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,	)	
v.	)	Case No. 17 C 2877
CITY OF CHICAGO, RONALD WATTS, ALVIN JONES, ELSWORTH SMITH JR., KALLATT MOHAMED, MANUEL LEANO, BRIAN BOLTON, ROBERT GONZALEZ, and DOUGLAS NICHOLS,	)	Judge Sara L. Ellis
Defendants.	)	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO BAR OR LIMIT CERTAIN TESTIMONY OF DEFENDANTS' EXPERT WITNESS MICHAEL BROWN

Defendants, City of Chicago, Alvin Jones, Elsworth Smith Jr., Douglas Nichols Jr., Brian Bolton, Manuel Leano, and Robert Gonzalez,[1] by their attorneys, for their response to plaintiff's motion to bar or limit certain testimony of defendants' expert witness Michael Brown ("Motion"), state:

INTRODUCTION

Defendants have moved to bar the entirety of plaintiff's FBI expert Jeffrey Danik's report. (Dkt. 242). As explained therein, Danik should not be permitted to offer the unsupported opinion that the City should have interfered with the confidential Joint FBI/IAD Criminal Investigation of Sgt. Ronald Watts to take an employment action against Watts, Officer Kallatt Mohammed, or any other member of the tactical team, because he is not qualified and lacks the foundation or any

[1] Defendants Watts and Mohammed join in the relief requested in this response brief to deny Plaintiff's motion to bar Brown.

methodology to offer that opinion. *Id*. As even Danik admits, had the City moved administratively to terminate Watts's employment during the pendency of the Joint FBI/IAD Investigation, then the federal government would likely never have been able to charge and convict Watts of the federal crimes he committed (Dkt. 242, Ex. 4, Danik dep at 30-31, 45, 181, 256-57), and White's conviction would in turn never have been vacated. Indeed, defendant City submits it has a strong summary judgment motion based on its participation with the FBI in that criminal investigation (Dkt. 256 at 17-22), which would moot this motion and all the other *Daubert* motions relating to Plaintiff's *Monell* claim.

In the event this Court allows all or some of Danik's report and/or denies the City's motion for summary judgment, Defendant City disclosed former FBI agent and expert witness Michael Brown to rebut Danik and the allegations in Plaintiff's complaint regarding the Joint FBI/IAD Investigation.[2] According to Brown, the City properly did not interfere with the FBI's investigation, and Plaintiff does not challenge the admissibility of Brown's opinion in that regard. Brown further opines that had the City interfered with the FBI investigation, it still likely would have lost any employment termination proceeding against Watts and Mohammed because it did not have the right to use the confidential FBI-owned evidence that had been developed against them over the years (until the criminal investigation concluded) in an administrative proceeding. (See Brown's report in *Baker*, attached as Dkt. 235-2 at 11, 37). Plaintiff in her Motion suggests Brown should not be allowed to offer this opinion because he never worked for a municipality's internal affairs department and does not have internal affairs experience. Ironically, Defendants have the same criticism of Danik, as he also never was assigned to internal affairs. (Dkt. 242 at 2,

[2] Brown submitted his initial report in *Baker v. City* (attached to Plaintiff's Motion as Exhibit 2) and then a Supplemental Report in *Gipson v. City* (attached to Plaintiff's Motion as Exhibit 5), both of which Defendants adopted in this case. Brown did not submit a supplemental report in this case.

6). Rather, they both have the same type of internal affairs administrative experience in connection with their work at the FBI. In Defendants' view, this Court should either bar both Danik and Brown from testifying as to internal affairs type administrative matters, or the Court should allow both of them to discuss the topic, as it would be an unfair and incongruous result to allow Danik to discuss the topic but not Brown. We address these points in section V of this response below.

Before we address the internal affairs point, however, we address a few other discrete points Plaintiff raises in Sections 1 and 2 of her Motion.

I. Brown Did Not and Does not Intend to Opine on White's Credibility.

Plaintiff requests in the heading of Section 1 of her Motion that Brown be barred from testifying as to "any witnesses' credibility," but she backtracks on that general and overarching position in her discussion and asks "only that Brown be barred from testifying as to Plaintiff's credibility." (Motion at 5-6). However, Brown did not opine on White's credibility and Defendants do not intend to elicit any such testimony. Presuming Plaintiff does not open the door to such an opinion at trial or ask the question herself, then this aspect of Plaintiff's Motion is agreed.

II. Defendants Agree Not to Ask Brown About the Public's Reaction to the Hypothetical Absence of Prosecution Against Watts and Mohammed.

In Section 2 of her motion, Plaintiff argues that Brown should be barred from opining on the public's reaction to a lack of criminal prosecution of Watts and Mohammed. (Motion at 6-7). Defendants agree Brown is not an expert in public relations or media relations as Plaintiff states, and will agree not to elicit testimony on the public's hypothetical reaction to the absence of a prosecution against Watts and Mohammed. (Motion at 6-7). That said, Defendants reserve the right to elicit from Brown his opinion that criminal charges against a police officer have an important deterrent effect from others committing acts of misconduct (Brown report in *Baker*, Dkt.

235-2 at 13-14). Defendants do not understand from Plaintiff's Motion (at 6-7) that he is moving to bar any such opinion.

III. Brown Should Be Allowed to Fully Contradict Danik's Incorrect Claim that Wilber "Big Shorty" Moore was Not Debriefed, that There is No Documentation of Moore's Debriefing, and that the FBI Agent Did Not Meet with Moore and/or that the FBI was Unaware of Moore's Information.

Plaintiff argues in Section 2 of her Motion (at 7) that "Brown should not be permitted to speculate as to why something (in this case, documentation of a meeting with a witness) happened or did not happen, but Plaintiff does not object to Brown's use of his knowledge, background, and experience to explain why such a meeting may not have been documented." Defendants do not intend to ask Brown to speculate. However, Defendants should be entitled to fully explore with Brown his rebuttal opinions to Danik's incorrect assertions that there was no FBI meeting with Moore (there was), there was no debriefing of Moore (there was), and that there was no documentation regarding same (there is, but Plaintiff apparently thinks there should have been more). In his supplemental report attached as Exhibit 5 to Plaintiff's Motion (Dkt. 235-5), Brown clearly sets forth his opinion regarding the federal government's interaction with Moore (at 9-10), and concludes as follows:

> Thus, the record shows that Moore was debriefed, that the FBI knew of Moore's debriefing, and that [the FBI Agent][3] met with Moore. As explained in my Baker report, these facts refute Danik's factually contradicted opinion that the CPD somehow concealed Moore's cooperation from the FBI or that the FBI did not know about the information he supplied regarding Watts. Danik was wrong in his Baker report, and his continued efforts on this point after I pointed out he was wrong, reflects a problematic and stubborn bias that is contrary to generally accepted law enforcement practices. (Dkt. 235-5, Brown Supplement at 10).

Based on Plaintiff's Motion (wherein he does not address Brown's *Gipson* Supplement as to this point), there may not be a dispute regarding this topic, but in light of Danik's assertions (contrary

[3] We are not including the FBI agent's name in this filing due to confidentiality concerns, but his name is included in Brown's report filed under seal.

to the record) that the FBI didn't meet Moore and was unaware of his debriefing and the information he provided, Defendants are uncomfortable agreeing to limit Brown's rebuttal testimony as requested by Plaintiff. Thus, Defendants suggest that this Court either deny Plaintiff's Motion on this point or defer ruling on it until trial.

IV. Plaintiff's Motion to Bar Brown's Opinions About the Investigation Into and Absence of Evidence of Planting Drugs and/or Framing Innocent People Should be Denied.

The undeveloped and unclear argument raised by Plaintiff at pages at 7-8 of her Motion regarding the Joint FBI/IAD's Investigation into and absence of evidence supporting planting drugs and/or false arrests should be denied. Plaintiff ignores Brown's original report rebutting Danik's criticism of the Joint FBI/IAD Investigation for failing to take action sooner when they allegedly knew that innocent people were being framed. (Dkt. 235-2 at 11-15, 21, 28, 36-37). And she also ignores the substance of Brown's supplemental report rebutting Danik's supplement claiming that the Joint FBI/IAD Investigation developed but ignored substantial evidence that innocent people were being framed. (Dkt. 235-5 at 3-10). In short, Brown opines that the Joint FBI/IAD investigation was reasonable, and that while there were allegations received of planting drugs on innocent people, there was no evidence developed during the investigation substantiating those allegations. According to Brown, the City correctly did not interfere with the ongoing Joint FBI/IAD Investigation until evidence of corruption was developed against Watts leading to his conviction along with Mohammed, and Danik's unsupported claim that the FBI and IAD allowed innocent people to be framed is not supported by the investigative record. Plaintiff's Motion does not in any meaningful way address the substance of Brown's reports, and her failure is not a mere technicality. It goes to the heart of the matter and, if allowed, would potentially result in the inadvertent exclusion of important overarching opinions offered by Brown as to the reasonableness of the Joint FBI/IAD Investigation and absence of evidence that people were being falsely arrested.

Plaintiff's failure to develop this argument results in waiver. *Shipley v. Chicago Bd. of Election Commissioners*, 947 F.3d 1056, 1063 (7th Cir. 2020) ("Arguments that are underdeveloped, cursory, and lack supporting authority are waived."). Accordingly, Plaintiff's Motion should be denied.

If this Court addresses Plaintiff's argument, then Defendants need to unpack the issue herein as Plaintiff did not do so for the Court. (Motion at 7-8). It starts with Danik. Danik opines that the Joint FBI/IAD Investigation was flawed because it took too long and thereby allowed the Watts team to plant drugs and falsely arrested multiple innocent people (unnamed by Danik) over the years. (Dkt. 235-1, Danik report at 1-2, 13-28). As we explain in our motion to bar Danik, Danik fails to identify anyone who was supposedly framed or any evidence supporting that conclusion. (Dkt. 242 at 15-16, 23-24). Brown's report in *Baker/Glenn* rebuts Danik's report, explaining that the Joint FBI/IAD Investigation received allegations of planting drugs, but that the evidence developed during the investigation only established that Watts and Mohammed were collecting a street tax from drug dealers to allow them to continue to sell drugs. Brown therefore concluded that the Joint FBI/IAD Investigation was reasonable and conducted in accordance with generally accepted law enforcement practices. Among other things, Brown opined:

> Danik fails to acknowledge that the investigation and interviews conducted after the November 2011 operation did not implicate any other members of the tactical team, despite the efforts of the PCTF to prove or disprove those allegations. This was reasonable and in accordance with generally accepted law enforcement practices, and refutes plaintiffs' allegations that there was a pattern of misconduct by other members of the tactical team, or a pattern of misconduct that the Watts tactical team was planting evidence and framing innocent people. Simply put, that evidence was not developed during the FBI and IAD investigation from 2004 to 2011, as reflected in [the FBI's] closing memorandum.[4] (Dkt. 235-2, Brown *Baker/Glenn* report at 36).

[4] The FBI's 2014 closing memorandum stated in part that, "Through investigation and CHS information, it was learned that Watts and CPD police officer Kallatt Mohammed were the officers stealing drugs and drug proceeds from drug dealers and drug couriers.…In summary, sufficient personnel and financial resources were expended on the investigation. All investigative methods/techniques that were initiated during the

Apparently recognizing that Brown has the stronger opinion, Plaintiff was forced to ask Danik to supplement his report in this case, wherein he now attacks FBI Agent Craig Henderson's declaration (relied on by Brown at 17 of Dkt. 235-2) averring that, "During my review of the items of electronic material collected by the FBI in its investigation of Mr. Watts and Mr. Mohammed, I did not perceive anything that indicated that the subjects of the investigation were engaged in falsification of criminal charges against any individual." (Ex. 1, Henderson declaration at 4). According to Danik's supplement, contrary to Henderson's declaration, the Joint FBI/IAD Investigation actually did develop electronic evidence proving that Watts and members of his team falsified criminal charges and planted illegal drugs on innocent persons which then led to false arrests. (Dkt. 235-1-2, Danik supplement at 1-3). Brown disagrees in multiple respects and multiple places of his supplemental report, including as follows:

> Relative to plaintiff's expert Jeffrey Danik's supplement in White and his "Reaction to Craig Henderson's Declaration," at no time during this investigation was evidence obtained which substantiated allegations regarding Watts, Mohammed, and/or other members of the tactical team falsifying criminal charges (such as planting illegal drugs on individuals which then led to false arrests). (Dkt. 235-5 at 3).
>
> During the Watts Investigation, there were multiple accusations accusing Watts, Mohammed, and/or their team members of extorting money from drug dealers in exchange for allowing those dealers to continue to sell drugs. There were also allegations that Watts or members of his team planted illegal drugs on drug dealers which then led to false arrests of those drug dealers. The investigation examined the accusations and developed evidence that Watts and Mohammed were extorting money from drug dealers to allow them to sell drugs. Consistent with SA Craig Henderson's March 15, 2023 declaration, no evidence was obtained that corroborated the accusations that Watts, Mohammed and/or members of Watts's team falsified charges or planted drugs on the drug dealers or any innocent persons. (Dkt. 235-5 at 4).
>
> In support of his statement that "Henderson's declaration is wrong," Danik refers to three recordings as evidence that Watts was involved in the planting of drugs on innocent people. However, what Danik fails to recognize is that none of the recordings contain any actual

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investigation have been completed. Furthermore, all leads that have been set have been completed. All logical and reasonable investigation was completed, and all evidence obtained during the investigation has been returned or destroyed in accordance with evidence policy." (Ex. 2, 2014 FBI Closing Memorandum at FBI 1279-80).

> evidence of this activity. For these reasons, Danik is wrong, not Henderson. (Dkt. 235-5 at 7).
>
> Although there were allegations made during the Watts investigation that Watts and members of his team planted illegal drugs, no evidence corroborating these allegations was obtained during the course of the investigation.
>
> The Watts Investigation properly assessed the accusations that were brought to their attention. The investigators followed the facts and were able to develop and implement scenarios which allowed for the collection of evidence that was objective and independent of the reliability concerns regarding the persons who came forward with the information. By doing so, the Watts Investigators and prosecution was able to secure convictions against both Watts and Mohammed.
>
> After an extensive investigation, that spanned over seven years, the 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. The conclusion that was presented by the lead investigator, as the result of a proper and thorough evaluation at the end the investigation, found that no such evidence had been obtained. I disagree with Danik's opinion to the contrary. (Dkt. 235-5 at 10).

As the foregoing demonstrates, Brown clearly opines based on the complete record that while the Joint FBI/IAD Investigation received allegations of planting drugs and falsely arresting people and investigated them, the only evidence that was developed during the investigation proved that Watts and Mohammed were collecting a street tax from drug dealers and stealing money from drug couriers, but not planting drugs or falsely arresting people. (Dkt. 235-2 at 16; dkt. 235-5 at 10). These opinions directly rebut Danik's opposite opinion and are supported by the entirety of the Joint FBI/IAD Investigation (including the FBI's 2014 memorandum and Henderson's declaration), unlike Danik whose opinions contradict the factual record. Moreover, Danik himself fails to identify anyone who the evidence shows was innocent, any evidence (beyond mere allegations) that a single person was framed, or any specific investigative activity that should have been done to prove someone was framed other than amorphously "tracking" Watts's cases for civil rights violations. (Dkt. 235-1, Danik report at 20). Plaintiff nevertheless criticizes Brown for apparently not citing enough investigation into these allegations. Although she does not come out and say it, Plaintiff is apparently suggesting that the Joint FBI/IAD

Investigation should have reported the absence of something proved during a wiretap, a consensual overhear, surveillance, clandestine operation, or witness interview. Plaintiff does not offer any support that such negative reporting is necessary, appropriate, or generally accepted. As Brown explains, the reports of all of those investigative activities were reviewed by Brown and fail to support any assertion that there is evidence of framing people.

Furthermore, Brown cites examples of ample investigative activity that would have developed evidence of falsely arresting people if it were happening, including but not limited to the wiretaps Agent Henderson said did not develop evidence of false arrests (Dkt. 235-2 at 16-18, 28-29), all the other overhears Henderson avers in his declaration that did not yield proof of false arrests, and all the other interactions the Confidential Human Sources ("CHS") had with the subjects of the investigation that were reported in the file. (Ex. 6 to Plaintiff's Motion, Brown deposition in *Gipson* at 20: "In other words, the agents would have directed the informants to engage in conversations with the targets so that evidence of that criminal activity could have been captured. … But based upon my experience in conducting similar types of investigations, [the CHS's] would've been instructed to not focus on – on one aspect, but on all aspects of criminal activity in which they made allegations.") Brown explained based on his involvement in similar investigations that the agents would not and did not ignore the allegations, but approached them and the evidence in an open ended way. (Ex. 6 to Plaintiff's Motion, Brown deposition in *Gipson* at 18-19: "As these complainants came forward and accusations were made, that any steps taken throughout the course of the investigation, would've been open-ended. In other words, an opportunity to support those accusations, if it was presented, then the FBI would've seized upon that and used that to obtain evidence of that particular criminal activity"). As Brown testified and stated in his report, the agents followed the evidence where it took them and directed their

informants to supply any such evidence, but here, those efforts did not develop evidence of framing innocent people. While Plaintiff is free to cross-examine Brown that some additional type of investigative activity could have been done to prove a false arrest, Plaintiff has not offered a legitimate basis to bar Brown's opinions. See *Blackmon v. City of Chicago*, 2022 WL 21296465, at * 4 (N.D. Ill. Aug. 30, 2022) ("To the extent that [the plaintiff] wishes to challenge the factual underpinnings or ultimate correctness of [the defendants' expert's] opinions … that may be done via cross-examination.") (citing cases). As the FBI explained in its closing memorandum, all investigative leads in the Joint FBI/IAD Investigation were followed and the only evidence developed was corruption against Watts and Mohammed (Ex. 2 at FBI 1280), not proof of planting drugs or fabricating cases. Henderson's declaration is further consistent with that conclusion. (Ex 1 at 4). In sum, Brown's opinion is supported by the record, not speculative, and is admissible.

V. Brown Has The Same Type of Experience in Internal Affairs Type Matters as Danik, and His Opinions Regarding Internal Affairs Do Not Exceed The Scope of his Expertise.

Plaintiff asserts (at 8-11) that Brown's opinions exceed the scope of his expertise in IAD matters and "Union contract issues." Specifically, Plaintiff contends (at 9-10) that Brown is not "equipped" to testify as to the policies, practices, and procedures of IAD and that he "improperly ventured into the realm of police internal affairs operations." With respect to "union contract issues," Plaintiff references the phrase at page 8 of her Motion, but then never discusses or develops the argument; it is therefore waived. *Shipley,* 947 F.3d at 1063.

As to IAD, Plaintiff seeks to bar the following three opinions from Brown: "As to officers other than Watts and Mohammed, there was insufficient evidence to bring criminal or administrative charges;" (Motion at 10, citing Brown report at 16); the "CPD must include an analysis as to the sufficiency of any evidence when it decides to initiate an administrative action against its officers;" (Motion at 10, citing Brown report at 19); and that "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." (Motion at 11, citing an excerpt of Brown's report at 31 for which Plaintiff seeks to bar a single clause).

The reason Plaintiff offers for why these opinions should be barred is because Brown admittedly never worked internal affairs for any municipality. (Motion at 9-11). Ironically, neither did Danik, which is in part why Defendants have moved to bar his opinions. (Dkt. 242 at 2, 6, 10). However, Brown has the same type of internal affairs experience as Danik. Danik explained at his deposition that he never worked internal affairs, but that as a supervisor at the FBI certain administrative disciplinary matters would be referred to him from time to time to conduct an investigation; that is the extent of Danik's internal affairs type experience. (Ex. 4 to Dkt. 242, Danik dep at 38-40). Brown has the same type of internal affairs experience as a supervisor at the FBI as Brown explains in his declaration attached hereto as Ex. 3 that was filed on December 20, 2024 in the *Gipson* case.[5] (*Gipson*, 18 C 5120, Dkt. 198, Ex. 3).

Moreover, while Brown did not identify the standard of proof for an administrative investigation in his *Baker/Glenn* report, he did so in his *Gipson* supplement. (Dkt. 235-5, at 5). Brown states as follows:

> In addition, as stated in my May 13, 2024 Baker report, "the CPD could not have moved administratively until the criminal investigation concluded, as doing so would have compromised the integrity of the ongoing federal corruption investigation." In an administrative proceeding, like a criminal proceeding, evidence must be introduced against the accused officer to prove the claim. The standard is preponderance of the evidence rather than beyond a reasonable doubt, *Clark v. Board of Fire and Police Commissioners of the Village of Bradley*, 613 N.E.2d 826 (Ill. App. Ct. 1993), but evidence corroborating the allegations must be introduced just like a criminal case. (Dkt. 235-5 at 5).

[5] Plaintiff fails to address Brown's December 20, 2024 declaration in his Motion. He has therefore waived any challenge to the substance of the affidavit and this Court should disregard any attempt by Plaintiff to challenge Brown's declaration in his reply brief. *Shipley v. Chicago Bd. of Election Commissioners*, 947 F.3d 1056, 1063 (7th Cir. 2020).

In her Motion (at 8-11), Plaintiff does not address this portion of Brown's supplemental report (and has therefore waived any challenge to it), and otherwise offers no argument why Brown is not qualified to offer such an opinion. Indeed, the opinion is unassailable, as evidence must be introduced against an accused officer to prove an administrative charge against him and Brown correctly cites the *Clark* case and the standard.[6] There is nothing controversial about Brown's opinion.

Plaintiff observes that Judge Valderrama in *Baker/Glenn* found that "without more from Defendants, the Court finds that they have failed to meet their burden of showing that Brown's testimony regarding administrative charges is allowable under Rule 702." (*Baker/Glenn v. City et al*., 16 C 8940, Dkt. 385 at 43). Judge Valderrama was correct in that Defendants did not supply him with Brown's experience with respect to FBI internal administrative investigations or that it is the same type of experience Danik possesses. Since Brown supplemented his report in this case and Defendants have supplied this Court with the information that Judge Valderrama was missing in Brown's declaration (Ex. 3 at 1-2), this Court should deny Plaintiff's Motion. Like Danik, Brown has internal affairs type experience and is qualified to testify to the standard of proof of an IAD administrative proceeding as well as evidence that must be submitted to sustain such an employment charge against an officer. Thus, Plaintiff's Motion should be denied.

In the alternative, should this Court grant Defendants' motion to bar Danik and preclude him from testifying as to internal affairs issues, then Defendants will withdraw Brown's opinions in that regard as discussed in section 3 of Plaintiff's Motion. Plaintiff cannot have it both ways,

[6] For her part, Plaintiff does not explain what is in dispute regarding Brown's opinion on this point, and it is not for the Court or Defendants to infer what exactly they contest. See *Nelson v. Napolitano*, 657 F.3d 586, 590 (7th Cir. 2011) (recognizing the court is not "obliged to research and construct legal arguments for parties, especially when they are represented by counsel"); *Dal Pozzo v. Basic Mach. Co.*, 463 F.3d 609, 613 (7th Cir. 2011) ("An advocate's job is to make it easy for the court to rule in his client's favor[.]")

however, and it would be unfair for one party's expert to opine on a topic but bar the other parties' expert from rebutting those opinions when they have the same type of experience.

CONCLUSION

For the foregoing reasons, Plaintiff's motion to bar or limit certain testimony of defendants' expert witness Michael Brown should be denied.

May 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **May 1, 2025**, I electronically filed the foregoing **Defendants' Response in Opposition to Plaintiff's Motion to Bar or Limit Certain Testimony of Defendants' Expert Witness Michael Brown** 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/ *Daniel M. Noland*