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

WILLIAM CARTER,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 17 C 7241
	)	
CITY OF CHICAGO, RONALD WATTS, DARRYL EDWARDS, ALVIN JONES, KALLATT MOHAMMED, JOHN RODRIGUEZ, CALVIN RIDGELL, JR., ELSWORTH J. SMITH, JR., GEROME SUMMERS, JR., AND KENNETH YOUNG, JR.,	)	Judge LaShonda A. Hunt
	)	
Defendants.	)	

REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION
TO BAR JON M. SHANE'S *MONELL* OPINIONS *(CORRECTED)*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page(s):**

Other Authority:

INTRODUCTION

Dr. Jon Shane's unique, untested, and unsupported method of analyzing the City's disciplinary system does not provide a legal basis for admitting his opinions. Rather than utilizing a valid statistical model, Shane concocted one out of whole cloth, for purposes of this litigation only, culminating in a first of its kind process (implemented through his code book) for analyzing the City of Chicago's CR investigations, which included Shane's identification of investigative variables that he found to be "of interest to him." (Response at 15). Shane then analyzed (by use of an Excel spreadsheet) the frequency with which the variables he identified were missing from CR investigations. Without any experience working in internal affairs, Shane concluded that the absence of these variables proves that Chicago routinely engages in insufficient internal affairs investigations.

Crucially for purposes of this Court's gate-keeping role, Shane's process (*i.e.* code book) has never been used on any other City, so neither he nor anyone else knows how New York, Los Angeles, Houston, Milwaukee, Cleveland, *etc.* would fare if this process was applied to them. For all we know, every other city would "fail" Shane's analysis based on this made-up code book designed for the result he reached. This is not a matter of cross examination; it is a matter of applying Fed. R. Evid. 702 and *Daubert* as they teach to bar this junk social science. It would be reversible error to allow Shane to offer his opinions based on this invented process.

Moreover, Shane's code book leads to absurd results because Shane failed to actually evaluate the merits of the CR investigations themselves by looking at their substance. In Case Log No. 1022370, for example, the complainant alleged that the police had "implanted a device inside [the complainant's] body and are stalking [him]." Yet, Shane's spreadsheet created by the code book suggests the CPD should have investigated and conducted certain tasks (such as interviewing the complainant and accused officers, and conducting a photo array) in response to this complaint despite the preposterous

and impossible nature of the allegation. Def.s' Group Ex. 11, Case Log No. 1022370 and Excerpt of Shane Spreadsheet.

Plaintiff offers this Court nothing material to support Shane's methodology and, instead, relies upon Shane's *ipse dixit* that every investigation must include each of the investigative steps identified by Shane in his code book. The only publication provided by Plaintiff in discovery that refers to national standards for internal affairs investigations is the DOJ publication titled, *Standards and Guidelines for Internal Affairs Investigations: Recommendations from a Community of Practice* ("DOJ Standards") (attached as Def.s' Ex. 12). Plaintiff, tellingly, does not reference this document in his Response because it contradicts Shane's methodology. Contrary to Shane's code book, the DOJ Standards instruct that "the extensiveness of the investigation may vary from complaint to complaint commensurate with the seriousness and complexity of the case." *Id.*, at 7. There is nothing in Shane's methodology that accounts for differences in the seriousness and complexity of any CR investigation. Quite the opposite, Shane's code book contradicts the DOJ Standards by requiring that each disciplinary investigation follow the exact same cookie cutter steps, a "one size fits all" standard made up for this litigation that is rejected by the DOJ. Accordingly, all of Shane's opinions should be barred because they are based on the flawed methodology he invented for purposes of this case that has never been tested and is not supported by any standard, national or otherwise.

Furthermore, although Shane did not review an insufficient number of CR files, his opinions regarding the City's disciplinary practices should also be barred because his data set includes CR files from irrelevant time periods (with at least one-third of the data coming from 2008 to 2011) and investigations by agencies other than Internal Affairs (*i.e.* excessive force complaints, which were investigated by the Office of Professional Standards (OPS) or Independent Police Review Authority (IPRA)). Shane also improperly tries to bolster his opinions by inapplicable studies, including the 1972 Metcalfe report, the 1997 Commission on Police Integrity (CPI) report, a 2016 Police Accountability

Task Force report, and the 2017 DOJ report. All testimony and opinion based on this data should be barred because the data is irrelevant and insufficient to provide a basis for Shane's opinions.

Finally, Plaintiff has not shown that Shane is qualified, nor that he has a proper foundation to offer opinions tying any deficiencies in the CPD's disciplinary system to the unconstitutional conduct Plaintiff alleges against the Defendant Officers.

It is Plaintiff's burden to demonstrate by a preponderance of the evidence that the evidence he seeks to elicit from Shane satisfies Rule 702 and *Daubert. Lewis v. CITGO Petroleum Corp.,* 561 F.3d 698, 705 (7th Cir. 2009); *Brown v. Burlington N. Santa Fe Ry. Co.,* 765 F.3d 765, 772 (7th Cir. 2014); *Varlen Corp. v. Liberty Mutual Ins. Co.,* 924 F.3d 456, 459 (7th Cir. 2019). Plaintiff has failed to do so. As explained in the Rule 702 Committee Notes, "critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology," are not questions of weight, but admissibility. Fed. R. Evid. 702, Committee Notes, 2023 Amendments. Rule 702 imposes a special obligation upon this Court, acting as a gatekeeper, to "ensure that any and all scientific testimony ... is not only relevant, but reliable." *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 589 (1993). As set forth herein, Plaintiff has failed to meet his burden and this Court should bar Jon Shane as a witness.

ARGUMENT

I. Shane's Methodology for Rendering his Opinion that CPD Failed to Conduct Investigations in Accordance with Nationally Accepted Standards is Unreliable.

Shane's opinion (Report, at 11) that "CPD caused the Defendants in this case to engage in corruption and extortion and to fabricate and suppress evidence" is premised on his finding "that CPD failed to properly conduct investigations of police misconduct in accordance with nationally accepted standards." Plaintiff argues (at 8) that police practices testimony is admissible in Section 1983 cases when it provides "expert testimony regarding sound professional standards governing the defendant[s] actions." (citation omitted). He explains, "[s]uch testimony is 'relevant and helpful' because it can 'give [the] jury a baseline to help evaluate whether [the] defendant[s'] deviation from

those standards were merely negligent or were so severe or persistent as to support an inference of intentional or reckless conduct that violated [Plaintiff's] constitutional rights.'" (citation omitted). However, Plaintiff fails to address fatal flaws in Shane's methodology, including the failure by Shane to identify any nationally recognized standard or "baseline" against which the CPD investigations can be compared. Shane reached his conclusions as to the investigative quality of CPD's internal affairs investigations by analyzing 1,265 randomly selected complaint register (CR) files for the presence (or absence) of certain "characteristics" that *Shane alone* deems necessary for every investigation. Neither Plaintiff nor Shane identify any study or other expert (police practices or social scientist) who has *ever* employed Shane's methodology for analyzing an agency's internal affairs practices. It is Plaintiff's burden pursuant to Fed. R. Evid. 702 to demonstrate that Shane's opinions are not only relevant, but reliable. Plaintiff has not met his burden pursuant to Fed. R. Evid. 702 of establishing that Shane utilized a reliable methodology.

A. Shane's Methodology Fails to Identify a Nationally Recognized Standard or Procedure for Assessing CPD's Investigation of Police Misconduct.

Shane's opinions as they relate to Plaintiff's *Monell* claims are premised on CPD's alleged failure to "comport with nationally accepted standards." (*see* Response, at 3). In his deposition, Shane explained that nationally accepted standards or policies, including those of the CPD, require investigations to be "complete" and "thorough." Def.s' Ex. 2, Jon Shane Apr. 23, 2024 Deposition ("*Baker* Dep"), at 186:2-12. Plaintiff points out (at 9) that, "Dr. Shane named and cited the sources for the generally accepted policing standards he applied." (citing Report, at 19-21). But, Plaintiff does not address Defendants' argument (at 12-13) and apparently concedes that none of the sources cited by Shane at 19-21 (including the 2001 IACP model policy on Investigation of Employee Misconduct (Def.s' Ex. 7), the 1990 IACP Concepts and Issues Paper on Investigation of Employee Misconduct (Def.s' Ex. 8), the 2001 IACP Training Keys (529, 530, and 531) on Investigation of Public Complaints (Def.s' Ex. 9), and the 1993 Police Foundation report (Def.s' Ex. 6)) offer any standard for assessing

the reasonableness of an administrative investigation. *See Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010) ("Failure to respond to an argument ... results in waiver."); *Minemyer v. R-Boc Representatives, Inc.*, No. 07 C 1763, 2012 WL 2155240, at *11 (N.D. Ill. June 13, 2012) ("In this Circuit, failure to respond to an argument implies concession and generally results in a waiver of the point."). Absent a nationally recognized standard or procedure against which CPD's investigations can be compared, Shane's opinions are simply unreliable *ipse dixit* and should be excluded. *See, General Elec. Co. v.* Joiner, 522 U.S. 136, 146 (1997) (Trained experts commonly extrapolate from existing data. But nothing 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).

B. Shane Did Not Utilize A Reliable Methodology for Collecting Data Within the CR File Sample.

As discussed in Defendants' Motion (at 11-14), Shane determined what data to extract from the CR files and how it should be coded. Shane explained in his report (at 159) that he identified "fundamental" investigative tasks or "data points" and created a code book instructing how these tasks should be coded in an Excel spreadsheet. *See also,* Def.s' Ex. 4, Dkt. 217-4, Code Book, at 6-12. Shane utilized individuals hired by Plaintiff's counsel ("Coders") to code the data. The coders were instructed (during a 90-minute training session) to follow Shane's code book to identify the indicated data points from the files for inclusion in the Excel spreadsheet. Shane's opinions thus are dependent on the manner in which the information in the CR files is coded in the spreadsheet. However, as Defendants explained in their Motion (at 11-14), Shane had no reliable basis for deciding which characteristics of the CR files warranted inclusion in his analysis nor did he ensure the reliability of how the information would be extracted by others.

Tellingly, Plaintiff's only response to this point is that "Dr. Shane performed his analysis by developing a code book **identifying data of interest to him** in the 1,265 CRs he reviewed and then

analyzed data collected by coders he trained." Resp., at 15 (emphasis added). Plaintiff failed to rebut that:

- Shane's code book has never been tested or used by anyone else (Mot., at 11-12);
- None of the sources cited by Shane offer any standard for assessing the reasonableness of an administrative investigation (Mot., at 12-13); and
- Shane cannot point to any studies of police disciplinary investigations that utilized the same variables for analysis that he used here (Mot., at 13).

He only states, in essence and without support, that - it doesn't matter. *See* Resp., at 15-16 ("Defendants argue that Shane's variables are unreliable because the variables themselves are not contained in a nationally reliable standard, but this is the wrong test. (ECF No. 203 at 11-12.)"). Plaintiff provides this Court with no basis for finding Shane's methodology reliable.

Additionally, none of the sources cited by Shane[1] support his conclusion (at 59 of his Report) that the activities identified in his code book "are fundamental to any internal affairs investigation and are expected to be completed in each applicable case to ensure a thorough investigation." While the data points consist of valid investigatory tasks in a general sense (*e.g.*, photos of victim taken, scene canvass), there is no basis for Shane's opinion that each and every investigatory task must be performed in every internal affairs investigation, lest the investigation be deemed incomplete. Nor does he provide any basis for how it should be determined that a particular data point is not needed for a particular investigation.

Plaintiff attempts to mischaracterize Defendants' argument as a criticism not of Shane's methodology but of his data set and argues " Defendants' challenge to the data and variable chosen

[1] Including the: IACP Concepts and Issues (Def.s' Ex. 8); IACP Training Keys (Def.s' Ex. 9).

by Shane is 'a question for the jury, not the judge.'" Response at 16, *citing Manpower, Inc. v. Ins. Co. of Pennsylvania,* 732 F.3d 796, 809 (7th Cir. 2013). However, Plaintiff's reliance on *Manpower* is misplaced.

The court in *Manpower,* and the cases upon which it relies, found as an initial matter that the expert "utilize[d] the methods of the relevant discipline." *Id.*, at 807. The expert in *Manpower* relied upon a growth-rate extrapolation methodology, a commonly relied upon methodology in the field. To prove this point, the court in *Manpower* pointed to "[t]he latitude we afford to statisticians employing regression analysis, [another] proven statistical methodology used in a wide variety of contexts." *Id.*

> Regression analysis permits the comparison between an outcome (called the dependent variable) and one or more factors (called independent variables) that may be related to that outcome. As such, the choice of independent variables to include in any regression analysis is critical to the probative value of that analysis. Nevertheless, the Supreme Court and this Circuit have confirmed on a number of occasions that the selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than to its admissibility.

Id. (citation omitted). The court concluded, "how the selection of data inputs affect the merits of the conclusions produced by an accepted methodology should normally be left to the jury." *Id.* Critically, Shane did not use a regression model[2] (nor any other proven methodology) to analyze the sufficiency of the internal complaints. His methodology involved tallying up data (that was of interest *to him*) from the Excel spreadsheet, including the frequency with which certain investigative tasks were completed across all sampled CRs. Unlike proven statistical methodology (like regression analysis), there is nothing to support a finding that Shane's methodology is reliable. "Reliability … is primarily a question of the validity of the methodology employed by an expert, not the quality of the data used in applying the methodology or the conclusions produced." *Manpower*, 732 F.3d at 806. Unlike *Manpower*, the reliability of Shane's opinions is directly at issue because of his failure to utilize a reliable methodology for identifying the quality of CPD's internal affairs investigations.

---

[2] Shane *Baker* Dep., at 104:4-106:22.

Plaintiff claims (at 15) "it is customary in the social sciences to hire coders to document data contained in voluminous documents, and Dr. Shane's manner of analysis is consistent with tools and practices from the 1999-2011 time period, including similar spreadsheets Dr. Shane knows from his experience in the Newark Police Department." However, this argument is vague and undeveloped. That social scientists customarily hire coders to document data contained in voluminous documents does not address the reliability of the decisions made by Shane and the coders regarding how information from the CR files should be coded. Even assuming that bias did not factor into the manner in which the coders mined data from the CR files (an assumption that neither Defendants nor Shane can test because we don't know anything about the coders, other than they are purportedly attorneys hired by Plaintiff's counsel), Plaintiff does not meaningfully address Defendants' argument (at 14) regarding the subjectivity of the coding process.

The subjectivity required to comply with the instruction in Shane's code book that "[f]or each variable, **you must judge** whether the category is applicable" reflects the unreliability of the coding process. Def.s' Ex. 4, Code Book, at 7 (emphasis added). Plaintiff claims (at 17-18) that, "[b]y creating objective definitions for the data to be collected and personally ensuring that the data collected were accurate, Dr. Shane appropriately guarded against any subjectivity that the coders may have introduced." However, Defendants' criticism is not that Shane failed to clearly define the nature of a given activity, it is that he left the *applicability* of any investigative task in relation to a given CR investigation up to the Coder's discretion. The fact that Shane may have checked the coders' work and agreed with the assessment does not eliminate the subjectivity of the exercise. Similarly, Shane's "familiarity" with collecting data on "similar spreadsheets" from his time in the Newark Police Department does not address questions regarding the reliability of Shane's methodology for collecting and assessing data (again, on points of interest to him) to determine if CPD's system for conducting internal affairs investigations failed to comply with national standards.

Plaintiff argues (at 18) that Defendants have not identified authority reflecting that Shane's methodology is inappropriate. As explained in the Committee Notes in the 2023 Amendments to Fed. R. Evid. 702, "the rule has been 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." "Critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology," are not questions of weight, but admissibility. Fed. R. Evid. 702, Committee Notes, 2023 Amendments. Plaintiff's attempt to shift the burden to Defendants should be rejected.

In *Daubert,* the Supreme Court offered the following non-exclusive factors to aid courts in determining whether a particular expert opinion is grounded in a reliable scientific methodology: (1) whether the proffered theory can be and has been tested; (2) whether the theory has been subjected to peer review and publication; (3) whether the theory has a known or potential rate of error; and (4) whether the relevant scientific community has accepted the theory. *See Bielskis v. Louisville Ladder, Inc.*, 663 F.3d 887, 894 (7th Cir. 2011) citing *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 593-94 (1993). None of the *Daubert* factors are present here to support a finding of reliability. To the contrary, Plaintiff does not substantively address that: the investigative tasks identified by Shane are not derived from any nationally reliable standards; Plaintiff has not identified any peer review or publication testing Shane's theory that the presence/absence of certain investigative tasks in internal investigations reflects that the investigative outcomes were incorrect; the potential error rate for Shane's Excel spreadsheet analysis is unknown; and, there is no evidence to suggest Shane's theories or methodology have ever been accepted in the scientific or law enforcement community.

Plaintiff has failed to establish the reliability of Shane's methodology for rendering opinions based on the CPD's purported failure to conduct internal affairs investigations in accordance with accepted standards. Those opinions should be barred.

II. Shane is Not Qualified to Render Opinions Regarding the Sufficiency of the City's Police Disciplinary System including its Impact on the Behavior of the Defendant Officers.

Defendants' Motion (at 3-6) also challenges Shane's qualifications to render opinions about CPD's disciplinary system, including its impact on the behavior of the Defendant Officers. Shane's opinions reach far beyond his qualifications – he has never worked in internal affairs, has never conducted any studies related to the quality of internal affairs investigations and their impact on officer behavior, and does not have training or background in psychology that allows him to render the causation opinions included in his report.

Plaintiff asserts (at 5) that Defendants misstate Shane's experience as a police officer. However, according to Shane's own testimony, Shane was a Newark police officer for twenty years. During his career, he never worked as an investigator or supervisor in the Internal Affairs Division. Shane *Baker* Dep., at 14:9-13; Jon Shane Aug. 29, 2023 Deposition in *Waddy v. Chi.* ("Shane *Waddy* Dep."), Dkt. 172-3, at 58:2-11. He also never investigated a police officer for unlawful conduct or criminal conduct. Shane *Waddy* Dep., at 58:12-59:8, 61:7-14. Plaintiff's argument (at 5) misleadingly states that Shane "personally conducted numerous internal affairs investigations." However, Shane explained that his experience was limited to times when he was a supervisor and the Internal Affairs Division would delegate to him certain complaints related to his subordinates accusing them of rules violations, including things like tardiness, care of property, and demeanor (*i.e.*, the manner in which they spoke to the public). Shane *Baker* Dep., at 17:4-19:12; Shane *Waddy* Dep., at 60:4-62:18. Additionally, despite Shane's vague testimony that when he "conducted internal affairs investigations as a supervisor," he received training that entailed "what things to look for," Plaintiff has not

established that he has sufficient training or experience to allow him to render the opinions related to the sufficiency of the CPD's entire disciplinary system and its impact on officer behavior.[3]

Plaintiff points to Shane's background in policy development (at 6). However, Shane does not challenge CPD's policies; his opinions relate to his criticism that the City's practice of investigating police misconduct did not comply with CPD and "national policy" requiring that investigations be complete and thorough. Shane *Baker* Dep., at 185-86. Plaintiff also claims (at 6) that Shane has "published articles on police discipline." However, the cited pages of Shane's Report (at 163-165) do not reflect any such relevant publication (nor is any publication authored by Shane referenced by Plaintiff or Shane in support of Shane's methodology). Plaintiff fails to meet his burden of establishing that Shane is qualified to render opinions about the CPD's disciplinary system. *See* Fed. R. Evid. 702(a); *Baldonado v. Wyeth*, No. 04 C 4312, 2012 WL 1597384, *5 (N.D. Ill. May 7, 2012) citing *Lewis*, 561 F.3d at 705 ("The proponent of the expert bears the burden of demonstrating that the expert's testimony would satisfy the *Daubert* standard."); *Schrott v. Bristol–Myers Squibb Co.,* No. 03–CV–1522, 2003 WL 22425009, at *1 (N.D. Ill. Oct. 23, 2003) (excluding medical expert, where proponent failed to offer sufficient evidence of the expert's qualifications in response to an attack on the expert's qualifications).

Additionally, Plaintiff does not meaningfully address Defendants' contention (at 6) that Shane also lacks experience or a sufficient background in psychology to provide a foundation for the inferential leap that the City's disciplinary system "would be expected to cause officers involved in narcotics enforcement . . . to engage in corruption and extortion and to fabricate and suppress evidence." Citing Rpt., at 11. Plaintiff states (at 7), that "Shane is not going to offer any testimony

[3] *See e.g.*, Rpt., at 30 ("Had the Superintendent of Police and the command staff prioritized the effort to address the most common allegations then they would have been able to intervene and stop the defendants' adverse behavior through a personnel improvement plan and/or other adverse employment action.")

about the individual motivations of the defendant officers… The opinion that Shane will offer is simply that one reason for a police department to have a working disciplinary system is to prevent officer misconduct." Plaintiff's failure to address Shane's qualifications to offer opinions related to causation waives the argument and should bar him from presenting any such testimony at trial. *Ennin v. CNH Industrial America LLC*, 878 F.3d 590, 595 (7th Cir. 2017); *see also Weber v. Univ. Research Assoc.*, Inc., 621 F.3d 589, 594 (7th Cir. 2010) ("A single sentence that mentions a theory of direct proof ... is not enough to preserve the issue....").

Defendants' Motion (at 19-21) further challenges, on the basis of an insufficient foundation, Shane's conclusory opinion that CPD's alleged failure to properly conduct administrative investigations of police misconduct was the moving force that caused the Defendant Officers in this case to engage in the underlying criminal activities alleged by Plaintiff. Shane's report offers multiple criticisms of the CPD's practices and processes in investigating complaints of police misconduct. However, and critically, Shane does not causally connect these alleged investigative deficiencies to the specific officer misconduct alleged in this case. For this additional reason, any "causation" opinion Shane might offer lacks a sufficient foundation and should be barred.

Most of Shane's report discusses disciplinary investigations involving general police misconduct and allegations of excessive force. He does not explain how those types of investigations can be reliably compared to a confidential investigation of alleged criminal behavior involving corruption and/or extortion, as was involved in this case. More importantly, Shane does not explain how the deficiencies he identifies in CPD's administrative investigations were the moving force that caused Defendant Officers Watts and Mohammed to act in the specific ways alleged, *i.e.*, operation of a criminal enterprise targeting drug dealers. The Court is left to speculate as to the causal link between Shane's criticisms and the type of misconduct alleged here.

The failure on the part of Shane to causally connect his criticisms of the CPD investigative process to the alleged criminal misconduct of Watts and Mohammed is not just a matter of semantics. Absent this critical link, Plaintiff (through Shane) essentially would be imposing vicarious liability on the City for the alleged criminal misconduct of the Defendant Officers. (*See* Motion, at 20-21). A municipality cannot be held liable under the common-law doctrine of *respondeat superior* for constitutional violations committed by its employees and agents. *First Midwest Bank v. City of Chicago*, 988 F.3d 978, 986 (7th Cir. 2021). A plaintiff asserting a *Monell* claim must prove the municipality's action was the "moving force" behind the alleged constitutional violation. *Id.*, at 987; *Bohanon v. City of Indianapolis*, 46 F.4th 669, 675 (7th Cir. 2022). As *First Midwest Bank* explained about the "moving force" requirement:

> [T]his rigorous causation standard guards against backsliding into respondeat superior liability. To satisfy the standard, the plaintiff must show a "direct causal link" between the challenged municipal action and the violation of his constitutional rights.

988 F.3d at 987. Indeed, "it is not enough to show that a widespread practice or policy was a *factor* in the constitutional violation; it must have been the *moving force*." *Johnson v. Cook County*, 526 Fed. Appx. 692, 696 (7th Cir. 2013) (emphasis in original).

As noted above, Shane's report fails to show this "direct causal link" between the CPD's alleged investigative deficiencies and the alleged criminal misconduct involving Plaintiff. It is not enough to suggest CPD's alleged failure to conduct adequate investigations of police misconduct was a factor in the criminal misconduct alleged by Plaintiff; it must have been the moving force. Absent a "direct causal link," this Court is left with a "bottom line" opinion on causation that lacks a sufficient foundation. Shane should not be allowed to offer any causation opinion at the trial of this matter.

III. The Data and Documents that Shane Relied upon are Irrelevant, Immaterial and Insufficient to Provide a Reliable Foundation for His Opinions.

Plaintiff asserts (at 11-12) that "[p]ost-event evidence is relevant here based on the consistency of Dr. Shane's conclusion that there was a deficient disciplinary system in all three time periods –

1999-2003, 2004-2007, and 2008-2011." His undeveloped assertion does not address the cases cited by Defendants (at 10) that clearly establish that post-event evidence is irrelevant under *Monell*. And Plaintiff's failure to provide any defense to Shane's reliance on excessive force data is equally as fatal to Shane's opinions.

Indeed, the only data and documents relied upon by Shane that Plaintiff attempts to salvage is his discussion of the 1997 CPI report. (Response at 13). Plaintiff's argument necessarily fails because Shane made no attempt to evaluate data from tactical units focused on narcotics arrests, which is the subject of the CPI report that Shane claims is pertinent. As further explained below and in Defendants' Motion, Shane should be barred because he relies on irrelevant and immaterial data.

A. Post-2006 Data Is Irrelevant Under the Case Law, Including the Cases Cited by Plaintiff; The Relevant *Monell* Time Frame is Five Years Before Plaintiff's Arrests.

As explained in Defendants' Motion (at 7-11), Shane's statistical analysis is flawed because he draws conclusions related to how the City conducted police disciplinary investigations in 2004 and 2006 with approximately half of the data coming from 2007 to 2011. However, where a plaintiff seeks to hold a municipality liable for its official polices or practices, black letter law in this Circuit holds that "subsequent conduct is irrelevant to determining the [municipalities'] liability for the conduct of its employees on [the date of an arrest]." *Calusinski v. Kruger*, 24 F.3d 931, 936 (7th Cir. 1994); *accord Prince v. City of Chicago*, 18 C 2952, 2020 WL 1874099, at *5 (N.D. Ill. 2020) (Harjani, M.J.).

Rather than provide this Court with applicable case law that supports the relevance of post-arrest data, Plaintiff cites two cases (at 11) that actually support Defendants' position and confirm that post-arrest data is irrelevant. *Velez v. City of Chicago*, 18 C 8144, 2021 WL 1978364, *4 (N.D. Ill. 2021) (Cole, M.J.); *DeLeon-Reyes v. Guevara*, 18 C 1028, 2019 WL 4278043, *9 (N.D. Ill. 2019) (Harjani, M.J.). The court in *Velez* found that data from **five years before the subject arrest** was relevant and

proportional for discovery purposes.[4] *Id.* Likewise, the court in *DeLeon-Reyes* found that data from **four years before the arrest** was relevant and proportional for discovery purposes.[5] *Id.* While the plaintiffs in both *Velez* and *DeLeon-Reyes* did not move to compel post-arrest data from the court, the plaintiff in *Velez* had asked for post-arrest data in their initial discovery request, which the court found (along with the request for data years before the event) "*staggeringly* overly broad." *Velez*, 2021 WL 1978364, *4. The overwhelming weight of authority – even the cases cited by Plaintiff - holds that post-arrest data is irrelevant. *Calusinki*, *Prince*, *Velez*, and *DeLeon-Reyes*.[6]

Plaintiff contends (at 10) that "Defendants provide no support for the contention that a 'five year period' has been 'generally accepted' in this district." Again, in addition to the cases cited by Defendants, the *Velez* case cited by Plaintiff directly contradicts that contention. *Velez*, 2021 WL 1978364, *4. As *Velez* found after conducting a thorough review of the case law on this issue, "[f]ive years' worth of production has become a sort of benchmark in these types of cases." *Id.* at *4. Plaintiff's denigration (at 10-11) of Chief Judge Pallmeyer's well-reasoned 2022 decision in *Brown* is also unwarranted, as she found on at least four separate occasions that the five-year period preceding the plaintiff's arrest was the relevant time frame for a *Monell* claim. *Brown v. City of Chicago*, 633 F. Supp.3d 1122, 1148-50 (N.D. Ill. 2022). Specifically, Judge Pallmeyer confirmed the relevant *Monell* time period was five years when ruling on the following:

(1) Excluding the 1972 Metcalfe Report as "immaterial" because it fell "outside of the five-year time period leading up to Mr. Brown's arrest." (*Id.* at 1148);

---

[4] Plaintiff incorrectly claims (at 11) that the court in *Velez* found that "there was 'no question'" as to the relevance of seven years of CR files" before the arrest. However, the court in *Velez* made no such statement, and in fact, rejected the plaintiff's request for seven years of CR files before the arrest. *Id.* at *4.

[5] Once again, Plaintiff incorrectly claims (at 11) that the court in *DeLeon-Reyes* concluded that the relevance of six years of CR files was "not seriously dispute[d]." However, the court in *DeLeon-Reyes* made no such statement, and in fact, rejected the plaintiff's request for six years of CR files before the arrest. *Id.* at *9.

[6] The only reason post-arrest data was produced here was because this case is part of the Coordinated Proceedings (which includes cases arising from arrests well after 2006), not because data after 2006 is relevant to Plaintiff's claims.

(2) "Otherwise, [plaintiff's expert] Waller identified four cases of police misconduct, only one of which took place during the period from May 1983 to May 1988." (*Id.* at 1149);

(3) "A significant portion of the documents Waller cites or references do not concern police misconduct in Area 1 or the Bomb and Arson Unit in the five-year period leading up to Mr. Brown's arrest, let alone the City's awareness of police misconduct in those units during the timeframe relevant to this case." (*Id.* at 1150);

(4) "The [1982] Wilson case is outside of the five-year time period leading up to this [1988] case and, except for this one noted instance, outside of Area 1." (*Id.* at 1149, n. 28).

What's more, in points 2 and 3 above, Judge Pallmeyer found that the data relied on by the plaintiff's expert outside of the relevant five-year period in *Brown* was immaterial and irrelevant, refuting Plaintiff's attempt to distinguish *Brown* by contending it was a ruling on summary judgment and not a *Daubert* motion. *Id.*

Plaintiff makes no attempt to distinguish *Calusinki*. Instead, Plaintiff proffers the magistrate judge's ruling in *Padilla v. City of Chicago*, 06 C 5462, 2009 WL 4891943, *7 (N.D. Ill. 2009) to support his attempt to rely on data created years after his 2006 arrest. But the magistrate judge in *Padilla* relied on a vacated panel opinion issued in *Sherrod v. Berry*, 827 F.2d 195 (7th Cir. 1987), *reh'g granted and opinion vacated*, 835 F.2d 1222 (7th Cir. 1988). As a vacated opinion, *Sherrod* is no longer binding precedent. *See United States v. Carmel*, 548 F.3d 571, 579 (7th Cir. 2008). Accordingly, the magistrate judge's ruling in *Padilla* is not persuasive authority and does not control. Moreover, the magistrate judge's ruling in *Padilla* expressly disclaimed that it was ruling on the admissibility of the discovery request, as it simply concluded the request could "lead to admissible evidence" under the old Rule 26(b)(1) standard. *Calusinski* remains the law of the Seventh Circuit and is binding on this Court.

The Seventh Circuit ruled on the relevance and admissibility of evidence after a trial in *Calusinki*, just as this Court is being asked to rule on the relevance and admissibility of evidence here for purposes of trial. *Calusinski*, 24 F.3d at 936. The Seventh Circuit squarely addressed the admissibility of evidence for a plaintiff's *Monell* claim in *Calusinski* that was also addressed by the trial

court, just as this Court is addressing the relevance of evidence to Plaintiff's *Monell* claim here. In sum, *Calusinski* is not only binding precedent, but as explained above, the case law developed since *Calusinski* overwhelming concludes that post-arrest data is irrelevant.[7] *See e.g., Prince*, 2020 WL 1874099, at *5 ("[C]ertainly CRs obtained by detectives after 1991 are not relevant to the *Monell* claim arising from alleged customs and practices that were in place before the 1991 Porter homicide."); *see also, Brown,* 633 F. Supp.3d at n.61 (N.D. Ill. 2022) (Pallmeyer, C.J.) (evaluating evidence five years before the plaintiff's arrest for purposes of *Monell* liability). Accordingly, Shane's opinions should be barred for the additional reason that the data he relies on, after Plaintiff's 2006 arrest (comprising about half of his data set) and from more than five years before Plaintiff's arrests, is irrelevant and immaterial.

B. Shane Should Also Be Barred Because of His Reliance on Irrelevant and Immaterial Data Relating to Excessive Force Investigations.

Defendants' Motion (at 15-16) also contends that Shane should be barred because he relies improperly on excessive force data:

> Shane provides no basis for his conclusion that CPD did not prioritize common allegations, nor a basis for his speculative conclusion that, had CPD prioritized the effort to address the most common excessive force complaints, it would have been able to stop the defendant officers' adverse behavior in this case. Indeed, this case has absolutely nothing to do with excessive force; Plaintiff does not claim that he was physically mistreated. It is a mystery Shane would put so much stock in the CPD's investigation of disciplinary complaints arising from excessive force allegations when those are immaterial.

Id. In his response, Plaintiff does not contest Defendants' point that excessive force data is irrelevant. It therefore remains a mystery why Plaintiff would provide data relating to excessive force investigations to his expert to rely on in a case that has nothing to do with excessive force. Of course, the case law does not support such a tactic. *Strauss v. City of Chicago*, 760 F.2d 765, 769 (7th Cir. 1985)

---

[7] Plaintiff also contends (at 12) that the irrelevant post-arrest data "rebuts any argument that the City took reasonable measures to address the deficiencies but that those reforms took time to work." Defendants, however, make no such argument. As a result, Plaintiff's strawman argument is simply a distraction that need not be considered.

("Strauss' data similarly represent nothing more than generalized allegations bearing no relation to his injury.).

Moreover, at the CPD, excessive force allegations were and are investigated by an entirely separate unit than the Internal Affairs Division ("IAD"), which investigates allegations such as corruption and false arrest, which are the claims at issue in this case. *See* Def.s' Group Ex. 11, Addendum to CPD General Order 93-3, at 2-4; CPD General Order 08-01-02, at 2-4; and Ch. 2-57 Independent Police Review Authority, 2-57-040. Yet Shane intermixes data relating to excessive force cases investigated by the OPS and IPRA with non-excessive force investigations conducted by IAD. This flaw in Shane's analysis is another separate, independent basis to bar his opinions because there is no way to segregate out the irrelevant excessive force data he relied on with the more relevant data from IAD. Neither Shane in his report nor Plaintiff in his Response make any attempt to do so. Colloquially, it is the classic case of apples and oranges. In the parlance of Rule 702, the data Shane purports to rely upon is unreliable and insufficient to supply a foundation to support his opinions.

C. The 1972 Metcalfe Report, the 1997 CPI Report, the 2016 PATF report, and the 2017 DOJ report Relied on By Shane are Irrelevant.

Defendants' Motion (at 10-11, 21-23) established that the 1972 Metcalfe Report addressing allegations of excessive force is irrelevant and immaterial. As Defendants explained, it is unreliable for Shane to opine that the City was on notice of or deliberately indifferent to an alleged widespread practice of corruption at the time of Plaintiff's arrests in 2004 and 2006 based on evidence relating to excessive force allegations from 1972. In response, Plaintiff states (at 12) that Dr. Shane relies on the 1972 Metcalfe Report "only for historical context," but then later (at 18) argues "Shane can, however, offer the opinion that the City of Chicago, starting in 1999 and going forward, had not fixed the problem identified decades before by the Metcalfe Report—namely, that "complaints from citizens of abusive conduct by police are almost universally rejected by the Police Department[.]" Plaintiff's argument is emblematic of the tenor of his entire defense of Shane's report: because he relied on

something, it is admissible *ipse dixit*. While Plaintiff may prefer that courts not act as gatekeepers when evaluating the admissibility of expert opinions, that is the law under Rule 702 and *Daubert*. It is unreliable for Shane to rely on a report from 32 years before the arrest to render an opinion with respect to the City's disciplinary system in 2004. As the case law set forth above regarding relevant *Monell* time frames demonstrates, this evidence is far too remote in time and scope to have any bearing on the arrests at issue. Indeed, Judge Pallmeyer in *Brown* barred the Metcalfe report relative to a 1988 arrest. *Brown*, 633 F. Supp.3d at 1148. Plaintiff (through Shane) should not be permitted to proffer it here for arrests that occurred in 2004 and 2006.

Shane's reliance on the 2016 PATF report and the 2017 DOJ report should also be barred. In addition to the irrelevant post-arrest time frames discussed above (*i.e.*, these reports cannot be relevant to what the City's final policymaker knew in 2004 and 2006), they are also irrelevant as to subject matter. As argued in Defendants' motion, but ignored by Plaintiff in response, the overwhelming focus of the PATF and DOJ reports relate to allegations of excessive force and officer involved shootings, such as the high-profile 2014 Laquan McDonald shooting.

Shane's reliance on the 1997 CPI report suffers from the same problems. It is irrelevant in time and subject matter. Plaintiff claims (at 13) that the CPI Report is relevant to plaintiff's claims because it shows the City was on notice of the risks posed by tactical drug units and failed to implement recommendations to improve its disciplinary system. (Shane Report of April 1, 2024 at 77-80, 116, ECF No. 204.)" However, the cited pages of Shane's report reference the CPI Report in the context of the City's early warning systems, not the disciplinary claim being raised by the Plaintiff. Therefore, Shane's opinions and testimony with respect to the 1997 CPI Report should also be barred.

IV. Shane Should Not Be allowed to Offer Opinions or Testimony Regarding CPD's Sustained Rates in Administrative Investigations.

As set forth in Defendants' Motion (at 17-19), testimony or opinion offered by Shane regarding CPD's sustained rates in administrative investigations should be barred. Shane's report is

devoid of any basis by which this Court can evaluate the reliability of an opinion or testimony that criticizes CPD's sustained rates in administrative investigations. Comparing the rates at which complaints of police officer misconduct are sustained or not sustained is not a sufficient, reliable measure to evaluate the quality of police misconduct investigations conducted by law enforcement agencies. Moreover, allowing Shane to introduce unreliable testimony concerning "sustained rates" will mislead and confuse the jury as to the actual issues to be determined at trial, resulting in unfair prejudice to the City.

As an initial matter, Shane did not identify or cite to any national standards or uniformly accepted criteria applicable to police departments across the country concerning the rates at which complaints of police officer misconduct are sustained or not sustained in administrative investigations. Plaintiff's Response (at 18) concedes that "Dr. Shane has not opined, and will not opine, that there is a universal "target sustain rate" that all police departments should strive for." The absence of such standards in Shane's report prevents this Court from assessing the reliability of any criticism of the CPD's sustained rates, which renders such criticism inadmissible under Rule 702. Defendants' Motion also provided case law for the proposition that mere statistics of the rates at which such complaints are sustained, without more, "fail to prove anything." *Bryant v. Whalen*, 759 F. Supp. 410, 423-24 (N.D. Ill. 1991), citing *Strauss*, 760 F.2d at 768-69. Plaintiff's Response does not address or even mention this case law.[8]

---

[8] The Response (at 19-20) does cite three District Court cases for the proposition that "widespread failure to discipline officers . . . is evidence relevant to *Monell* liability." *Obrycka v. City of Chicago*, 07 C 2372, 2012 WL 601810 (N.D. Ill. Feb. 23, 2012); *Garcia v. City of Chicago*, 01 C 8945, 2003 WL 1715621 (N.D. Ill. Mar. 20, 2003); *Kindle v. City of Harvey*, 2002 WL 230779 (N.D. Ill. Feb. 15, 2002). Besides a parenthetical reference, Plaintiff provides no discussion of the facts of those cases. Plaintiff does not explain how sustained rates relate to the proposition for which the cases are cited, *i.e.*, widespread failure to discipline officers is relevant to *Monell* liability, or more importantly, how the facts of those cases support Shane's attempt to compare the CPD's sustained rates to other municipalities or agencies. Plaintiff also does not explain how or why those cases should lead to a different conclusion than *Strauss* or *Bryant* would ordain. Plaintiff's cursory and undeveloped arguments should be considered waived. *Shipley,* 947 F.3d at 1062-63.

Defendants' Motion (at 19) also raised an additional, independent reason to bar testimony or opinions from Shane concerning CPD's sustained rates in administrative investigations of complaints of police officer misconduct: the likelihood of confusion of the issues to the jury. Introduction of unreliable evidence concerning "sustained rates" creates a real risk of misleading or confusing the jury as to the actual issues to be determined at trial, resulting in unfair prejudice to the City. As noted in the Motion (*id.*), "the Seventh Circuit requires evidence that complaints which were not sustained actually had merit." *Bryant*, 759 F. Supp. at 424. For that reason, mere statistics of unsustained complaints, without any evidence those complaints had merit, are insufficient to establish *Monell* liability against the City. *Id.* Testimony or opinions offered by Shane critical of CPD's sustained rates in administrative investigations therefore will not assist the jury in its assessment of the *Monell* allegations and should be barred. Moreover, 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).

V. Shane Should be Barred from Discussing the Cherry-Picked Evidence of Untimely, Unfairly Prejudicial, and Irrelevant Evidence Discussed at Pages 72-83 of his Report Pursuant to Fed. R. Evid. 403.

Defendants alternatively contend in their Motion (at 21-23) that Federal Rule of Evidence 403 should prohibit Shane from discussing the cherry-picked reports discussing alleged miscellaneous CPD misconduct from 31 years before Plaintiff's 2004 and 2006 arrests and a decade after his arrests. As discussed above, the 1972 Metcalfe report, the 1997 CPI report, the 2016 PATF report, and the 2017 DOJ report are irrelevant and immaterial to the allegations of this case. And even if they have any limited relevance, they should be barred because they would unfairly prejudice all Defendants and mislead and confuse the jury.

Plaintiff responds by asserting (at 13) that Defendants' argument that the evidence should be excluded as prejudicial or irrelevant should be made in a motion *in limine* or trial. As Defendants stated

in their motion, they will file such a motion, if necessary, with their pretrial statement but Defendants also raise it in this motion to preclude Shane from relying on this material.

Finally, Plaintiff argues (at 12, 13) that Shane relies on the 1972 Metcalf Report, 2016 PATF Report, and 2017 DOJ Report for "historical context" and to "form his understanding of the City's discipline and appeal processes, as well as historical attempts (and failures) to reform the CPD." But again, his argument proves Defendants' point: Plaintiff, through Shane, is attempting to unfairly prejudice all Defendants by interjecting a hand-picked history of alleged CPD misconduct that has nothing to do with this case. The only unfairness pertaining to such evidence would be to Defendants if this type of extraneous and irrelevant material, which is outside the relevant *Monell* five-year time frame and concerns a myriad of unrelated allegations, were admitted. It should be barred.

WHEREFORE, Defendants request that this Court enter an order barring Jon Shane as a witness, and for whatever other relief the Court deems just.

Date: February 13, 2025

Respectfully submitted,

/s/*William E. Bazarek*
Special Assistant Corporation Counsel

Andrew M. Hale
William E. Bazarek
Anthony Zecchin
Kelly M. Olivier
Jason Marx
Hannah Beswick-Hale
Hale & Monico LLC
53 W. Jackson Blvd.
Suite 334
Chicago, IL 60604
312-494-1000

Attorneys for Defendants Darryl Edwards, Alvin Jones, John Rodriguez, Elsworth J. Smith, Jr., Gerome Summers, Jr., and Kenneth Young, Jr.

/s/*Elizabeth A. Ekl*
Special Assistant Corporation Counsel

Terrence M. Burns
Daniel M. Noland
Paul A. Michalik
Elizabeth A. Ekl
Katherine C. Morrison
Daniel J. Burns
Dhaviella N. Harris
Burns Noland LLP
311 S. Wacker Dr., Suite 5200
Chicago, IL 60606
312-982-0090

Attorneys for Defendant City of Chicago

/s/*Brian P.Gainer*
Special Assistant Corporation Counsel

Brian P. Gainer
Monica Burkoth
Lisa M. McElroy
JOHNSON & BELL, LTD.
33 West Monroe Street
Suite 2700
Chicago, IL 60603
312-372-0770

Attorneys for Defendant Ronald Watts

/s/*Eric S. Palles*
Special Assistant Corporation Counsel

Eric S. Palles
Sean M. Sullivan
Kerry M. Mohan
Naphtalia Lafontant
Laura S. Platt
Yelyzaveta Altukhova
Raymond H. Groble III
Mohan Groble Scolaro, P.C.
55 W. Monroe St.
Suite 1600
Chicago, IL 60603
312-422-5533

Attorneys for Defendant Kallatt Mohammed

CERTIFICATE OF SERVICE

I hereby certify that on **February 13, 2025**, I electronically filed the foregoing **Reply in Support of Defendants' Joint Motion to Bar Jon M. Shane's *Monell* Opinions *(Corrected)*** 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/ Elizabeth A. Ekl