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 Magistrate Judge Laura K. McNally
CITY OF CHICAGO, RONALD WATTS, ALVIN JONES, ELSWORTH SMITH JR., KALLATT MOHAMED, MANUEL LEANO, BRIAN BOLTON, ROBERT GONZALEZ, and DOUGLAS NICHOLS,	)	
Defendants.	)	

DEFENDANTS' JOINT REPLY IN SUPPORT OF JOINT MOTION TO BAR JEFFREY DANIK

Defendants have jointly moved to bar Plaintiff's purported expert, Jeffrey Danik, from testifying or offering opinions at the trial in this matter. (Dkt. 263). As set forth in the Motion, Danik lacks the requisite qualifications to offer the specific testimony and opinions set forth in his report. While Danik may be a former FBI agent, he has no experience working on a joint investigation between the FBI and a separate law enforcement agency investigating that agency's members for alleged criminal conduct. Moreover, his opinions lack any standards or methodology by which this Court can evaluate their reliability. He offers little more than his own say-so and personal *ipse dixit*. Rather than apply sound methodology to a set of facts, Danik also offers argumentative assertions that mirror Plaintiff's counsel's anticipated closing argument. In addition to these fatal deficiencies, several other reasons exist for this Court to bar Danik's opinions. For the reasons set forth herein and in the Motion to Bar, Danik's testimony is inadmissible, in total, and should be barred.

I. Danik Should Be Barred From Opining that the CPD Should Have Interfered with the Joint FBI/IAD Investigation Before its Conclusion to Attempt Instead to Bring Administrative Charges against Watts or Mohammed.

Defendants argued (Motion at 2-10) that Danik does not have any applicable experience or methodology that would allow him to testify under Rule 702 and *Daubert* that the CPD should have destroyed the confidentiality of the Joint FBI/IAD Investigation by moving administratively to fire Watts or other officers before its conclusion. In the introduction, Defendants directly challenged plaintiff and Danik as to four points of experience and professional standards that would be needed for his opinion to be admissible and argued that he "has none of those things." Specifically, we called out Danik because he (1) "never worked on an investigation like this;" (2) "can't identify a single investigation where a local municipality broke the cover of a confidential FBI criminal investigation to move administratively against a corrupt officer/official;" (3) "never worked for a City's police department and has no applicable internal affairs experience;" and (4) "can't cite a single professional standard that supports his opinion." (Motion at 2). In response, Plaintiff fails to rebut any of these points or otherwise meaningfully rebut Defendants' arguments. Danik should be barred.

A. Danik is Not Qualified: (1) He Never Worked on an Investigation Like This, (2) He Failed to Identify a Single Investigation Where a Local Municipality Broke the Cover of a Confidential FBI criminal Investigation to Move Administratively Against a Corrupt Officer or Official, and (3) He Has No Applicable Internal Affairs Experience.

Danik never worked on an investigation like the Joint FBI/IAD Investigation at issue and fails to cite any similar investigation where a municipality took employment action against a target before the FBI concluded its confidential criminal investigation. Plaintiff's counsel had previously argued in their *Baker/Glenn* Response (16 C 8940, Dkt. 342 at 7) that two investigations Danik worked on (Operation Farmhouse Cantina and Operation Blind Justice) were sufficiently similar to the Joint FBI/IAD Investigation at issue to provide Danik a foundation to opine. However, Defendants explained in their Motion to Bar (at 5) why those two investigations offered Danik no foundation to opine here, and Plaintiff has now abandoned those two investigations to salvage Danik's opinions.

Plaintiff instead resorts to a discussion of Danik's generalized experience working at the FBI, including on inapposite roles and unidentified corruption cases that he "evaluated" and "assessed." (Response at 8, citing pages 18-20 of Danik's deposition wherein he stated at 19:18-21 that "A lot of those are just evaluations of case assessments. Some cases opened and then closed and then referred to internal affairs.") Danik's vague testimony is insufficient to establish an expert foundation to opine under Rule 702. In *Kraft Foods Global, Inc. v. United Egg Producers, Inc.*, 2023 WL 6248473, *2 (N.D. Ill. September 19, 2023)(Seeger, J.), the Court offered a helpful analogy for sports fans in explaining when an expert is qualified:

> By way of illustration, imagine watching a football game on a cozy autumn afternoon. Imagine if a question came up about whether a wide receiver caught a pass. Most people could watch the footage for themselves, and decide whether the player caught the ball. The fans can see it with their own eyes and make up their own minds. An announcer doesn't add much value by watching what everyone else can see and then declaring "he caught it" or "he dropped it." But it might help to have a rules expert explain what it *means* to make a catch (e.g., making a so-called "football move," or having two feet in bounds).

Consistent with Judge Seeger's analogy, while someone like Danik may be a rules expert in one sport (like basketball), that does not qualify him to be a rules expert in another support (like football) to explain a "football move" to the jury. In terms applicable to this case, while Danik may be a "rules expert" on certain FBI protocols, he is not a "rules expert" on confidential corruption investigations similar to the Joint FBI/IAD Investigation at issue and does not have the foundation to opine that the CPD should have ruined that investigation by taking an employment action against its officers.

This is not a matter for cross-examination as Plaintiff suggests, but is a question of admissibility. Because Danik has never worked on a similar investigation, Defendants have nothing to cross examine him about. If, for instance, he had any relevant experience (or, at least, had cited someone else's relevant experience), we could cross-examine him on that experience. But he has none, so our cross-examination would be a dead end. Danik's opinion is the classic inadmissible *ipse dixit*. *Wendler & Ezra, P.C. v. American Intern. Group, Inc.*, 521 F.3d 790, at 791 (7th Cir. 2008)("an expert's *ipse*

dixit is inadmissible" because "'[a]n expert who supplies nothing but a bottom line supplies nothing of value to the judicial process.'"). Plaintiff's failure to rebut Defendants' first two basic points of challenge, in and of themselves, supports barring Danik's opinion.

Plaintiff also fails to meaningfully rebut Defendants' third challenge point: Danik has no applicable internal affairs experience. Plaintiff admits as he must that Danik never worked internal affairs for a City or other local public entity. And as for what Plaintiff calls (at 8) "internal affairs" experience, that was for a handful of routine investigations outsourced from the FBI headquarters to the field to be conducted by a supervisor of Danik's own subordinates. As such, Danik's "internal affairs" experience does not provide him a foundation to opine as to the standards a municipality should follow when assisting the FBI in a joint criminal investigation of the municipality's employee, and specifically for him to claim without any support that the municipality should have moved to terminate the employee before the completion of the joint federal investigation. Conducting routine investigations of one's own subordinates is a far cry from the confidential Joint FBI/IAD Investigation at issue.

Plaintiff's Response (at 7) cites to *Jimenez v. City of Chicago*, 732 F.3d 710, 719 (7th Cir. 2013), for the proposition that an FBI agent may obtain sufficient experience in law enforcement practices to testify about a police department's compliance with generally accepted law enforcement standards. Although that specific issue was not presented to or addressed by the court in *Jimenez*, Defendants need not quarrel with that proposition here. The point is that Danik, a non-police officer who never worked in a police department's Internal Affairs section, lacks the requisite experience to offer criticisms directed to IAD's actions as part of the joint FBI/IAD criminal investigation of Watts and Mohammed.

B. Lack of Reliability and Methodology: Danik Cannot Cite a Single Professional Standard that Supports His Opinion.

In addition to his lack of relevant experience, Danik should be barred because there is no written professional standard supporting his opinion that the CPD should have disclosed the Joint FBI/IAD Investigation to pursue an administrative action. Initially, Defendants established that the DOJ publication cited by Danik supports the opposite conclusion. (Motion at 8, citing section 2.4 of Ex. 3, DOJ Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, hereinafter "DOJ Publication."). While Plaintiff bizarrely says (at 11) "that is not what the report says," the very first comment of Section 2.4 of the DOJ Publication expressly states that "[i]t is common practice to hold an administrative investigation in abeyance during the pendency of a criminal investigation based on the same facts." *Id.* That is exactly what the report says.[1]

Although Danik does not discuss the excerpt, Plaintiff's attorneys quote a few additional sentences (at 11) of the later commentary of section 2.4 discussing a prosecutor taking over a "year or more" to make a prosecutive decision, stating that "some agencies proceed with the administrative investigation, including taking a compelled statement from the subject officer, before the prosecutor had made a decision," and adding that "a collective decision should be made to best protect the interests of both the criminal and internal investigation." Here, the prosecutor (the USAO) refused to move forward until more evidence was developed because there was insufficient evidence to charge Watts (the primary target) up to and including late 2011. (See Ex. 6 to Motion at 2, FBI Agent July 13, 2011 memo reporting that while the USAO supports an extortion charge against Mohammed, it had "elected to delay filing the complaint until further evidence could be obtained implicating Watts.") Since a compelled statement against Watts, Mohammed, or any other officer would have necessarily blown the cover of the confidential Joint FBI/IAD Investigation, this excerpt quoted by Plaintiff's

[1] In a similarly odd suggestion, Plaintiff states that Defendants did not appropriately reference Judge Valderrama's *Baker* opinion. Plaintiff is incorrect, as Defendants cited Judge Valderrama's opinion no less than nine times in their Motion to Bar, and credibly explained those instances where we disagree with his reasoning.

counsel obviously does not apply here, which probably explains why Danik himself did not discuss it in his report. In fact, the only reason why the Joint FBI/IAD Investigation was ultimately successful was because the FBI and IAD maintained its confidentiality (and did not notify the target and subject officers through a compelled statement or otherwise), which enabled investigators the opportunity to execute the November 21, 2011 sting operation where Watts and Mohammed stole government funds from a drug courier working with the FBI. (See Para. 47 to Dkt. #262 (Plaintiff and City's Joint Statement of Undisputed Material Facts)). It is no wonder why Danik cannot find any support for his opinion as no reputable law enforcement publication would publish such an illogical standard.[2]

Plaintiff's citation (at 14-15) to the testimony of the City's internal affairs expert Jeff Noble[3] in an unrelated case (*Curtin v. County of Orange, Ca*) is misdirection. The *Curtin* case involved an allegation where a victim alleged in a publicly filed Claim for Money or Damages that the accused officer sexually assaulted her and that a different victim, plaintiff Curtin, alleged that she was sexually assaulted months later by the same officer. (Ex. 16, *Curtin v. Cnty. of Orange* Dkt. #29, Second Amended Complaint; Ex. 17, *Curtin v. Cnty. of Orange* Dkt. #37-2, Claim for Money or Damages Against the County of Orange). Noble testified in *Curtin* "that there is a generally accepted standard in policing to conduct concurrent investigations" under those facts, but he did not testify that an administrative action should be taken against a police officer that would reveal a confidential joint investigation between the federal government and a municipality. (See Ex. 7 to Dkt. #269, Plaintiff's Response to Defendants' Joint Motion in *Limine* to Bar Jeffrey Danik). The inapposite *Curtin* case provides Danik

[2] Danik's amorphous criticism that the subject Joint Investigation was not as "high tempo" as he would prefer is likewise not grounded in any written standard. Like his other criticisms, the phrase "timely, high tempo resolution of allegations" (Response at 14) necessarily falls into the category of *ipse dixit* due to its extreme vagueness.

[3] Unlike Dr. Shane and Danik, there is no doubt Noble is an internal affairs expert. Among many other credentials, he is listed by name in the acknowledgements section of the DOJ Publication at issue as a contributor to that publication. (Ex. 3 to Motion at 8).

no support. Moreover, Noble has opined in this case that the CPD properly did not undermine the Joint FBI/IAD Investigation by taking administrative action before the criminal investigation was complete. (Dkt. #229, Noble report, at pp. 61-63).

Defendants also argued (Motion at 9) that Danik does not have the foundation to opine that the MOU supports his opinion because he never worked with the specific provisions of the MOU at issue and that he was never involved in anything like the subject Joint Investigation. Rather than challenge Defendants' actual argument, Plaintiff asserts (at 12) that Defendants are incorrect because Danik is allowed to interpret the 2011 MOU differently than Defendants. Defendants agree that if Danik was qualified to opine regarding this investigation and these provisions of the MOU, then Plaintiff would be correct, but the whole point of Defendants' argument is that Danik is not qualified to so opine. Danik is like a basketball official attempting to opine on whether a player made a "football move." While he may have general officiating experience, he doesn't have the necessary experience to opine on the subject Joint FBI/IAD Investigation.

Plaintiff's Response (at 11) identifies two additional "published standards" on which Danik purportedly relies: the FBI's Domestic Investigations and Operations Guidelines, 2011 version ("DIOG"), and the FBI's Manual of Investigative Operations and Guidelines Part II, Section 18 ("MIOG"). Apart from listing the DIOG and MIOG in an Appendix, these FBI documents are not discussed or even mentioned in the report itself. And for good reason. At deposition, when asked if there was anything in the DIOG that he relied upon in formulating his opinions, Danik answered "Not really." (Ex. 4 to Motion to Bar Danik, Danik dep., at 149:21-23.) As for the MIOG, Danik testified he referred to it for "historical guidance" concerning the FBI's use of MOUs (Memorandum of Understanding). (*Id.* at 153: 4-15.) Neither Danik's report nor his deposition testimony establishes that these two FBI publications or the DOJ publication provide support for his opinions regarding the CPD and the joint FBI/IAD investigation of Watts and Mohammed. This Court is left to guess

as to how (or even if) these publications provide a basis by which to evaluate the reliability of Danik's opinions.

II. Danik's Opinions that Parrot Plaintiff's Anticipated Closing Arguments Should be Barred.

Additional reasons exist for this Court to bar Danik's opinions. As set forth in the Motion, Danik repeatedly parrots Plaintiff's anticipated closing argument under the guise of "opinion" testimony. His opinions are not stated in the objective, measured language expected of an expert, but instead resort to argumentative, occasionally inflammatory language more indicative of a closing argument.[4] Defendants' challenge to these opinions is not solely based on their "tone" as minimized by Plaintiff. (Response at 22). Rather, the type and tone of the language reveal Danik's report and opinions are nothing more than Plaintiff's allegations cloaked as expert opinion. As such, they should be deemed inadmissible. *Goldberg v. 401 North Wabash Venture LLC*, 755 F.3d 456, 461 (7th Cir. 2014) ("An expert witness is not permitted to parrot what some lay person has told him."); *Higgins v. Koch Development Corp.*, 2013 WL 6238650 (S.D. Ind. Dec. 3, 2013) ("[T]he court must be wary that experts are not simply parroting the opinions of counsel.").

Defendants' Motion (at 13-14) includes bullet points reflecting a number of objectionable opinions offered by Danik lest Defendants be accused of failing to identify specific opinions they seek to bar. Plaintiff criticizes what he deems to be "laundry list objections" that does not include further discussion of each. (Response at 13). However, Plaintiff's argument overlooks that Defendants set forth the bases of their objections before listing the bullet points as examples of opinions inadmissible under Rule 702. The list includes examples that necessarily rely on Danik's conclusions about disputed

[4] Just a few examples of such language from Danik's report include: "shocked and saddened;" "worst possible;" "often-bungling group of officials;" "stunning information;" "spectacularly failed operation;" "incredible operational failure;" "most astounding allegation;" "disturbingly;" "shockingly;" "alarming;" "inexplicable combination of amateurism;" "ominously;" "unbelievably;" "misfires and bungling." (Motion at 13-14).

underlying facts or opine on the mental state of the Defendants, the credibility of witnesses, and/or ultimate legal matters. Danik's opinions set forth in the bullet points are almost exclusively comprised of summarizing and repeating arguments and/or evidence he has construed to be favorable to Plaintiff. A repetitive discussion of each opinion with multiple objections is unnecessary to establish that Danik's report is rife with deficiencies.[5]

Moreover, as explained above, Danik fails to define the standards by which he judges Defendants' actions, offering no "concrete information against which to measure abstract legal concepts." *U.S. v. Blount*, 502 F.3d 674, 680 (7th Cir. 2007). Without a sound framework, his opinions are tantamount to bald legal conclusions, which are unhelpful and inadmissible. *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003).

Defendants' Motion also raised the concern that many of these objectionable opinions create the very real possibility of confusion of the issues for the jury. By argumentatively labeling Defendants' alleged actions as "stunning," a "spectacular[] failure," "long bungled," and that he was "shocked and saddened by the investigation," Danik impermissibly "induce[s] the jurors to substitute their own independent conclusions for that of the experts." *See Thompson v. City of Chicago*, 472 F.3d 444, 458 (7th Cir. 2006). These opinions "would confuse the jury and unfairly prejudice [Defendants] by implying scienter or at least allowing the jury to infer it." *Am. Family Mut. Ins. Co. v. Electrolux Home Prods., Inc.*, 2014 WL 2893179, at *8 (W.D. Wis. 2014) (refusing to admit proffered expert opinion that Defendant behaved "unethically"). Plaintiff's Response does not address this concern.

III. Danik's Speculative Opinions Should be Barred.

[5] Though Judge Valderrama barred most of these "opinions," and Plaintiff stubbornly didn't withdraw or concede of them herein, Plaintiff posits that Defendants should have altered their arguments seeking to bar these opinions. Defendants disagree. The best way for this Court to evaluate the impropriety of these opinions is to simply read Danik's report, and they become obvious.

As set forth in Defendants' Motion (at 17-19), Danik speculates throughout his report, which is improper. The Motion provides representative examples, which need not be repeated here. Suffice to say, these objectionable "opinions" include tentative language like "almost," "mostly because," "might have immediate impact," "apparently never," "appeared to," "potential significant benefit," "high probability she could have," "seems to have," and/or "appears to take no action." Opinions utilizing such language should be barred because they involve improper speculation.

Plaintiff's Response (at 16) suggests the examples offered by Defendants are not speculation, they are Danik's opinions. Opinions or not, they are speculation. In attempting to salvage Danik's speculative opinions, the Response (at 16-17) tries to clean up the opinions by removing the equivocal language that renders them speculative. That ploy, however, should not be allowed to avoid the actual language in the speculative opinions offered by Danik. They should be barred.[6]

IV. Opinions Against Non-Parties Should be Barred.

Danik's report includes opinions pertaining to parties against whom there are no pending claims. As set forth in the Motion (at 19-20), these include opinions critical of a lead FBI agent, the FBI itself, and a non-party police officer, which Danik asserts are based on "stunning information." Neither the FBI, the FBI agent, nor the female police officer referenced in Danik's report are parties to this case. As such, Danik's opinions related to these non-parties will not "help the trier of fact to understand the evidence or to determine a fact *in issue*." Fed. R. Evid. 702 (emphasis added).

[6] In a recurring pattern, Plaintiff once again (at 17) contends that Defendants have argued that Judge Valderrama's "reasoning was wrong without providing any additional analysis or authority." And once again, Plaintiff is incorrect as Defendants explained to this Court (Motion at 19) how Plaintiff's counsel unfairly persuaded Judge Valderrama to incorrectly rule on these points by mischaracterizing the *DePaepe* case. Unfortunately, Plaintiff has doubled down in his response here. Danik's speculation has no place in a court of law.

Plaintiff's Response (at 17) argues Danik is not offering opinions against non-parties, he is simply "describing facts." Plaintiff's position is belied by the actual language of Danik's report. For example, Danik refers to "stunning information" concerning the FBI and its lead agent, and the "long, bungled investigation." (Report, at 24, 28). When asked about that language at his deposition, Danik confirmed this opinion "was mainly of the bureau's bungling." (Ex. 4 to Motion to Bar Danik, Danik dep. at 281). Such assertions concerning FBI "bungling" clearly involve much more than a description of "facts." Such opinions concerning non-parties should be barred.

Hoping to have his cake and eat it too, Plaintiff asks this Court to disregard Judge Finnegan's ruling barring discovery of Plaintiff's allegations of FBI misconduct because Plaintiff "took no position" on the motion. (Response at 18). If Plaintiff wanted to rely on this evidence, then why didn't he take a position? The Federal Rules of Civil Procedure long ago abandoned trial by ambush, but Plaintiff suggests he is entitled to an exception to that rule because "he took no position" when Defendants attempted to obtain discovery to investigate Plaintiff's allegations. Judge Finnegan's ruling applies to all parties, regardless of whether Plaintiff "took no position." Defendants' Motion to Bar should be granted because Defendants have not been allowed to conduct discovery regarding the allegations.

V. Opinions Based on Facts Not Found in the Record and Contradicted by the Record Should be Barred.

Under Rule 702, experts may not offer opinions that are not supported or are contradicted by unrebutted evidence in the record. *Martinez v. Sakurai Graphic Sys.*, 2007 WL 2570362, at *5 (N.D. Ill. Aug. 30, 2007). Defendants' Motion (at 20-24) identifies four opinions offered by Danik that lack support or are contradicted by unrebutted evidence in the record: CPD had "clear evidence" of corruption by Watts and Mohammed "beginning in 2003" (Ex. 1 to Motion to Bar Danik, Danik Report at 10); Calvin Holliday's 2004 memorandum indicating the United States Attorney's Office "should be in control of everything that results from [a CI's] cooperation" more likely meant the

USAO would need to agree that it be in control of any sentencing credit resulting from the CI's cooperation (*id.* at 14); CPD failed to bring to the FBI's attention allegations from a potential informant (*id.* at 17); and, that Watts may have been involved in the murder of ATF informant Wilbert "Big Shorty" Moore (*id.*). Plaintiff's Response fails to meaningfully rebut Defendants' Motion as to these points.

Taking the first example, Danik's report states, "Clear evidence of corruption by Watts and Mohammed was collected and known to agents/officers and command staff of CPD beginning in 2003." (Report, at 10). Although Plaintiff's counsel's Response in *Baker* (at 18) concedes the record does not support Danik's actual statement and attributes the error to a "typo" and then confirmed Danik is not offering an opinion regarding the City's knowledge in 2003 (*Id.*), Plaintiff in this case makes no such concession. While it is unclear why counsel withdrew the opinion in *Baker* but decline to withdraw it here, the opinion should be barred for the reasons stated in Defendants' motion.

Next is Danik's rewriting of Calvin Holliday's memorandum[7] of September 21, 2004. Holliday's memo states in part as follows: "The Cooperating Individual is to be prosecuted in federal court and the United States Attorney's Office believe they should be **in control of everything** that results from his cooperation." But contrary to the express language that the USAO "should be in control of everything," Danik opines that "it was more likely that the USAO would need to agree to be **in control of any sentencing credit** resulting from the cooperation." (Report at 14). There is no limitation or qualification of the term "everything" in the plain language of the memo. Danik's opinion changes the facts by improperly changing the express term "everything" to "sentencing credit." Plaintiff's Response does not refute that Danik is rewriting the express language of the memorandum, chalking it up to Danik's "experience" in suggesting a different interpretation. (Response at 19). This

[7] Holliday's 9/21/04 memo is attached as Exhibit 11 to Defendants' Motion to Bar.

opinion should be barred. It cannot be reliably tested, contradicts the actual record, and would only serve to confuse, rather than assist, a jury. Plaintiff did not cite any case law to this Court or Judge Valderrama that allows an expert to rewrite the record to fit his narrative under the guise of "interpretation."

As to the claim the CPD failed to bring to the FBI's attention allegations from the potential informant at issue, the Motion (at 22) provides citations to the record that flatly contradict Danik's assertion. Plaintiff's Response does not address this issue. Plaintiff's failure to respond to this argument in his Response results in forfeiture. *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010). While Plaintiff has not expressly withdrawn his opinion here, he impliedly does because he does not rebut Defendants' argument in his response.

Finally, Danik should not be allowed to testify or infer that Watts may have been involved in the murder of informant Wilbert "Big Shorty" Moore. As set forth in the Motion (at 23), Moore was murdered by the Hobos street gang. *U.S. v. Brown*, *et al.*, 973 F.3d 667 (7th Cir. 2020). Although Danik's Report (at 17) suggests the CPD and FBI knew of an allegation that Watts may have been involved in Moore's murder, he admitted at deposition there was no evidence to support that allegation. (Motion Ex. 4, Danik dep at 272:19 – 273:11). Danik should not be permitted to inject pure conjecture into this case with this unsupported allegation, especially in light of his admission at deposition.

Plaintiff's Response does not contest Danik's disavowal of an opinion that Watts may have been involved in Moore's murder. Instead, and even though Danik concedes Watts had nothing to do with the murder, Plaintiff posits (at 20) this false accusation is nevertheless admissible because it would be "extremely prejudicial to the CPD" because the City did not investigate it. Plaintiff's suggestion that a false allegation against Watts should be presented to the jury – indeed, an extremely prejudicial false allegation - is devoid of logic. Any testimony or inference from Danik that Watts may have been

involved in Moore's murder is unsupported by the record, has been disavowed by Danik, and is properly the subject of a motion to bar under *Daubert*.

VI. Danik's *Gipson* Supplement Should be Barred.

Defendants explained (at 24-25) that Danik's *Gipson* supplement is inadmissible because it constitutes an improper credibility assessment of Henderson. In response, Plaintiff contends Danik's supplement is fair game because Defendants confronted him with Henderson's declaration at his deposition. But merely because Defendants cross-examined Danik at deposition with evidence in the record undermining his opinion does not allow Danik to spin the record however he sees fit. *Kraft Foods Global, Inc.,*, 2023 WL 6248473, *2 ("An expert is not a color commentator on the evidence. An expert cannot merely argue the facts, or say what he would do if he sat on the jury.")

Defendants further established that Danik's "opinions" regarding FBI recording 1D-30 and his opinion that the FBI file is replete with evidence of planting drugs and framing people are inadmissible. (Motion at 24-25). Plaintiff fails to address either of these arguments in his response. Accordingly, Plaintiff has forfeited any challenge to this aspect of Defendants' Motion and these opinions should be barred.

VII. Danik Should Be Barred From Opining that Anyone Was Innocent.

In Section III of the Motion (at 16-17), Defendants argued that Danik should not be permitted to opine that anyone was falsely arrested, innocent or wrongfully convicted because those are improper credibility assessments. Plaintiff does not address this section of Defendant's Motion, thereby conceding the point. Accordingly, the opinions Defendants' address in Section III of the Motion should be barred.

WHEREFORE, Defendants request that this Court enter an order *in limine* barring Jeffrey Danik as a witness, and for whatever other relief this Court deems fit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **May 22, 2025**, I electronically filed the foregoing **Defendants' Joint Reply In Support of Joint Motion to Bar Jeffrey Danik** 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