IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	)	Master Docket Case No. 19-cv-01717
	)	Judge Franklin U. Valderrama
	)	Magistrate Judge Sheila M. Finnegan

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO BAR OR LIMIT DEFENSE EXPERT MICHAEL BROWN'S OPINIONS

INTRODUCTION

Defendants' proposed expert, Michael Brown, seeks to rebut Plaintiffs' expert, Jeffrey Danik. Both experts are retired FBI agents. For the reasons discussed in Plaintiffs' motion to bar or limit his testimony and below, Brown should not be permitted to testify about witnesses' credibility, speculative opinions, or matters outside of his offered expertise in this case.

ARGUMENT

I. Brown cannot opine on the credibility of witnesses or Plaintiffs.

Both in his report and during his deposition, Brown makes credibility assessments of [redacted] Ben Baker. Brown's opinions on their credibility are improper and should be barred, without exception.

The law is well-established and straightforward on this issue—an expert cannot determine credibility; that is for the trier of fact. *United States v. Scheffer,* 523 U.S. 303, 313 (1998); *Goodwin v. MTD Products, Inc.,* 232 F.3d 600, 609 (7th Cir. 2000) ("An expert cannot testify as to credibility issues."); *United States v. Hall,* 165 F.3d 1095, 1107 (7th Cir. 1999) ("It is the exclusive province of the jury to determine the believability of a witness .... An expert is not permitted to offer an opinion as to the believability or truthfulness of a witness's story"); *Mason*

v. City of Chicago, 631 F. Supp. 2d 1052, 1062 (N.D. Ill. 2009); *see also*, *United States v. Scop*, 846 F.2d 135, 142 (2d Cir. 1988) (finding that expert witnesses cannot offer opinions on relevant events based on their personal assessment of the credibility of another witness's testimony).

In response to Plaintiffs' argument on the impropriety of these assessments, Defendants contend that Brown was merely commenting on these individuals' credibility for purposes of utilizing their allegations in the joint CPD/FBI corruption investigation, and as an explanation as to why the allegations need to be corroborated. This is a distinction without a difference. When Brown attempts to cast doubt on Baker's credibility during the relevant time period, it is tantamount to him doing so in the present case because Baker's core allegations against Watts and his team are the same now as they were approximately 20 years ago. When an expert comments on a witness's credibility, whether in the context of current litigation or past events, the consequences are the same—the expert invades the jury's role. Notably, Defendants point to no case law where courts carve out exceptions for experts like Brown to opine on an individual's credibility for any purpose.

Moreover, contrary to the suggestion by Defendants, Brown did not rely on the relevant investigators' determinations of Baker's [redacted] credibility in defending the CPD's actions and inactions. In fact, Brown did not cite to anything in the record that demonstrates Chicago Police or FBI personnel shared his skepticism of the men's credibility or that they relied on that determination during the joint investigation.

What's more, Brown impugns the credibility of an entire group of people—individuals with criminal records who accused Watts of misconduct.

> Not only did Danik fail to identify those responsible for making the accusations, an examination of the investigative file reveals that each of the sources responsible for the accusations can be attributed to individuals with questionable

> credibility stemming from their past and present criminal behavior and their current motivation in providing information to the authorities.

Dkt. at 300-2, p. 18. The prohibition against expert testimony on the credibility of others applies not only when the expert expresses an opinion about a specific person, but also when the opinion concerns a class of persons that includes those whose credibility is at issue in the trial. *United States v. Rodriguez-Flores*, 907 F.3d 1309, 1321 (10th Cir. 2018) (citing Fed. R. Evid. 702(a)) (holding that it was clear error by the lower court to admit the DEA expert's testimony on the credibility of drug couriers). Because Brown did just that in his report, the Court should exclude this opinion and any potential, related testimony that may stem from it.

Additionally, Defendants argue that Plaintiffs' counsel invited Brown to testify about these witnesses' credibility by asking him certain questions at his deposition. Not so. Brown included credibility assessments of Baker, [redacted] in his expert report. Thus, any questions that he was asked at his deposition were appropriate given his articulated opinions. For example, Brown stated in his report, "A prime example of a key witness who had serious issues related to his credibility [redacted] Dkt. at 300-2, p. 18. Another instance where Brown expressed credibility views in his report is outlined below:

> As this information demonstrates, while Baker claims that he was falsely arrested by members of the Watts team, the evidence shows that he was a drug dealer who ran a drug line before he was arrested. This evidence is corroborated by Baker's convictions for drug dealing before his 2005 arrest and incarceration, which Baker failed to disclose in his interrogatory answers, his 2018 criminal charges by the USAO for possession of fentanyl laced heroin, and subsequent 2019 plea agreement. Moreover, Baker's arresting officers for his March 23, 2005 narcotics arrest (Officers Nichols and Leano), were not implicated as corrupt officers during the FBI and IAD investigation from 2004 to 2012.

Dkt. at 300-2, p. 17. When Plaintiffs properly questioned Brown on these sentiments, Brown answered by testifying that "Baker has credibility issues…" Dkt. at 300-3, 136:1. Plaintiffs,

therefore, did not invite this testimony—they asked questions about statements in his report and Brown responded that the statements were based on his assessments of credibility.

Ultimately, if permitted to testify, Brown should be allowed to highlight the need to corroborate individuals' allegations in any investigation. But he should not be permitted to make that point in the context of impugning the credibility of those who made those allegations—or a whole group of people. This Court should bar all testimony or opinions by Brown that touch on a witness's or plaintiff's credibility.

II. Brown should be barred from offering opinions that are speculative or fall outside the scope of his expertise.

There is no dispute that Brown should not be permitted to speculate or opine on subjects outside of his expertise. For the reasons stated in the opening motion, Plaintiffs believe Brown did so in the examples articulated therein. Defendants disagree and propose reasons that his comments are neither speculative nor outside the scope of his experience. Plaintiffs continue to believe that the identified comments on public and media relations, CPD internal affairs, including administrative action, and union matters are improper opinions in this context.

Opinions that are based on speculation are inadmissible. *Rogers by Rogers v. K2 Sports, LLC*, 348 F. Supp. 3d 892, 901 (W.D. Wis. 2018). As the Seventh Circuit concluded, "the whole point of *Daubert* is that experts can't speculate. They need analytically sound bases for their opinions. District courts must be careful to keep experts within their proper scope, lest apparently scientific testimony carry more weight with the jury than it deserves." *DePaepe v. Gen. Motors Corp.*, 141 F.3d 715, 720 (7th Cir. 1998).

In his report, Brown offered multiple, speculative opinions, as outlined in Plaintiffs' motion. Take the first one noted, on page five of the Motion, regarding the potential "collateral damage" to CPD had it initiated administrative penalties against Watts. Dkt. at 300-2, p. 14.

Brown's reasoning is entirely speculative in ways that may well mislead a jury. First, Brown assumes, without a basis, that CPD uses criminal prosecutions of its officers as teaching opportunities or deterrence tools for other officers. Nothing in the record supports that CPD operates as such. Brown also relies on the inaccurate premise that CPD had authority to initiate criminal charges against Watts or any of his officers. This, too, is wrong for one glaring reason—CPD had agreed to defer to the federal authorities for any prosecution of Watts or his officers that stemmed from the joint investigation. In the end, the United States Attorney's Office ("USAO") brought criminal charges against Watts and Mohammed.

Defendants argue that Brown's "training, experience, and background" allow him to opine on how the public or law enforcement community would have perceived Watts's corruption and the related investigation in the event that the USAO did not prosecute Watts. Despite Defendants' argument to the contrary, Brown has no basis to offer such opinions. Brown has no education, training, or experience in public or media relations—in or out of the law enforcement setting—nor do Defendants claim he does. Instead, Defendants claim that Brown is not required to be an expert in public or media relations to present these views. Even assuming that is true, Brown did not equip himself to opine on a hypothetical reaction from the public about these matters. He did not review polling, surveys, or conduct interviews of individuals from the community about Watts or the joint investigation. Even if Brown did so, these opinions fall outside of the scope for which Defendants offered him as an expert.

Although Brown acknowledged in his deposition that he is unable to opine on CPD's internal affairs and administrative proceedings, he repeatedly did so in his report. Thus, any such opinion should be prohibited.

CONCLUSION

For all these reasons and as set out in Plaintiffs' motion, this Court should bar the above-described opinions and testimony of Defendants' expert, Michael Brown, and any other relief it deems necessary and just.

Respectfully Submitted,

/s/ Gianna Gizzi
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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2024, I electronically filed the foregoing **Plaintiffs' Reply in Support of their Motion or Bar or Limit Defense Expert Michael Brown's Opinions** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to counsel of record.

/s/ Gianna Gizzi