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

Lionetta White, Special Administrator of the Estate of LIONEL WHITE, SR.,	)	
Plaintiff,	)	Case No. 17 C 2877
v.	)	Judge Sara L. Ellis
CITY OF CHICAGO, RONALD WATTS, ALVIN JONES, ELSWORTH SMITH JR., KALLATT MOHAMED, MANUEL LEANO, BRIAN BOLTON, ROBERT GONZALEZ, and DOUGLAS NICHOLS,	)	Magistrate Judge Laura K. McNally
Defendants.	)	

MOTION TO BAR OR LIMIT CERTAIN TESTIMONY OF DEFENDANTS' EXPERT WITNESS MICHAEL BROWN

Pursuant to Rule 702 of the Federal Rules of Evidence and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993), Plaintiff moves to bar portions of the proposed expert testimony of Michael Brown.

INTRODUCTION

Defendants Ronald Watts and Kallatt Mohammed were arrested in 2012 and eventually pled guilty to federal criminal charges following a lengthy investigation by the federal government and the City of Chicago. That investigation began in 2004 when the FBI and Chicago Police Department started investigating allegations that Watts and Mohammed were extorting drug dealers in the Ida B. Wells housing project. The Chicago Police Department's Internal Affairs Division ("IAD") participated in this investigation from the start. Because IAD was kept abreast of the FBI investigation, City officials—including the head of IAD and the CPD

superintendents—were aware of credible allegations that Watts and his team were extorting and soliciting bribes from drug dealers. Indeed, [redacted].

During the investigation, which spanned at least eight years, City officials had reason to believe that Watts and his crew continued engaging in criminal activity on the streets—extorting drug dealers and framing citizens for crimes they did not commit—yet City officials took no steps to prevent these abuses from continuously occurring. To the contrary, the City allowed Watts and Mohammed to remain as tactical officers until federal law enforcement arrested them both in 2012. The City allowed this to happen despite knowing that the FBI investigation was designed to investigate and prosecute criminal activity, not to impose internal discipline of CPD officers.

Among other things, Plaintiff in this case alleges that the City is liable for Plaintiff's injuries under *Monell v. Dep't of Soc. Svcs.*, 436 U.S. 658 (1978) and its progeny because of the City's wholesale failure to supervise and discipline Watts and Mohammed, along with other Defendants, because the City long knew about and ignored holes in its disciplinary system. The City's failure to adequately supervise and discipline Watts, Mohammed, and other Defendants while the FBI's eight-year investigation continued is relevant to Plaintiff's *Monell* claim. Plaintiff disclosed Jeffrey Danik, a retired FBI agent, as an expert to opine on the FBI and CPD's joint investigation. Ex. 1-1 (Danik Report, April 1, 2024); Ex. 1-2 (Danik Supplemental Report, June 3, 2024). Specifically, Danik discusses how the City's inaction for years was unreasonable in light of the allegations and evidence against Watts and his team.

To rebut Danik, Defendants have disclosed another retired FBI agent, Michael Brown, as their proposed expert witness. Brown produced an expert report in an earlier case that was a part

of the Watts Coordinated Proceedings, *Baker v. City of Chicago, et al.*. Ex. 2 (Brown *Baker* Report & CV, May 13, 2024). Brown later wrote a 10-page supplement in another Watts Coordinated Proceedings case, *Gipson v. City of Chicago*, *et al.*, Ex. 5 (Brown Supplemental Report). In this matter, Brown adopts these two reports wholesale and states that his opinions are unchanged. Ex. 7 (Def Rule 26(a)(2) disclosure). In *Baker*, after briefing, Judge Valderrama issued a thorough opinion that granted in part and denied in part each side's motion to bar the FBI experts (Brown and Danik). Ex. 3 (Docket No. 445 in Case No. 16-cv-8940).[1]

In short, although Brown may be competent to discuss FBI investigations, his reports and depositions show that he is attempting to go beyond his expertise and opine on matters that are not proper subjects of expert testimony. In particular, Brown proposes to: (1) discuss witness credibility; (2) offer speculative testimony; and (3) offer opinions that exceed his expert qualifications. The Court should grant Plaintiff's motion to bar Brown from doing any of these things.

LEGAL STANDARD

"[A]ll witnesses who are to give expert testimony under the Federal Rules of Evidence must be disclosed under Rule 26(a)(2)(A)." *Musser v. Gentiva Health Servs.*, 356 F.3d 751, 756 (7th Cir. 2004). Federal Rules of Evidence 702 and 703 govern the admissibility of expert witness testimony. Fed. R. Evid. 702 & 703. In relevant part, opinion testimony is admissible only if the expert's "specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue," and then only if the testimony is "based on sufficient facts or

[1] The *Gipson* matter settled prior to any ruling by Judge Seeger on the *Daubert* motion related to Brown or Danik. In an effort to save resources, in *Gipson*, Plaintiff proposed that the parties agree, with the Court's permission, to be bound by Judge Valderrama's ruling in that case. The defense refused.

data" and "the product of reliable principles and methods," which "reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702. The expert's opinion must be based on "knowledge," not merely "subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590; *Brown v. Burlington N. Santa Fe Ry. Co.*, 765 F.3d 765, 772 (7th Cir. 2014).

The trial judge occupies a "gatekeeping role" and must scrutinize proffered expert testimony to ensure it satisfies each requirement of Rule 702. *Daubert*, 509 U.S. at 592-93, 597. Part of the Court's gatekeeping role is to ensure that opinions are based on reliable science. *See*, *e.g.*, *Harris v. City of Chicago*, 14 C 4391, 2017 WL 3142755, at *5 (N.D. Ill. July 25, 2017) (decision of whether an expert's opinion is based on reliable science is "a legal conclusion for the Court's resolution pursuant to *Daubert* and Rule 702"). By contrast, it is not proper for an expert to testify that another expert's opinion is not based on reliable science. *Id*.

The proponent of the expert evidence bears the burden of establishing, by a preponderance of the evidence, that the requirements set forth in Rule 702 and *Daubert* have been satisfied. *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009). This rule applies not only to scientific testimony but to all expert testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). A *Daubert* inquiry ultimately requires a two-step analysis: first, a determination of the expert's reliability, and second, whether the proposed expert testimony is relevant and aids the trier-of-fact. *Cummins v. Lyle Industries*, 93 F.2d 362, 367-68 (7th Cir. 1996). A trial court should exclude expert testimony that is not pertinent to a disputed issue in the case even if the methodology underlying the testimony is sound. *Smith v. Ford Motor Co.*, 215 F.3d 713, 719 (7th Cir. 2000).

1. **Brown should be prohibited from testifying on any witnesses' credibility.**

It is well-settled that determining the weight and credibility of witness testimony is the exclusive province of the jury and that experts are not permitted to offer opinions as to the believability or truthfulness of that testimony. *United States v. Hall,* 165 F.3d 1095, 1107 (7th Cir. 1999). Nor may expert witnesses attempt to sort out possible conflicting testimony or to argue the implication of those inconsistencies. *Davis v. Duran*, 277 F.R.D. 362, 370 (N.D. Ill. 2011).

In *Baker,* Brown violated these principles when he testified at his deposition that he believed Baker "has some credibility issues." Ex. 4 (Dep. of Michael Brown in *Baker*, May 29, 2024) at 136:1-3. Judge Valderrama agreed and barred Brown from opining about "any witness's credibility as it relates to this case" and from testifying "as to which version of events should be believed." Ex. 3 at 37.[2]

In the *Baker* case, [redacted] Judge Valderrama held that "Brown may *not* testify as to his opinions on any witness's credibility as it relates to this case," but he was permitted to offer opinions as to how the "credibility of informants" could "be factored into the FBI or IAD's investigation into the Defendant Officers." Ex. 3 at 36-37. Any such testimony would also be subject to potential future motions in limine on evidentiary grounds, "such as under Rule 403." *Id*. at 37. The same result is appropriate here. As Judge Valderrama noted, "it goes without saying" that an expert may not testify about a witness's credibility as it relates to the allegations in the case. *Id*. Thus, at this stage, Plaintiff asks only that Brown be barred from

[2] During his deposition in the *Gipson* case, Brown was more careful to avoid making credibility determinations, and he did not expressly say that Gipson had any such issues. Brown was not deposed as it relates to the *White* matter because he did not issue a new report for this case.

testifying as to Plaintiff's credibility. To the extent that Plaintiff believes testimony about the credibility of other individuals who provided information during the joint investigation should be barred under Rule 403 or for other non-*Daubert* related reasons, Plaintiff will move in limine with respect to such information or object at trial.

2. **Brown should be barred from offering speculative opinions, as well as opinions that lack foundation and would not help the jury.**

An expert's opinion must be based on "knowledge," not merely "subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590. Although an expert may offer "a hypothetical explanation of the possible or probable causes of an event," the Seventh Circuit has cautioned that "these hypothetical alternatives must themselves have 'analytically sound bases' so that they are more than mere 'speculation' by the expert. *Smith*, 215 F.3d at 718-19 (quoting *DePaepe v. General Motors Corp*., 141 F.3d 715, 720 (7th Cir. 1998)). In this case, Brown seeks to offer a number of speculative opinions.

First, in addressing why it was appropriate for CPD to refrain from disciplining officers during the eight-year FBI investigation, Brown stated that had CPD acted on its own:

> There could also be collateral damage to any CPD administrative proceeding as well. CPD would no longer be able to use a successful prosecution of Watts as a deterrent to current or future officers. Rather, to those who were aware of Watts' illegal activity, it would appear that Watts 'got away' with his illegal activity and that CPD merely looked the other way rather than bring charges against one of their own. The public and the media could likely characterize the failure of Watts being criminally charged as an example of a police cover-up.

Ex. 2 (Brown Report) at 14. In offering this opinion, Brown is speculating about the public reaction to a hypothetical situation that never happened. Beyond that, nothing in Brown's background or in his expert disclosure would suggest that he is an expert in public relations, media relations, or in the way that the public reacts to decisions to prosecute (or not prosecute) individuals. Judge Valderrama agreed, holding that "Brown's report does not explain how his

experience in sensitive investigations provides him the expertise to opine" on the public's reaction to a lack of prosecution. Ex. 3 at 39. Nothing has changed about Brown's opinion or his qualifications, and this Court should similarly bar Brown from offering this opinion in the *Gipson* case.

[redacted]

Third, in his supplemental report, Brown states or at least strongly implies that the FBI investigated allegations that the Watts' team was framing people for drug crimes they did not commit and concluded that they were not doing so. Ex. 5 at 4 (discussing allegations of individual being framed and concluding that no evidence corroborating those claims was developed); *Id*. at 9 ("FBI had plenty of information at its disposal to properly evaluate if any evidence corroborating the accusations regarding Watts planting illegal drugs was developed during the course of the investigation" but the "lead investigator" concluded "that no such evidence had been obtained."). This is not accurate, but more importantly for purposes of this

motion, Brown's testimony on this point is speculative and lacks foundation. When asked at his deposition if he could identify "a specific steps or operation that the FBI took … that you associate with looking for evidence of planting drugs," he pointed to wiretaps before admitting that he does not know how many recordings were captured on those wiretaps or what communications were captured. Ex. 6 (Brown *Gipson* Dep. at 19:4-21:12). Brown should not be permitted to speculate about what agents may have done with information that may or may not have been on recorded telephone calls that he knows nothing about.

Along the same lines, Brown should not be permitted to offer the above-cited opinion found on page 9 of his supplemental report that the lead investigator concluded that there was no evidence of the Watts team framing people. [redacted]. Brown has essentially admitted that his opinion lacks foundation by admitting that the sole source for the opinion does not actually say what Brown claims. But even setting those issues aside, Brown is at most reciting a factual conclusion from a fact witness rather than offering any expertise. That is not proper expert testimony. *See*, *e.g.*, *Hostetler v. Johnson Controls, Inc.*, 3:15-CV-226 JD, 2020 WL 4915668, at *7 (N.D. Ind. Aug. 21, 2020) (factual narrative was not proper expert testimony).

3. <u>Brown should be barred from offering opinions outside the scope of his expertise.</u>

Brown strays from his own expertise in his proffered testimony when he comments on IAD and Union contract issues, and this Court should bar opinions when he does so.

Courts routinely strike expert opinions that go beyond that witness' areas of expertise. *See, e.g.*, *Fisher v. Ethicon, Inc.*, 624 F. Supp. 3d 972, 981 (C.D. Ill. 2022) (barring a pathologist from opining on specific risks of surgical tool and whether those risks appeared on instructions); *Casares v. Bernal*, 790 F. Supp. 2d 769 (N.D. Ill. 2011); *see also*, *Ilnytskyy v. Equipnet, Inc.*, 627 F. Supp. 3d 818, 828-29 (E.D. Mich. 2022) (prohibiting industrial safety expert from testifying about forklift operation); *Johnson v. Baltimore Police Dep't*, 608 F. Supp. 3d 227 (D. Md. 2022) (barring police practices expert from testifying about the reasonableness of suspect's psychological response during police pursuit); *Easterwood v. Husqvarna Pro. Prod., Inc.*, 576 F. Supp. 3d 950, 962 (M.D. Ala. 2021) (excluding mechanical engineer's opinions about product manufacturing warnings); *Whelan v. Royal Caribbean Cruises Ltd.*, 976 F. Supp. 2d 1322, 1328 (S.D. Fla. 2013) (limiting treating physician's testimony on decedent's cause of death given scope of physician's treatment); *In re Aredia & Zometa Prod. Liab. Litig.*, 754 F. Supp. 2d 934, 938 (M.D. Tenn. 2010) (barring treating doctors from opining on causation of patient's diagnosis); *In re Viagra Prod. Liab. Litig.*, 658 F. Supp. 2d 950, 960 (D. Minn. 2009) (prohibiting epidemiologist from offering opinion on the causation of plaintiff's vision loss).

A. CPD's Internal Affairs and Independent Investigation

Brown is not equipped to testify or comment about the policies, practices, and procedures of the CPD's Internal Affairs Department or CPD's internal investigation of Watts and his team. Police internal affairs fall outside of Brown's expertise. Indeed, Brown specifically testified in his *Baker* deposition that he was not offering opinions about CPD's internal affairs system. Ex. 4 (Dep. of Michael Brown) at 74:9-17. During that deposition, Brown also testified that he does not know what standards govern CPD Internal Affairs investigations. *Id*. at 257-263. Yet, Brown

improperly ventured into the realm of police internal affairs operations, including that of CPD, several times throughout his report and during his *Baker* deposition.

First, Brown's report from *Baker* states, "As to officers other than Watts and Mohammed, there was insufficient evidence to bring criminal *or administrative* charges." Ex. 2 (Brown Report) at 16 (italics added). *See also* Ex. 2 at 28 (Brown stating similarly about the insufficient evidence to bring administrative charges). Without the requisite background on internal affairs, Brown has no basis to provide an opinion that there was insufficient evidence to bring administrative charges. Judge Valderrama agreed and barred Brown from offering this opinion, which was appropriate given Brown's admission that "he has no experience in" bringing administrative charges. Ex. 3 at 43.

Second, Brown's report asserts that "CPD must include an analysis as to the sufficiency of any evidence when it decides to initiate an administrative action against its officers." Ex. 2 (Brown Report) at 19. Again, without the requisite background on internal affairs, especially CPD internal affairs, Brown has no basis to opine on what CPD had to do to initiate an administrative action against Watts or Mohammed. Again, Judge Valderrama agreed, which was the correct result given Brown's admission that he is not an expert on CPD internal affairs. Ex. 3 at 44. Judge Valderrama also held that regardless of Brown's qualifications, this proposed testimony was "the sort of opinion that a jury does not need expert testimony to understand." *Id*. That was also correct. To the extent that Brown's proposed testimony is based in fact, a CPD employee will be able to provide that testimony at trial.

Finally, Brown seeks to offer the following testimony that is beyond his expertise:

> These same risks are also present when conducting an administrative action against the targeted officers. Although the evidentiary burden is lower in such an action, certain portions of evidence will still have to be revealed. This revelation could cause irrevocable damage to the ongoing investigation or cause it to be shut down.

> Danik's opinion that 'nothing precludes the use of that evidence …in an administrative action,' is far from reality. As outlined above, numerous reasons exist for not using this evidence in a premature administrative action against either Watts or Mohammed. Finally, since the evidence of the controlled bribe payments was not available for CPD IAD to use until the conclusion of the criminal investigation, it is likely that any such administrative proceeding would be unsuccessful, leaving those officers on the street and obstructing the criminal investigation at the same time.

Ex. 2 (Brown Report) at 31; *see also* Ex. 5 at 5 (Brown Supplemental Report, discussing CPD's ability to take administrative action and citing a case for the evidentiary standard). Without any background or knowledge of internal affairs, Brown has no basis to offer an opinion on the probability of success of an administrative proceeding brought against Watts or Mohammed without the evidence of a controlled bribe payment. Indeed, as noted above, Brown has admitted that he does not have any expertise in CPD's internal affairs process. Moreover, his opinion on what would have happened in an administrative hearing without certain evidence is speculative. Judge Valderrama barred Brown from testifying to this opinion on both of those grounds, and this Court should do the same. Ex. 3 at 44-45.

CONCLUSION

For the reasons stated herein, this Court should bar Michael Brown's opinions and testimony on the above-described topics.

Respectfully Submitted,

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