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.,	)	Case No. 17-cv-2877
Plaintiff,	)	Hon. Sara L. Ellis
v.	)	JURY TRIAL DEMANDED
CITY OF CHICAGO, et al,	)	
Defendants.	)	

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

Plaintiff moved to bar Defendants' proposed expert Michael Brown from: (1) discussing witness credibility; (2) offering speculative testimony that lacks foundation; and (3) offering opinions that exceed his qualifications. Dkt. 235. Defendants agree that Brown will not discuss witness credibility, and they agree that Brown will not testify about one issue that Plaintiff identified as speculative. Dkt. 274 at 3-4. The Court should grant the remaining portions of Plaintiff's motion to bar as well.

Argument

I. Brown should be barred from offering speculative opinions, as well as opinions that lack foundation.

Plaintiff's motion argued that Brown should not be permitted to testify about the public's hypothetical reaction to a counterfactual scenario where Mohammed and Watts were *not* charged with crimes and were instead subjected to administrative proceedings by the Chicago Police Department ("CPD"). Dkt. 235 at 6-7. Defendants agree that Brown will not offer this opinion. Dkt. 274 at 3-4.

Plaintiff's motion also argued that Brown should not be permitted to speculate as to why

no documentation of a certain meeting with between an FBI informant and law enforcement agencies existed. Dkt. 235 at 7. Defendants respond by saying that it is unclear whether the parties actually have a dispute with respect to this particular issue because Brown does not intend to speculate. Dkt. 274 at 4-5. After reviewing Defendants' response, Plaintiff is also uncertain as to whether there is a disagreement. Therefore, Plaintiff also agrees with Defendants' suggestion that a ruling on that one specific issue be reserved for trial to the extent there is a need for a ruling at all. Dkt. 274 at 5.

Finally, Plaintiff argued that Brown should not be permitted to testify that FBI concluded that the Watts team did not frame people because that is not based in fact, is speculative, and lacks foundation. Defendants accuse Plaintiff of ignoring Brown's disclosures when making this argument, Dkt. 235 at 5-10, and specifically of ignoring the instances when Brown discusses how the FBI's files contain a limited number of allegations that Watts and others were framing people. This argument is misplaced. Plaintiff is not arguing that Brown should be precluded from discussing specific pieces of evidence in the FBI files. Rather, Plaintiff is arguing that Brown should be precluded from offering unfounded conclusions that are not supported by the record.

On this score, Defendants do not point to a single piece of evidence that suggests the FBI concluded that Watts and his team were not framing people. The closest Defendants come is a citation to a declaration submitted by an FBI agent during the Coordinated Proceedings when the FBI was trying to prevent the parties from obtaining consensual recordings. Dkt. 274 at 7 (citing declaration of Craig Henderson). But that declaration says only that the particular agent did not perceive anything suggesting that that Watts or Mohammed was framing people in certain recordings that the agent reviewed. *Id*. As Plaintiff pointed out in his motion to bar, Brown admitted that the declaration does not say that the FBI concluded there the Watts team was not

framing people. Dkt. 235 at 8. Defendants do not argue otherwise in their response brief.[1]

Taking a step back, Brown (and Defendants in their briefing) is really saying that because the FBI did not develop evidence to criminally charge Watts and Mohammed with framing people, that means the FBI determined that they were not framing people. Dkt. 274 at 10. Indeed, they assert that the FBI's closing memorandum says that "all investigative leads were followed and the only evidence developed was corruption against Watts and Mohammed (Ex. 3 at FBI 1280), not proof of planting drugs or fabricating cases." Dkt. 274 at 10. That carefully worded sentence is not the same thing as saying that the FBI concluded that Watts and his team were not framing people. Drawing the conclusion that the FBI found that Watts *did not* frame people merely based on the fact that the FBI found that he *did* commit a different crime is a logical fallacy, and it is also not supported by the evidence. The actual FBI memorandum that Defendants cite and attach as an exhibit to their response brief plainly does not say anything like that. It says that the investigation was opened because of allegations that Watts and Mohammed were stealing drugs and drug proceeds from drug dealers and then concludes that all leads were followed. It does not have one word about an investigation into whether Watts, Mohammed, or anyone else was framing people, let alone say that the FBI determined that Watts and Mohammed *were not* framing people.[2]

Experts may not offer testimony that lacks a factual basis. *See*, *e.g.*, *Constructora Mi Casita, S de R.L. de C.V. v. NIBCO, Inc.*, 448 F. Supp. 3d 965, 972 (N.D. Ind. 2020) ("Even his opinion on the projected Mexican labor costs lacks a sound factual basis. When asked how to

[1] Having now had the opportunity to review many of the recordings, Plaintiff does not agree with the agent's perception. Regardless, the declaration still does not say that the FBI concluded that the Watts team did not frame anyone.

[2] Casting further doubt on Defendants' and Brown's assertion that the FBI determined that Watts and his team were not framing people and that it was reasonable for the City to rely on that determination: the City itself, through the Civilian Office of Police Accountability, determined that members of the Watts team engaged in a widespread practice of framing people. Dkt. 265 ¶¶ 61-64 (citing COPA documents).

calculate the difference between U.S. and Mexican labor costs, Mr. Gallagher can't recall any source of data on Mexican labor and can't speak to its accuracy. He can't confirm that any Mexican labor data came from a reputable or government source. He readily confesses that his software (RS Means)—his sole source—contains no data for Mexican labor.").

With no factual basis in the record supporting his conclusion that the FBI determined that the Watts team had not framed people, Brown's testimony on that point should be excluded. Beyond that, as Plaintiff noted in his motion, Brown's proposed testimony that the FBI determined that the Watts team was not framing people is merely a factual summary, which would not be proper expert testimony even if it had factual support. *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).

II. Brown should be barred from offering opinions outside the scope of his expertise.

Plaintiff's motion showed that Brown lacks the experience necessary to testify about CPD's internal affairs process, and that his proposed testimony that an administrative action against Watts or Mohammed likely would have failed for lack of evidence was also speculative. Dkt. 235 at 8-11. Plaintiff also pointed out that Judge Valderrama barred Brown's testimony on those grounds. *Id*. Defendants do not respond to Plaintiff's argument that Brown's "opinion on what would have happened in an administrative hearing without certain evidence is speculative." Dkt. 235 at 11. Therefore, they have waived or forfeited arguments as to the admissibility of that testimony.

Defendants do not fare any better with respect to the broader point about whether Brown should be allowed to offer testimony about CPD's internal affairs process. They admit that Judge Valderrama properly excluded that testimony in *Baker* because they "did not supply him with

Brown's experience with respect to FBI internal administrative investigations or that it is the same type of experience [Plaintiff's expert] Danik possesses." Dkt. 274 at 12. Defendants seek to avoid that outcome by noting that "Brown supplemented his report in this case and Defendants have now supplied this Court with the information that Judge Valderrama was missing in Brown's declaration (Ex. 3 at 1-2)." Dkt. 274 at This sentence could be read to suggest that Defendants provided a timely supplemental expert disclosure in this case that discussed Brown's experience with internal affairs. They did not.

The supplement that Defendants refer to and the declaration that they attached as Exhibit 3 to their response brief are separate documents. The supplement was provided on a timely basis in the *Gipson* case, and it addresses substantive points (some of which are the subject of Plaintiff's motion). And importantly, it was directly referenced in Defendants Rule 26(a)(2) Disclosures in this case. Dkt. 235-8. But the supplement itself says nothing about Brown's experience with internal affairs divisions. Dkt. 235-6 at 5. The only thing it supplements about internal affairs is a citation to a case that discusses the legal standard for administrative proceedings. Dkt. 235-6 at 5.

The declaration that Defendants cite that discusses Brown's experience with internal affairs is dated December 20, 2024. Dkt. 274-3. This is the same date that the Defendants' response brief was due in *Gipson* and well after expert disclosures were due in that case. As Plaintiff's counsel explained in their reply in the *Gipson* case, the new declaration showed that Brown's original disclosure violated Rule 26's requirement that expert reports include a witness' qualifications. And the belated declaration was not harmless. Plaintiff was unable to depose Brown about his purported qualifications or explore how those qualifications impact, support, or relate to his proffered opinions.

Even with that context and warning, Defendants do the exact same thing here. They never disclosed this Declaration as part of Brown's opinions in *this* matter. Indeed, as noted, they specifically adopt Brown's prior report in *Baker/Glenn* and his supplement in *Gipson* but make no mention of his Declaration in their Rule 26(a)(2) Disclosures in this case. Dkt. 235-8. Accordingly, contrary to the Defendants' claim in footnote 11 of their Response, dkt. 274 at 11, it is Defendants who have forfeited or waived any reliance on this Disclosure by never referencing it. This Court cannot find that Plaintiff waived addressing something that the Defendants themselves never disclosed or indicated were part of Brown's opinions in this case.

Ultimately, Defendants acknowledge that Brown failed to establish that he is qualified to testify about internal affairs unless the Court is willing to consider the expert disclosure that Defendants did not timely disclose in *Gipson*, and then did not rely on at all in this case. Had Defendants actually indicated that Brown was relying on this Disclosure in their Rule 26(a)(2) Disclosures, Plaintiff would have deposed him on this topic and this issue could perhaps be addressed. But Defendants did not, so Plaintiff did not. Having been deprived of the chance to question him about those purported qualifications, this Court should not consider Brown's new declaration, and it should bar him from testifying about internal affairs.

CONCLUSION

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

Respectfully Submitted,

/s/ Joshua Tepfer
One of Plaintiff's Attorneys

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