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

William Carter, Plaintiff, v. City of Chicago, Ronald Watts, Phillip Cline, Debra Kirby, Darryl Edwards, Alvin Jones, Kallatt Mohammed, John Rodriguez, Calvin Ridgell, Jr., Elsworth J. Smith, Jr., Gerome Summers, Jr., and Kenneth Young, Jr., Defendants.	)	Case No. 17 C 7241 Honorable LaShonda A. Hunt

DEFENDANT OFFICERS' MOTION TO BAR CERTAIN OPINIONS OF PLAINTIFF'S PROPOSED EXPERT JON M. SHANE

Defendants, Ronald Watts, Kallatt Mohammed, Darryl Edwards, Alvin Jones, John Rodriguez, Calvin Ridgell, Jr., Elsworth J. Smith, Jr., Gerome Summers, Jr. and Kenneth Young, Jr., by and through their undersigned counsel, hereby move to bar certain portions of the opinions of Plaintiff William Carter's proposed expert witness Jon M. Shane relating to Plaintiff's underlying arrests giving rise to this lawsuit, and in support thereof state as follows:

BACKGROUND

William Carter has filed a lawsuit alleging that he was wrongfully arrested by Chicago Police Officers on three separate occasions: on March 3, 2004, June 18, 2004, and May 19, 2006. On July 9, 2024, Carter disclosed Dr. Jon M. Shane as an expert. Exhibit A, July 9, 2024 Report of Dr Jon M. Shane ("July 9 Shane Report"). Dr. Shane opined that the arrest documentation for each of Plaintiff's arrests fell before national accepted law enforcement standards, Ex. A, July 9 Shane Report, p. 2. Dr. Shane incorporated opinions previously disclosed in his April 1, 2024

Report for the Baker & Glenn, Leonard Gipson, and Lionel White, Sr. cases (Exhibit B, April 1, 2024 Report of Dr. Jon M. Shane ("April 1 Shane Report")) and his June 27, 2024 Supplemental Report in the Gipson and White, Sr. cases ("June 27 Shane Report").[1]

Carter's first arrest was on March 3, 2004 when he was arrested after he was observed holding two clear plastic bags of suspect narcotics. Ex. C. March 3, 2004 Arrest Report ("March 3, 2004 A/R"), F PL JOINT 03880-03881; Ex. D, March 3, 2004 Vice Case Report ("March 3, 2004 VCR"), CITY-BG-031082-031083. Plaintiff looked at the officers and ran, but was caught and detained. Ex. D, March 3, 2024 VCR, CITY-BG0031082. Both plastic bags were recovered; one was found to contain 34 blue tinted plastic bags of suspect heroin and the other was found to contain 30 smaller plastic bags of suspect crack cocaine. Ex. C. March 3, 2004 A/R, F PL JOINT 03880-03881; Ex. D, March 3, 2004 VCR", CITY-BG-031082-031083. Officer Mohammed was listed on both reports as the first arresting officer, and Officer Young was listed as the second arresting officer. *Id.* The March 3, 2004 A/R listed Officer "D. Edwards" as also assisting in the arrest. Ex. C, March 3, 2004 A/R, F PL JOINT 03880-03881. No other officers are listed on either report. Ex. C. March 3, 2004 A/R, F PL JOINT 03880-03881; Ex. D, March 3, 2004 VCR, CITY-BG-031082-031083.

Plaintiff's next arrest occurred on June 18, 2004. Ex. E, June 18, 2004 Arrest Report ("June 18, 2004 A/R"), CITY-BG-031023-031024; Ex. F, June 18, 2004 Vice Case Report ("June 18, 2004 VCR"), CITY-BG-031088-031089. Plaintiff was detained after he was observed holding a clear plastic bag of suspect narcotics. *Id.* Said bag was recovered and found to contain 22 smaller ziplock bags of suspect heroin. *Id.* A custodial search of Plaintiff revealed $200. *Id.* Officer Jones was

1 Although Dr. Shane states he is incorporating both of those opinions into this report, he does not cite to his June 27 Report anywhere in this opinion.

listed as the first arresting officer on both reports and Officer Edwards was listed as the second arresting officer on both. *Id.* No other officers are listed on the June 18, 2004 arrest report, but Officers Young, Rodriguez, Summers, Mohammed, Ridgell, and Sgt. Watts are listed on the Vice Case Report. *Id.*

Plaintiff's final arrest occurred on May 19, 2006. Plaintiff was engaged in a hand-to-hand narcotics transaction with a woman named Sandra Berry, where Berry handed Plaintiff $20 and Plaintiff removed two plastic bags of suspect crack cocaine from a clear plastic bag and handed them to Berry. Ex. G, May 19, 2006 Arrest Report ("May 19 A/R"), CITY-BG-031037-031041; Ex. H, May 19, 2006 Vice Case Report ("May 19, 2006 VCR"), CITY-BG-031095-031096. Plaintiff and Berry were detained. *Id.* The plastic bag Plaintiff was holding was recovered and found to contain 16 knotted plastic bags of suspect crack cocaine and two plastic bags of suspect crack cocaine were recovered from Berry's hand.[2] *Id.* A $20 bill was also recovered from Plaintiff's hand and $115 was recovered from his pants pocket. *Id.*

Defendant Officers move to bar the following opinions in Dr. Shane's report: any opinions related to police reports and discovery in any of the criminal prosecutions of Carter; any opinions regarding the reports drafted by Defendant Officers in Carter's arrests; any opinions about narcotics officers being susceptible to illegal or unlawful conduct; or any opinions about the reasons why Defendant Officers are on a *Brady/Giglio* list. This Court should also bar these opinions pursuant to Federal Rule of Evidence 403. Dr. Shane's opinions on each of these topics should be barred pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993). Dr. Shane's opinions go beyond his area of expertise

2 Although Plaintiff's May 19, 2006 arrest report indicates two people were arrested (presumably Ms. Berry) and lists a second Central Booking number, May 19, 2006 A/R, CITY-BG-031037, Dr. Shane's report does not indicate that he reviewed that report.

and are speculative and unreliable. Further, his opinions would not assist the trier of fact. For the reasons listed below, this Court should bar Dr. Shane from testifying to these opinions.

LEGAL STANDARD

"Federal Rule of Evidence 702 and *Daubert* govern the admissibility of expert testimony." *United States v. Godinez*, 7 F.4th 628, 637 (7th Cir. 2021). Effective December 1, 2023, Rule 702 now states that "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise **if the proponent demonstrates to the court that it is more likely than not that**: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the **expert's opinion reflects a reliable application of** the principles and methods to the facts of the case." Fed. R. Evid. 702 (Emphasis added as to the new language of the rule).

The December 2023 committee comments explain that Rule 702 was amended "to clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule." Rule 702, December 2023 committee comments at p. 19. https://www.govinfo.gov/content/pkg/CDOC-118hdoc33/pdf/CDOC-118hdoc33.pdf. Per the committee comments, "many courts have held that the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a)." *Id*. The committee comments further state that the amendments to the rule were "made necessary by the courts that have failed to apply correctly the reliability requirements of that rule." *Id*. As clarified

by the committee comments, "arguments about the sufficiency of an expert's basis [do not] always go to weight and not admissibility." *Id*. The committee comments also emphasized the important gatekeeping function of the courts:

> (2) Rule 702(d) has also been amended to emphasize that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology. Judicial gatekeeping is essential because just as jurors may be unable, due to lack of specialized knowledge, to evaluate meaningfully the reliability of scientific and other methods underlying expert opinion, jurors may also lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support. *Id*.

In addition to the recently revised Rule 702, the case law also makes clear that the trial court must ensure that "any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Daubert*, 509 U.S. at 589; *see also Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147-49 (1999) ("Kumho Tire") (extending *Daubert* principles to all areas of expert testimony). The Seventh Circuit has stressed that "the key to the gate is not the ultimate correctness of the expert's conclusions. Instead, it is the soundness and care with which the expert arrived at her opinion[.]" *Schultz v. Akzo Nobel Paints, LLC*, 721 F.3d 426, 431 (7th Cir. 2013).

To satisfy *Daubert*, the proffered testimony must have a reliable basis in the knowledge and experience of the relevant discipline, consisting of more than subjective belief or unsupported speculation. *Chapman v. Maytag Corp.*, 297 F.3d 682, 686-87 (7th Cir. 2002); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) ("[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered."). By assessing reliability, the court ensures the expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice

of an expert in the relevant field." *Kumho Tire*, 526 U.S. at 152. An expert "cannot simply assert a 'bottom line.'" *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010).

ARGUMENT

I. Dr. Shane's Opinions on the Reports Generated in Connection with Plaintiff's Arrests Are Speculative, Unreliable, and Do Not Assist the Trier of Fact.

Dr. Shane's July 9 report opines that the reports drafted in connection with Plaintiff's three arrests fall below nationally accepted law enforcement standards because: (1) the June 18, 2004 and May 19, 2006 arrests list all officers on the team as participants in these arrests even if some of those officers were not present, and (2) the reports use the terms, "R/O" or "R/O's" (i.e., "Reporting Officer" or "Reporting Officers") without identifying who the officer or officers are who made the observations listed in the narrative or who took what actions regarding Plaintiff's arrests. Ex. A, July 9, Shane Report, p. 2. Dr. Shane's opinions in this case are speculative, not reliable, and do not assist the trier of fact; therefore, this Court should bar Dr. Shane from offering any such opinions.

A. There is no evidence that officers who were not present were listed on the Vice Case Reports prepared in connection with Plaintiff's June 18, 2004 and May 19, 2006 arrests and Any Opinions Based on this Assumption are Unreliable and Speculative.

Dr. Shane suggests that there are officers listed on the Vice Case Reports for Plaintiff's June 18, 2004 and May 19, 2006 arrests who were not, in fact, present during those arrests. This is complete speculation and Dr. Shane fails to cite to any evidence he reviewed to support this contention. None of Dr. Shane's Reports indicate he reviewed Plaintiff's deposition in connection with drafting this Report; indeed, the only case-specific materials it appears Dr. Shane reviewed were the Arrest Reports and Vice Case Reports from each of Plaintiff's three arrests. Those reports certainly do not support Dr. Shane's contention and the lack of any other evidentiary support make this opinion complete speculation; therefore, any opinions based on this false assumption are

unreliable and should be barred. *See Daubert*, 509 U.S. at 589 (scientific testimony or evidence should be "not only relevant, but reliable"); *see also Kumho Tire,* 526 U.S. at 147-149 (extending *Daubert* principles to all areas of expert testimony).

Moreover, Plaintiff's counsel will have the opportunity to explore who was present for either of these two arrests on cross-examination and, should it turn out that an officer or officers was listed as being present for an arrest, but in fact were not, it certainly does not require expert testimony to convey the significance of this to a jury. Fed. R. Evid. 702 (a); *United States v. DeWitt*, 943 F.3d 1092, 1096 (7th Cir 2019); *Ancho v. Pentek Corp.*, 157 F.3d 512, 519 (7th Cir. 1998) (holding that an expert "must testify to something more than what is 'obvious to the layperson' in order to be of any particular assistance to the jury").

B. Dr. Shane's opinion that the use of "R/O" or "R/O's" rather than officers' names is unreliable, speculative, and does not assist the trier of fact.

Dr. Shane also opines that the Arrest Reports and Vice Case Reports for all three of Plaintiff's arrests do not meet nationally accepted standards because it uses the terms "R/O" or "R/O's" (for Reporting Officer or Reporting Officers) instead of identifying the Reporting Officer or Reporting Officers by name and therefore one cannot tell what each of the Reporting Officers saw or did. Ex. A, July 9 Shane Report, pp. 2-3. Dr. Shane concludes that this manner of report writing "could hamper an arrestee's defense of the charges brought against him by providing a roadblock to his ability to question the officers and otherwise defend against the charges." Ex. A, July 9 Shane Report, pp. 2-3. This opinion is unreliable and speculative.

At bottom, Dr. Shane's opinion is that these reports could be more clearly written and do a better job of explaining each officers' role in Plaintiff's arrests. This is not relevant to Plaintiff's claims and Dr. Shane's generic assertion that the use of "R/O" and "R/O's," instead of names, and not explaining what each officer did causes these reports to fall below nationally accepted

standards should not be permitted without demonstrating that this opinion is sufficiently reliable. Plaintiff has failed to do so here and Dr. Shane should be barred from offering any such opinion.

More significantly, and what makes this opinion inherently unreliable and speculative, is that Dr. Shane's opinion appears to be deliberately misleading. Dr. Shane asserts that Plaintiff's defense could be hampered without having this information and creating a "roadblock" to his ability to question the officers or otherwise defend himself. Ex. A, July 9 Shane Report, pp. 2-3. This is absurd and ignores a myriad of options Plaintiff's attorneys had at their disposal to investigate and challenge the cases against Plaintiff, many of which Dr. Shane should have been aware of as a former police officer. For example, Plaintiff's attorneys could have filed a motion to quash arrest and suppress evidence and called any or all of the officers on these the reports to testify. They could have requested a Bill of Particulars from the State's Attorney "containing such particular as may be necessary for the preparation of the defense." Ex. I, 725 ILCS 5/111-6, Bill of particulars. In short, there was no "roadblock" preventing Plaintiff from pursuing any testimony or evidence he needed to prepare a defense in his three cases. Dr. Shane's conclusion that officers not being identified by name in a report somehow impairs Plaintiff's ability to prepare a defense is too far a leap; this opinion is nothing more than rank speculation and should be barred.

Finally, nothing in Dr. Shane's opinion will assist the jury in assessing Plaintiff's claims. Whether the officers included their names or not is not relevant and the jury will be able to hear testimony from the officers about their role in the arrests: the manner in which a report is written and its contents are not a substitute for testimony from the witnesses stand. Dr. Shane's opinion about whether the officers should have used their names instead of "R/O's" will not assist them in reaching a verdict. *See* Fed. R. Evid. 702 (a); *DeWitt*, 943 F.3d at 1096; *Ancho*, 157 F.3d at 519.

II. Dr. Shane's Opinions About Narcotics Officers Being Susceptible to Illegal and Improper Conduct and Why Defendants Officers are on a *Brady/Giglio* List is Speculative and Should Not Be Allowed[3]

A. Dr. Shane's opinion that narcotics officers are exposed to illegal and improper conduct - and the implication that the Defendant Officers are corrupt - is complete speculation and unfairly prejudicial

Again, under the guise of offering an opinion on supervision, Dr. Shane posits that officers who work in tactical narcotics enforcement are "more prone to corruption compared to other assignments within a police department." Ex. B, April 1 Shane report, p. 79. He also suggests that tactics used to enforce drug laws "create an impetus toward dishonesty (e.g., undercover operations, surveillance locations, secrecy, search warrant, reverse sting operations, buy narcotics.)." Ex. B, April 1 Shane report, pp. 79-80.[4] Dr. Shane also opines that narcotics officers are exposed to "corruption hazards," including involvement with illegal drugs, financial temptations, "limited oversight with an ethos of secrecy, loyalty, and solidarity," and working in a high-stress environment. These claims are pure speculation. Moreover, Dr. Shane cites no evidence that *these* Defendant Officers were susceptible to any of these temptations to engage in dishonest acts or improper or illegal activity; therefore, there is no basis for this opinion and it is entirely speculative. To the extent Dr. Shane is relying on citizen complaints made against Defendants Officers as evidence that they have engaged in corrupt activities, this is completely improper.[5] *Strauss v. City of Chicago*, 760 F.2d 765, 768-69 (7th Cir. 1985) ("People may file a complaint for

3 Although Dr. Shane has not expressly rendered these opinions in Plaintiff's case, he has incorporated his April 1, 2024 and June 3, 2024 Reports as part of this Report. Ex. A, July 9 Shane Report, p. 2. Therefore, Defendant Officers are making these arguments in the event Plaintiff seeks to elicit these opinions from Dr. Shane in this case.

4 This sentence is peculiar because Dr. Shane admits that these are all legitimate investigative techniques used by law narcotics officers. Ex. J, Shane Baker dep., p. 287:2-9.

5 As with the opinions themselves, Defendant Officers intend on filing a motion *in limine* at the appropriate time to challenge the admissibility of any Complaint Registers against them at trial.

many reasons, or for no reason at all"); *Bryant v. Whalen*, 759 F. Supp. 410, 423-24 (N.D. Ill. 1991).

Moreover, such evidence would constitute improper character evidence, or propensity evidence, under Fed. R. Evid. 404. In addition, such evidence is irrelevant, hearsay, and any probative value it may have is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. *See* Fed. R. Evid. 402 and 403.[6] Jumping to the conclusion reached by Dr. Shane is rank speculation and improperly credits the allegations made against the Defendant Officers as true. More significantly, allowing this opinion would be highly prejudicial and improperly suggest a reason for the jury that any of the Defendant Officers may have engaged in illegal or unlawful conduct without any evidence to support the inference that these Defendant Officers would have been inclined to do any of the things Dr. Shane cites.

B. Dr. Shane Should Be Barred from Opining on the Reasons an Officer May be on a *Brady/Giglio* list

Dr. Shane opines that officers on a *Brady/Giglio* list are not called to testify "because of their dishonesty." Ex. J, Shane Baker dep., pp. 278:19-279:11. However, this opinion is conclusory and speculative.

Under *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and *Giglio v. United States*, 405 U.S. 150, 154 (1972), exculpatory and impeachment evidence, when such evidence is material to guilt or punishment, must be disclosed prior to trial. There is a distinction between the materials that are to be disclosed under *Brady* or *Giglio* (*i.e.*, exculpatory versus impeachment) and the reasons for being on either list could have nothing to do with dishonesty. In this case, Dr. Shane is baselessly jumping to the conclusion that the officers involved in Plaintiff's arrests are on that list

6 Defendant Officers intend on filing a motion *in limine* on this issue at the appropriate time should this Court not bar these opinions.

because of their perceived dishonesty. Dr. Shane provides no citation to any documents he reviewed that support his statement; indeed, there is no indication that Dr. Shane reviewed any documentation that indicated why any of those officers were on that list. Allowing him to testify that Defendant Officers' presence on the list because of concerns about their honesty, which is based on nothing more than speculation, would be improper and permit him to take a "cheap shot" at the officers' credibility under the guise of his "expertise."[7]

III. Dr. Shane's Opinions Should be Barred Pursuant to Rule 403

Aside from the bases discussed above, Dr. Shane's opinions also should be barred pursuant to Rule 403. Any probative value these opinions may have is substantially outweighed by the dangers of unfair prejudice, confusing the issues, and misleading the jury. Therefore, this Court should bar these opinions.

Federal Rule of Evidence 403 provides that the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, and/or needlessly presenting cumulative evidence. Fed. R. Evid. 403. In this case, almost all of the aforementioned dangers are present, and Defendant Officers will be unable to receive a fair trial if Dr. Shane is allowed to testify to these opinions. Permitting Dr. Shane to opine as to the Defendant Officers being susceptible to engaging in criminal activity, solely by virtue of their assignment, also carries with it the danger of unfair prejudice. Regardless of Dr. Shane's basis, to admit such an overly broad, salacious opinion--that the Defendant Officers were inevitably going to end up corrupted by virtue of the simple fact that they were involved in narcotics-related cases--is improper and violative of Rule 403. Consequently, Dr. Shane's opinions should be barred.

7 Again, Defendant Officers intend on filing a motion *in limine* on this opinion, should the Court not bar it pursuant to *Daubert.*

CONCLUSION

For the reasons stated above, this Court should bar any opinions regarding the reports drafted by Defendant Officers in any of Carter's arrests; any opinions about narcotics officers being susceptible to illegal or unlawful conduct; any opinions about reasons why Defendant Officers are on a *Brady/Giglio* list, and any other relief this Court deems proper.

Dated: December 13, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Anthony E. Zecchin, hereby certify that on December 13, 2024, I electronically filed the forgoing, DEFENDANT OFFICERS' MOTION TO BAR CERTAIN OPINIONS OF PLAINTIFF'S PROPOSED EXPERT JON M. SHANE with the Clerk of the Court using the ECF system, which simultaneously served copies on all counsel of record via electronic notification.

/s/ Anthony E. Zecchin