants identified the Plaintiffs as the offenders and described their observations of Plaintiffs during the underlying criminal proceedings; and the progression of Plaintiffs’ prosecutions was not unlike the progression of prosecutions of thousands of other narcotics cases prosecuted by the CCSAO.

based on his thirty-year career as a Cook County prosecutor, primarily assigned to narcotics cases, Hughes should be deemed qualified as an expert, and his report and his testimony should be categorized as opinions that were properly disclosed as expert testimony.

II. Hughes should be permitted to testify about Sin City and other investigations because his expertise in prosecuting narcotics offenses is relevant to Defendants' defenses in this matter.

As an initial matter, Plaintiffs' Motion states that "Mr. Hughes remembers nothing about Sin City." Dkt. 297, p. 4. This is false. Hughes was the lead prosecutor of the Sin City from approximately 2004 to 2006 while he was assigned to the Complex Narcotics Division. Ex. B, 158:19-25⁴. He testified that Sin City is a "textbook example of some of the cases I worked for over ten years of the State's Attorney's Office," and the reports related to Sin City "were the type of reports that I was accustomed to seeing all the time." Ex. B, 148:11-20. Hughes' report describes his experiences as the lead prosecutor of Sin City (Dkt. 297-1, p. 3), including that the level of drug sales within IBW was estimated to be \$10,000 to \$15,000 per day, and he also testified that "[e]verything that I prepared in this report was based on my experience" in addition to his memory, and his reviewing of reports provided to him. Dkt. 297-1, p. 3; Ex. B, 114:23-115:20, 143:6-16, 146:1-23.

With respect to whether Hughes should be permitted to testify to his experiences with Sin City and other investigations, Hughes' thirty-year career as a Cook County prosecutor can be likened to a building a home. Hughes's individual assignments within the CCSAO are individual structural pieces and that, over three decades, were combined together and built into a structure that became a home – culminating in his present expertise in prosecuting narcotics offenses.

⁴ Exhibit 12 to Hughes' Deposition, a summary of the Sin City operation, provides that the investigation was initiated on January 24, 2005; however, Hughes testified that he believed he worked on Sin City beginning in approximately 2004.

Delving into the analogy, his experience as serving as a First Chair in the Complex Narcotics Unit from 2000-2010 is one component, the cement, with his experience as the lead prosecutor of Sin City being just a portion of the cement. The wood, windows, roof, and other ingredients that were nailed, soldered and glued together, came from his experiences in Night Narcotics from 1994-1995; prosecuting narcotics offenses in the Felony Trial Division from 1995-2000; and ultimately ending his career as the Supervisor of the Special Grand Jury (largely tasked with indicated narcotics offenses) and Narcotics Preliminary Hearing Unit from 2010-2020. Separately, and alone, none of these experiences may necessarily make him an expert. Together, however, they do – and, once combined, they cannot be separated and parsed from one another, just as one cannot separate out the cement foundation, or pieces of structure from a home, without it collapsing or becoming decrepit.

Important to this case, Hughes' experience with Sin City and other narcotics investigations is highly relevant, in that that specific operation investigated and prosecuted individuals who were performing narcotics sales and activities in IBW at the same location and during the relevant time frame of Plaintiffs' arrests. Moreover, Hughes' experience as a career narcotics prosecutor, which necessarily includes his experiences with Sin City and other investigations, is relevant to informing the jury as to what specific information is needed for a prosecutor to proceed in narcotics prosecutions, including a prosecutor's reliance on police reports. See Ex. B, 187:22-188:8. Consequently, and further outlined below, Hughes should be permitted to testify regarding these topics.

A. Hughes should be permitted to opine regarding his experience as the lead prosecutor of the Sin City operation, because that operation and experience is relevant to Plaintiffs' claims and Defendants' defenses.

Hughes was the lead prosecutor over Sin City, a narcotics investigation executed by the Chicago Police Department within IBW, in the early 2000s – during the same time period as Plaintiffs’ 2004 and 2005 arrests. Dkt. 297-1, p. 2. Hughes disclosed that as the lead prosecutor, one of his processes would be to work with the CPD, which included reviewing their documentation and reports. Dtk. 297-1, pp. 1-2, Ex. B, 155:23-156:3. Produced in discovery in this matter, and submitted to Hughes, are documents, materials and reports obtained during the Sin City investigation. Within the Sin City documentation, which was scanned by Hughes in preparation for drafting his report and testifying at his deposition,⁵ there is a chart (“Sin City chart”) that was created by the CPD chart that ranks individuals’ hierarchy within the narcotics trafficking taking place at IBW, wherein Plaintiff Ben Baker (“Baker”) is marked as a “Building Manager” for the 527 Building in IBW. Dkt. 297-1, p. 3; Ex. B, 139:15-140:22, 168:15-23. One of Plaintiffs’ defenses is that Baker, an admitted drug dealer, had stopped dealing drugs at the time of his 2004 and 2005 arrests. The fact that Baker was identified as a Building Manager during this exact time period during the investigation and prosecution of Sin City is highly relevant to Defendants’ defense that Plaintiffs did possess narcotics at to the time of their arrests, and Defendants did not falsely arrest nor maliciously prosecute them.

1. Hughes’ testimony regarding his experience with Sin City, in IBW, is relevant and not unduly prejudicial in light of Plaintiffs’ testimony.

As noted above, Plaintiffs claim that they did not commit the crimes they are accused of, and that they were framed by corrupt Chicago Police officers. Dkt. 238. Plaintiffs’ support this claim, in part, by claiming that Baker was no longer selling drugs as of 2004. *See* Exhibit C, Answer No. 1. In contrast, Defendants maintain that Plaintiffs were not framed, they were properly

⁵ Again, Hughes lived the Sin City operation and had reviewed and worked with all of this documentation in real-time as the lead prosecutor. Ex. B, 14:5-20, 17:7-10, 168:15-169:14, 170:3-19.

and appropriately charged, prosecuted and convicted for the narcotics crimes they committed. The Sin City chart indicating that Baker was a Building Manager of the 527 Building within IBW, and Hughes' testimony regarding this identification, refutes this theory. Dkt. 297-1, p. 3; Ex. B, 139:15-140:22, 168:15-23. Hughes testified that Baker, as a Building Manager, was "in charge" of the narcotics in that specific building, meaning that he was an individual who provided narcotics to the individual distributors within the 527 Building, and then the individual distributors would bring money back to Baker after they sold the narcotics he supplied to them. Ex. B, 140:10-22. Hughes further stated that his knowledge of Baker being identified as a Building Manager, and what role a Building Manager perform in narcotics activities, comes from "being in the complex narcotics unit and working . . . the criminal drug conspiracy cases." Ex. B, 140:23-141:3. This testimony is corroborated by Elgen Moore, also a Plaintiff in the *In re Watts Coordinated Pretrial Proceedings*, who testified at his deposition that he was arrested "as part of the Sin City takedown," after selling heroin "for Ben Baker" to an undercover officer at the 527 Building on April 27, 2005. Group Exhibit D, excerpts of Elgen Moore Deposition, at 194:23-195:17, 209:2-210:8, and Exhibit 15 to Elgin Moore Deposition (a Supplemental Report documenting the undercover buy). While it is true that under Evidence Rules 403 and 404(b) evidence of an individual's prior arrests are "usually" not admissible because they may indicate propensity, they "may . . . be admissible for other purposes," and have been admitted when the probative value of the prior arrests was outweighed by the risk of prejudice. *See Betts v. City of Chicago, Ill.*, 784 F. Supp. 2d 1020, 1024 (N.D. Ill. 2011) (citing Fed. R. Evid. 403 and 404(b)). Unlike the cases⁶ cited in Plaintiffs' Motion

⁶ *Mowrey v. City of Fort Wayne*, 2013 WL 6512664, at *2 (N.D. Ind. Dec. 12, 2013) (arrests were excluded because evidence of a plaintiff's prior arrests are usually inadmissible, and defendants did not "suggest otherwise"); *Dyson v. Szarynski*, 2014 WL 7205591, at *6 (N.D. Ill. Dec. 18, 2014) (in evaluating whether to admit evidence of the plaintiff's other arrests, the court noted that "there are a myriad of ways [the plaintiff] could open the door to his prior arrests," and stated that the defendant was "free to raise this issue again after [plaintiff's] direct examination."); *Gregory v. Oliver*, Case No. 00 C

(Dkt. 297, pp. 5-6), Plaintiffs here have opened the door to this testimony by asserting that Baker was no longer selling drugs at IBW as of 2004. Ex. C, Answer No. 1. It must be noted that Hughes concedes that Baker was not prosecuted during Sin City, despite being identified as a Building Manager, because Hughes, as the lead prosecutor, did not see enough “direct evidence” in the information provided to him by CPD to prove that Baker was involved in narcotics sales and activities “beyond a reasonable doubt.” Ex. B, 141:4-142:18. Thus, beyond the probative value of this testimony outweighing the risk of prejudice, any prejudice concerns regarding the admission of Hughes’ experiences with Sin City are further assuaged by Hughes’ concessions, and this testimony should therefore be allowed.

2. Hughes has sufficient foundation for his opinions.

Plaintiffs claim that Hughes lacks foundation to offer any opinions because he has failed to “identify the data he relied on.” Dkt. 297, p. 6. This is incorrect. Hughes’ report and testimony reveal that his opinions are based upon his experience as Cook County ASA for over thirty years, the bulk of which was prosecuting narcotics offenses just like those Plaintiffs were arrested for and convicted of, including his experience as the lead prosecutor of Sin City. Dkt. 297-1, p. 17; Ex. B, 17:7-10, 114:23-115:20, 143:6-16, 146:1-23. Furthermore, while he noted that he was unable to specifically identify which Sin City documents he reviewed, Plaintiffs’ counsel had the opportunity to and did, in fact, show certain documents to Hughes during the course of his deposition. *See* Ex. B, pp. 7-8, (wherein Exhibits 3, 4, 6, 7, and 9 were identified by Hughes as documents he reviewed, and Exhibit 15 is a subpoena response that lists out documents reviewed by Hughes). Hughes noted that he did a “quick overview” of the Sin City documents, recognized

5984, 2003 WL 1860270, at *1 (N.D. Ill. April 9, 2003) (the court found that “defendants have shown nothing to overcome [the prior arrests’] presumptive inadmissibility under Evid. R. 609(b),” and that there was “no contest – exclusion is clearly called for,” when examined under “the combined lens of Evid. R. 404(b) and Evid. R. 403.”).

that they were the same documents he encountered and worked with when he was personally prosecuting Sin City cases, and further noted that he focused his review of documents on Plaintiffs' police reports, in addition to reviewing Baker's deposition. Ex. B., 31:24-33:16, 36:11-37:9. Throughout his deposition, Hughes responded, appropriately, to Plaintiffs' counsel's questions regarding his "purpose" in this case, and the basis therefore, was to "respond to police reports and basically establish for you or anyone else in court as to what the [sic] those items mean, and – how they would be handled by a prosecutor in court," and provide his expertise with narcotics prosecutions. Ex. B, 37:16-22; *see also* Ex. B, 16:12-17:10⁷, 34:18-25, 23:16-24. Thus, Hughes thoroughly explained the foundation for his disclosed opinions.

Plaintiffs cite *Levy v. Marion County Sheriff*, No. 1:17-cv-03090-JMS-TAB, 2019 WL 535706 (S.D. Ind. Feb. 11, 2019), to support their position that Hughes' testimony should be barred because, by failing to specifically identify the Sin City documents he reviewed among the list of Sin City documents that were provided to him (and Plaintiffs), "Plaintiffs could not cross-examine about those documents." Dkt. 297, pp. 6-7. However, there is a key distinguishing factor between the plaintiff's expert whom defendants sought to exclude in *Levy*, and the present motion to bar Hughes. Plaintiffs in this case were provided the same materials that Hughes relied upon⁸, while the *Levy* expert relied and based her opinions on *data* that she did not disclose in her report and that she did not recall at her deposition, and that she later alluded to in an affidavit tendered to opposing counsel after her deposition. *Levy*, 2019 WL 535706 at *3 (emphasis added). Unlike the *Levy* defendants, Plaintiffs' counsel had the opportunity to cross-examine Hughes on any of the

⁷ Cf. Ex. B, 19:5-14 (acknowledging that he has never been an expert witness, and it is his understanding that an individual is not an expert "until the Court deems you as such," thus he was hesitant to refer to himself as an expert at this time).

⁸ In addition to his extensive, hands-on experience as a Cook County prosecutor and the lead prosecutor of Sin City.

Sin City documents provided to both him and Plaintiffs, and did in fact cross-examine Hughes regarding the Sin City chart on which Baker is identified as a Building Manager. *See supra*. All other documents that Hughes reviewed and relied upon that were specific to this case, namely Plaintiffs' police reports and deposition testimony, were clearly identified. Ex. B., 31:24-33:16, 36:11-37:9. Notably, the *Levy* court ultimately excluded plaintiff's expert not solely based on the failure to identify the data upon which she relied, but also the plaintiff's violation of Rule 26 for failing to disclose that the expert had testified on four other occasions, and because the expert had no knowledge of the core issues in the case. *Levy*, 2019 WL 535705 at *3, 4. In sum, none of the bases that were used to exclude the expert in *Levy* are present in this case.

B. Hughes is qualified to testify regarding investigative techniques employed by the CCSAO, in conjunction with the CPD, regarding narcotics operations based upon his over thirty-years as a Cook County prosecutor.

As noted *supra*, an individual may be an expert based upon his or her specialized knowledge. Like the prosecutor in *Trimble*, Hughes is being asked to summarize his experiences and draw conclusions about how, in general, narcotics prosecutions operated in conjunction with CPD's investigations, and tactics to combat narcotics sales in Cook County, including at IBW, in 2004 and 2005 when Plaintiffs were arrested and charged with committing narcotics crimes. *See Tribble*, 670 F.3d at 758. Hughes' report discusses his expertise with working with police officers who used the very techniques employed in Plaintiffs' arrests, namely: surveillance from hidden locations and undercover vehicles; working off of information from concerned citizens; the tactics individuals selling narcotics would use to conceal their supply from law enforcement; the general logistics of drug activities and sales within IBW; and techniques and varying roles used by tactical teams outside of CPD's Organized Crime divisions. Dkt. 297-1, pp. 2-3. Hughes' report also discusses how, upon his review of the police reports for Plaintiffs' arrests, based upon his decades

of experience prosecuting narcotics crimes, there is nothing problematic or untoward in said reports. *Id.* at pp. 3-5. Merely because there are differences between large scale narcotics investigations and the on-view arrests of Plaintiffs does not mean that such background information would not be helpful to a jury in explaining the larger context of narcotics activities and tactical teams' efforts to combat such activities during the early aughts and at IBW. Consequently, Hughes should be permitted to provide this context, based upon his extensive and specific expertise as a narcotics prosecutor for thirty years, during his testimony.

III. Hughes should be permitted to testify regarding the police reports documenting Baker's and Glenn's arrests.

To reiterate, *Daubert* allows for Hughes to opine regarding the police reports documenting Plaintiffs' arrests based upon his specialized knowledge as a former career Cook County ASA who has reviewed easily over 1,000 police reports throughout his career, and prosecuted hundreds of narcotics cases. Dkt. 297-1, pp. 1-2. Plaintiffs' theory, as evidenced by Dr. Shane's report, is that the police reports for Plaintiffs' arrest were part and parcel of their wrongful arrests, prosecutions, and convictions. See Ex. A, pp. 107-109. Indeed, one of Dr. Shane's opinions for Plaintiffs' case is that the police reports for Plaintiffs' underlying arrests "cannot function as a useful aid to prosecuting in conducting criminal proceedings because the prosecutors are unable to determine who know what about the events at issue based on the report." *Id.* at p. 107. Who better than a former prosecutor, who spent almost his entire career prosecuting narcotics crimes, to opine regarding the usefulness of the at-issue reports? Unlike Dr. Shane, who does not offer support for this contention, Hughes is able to detail his and other prosecutors' processes and methodologies for identifying who performed what function during a given narcotics investigation or arrest; which included reviewing all available reports, reaching out to the officers listed in Box 1 and Box 2 on the arrest report, and then contacting as many other officers as needed to identify who performed

each function. *See* Ex. B. 60:21-61:21, 68:18-23, 73:15-22, 75:24-77:10, 79:23-78:5, 100:2-101:2. As a career Cook County ASA who relied on police reports during his prosecutions of narcotics offenses, he has specialized knowledge regarding these reports that is both reliable and would aid a jury in their evaluation of Plaintiffs' claims that these reports indicate the corruption of Defendants.

Indeed, because Plaintiffs have placed the police reports underlying Plaintiffs' arrests at issue, Defendants should be permitted to effectively rebut that testimony. Even without Dr. Shane⁹, Hughes should be permitted to testify to the significance of the information contained, or not, within the police reports, based upon his extensive experience and expertise with prosecuting narcotics offenses.

CONCLUSION

WHEREFORE, Defendants hereby respectfully request that this Court deny Plaintiffs' Motion to Bar Testimony of Kevin Hughes.

Dated: July 1, 2024

Respectfully submitted,

By: /s/ Paul A. Michalik
Special Assistant Corporation Counsel
One of the Attorneys for Defendants City of
Chicago and the Supervisory Officials

By: /s/ Kelly M. Olivier
Special Assistant Corporation Counsel
One of the Attorneys for All Defendant
Officers except for Cadman, Spaargaren,
Mohammed, and Watts

⁹ Defendants have filed a Motion to Bar Certain Opinions of Plaintiffs' Proposed Expert Jon M. Shane (Dkt. 326).

Terrence M. Burns
Daniel J. Burns
Paul A. Michalik
Daniel M. Noland
Katherine C. Morrison
Elizabeth A. Ekl
Dhaviella R. Harris
Burns Noland, LLP
311 S. Wacker Dr., Suite 5200
Chicago, IL 60606
(312) 982-0090

By: /s/ Eric S. Palles
Special Assistant Corporation Counsel
One of the Attorneys for Defendant Kallatt
Mohammed

Eric S. Palles
Sean M. Sullivan
Yelyzaveta Altukhova
Ray Groble
Mohan Groble Scolaro, PC
55 W Monroe, Suite 1600
Chicago, IL 60603
Phone: (312) 422-9999

Andrew M. Hale
Anthony E. Zecchin
Kelly M. Olivier
William E. Bazarek
Jason M. Marx
Hannah Beswick-Hale
Hale & Monico LLC
53 W. Jackson Blvd., Suite 334
Chicago, IL 60604
(312) 341-9646

By: /s/ Brian P. Gainer
Special Assistant Corporation Counsel
One of the Attorneys for Defendant Ronald
Watts

Brian P. Gainer
Monica Burkoth
Lisa M. McElroy
Alezza Mian
Johnson & Bell, Ltd.
33 W. Monroe St., Suite 2700
Chicago, IL 60603
(312) 372-0770

CERTIFICATE OF SERVICE

I, Kelly M. Olivier, an attorney, hereby certify that, on **July 1, 2024**, I electronically filed the forgoing, DEFENDANTS' JOINT RESPONSE TO PLAINTIFFS' MOTION TO BAR TESTIMONY OF KEVIN HUGHES with the Clerk of the Court using the ECF system, which simultaneously served copies on all counsel of record via electronic notification.

/s/ Kelly M. Olivier