

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

In re: WATTS COORDINATED

PRETRIAL PROCEEDINGS

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Master Docket Case No. 19-cv-01717

Judge Franklin U. Valderrama

Magistrate Judge Sheila M. Finnegan

THIS DOCUMENT RELATES TO CASE NO. 16-CV-8940

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO BAR THE  
TESTIMONY OF KEVIN HUGHES**

**INTRODUCTION**

Defendants disclosed former Cook County Assistant State's Attorney Kevin Hughes as an expert witness to testify about: (1) Operation Sin City, which was an investigation into drug sales at the Ida B. Wells housing complex in the early 2000s; (2) various investigative techniques used in investigations such as Sin City; and (3) the police reports documenting the arrests of Ben Baker and Clarissa Glenn. Dkt. 297 Ex. 1 (Hughes Report) at 2-5.<sup>1</sup>

Plaintiffs' motion to bar Mr. Hughes from testifying showed that the first two topics are irrelevant, something that Mr. Hughes himself concedes, and that he is not competent to testify about them regardless of relevance. Dkt. 297 at 2-8. Defendants' response brief does not address Hughes' concessions and instead attempts to salvage his testimony by relying on an inapplicable Seventh Circuit case. Dkt. 327 at 4-8. Beyond that, the response provides an unconvincing basis for the purported relevance of the Sin City investigation and an unpersuasive argument that Hughes has a sufficient foundation to offer opinions on that topic. Dkt. 327 at 8-14.

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<sup>1</sup> Mr. Hughes was also proffered as an expert to testify that it was unusual in his experience to test plastic bags for fingerprints. Based on Judge Finnegan's ruling that denied Defendants' motion to conduct forensic testing on certain evidence in this case, which resulted in Plaintiffs withdrawing all expert testimony about fingerprint testing for plastic bags, Plaintiffs understand that Mr. Hughes would be precluded from offering this testimony.

Plaintiffs' motion to bar also established that Mr. Hughes is not familiar with and did not address the relevant professional standards for police reports, meaning that his testimony on that topic should be barred as well. Dkt. 297 at 9. In response, Defendants point out that Hughes is an experienced prosecutor who is familiar with police reports in Cook County, Illinois. Dkt. 327 at 14-15. Plaintiffs do not disagree with that assessment and did not argue otherwise. But that does not save his testimony about the police reports at issue in this case because he has not even tried to establish that the reports prepared in Cook County comport with generally accepted standards for police reports, which is the relevant standard for experts in the Seventh Circuit.

### **ARGUMENT**

#### **I. Defendants failed to adequately address Hughes' concessions about his testimony, and their reliance on *Tribble v. Evangelides* is not persuasive.**

The first section of Plaintiffs' motion to bar argued that Hughes's report failed to disclose any opinions, something that Hughes himself confirmed during his deposition. Dkt. 297 at 3, citing Dkt. 297 Ex. 1 (Hughes Report); Dkt. 297 Ex. 2 (Hughes Dep.) at 18:23-20:7 (acknowledging that there are a number of *Watts* related cases, stating that he has never been disclosed as an expert, and answering "no" when asked if he had disclosed any opinions in any of those cases). With respect to the Sin City Operation, Hughes merely recites facts that he gleaned from unspecified reports. He does not discuss whether Sin City complied with relevant standards, express an opinion about the investigation, or otherwise even try to tie Sin City into this case. Dkt. 297 at 3-4. Similarly, his report and deposition testimony address techniques that, in his experience, officers commonly use during complex narcotics investigations similar to Sin City. *Id.* But again, Hughes offers no opinions as to whether those techniques comply with generally accepted standards, and he makes no effort to tie those techniques to this case. To the contrary, he acknowledged that Mr. Baker and Ms. Glenn were not arrested as part of Sin City or

during any other complex narcotics investigation. He went so far as to concede that he would not testify about Sin City or techniques used in similar operations because such testimony was not relevant. Dkt. 297 at 3-4.

Defendants call Plaintiffs' citation to Hughes' concessions "gamesmanship," but they do not explain why accurately citing a deposition transcript is improper. As Defendants note, Hughes is an extremely experienced lawyer. He was asked at his deposition if he was offering opinions, and he said he was not. Defendants do not claim that the citation is inaccurate or that Hughes did not make the concessions. In fact, they do not even address the fact that Hughes conceded his testimony about Sin City and similar investigations is not relevant and that he would not offer testimony about those issues. Their failure to respond to those points is a sufficient basis to bar his testimony about Sin City and similar investigations. *See, e.g., Alioto v. Town of Lisbon*, 651 F.3d 715, 721 (7th Cir. 2011) ("waiver" when party failed to respond to opposing party's main argument); *see also Ochoa v. Lopez*, 20-CV-02977, 2021 WL 4439426, at \*12 (N.D. Ill. Sept. 28, 2021) ("Ochoa does not respond to this argument, and has waived it.") (Valderrama, J.).

Separate from forfeiture or waiver, and with respect to the broader point about whether Hughes does in fact offer any opinions, a careful reading of his report shows that he does not other than with respect to the reports generated as a result of Baker and Glenn's arrests. Defendants rely on *Tribble v. Evangelides*, 670 F.3d 753, 758 (7th Cir. 2012), to support their argument that Hughes is offering opinion testimony about Sin City and other similar investigations, but it does not support their view. That case holds that a prosecutor who testifies about general procedures in court and about the meaning of those procedures offers admissible expert testimony. But in contrast to the prosecutor who testified in *Tribble*, Hughes does not

draw any conclusions. Nor does he even seek to testify about his experience prosecuting cases, which was the subject of the prosecutor's testimony in *Tribble*. Rather, Hughes at most asks the Court to allow him to tell the jury that he learned about various investigative techniques from police officers over the years. His report makes no effort to tie techniques into the facts of this case, let alone explain whether those techniques meet generally accepted standards for investigations. Put differently, Hughes is only seeking to tell the jury that certain investigative techniques exist. He has not stated that they are generally accepted in the policing community, and therefore his proposed expert testimony on this point will not be helpful to the jury and is not admissible. *Jimenez v. City of Chicago*, 732 F.3d 710, 721 (7th Cir. 2013) (police practices experts offer admissible testimony when they identify and reliably apply generally accepted standards).

**II. Defendants have failed to establish that Hughes has any admissible testimony to offer.**

If the Court reaches the merits of Hughes' proposed testimony about Sin City or other similar operations, his testimony should still be barred. Plaintiffs showed that the testimony is irrelevant, unduly prejudicial, and lacking in foundation. Defendants' response fails to show otherwise.

The Court should also bar Hughes from testifying about whether the police reports documenting the arrests of Baker and Glenn are adequate because Hughes failed to identify the relevant standards to judge those reports against.

**A. The Court should bar Hughes from opining about Sin City.**

It is undisputed that dozens of individuals were arrested as a result of the Sin City Investigation in Ida B. Wells. It is also undisputed that Ben Baker and Clarissa Glenn were not amongst those individuals. As Plaintiffs pointed out in their motion, there is no good argument

that the Sin City Investigation is relevant to this case, but there is a strong argument that evidence about that investigation would be unduly prejudicial. Dkt. 297 at 4-6. Hughes was unable to identify any possible relevance other than the fact that Sin City was an investigation at Ida B. Wells, the same general location where Mr. Baker and Ms. Glenn were arrested. Dkt. 297 at 5.

In response, Defendants do not argue that Sin City is generally relevant to their claims or ask that the Court allow Hughes to testify generally about that operation. Dkt. 327 at 8-11. Instead, they address only one specific issue: Ben Baker was identified as a “building manager” in (an undated) chart created by the Chicago Police Department as part of the Sin City Investigation. *Id.* Defendants argue that Hughes should be permitted to testify that Mr. Baker was identified as a building manager, which in their view means that he controlled the drug trade at a particular building. *Id.* They assert that Hughes’ testimony on that point is relevant because Mr. Baker answered an interrogatory response stating that he stopped selling drugs in 2004, which opened the door to Hughes’s testimony. *Id.*

There are numerous problems with Hughes’s proposed testimony about Ben Baker as a building manager. First, Hughes acknowledged that his sole knowledge about Mr. Baker allegedly being a building manager comes from looking at the chart. Dkt. 297-1 at 140:3-140:8 (explaining that he bases his conclusion that Baker was a “building manager” on police reports alone). Defendants cite a different excerpt from Hughes’s deposition to suggest that he has additional knowledge that Baker was a building manager. Dkt. 327 at 10, citing Hughes Dep. at 140:23-141:3. But that testimony addressed Hughes’ knowledge about what a “building manager” meant in general. Hughes did not say that he knew Baker was a building manager.

Second, the chart identifying Mr. Baker as a “building manager” has no detail whatsoever about the basis for the conclusion that Mr. Baker was a building manager. Reply Ex. 1 (CITY-BG-028602).<sup>2</sup>

Third, Hughes acknowledged that Mr. Baker was not charged with any crimes in connection with the Sin City investigation because the police did not provide prosecutors “with any information that would’ve been enough to charge him with any crime based on that investigation.” Dkt. 297-2 at 142:11-142:13. In fact, Hughes specifically acknowledged that “there was not enough direct evidence to establish that” Ben Baker was a building manager. Dkt. 297-2 at 141:7-141:8. Third, the chart is undated.

In short, Defendants want to use Hughes to introduce an extremely prejudicial “fact” about Ben Baker being a building manager in Ida B. Wells despite: (1) Hughes having no independent knowledge of the chart or of Mr. Baker’s alleged involvement in the drug trade at Ida B. Wells; (2) the chart not having a date or explaining when Ben Baker was purportedly a building manager, meaning that it does not even address Defendants’ relevance argument because it does not say that Baker was a building manager in 2004 or 2005; and (3) Hughes having admitted that prosecutors did not have sufficient evidence to prove that Mr. Baker was a building manager.<sup>3</sup>

The Court should not allow Hughes to offer this testimony. The Defendants acknowledge that prior arrests are generally inadmissible in civil rights cases because they are unduly prejudicial, Dkt. 327 at 10-11, and they cite no cases allowing the admission of uncharged

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<sup>2</sup> Although Hughes did not specifically identify what document he saw that identified Mr. Baker as a building manager, Defendants’ response brief refers to a chart, and Plaintiffs are not aware of another chart or police report identifying Mr. Baker as a building manager.

<sup>3</sup> The arrests at issue in this case occurred in 2005. Ben Baker was also framed by Defendants in 2004, although a judge suppressed the charges in that case. That arrest does provide relevant background regarding his experiences with Defendants, but he does not bring claims based on that arrest.

alleged criminal activity, let alone allowing the admission of such evidence when prosecutors have already concluded they could not prove the alleged crimes occurred. The Court should not allow Defendants to offer irrelevant supposition that Ben Baker was a building manager at Ida B. Wells under the guise of expert testimony.

**B. Hughes failed to identify the data he relied on, and Defendants failed to establish any foundation for his proposed testimony about Sin City.**

Plaintiffs' motion established that Hughes failed to identify the data he relied on and otherwise failed to establish a foundation for his opinions. Dkt. 297 at 6-7. He was provided with hundreds of documents about Sin City, but he reviewed only a small subset of those documents, and he was unable to point to any specific documents relating to Sin City that he reviewed. Dkt. 297 at 6. Nor did he have an independent recollection of the Sin City investigation when asked about it during his deposition. Dkt. 297 at 7. Defendants do not seriously contest these points. Instead, their response talks about Hughes' general experience prosecuting cases and notes that he was the lead prosecutor for Sin City. Dkt. 327 at 11-12. But that ignores the real issue.

Plaintiffs do not take issue with Hughes' experience as a prosecutor or even take issue with the general proposition that his significant experience plus his role as a lead prosecutor on Sin City *could* in theory have provided him with the requisite foundation to offer testimony about that operation. The problem is that Hughes has no independent recollection of any relevant facts from the Sin City investigation. Dkt. 297 at 7 (citing Hughes deposition). Defendants do not disagree with that assessment in any meaningful way – indeed they do not cite a single fact that Hughes purports to recall from Sin City. Thus, the only way that Hughes might have been able to establish a foundation for his opinions would have been to review documents from Sin City. Hughes, however, failed to identify the documents he reviewed, if any. He could only specifically recall reviewing reports of Mr. Baker and Ms. Glenn's arrests, and those are not

from Sin City. Defendants note that Plaintiffs were provided with the same universe of documents that Hughes was provided, Dkt. 327 at 12-13, but that does not solve the problem because Hughes had no idea which of the hundreds of documents he reviewed. Thus, not only did Hughes improperly fail to identify the data he relied on, but Plaintiffs were effectively precluded from cross-examining him on that data. Dkt. 297 at 6-7.

**C. Hughes should not be permitted to testify about investigative techniques commonly used in narcotics operations.**

Plaintiffs' motion to bar Hughes from testifying about commonly used investigative techniques showed that such testimony should be barred because Hughes acknowledged those techniques are used in long-term investigations rather than a single-day arrest such as the arrests at issue here, and because he failed to compare the techniques from those investigations to generally accepted standards. Dkt. 297 at 8. In response, Defendants devote two separate sections of their briefs to argue that Hughes has sufficient experience as a narcotics prosecutor to testify about investigative techniques. Dkt. 327 at 7-8, 13-14. That experience, however, does not make Hughes's testimony admissible.

Plaintiffs do not contest that Hughes's significant experience as a prosecutor gave him exposure to techniques that police officers commonly use during narcotics investigations. But that is meaningless here because Hughes acknowledged that the techniques he discussed in his report were not used during the arrests of Baker and Glenn and are therefore not relevant. Dkt. 297 at 8. Defendants do not disagree that Hughes seeks to discuss investigative techniques that were not used in connection with Mr. Baker and Ms. Glenn's arrests. Instead, Defendants now assert that Hughes' testimony about techniques that police officers use in long-term investigations would "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." Dkt.



327 at 14. Defendants, however, provide no explanation as to why the jury should hear about general techniques that police officers might employ in long-term drug operations that have nothing to do with the arrests at issue here. Even if the jury hears something about drug activities at Ida B. Wells, Defendants have not identified any possible basis for their expert to tell the jury about specific, irrelevant investigative techniques that he has seen other officers use over the years in completely unrelated investigations. Defendants are essentially acknowledging that they want to use Hughes to backdoor irrelevant evidence about general drug activities at Ida B. Wells. The Court should not let them do so.

Defendants again rely on *Tribble* to salvage Hughes' testimony, but it does not help. As discussed above, *Tribble* involved testimony from a prosecutor about actions that happened in court and what those actions meant in that context. Hughes is not even trying to offer that testimony. Instead, he wants to tell the jury about various techniques that he has heard of police officers using over the years during narcotics investigations. Separate from the relevance arguments addressed above, Hughes may not offer such testimony unless he identifies the relevant standards to judge those techniques against. *See, e.g., Jimenez*, 732 F.3d at 721. Otherwise, Hughes is merely telling the jury that certain techniques exist rather than helping the jury evaluate whether the techniques are proper or whether the Defendants deviated from the proper standards. Hughes did not do so here, and his opinions should be barred for that reason as well. *Andersen v. City of Chicago*, 454 F. Supp. 3d 740, 745 (N.D. Ill. 2020) (excluding police practices expert who failed to identify relevant professional standards or apply those standards to case).

**III. Hughes should be barred from testifying about the police reports documenting Baker and Glenn's arrests.**

Plaintiffs also moved to bar Hughes from testifying about the police reports documenting Baker and Glenn's arrests. Dkt. 297 at 9. Defendants' response largely concentrates on Hughes' qualifications to review such reports. Dkt. 327 at 14. But again, Plaintiffs do not question that Hughes has significant experience reviewing police reports. Nor do they challenge that Hughes would be qualified to determine if the reports would have been helpful or otherwise useful to him as a prosecutor. That, however, is not the relevant standard. If Hughes wanted to provide expert testimony about the propriety of the police reports documenting Mr. Baker and Ms. Glenn's arrests, he needed to identify the relevant standard for judging such reports. *See Jimenez*, 732 F.3d at 721; *see also Andersen*, 454 F. Supp. 3d 740, 745 (N.D. Ill. 2020) (excluding police practices expert who failed to identify relevant professional standards or apply those standards to case). Hughes failed to do so, which should result in the exclusion of this testimony.

**CONCLUSION**

For the reasons stated in Plaintiffs' motion to bar and above, the Court should bar Kevin Hughes from testifying in this case.

Respectfully submitted,

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