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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

BENJAMIN MANN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17-cv-2300
	)	
CITY OF URBANA, et al.,	)	Magistrate Judge Eric I. Long
	)	
Defendants.	)	

PLAINTIFF'S MOTIONS *IN LIMINE*

Plaintiff Benjamin Mann ("Plaintiff"), by and through his undersigned attorneys, Nathan & Kamionski LLP, hereby moves this Court for entry of an order *in limine* as to the following matters:[1]

PLAINTIFF'S MOTION *IN LIMINE* NO. 1 TO EXCLUDE PLAINTIFF'S PRIOR ARRESTS AND CONVICTIONS

Mr. Mann moves this Court to exclude all evidence or otherwise any reference to his criminal record at trial. Specifically, any mention of Mr. Mann's prior arrests, charges, convictions, other criminal involvement, or the circumstances surrounding his past arrests and convictions should be barred pursuant to Federal Rules of Evidence 402, 403, and 404(b).

Mr. Mann was convicted of obstructing justice on August 19, 1999 and June 1, 2004 in Champaign County, Illinois. On January 26, 2006, Mr. Mann was resentenced for violating probation stemming from his 2004 conviction. He was convicted of unlawful restraint on July 14, 2008, in Jackson County, Illinois. Mr. Mann was also convicted of possession of cannabis on November 9, 2010.

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[1] Plaintiff reserves the right to supplement his motions *in limine* after the Court rules on the pending summary judgment motion.

On March 8, 1999, Mr. Mann was arrested and charged with theft. Mr. Mann was also arrested for domestic battery on three different occasions: June 13, 2000, November 11, 2011, and January 30, 2017. Mr. Mann was arrested and charged with resisting a peace officer on October 2, 2003. He was arrested and charged with criminal trespass on July 29, 2004 and December 19, 2005. On March 17, 2014, Mr. Mann was arrested and charged with resisting a peace officer. These arrests all occurred in Champaign County, Illinois.

Mr. Mann has a reasonable basis to believe the defense will introduce evidence of his prior arrests, convictions, and subsequent imprisonment, either through the testimony of officers, through documentary evidence, or cross examination.

First, evidence of a prior arrest is not admissible for any purpose, including to impeach a witness. *Thompson v. City of Chicago*, 722 F.3d 963, 977 (7th Cir. 2013); *Barber v. City of Chicago*, 725 F.3d 702, 709 (7th Cir. 2013); *Cruz v. Safford*, 579 F.3d 840, 845 (7th Cir. 2009). Conversely, informing the jury of Mr. Mann's prior arrests, when he was not convicted of the charges, is unduly prejudicial pursuant to Federal Rule 403. Accordingly, the defense should not be permitted to introduce evidence or question Mr. Mann concerning his prior arrests.

As for Mr. Mann's convictions, this evidence is equally inadmissible. Federal Rule of Evidence 402 states that only relevant evidence is admissible. Mr. Mann's prior convictions bear no connection to the issues in this case. His prior convictions are for obstructing justice, unlawful restraint, and possession of cannabis, none of which have anything to do with the violation of his constitutional rights on March 19, 2017 and July 30, 2017 by Urbana police officers.

In addition, the minimal probative value of Mr. Mann's convictions would not outweigh its prejudicial effect. "Courts have a 'duty to ensure that…civil rights plaintiffs are not unfairly prejudiced by the use of their criminal pasts against them.'" *Norris v. Bartunek*, No. 15 C 7306,

2017 WL 4556714, at *3 (N.D. Ill. Oct. 12, 2017) (quoting *Geitz v. Lindsey*, 893 F.2d 148, 151 (7th Cir. 1990)). In a civil rights case, "the risk of portraying the plaintiff as an unsympathetic member of the criminal class is particularly dangerous." *Id*. (citing *Gora v. Costa*, 971 F.2d 1325, 1331 (7th Cir. 1992)). "Presenting a § 1983 plaintiff's criminal history to the jury presents a substantial risk that the jury will render a defense verdict based not on the evidence but on emotions or other improper motives, such as a belief that bad people should not be permitted to recover from honorable police officers." *Barber*, 725 F.3d at 714. Considering the risk of jurors labeling Mr. Mann a criminal not entitled to recovery in this action due solely for his criminal past, his prior convictions should be excluded.

Furthermore, all but one of Mr. Mann's convictions are more than ten years old. Under Rule 609(a)(2), Mr. Mann's prior convictions do not involve dishonesty or a false statement and should not be admitted into evidence. *See Clarett v. Roberts*, 657 F.3d 664, 669 (7th Cir. 2011) (holding that admission of a person's criminal conviction is generally limited to perjury, criminal fraud, embezzlement or false pretenses convictions). As such, Mr. Mann's prior arrests, convictions, and subsequent imprisonment, should be precluded as irrelevant and substantially prejudicial.

PLAINTIFF'S MOTION *IN LIMINE* NO. 2 TO EXCLUDE SPECULATIVE TESTIMONY BY TIM SEATON

Mr. Mann moves *in limine* for an order preventing the Defendants from introducing certain improper and speculative testimony at trial pursuant to Federal Rules of Evidence 403 and 701. Specifically, Mr. Mann seeks to prevent the Defendants from making statements or asking questions about misconduct allegedly perceived by witness Tim Seaton. Tim Seaton witnessed the altercation between Mr. Mann and Koraysia Pierce that occurred on March 19, 2017. Mr. Seaton

also called the police after hearing noises he believed to be coming from Mr. Mann's apartment on July 30, 2017.

Mr. Mann has reason to believe that the Defendant may attempt to question Mr. Seaton about alleged wrongdoing by Mr. Mann, which is purely speculative and for which the Defendants have no good faith basis to inquire. For example, Mr. Seaton stated at his deposition that he believes Mr. Mann was intoxicated on March 19, 2017 because of how "belligerent" he was at the time. (Deposition of Tim Seaton, attached hereto as Exhibit "Ex." 1, 16:20-17:5). However, there is no evidence that would be sufficient to substantiate Mr. Seaton's claim that Mr. Mann was intoxicated or belligerent at the time of the March 19th incident.

Another example is when Mr. Seaton stated at his deposition that, on July 30, 2017, he heard noise coming from Mr. Mann's apartment that sounded as though someone was being severely injured. (Ex. 1, 36:21-24). Once again, there is no proof in the record that anyone was being severely injured in Mr. Mann's apartment that night. Both of these opinions are improper and unsupported, and should thus be excluded.

The Federal Rules of Evidence limit the opinion testimony of lay witnesses to that "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determine a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R. Evid. 701. The Seventh Circuit has explained that personal knowledge can include inferences, but "the inferences must be tethered to perception, to what the witness saw or heard." *U.S. v. Santos*, 201 F.3d 953, 963 (7th Cir. 2000). Inferences "must be grounded in observation or other first-hand personal experience. They must not be based on flights of fancy, speculations, hunches, intuitions or rumors remote from that experience." *Visser v. Packer Eng'g Assoc., Inc.*, 924 F.2d 655, 659 (7th Cir. 1991).

Mr. Seaton's belief that Mr. Mann was intoxicated on March 19th is neither rationally based nor helpful to the jury. First, Mr. Seaton stated that he did not see Mr. Mann drink anything. (Ex. 1, 58:19-22). Additionally, Mr. Seaton was approximately 20 feet away from Mr. Mann when he witnessed the altercation involving Mr. Mann through his living room window. (Ex. 1, 22:15-24, 56:21-24). The sole fact that Mr. Mann was yelling and cursing at officers led Mr. Seaton to believe Mr. Mann was intoxicated. (Ex. 1, 58:2-14). No other officer on scene, whether in police reports or at their depositions, stated that Mr. Mann appeared intoxicated that night. Further, there is no evidence that a breathalyzer test was performed to determine if Mr. Mann was intoxicated that evening. This testimony would only mislead the jury into believe that Mr. Mann was intoxicated at the time he encountered the police, thus provoking his own arrest, which is simply not true. Therefore, this testimony is impermissible.

Likewise, Mr. Seaton's allegations that someone was "severely injured" in Mr. Mann's apartment on July 30th is mere speculation. Mr. Seaton confirmed that it is possible that the noises he heard were *not* Samantha Wade because he did not see anything to confirm his suspicion. (Ex. 1, 37:10-15). No officer stated that Ms. Wade appeared injured when they made entry into the apartment. This evidence would only be introduced for the sole purpose of presenting Mr. Mann to the jury as a violent person. Thus, the mere mention of this alleged misconduct would be substantially more prejudicial than probative.

Without any good faith basis that Mr. Mann was in fact intoxicated on March 19th or severely injuring someone in his apartment on July 30th, any statements pertaining to these allegations must be barred.

PLAINTIFF'S MOTION *IN LIMINE* NO. 3 TO EXCLUDE MEDICAL OPINION TESTIMONY BY DEFENDANT JENNIFER DIFANIS

Mr. Mann moves to bar Defendant Jennifer Difanis from providing any testimony regarding a diagnosis, opinion, or inference as to the nature and extent of any medical condition Koraysia Pierce may have had on March 19, 2017 pursuant to Rule 701.

On March 19, 2017, Defendant Difanis interviewed Koraysia Pierce, a woman involved in a physical altercation with Mr. Mann. On scene, Difanis interviewed Ms. Pierce regarding what happened during the altercation. From this conversation, Difanis learned that Ms. Pierce was previously in a car accident. (Deposition of Jennifer Difanis, Ex. 2, 116:15-17). Difanis then concluded that Ms. Pierce could not move quickly, lunge, lean from one side to the other, or launch a physical attack on Mr. Mann because "pain would significantly impair her balance[.]" (Ex. 2, 116:11-117:1). Difanis has no medical training beyond basic CPR. (Ex. 2, 117:2-6).

Pursuant to Rule 701, lay witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R. Evid. 702.

Any determination as to the extent of Ms. Pierce's injuries or her ability to move based on her injuries relies on specialized knowledge, usually reserved for a doctor, that Defendant Difanis does not have. If it is the Defendants' contention that Difanis does have specialized knowledge, then she has not been tendered as an expert witness to render this conclusion. Therefore, Difanis's uninformed medical opinions regarding Ms. Pierce's movement abilities should be barred.

PLAINTIFF'S MOTION *IN LIMINE* NO. 4 TO BAR STATEMENTS REGARDING TAX PAYER MONEY

Mr. Mann moves this Court to exclude any argument or suggestion that Mr. Mann's case, damages request, or verdict places a financial burden on the public or will be funded by tax payer money

pursuant to Federal Rules of Evidence 401, 402, and 602. Any argument that a verdict in Mr. Mann's favor would impose a tax burden on the public or would be fulfilled with tax payer money is irrelevant, lacks foundation, and is based on conjecture and speculation. Therefore, such argument should be barred.

PLAINTIFF'S MOTION *IN LIMINE* NO. 5 TO PERMIT TREATING ALL POLICE OFFICERS WHO TESTIFY AS HOSTILE WITNESSES

Mr. Mann moves this Court to permit him to treat any named defendant police officers, including previously dismissed defendant police officers, as hostile witnesses in his case in chief. In relevant part, Rule 611(c) provides that leading questions can be used: "When a party calls a hostile witness, or a witness identified with an adverse party." It is well established that police officers may be called as adverse witnesses in section 1983 actions. *Ellis v City of Chicago*, 667 F.2d 606 (7th Cir. 1981).

Here, all Urbana Police Officers expected to testify in this case were directly involved in the incidents on March 19th and July 30th involving Mr. Mann and Defendant Officers, and all are employees and agents of the City of Urbana. Moreover, each officer was produced for and represented at their depositions by the same attorneys that represented Defendant Officers. Therefore, Mr. Mann should be allowed to treat all non-party Urbana Police Officers in this case as hostile witnesses and call them, if necessary, in his case in chief.

PLAINTIFF'S MOTION *IN LIMINE* NO. 6 TO SEQUESTER LAY WITNESSES

Mr. Mann moves this Court to exclude all lay witnesses (other than the parties) from the courtroom during opening statements and testimony of any and all other witnesses.

PLAINTIFF'S MOTION *IN LIMINE* NO. 7 TO BAR STATEMENTS OF KORAYSIA PIERCE

Mr. Mann seeks to bar any evidence, argument, questioning or testimony concerning statements purportedly made by Koraysia Pierce to law enforcement officers. Ms. Pierce has never given a statement under oath or been subject to cross examination regarding the events that occurred on March 19, 2017. Any statements she made to the Urbana police should be barred on the ground that these statements are particularly unreliable and constitute inadmissible hearsay pursuant to Federal Rules of Evidence 801 and 804.

It is expected that defense counsel will attempt to elicit from Defendant Jennifer Difanis Pierce's version of what occurred during the altercation between her and Mr. Mann on March 19, 2017. Pierce's statements fall squarely within the definition of hearsay: they are out-of-court statements offered to prove the truth of the matters asserted.

Defendants may argue that Ms. Pierce's statements were recorded in Difanis's police report, and they are an exception to the hearsay rule. The police report itself may satisfy the business record exception; however, Ms. Pierce's statements contained inside the report are hearsay within hearsay and should not be admitted.

PLAINTIFF'S MOTION *IN LIMINE* NO. 8 TO LIMIT THE EXPERT TESTIMONY OF JON B. BLUM

Mr. Mann moves this Court for an order excluding certain testimony of defense expert Jon B. Blum. Mr. Mann anticipates that defendants will seek to elicit testimony from Mr. Blum as to his opinion on whether Defendant King used excessive force against Mr. Mann in violation of the Fourth Amendment. (*See* Report of Jon B. Blum, attached hereto as Ex. 3, at 5). This opinion proffered by Mr. Blum should be barred.

The legal standard for the admission or exclusion of expert testimony is well established. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the Supreme Court explained that a district court has a "gate keeping role" of ensuring an expert's testimony is both reliable and relevant. 509

U.S. 579, 597 (1993). These principles, along with Federal Rule of Evidence 702, govern the admissibility of expert testimony. *Ervin v. Johnson & Johnson, Inc.*, 492 F.3d 901, 904 (7th Cir. 2007).

Under Federal Rule of Evidence 702, a witness may provide expert testimony only where: (1) the testimony "will help the trier of fact to understand the evidence or to determine a fact in issue;" (2) "the testimony is based on sufficient facts or data;" (3) "the testimony is the product of reliable principles and methods;" and (4) "the expert has reliably applied the principles and methods to the facts of the case. Fed. R. Evid. 702. Rule 702 "requires that the evidence or testimony 'assist the trier of fact to understand the evidence or to determine a fact in issue," which "goes primarily to relevance." *Daubert*, 509 U.S. at 591. "An expert's testimony qualifies as relevant under Rule 702 so long as it assists the jury in determining any fact at issue in this case." *Stuhlmacher v. Home Depot U.S.A., Inc.*, 774 F.3d 405, 409 (7th Cir. 2014). As the Seventh Circuit has explained, "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." *Dhillon v. Crown Controls Corp.*, 269 F.3d 865, 871 (7th Cir. 2001). Similarly, it is not helpful for an expert witness to weigh evidence or make credibility determinations, as these tasks are for the jury. *Giuffre v. Jefferson*, No. 14 C 3692, 2017 WL 951239. at *2 (N.D. Ill. Mar. 10, 2017). Expert testimony regarding legal conclusions that are outcome determinative are inadmissible. *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003).

In pertinent part, Mr. Blum opines:

1. "Non-deadly force used by Officer King to stop Mr. Mann's active resistance was reasonable."
2. "Force used by Officer King was consistent with his training and law enforcement industry best practices."

3. "Officer King's perception and decision to use force and stop Mr. Mann's resistance quickly was reasonable[…]"
4. "In summary, 'the facts and circumstances known to [Officer King] at the time were such as to cause an ordinary and prudent person with similar training and experience to act or think in a similar way under similar circumstances."

(*See* Ex. 3 at 5-6, 8, 10).

Not only would Mr. Blum's testimony on the reasonableness of force be unnecessary in assisting the trier of fact, but allowing it would also improperly interfere with the jury's role as fact finder. One of the ultimate issues the jury will be called upon to determine in this case is whether Defendant King used unreasonable force against Mr. Mann on March 19th. Any conclusion by Mr. Blum as to the ultimate issue of excessive force must therefore be excluded. *See Hallett v. Richmond*, No. 05 C 50044, 2009 WL 5125628, at *2 (N.D. Ill. May 15, 2009)(granting the plaintiff's motion to bar the defendants' use of force expert because the expert testimony of the reasonableness of defendants' use of force would not assist the trier of fact); *Thompson*, 472 F.3d at 458 (holding that expert opinion testimony regarding the reasonableness of the defendants' use of force is prohibited because it would only serve to cause confusion for the jury); *McCloughlan v. City of Springfield*, 208 F.R.D. 236, 237-239 (C.D. Ill. 2002) (holding that the defendant's police practices expert would not be allowed to offer any opinions on the specific facts of the case because such testimony would not assist the jury); *Graham v. Bennett*, No. 04 C 2136, 2007 WL 781763, at *2 (C.D. Ill. Mar. 12, 2007) ("[N]o expert can be permitted to testify as to the ultimate issue in this case, i.e., whether Defendants' use of force was reasonable under the circumstances presented."). Furthermore, the jury will receive an instructing defining unreasonable force from the Court, making Mr. Blum's testimony on unreasonable use of force unnecessary. *See* Federal Civil Jury Instructions of the Seventh Circuit No. 7.10.

In Mr. Blum's opinion, Defendant King's use of force was reasonable. This testimony addresses an issue that is well within "lay competence." Here, the disputed issues include whether Mr. Mann posed a serious threat to Defendant King and whether Defendant King used an unreasonable amount of force when tripping and slamming Mr. Mann to the ground. There is no need for "specialized knowledge" to decide these issues. *See Pena v. Leombruni*, 200 F.3d 1031, 1034 (7th Cir. 1999) (holding that a jury did not need a police practices expert to determine if the defendant police officer acted reasonably in using deadly force because the question was "within lay competence"). Further, these issues do not involve complex facts and are ultimately credibility determinations for the jury, not for Mr. Blum.

Furthermore, Mr. Blum's opinion that the "weaponless take-down tactic used by Officer King was consistent with his training and industry best practices" should also be barred. (Ex. 3, at 9). Mr. Blum is basically stating that Defendant King's actions fit within proper police guidelines, an inappropriate conclusion to make to a jury under Seventh Circuit law. Whether or not an officer's use of force is consistent with police guidelines is irrelevant to whether that officer violated a person's Fourth Amendment rights. *See Thompson*, 472 F.3d at 455. "The fact that excessive force is 'not capable of precise definition' necessarily means that, while [a police department's policies, orders, or guidelines] may give police administration a framework whereby commanders may evaluate officer conduct and job performance, it sheds no light on what may or may not be considered 'objectively reasonable' under the Fourth Amendment given the infinite set of disparate circumstances which officers might encounter." *Id*. Moreover, "42 U.S.C. § 1983 protects plaintiffs from constitutional violations, not violations of state laws or, in this case, departmental regulations and police practices." *Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir.

2003); *see Pasiewicz v. Lake County Forest Preserve Dist.*, 270 F.3d 520, 526 (7th Cir. 2001); *Soller v. Moore*, 84 F.3d 964, 969 (7th Cir. 1996).

Testimony from Mr. Blum regarding police guidelines to show that Defendant King followed best police practices must be excluded as irrelevant. *See Berg v. Culhane*, No. 09 C 5803, 2010 WL 3420081, at *2 (N.D. Ill. Aug. 27, 2010) (holding that whether the defendant officer followed police practices is highly prejudicial on the issue of the officer's liability and of limited probative value); *Fields v. City of Chicago*, No. 12 C 1306, 2018 WL 1652093, at *6-7 (N.D. Ill. Apr. 5, 2018)(holdings that an expert who opined on whether the officers' actions were in accord with nationally accepted law enforcement practices, standards, and training would not assist the jury and created a significant risk of prejudice and confusion); *United States v. Brown*, 871 F.3d 532, 534 (7th Cir. 2017)("[A]s the district judge concluded, the admission of [the expert's] testimony may have induced the jurors to defer to his conclusion rather than drawing their own."); *see also Legg v. Pappas*, 383 Fed.Appx. 547, 550 (7th Cir. 2010) ("In the exact same context – while granting a motion to exclude expert testimony about police practices in a Section 1983 excessive force case – we have held that the violation of police regulations or even a state law is completely immaterial as to the question of whether a violation of the federal constitution has been established.").

Moreover, Mr. Blum's report consists of overbroad conclusions gleaned from the reports of Defendant Officers with an obvious disregard for the testimony of Plaintiff. Mr. Blum's report was emailed to Plaintiff's counsel on April 1, 2019. The depositions of Mr. Mann, Defendant Officers, and additional witnesses were taken in February 2019. Yet, nowhere in Mr. Blum's report does it state he reviewed a single deposition. Mr. Blum presumes that Defendant Officers' version of events are true and that Defendant King's actions were justified. Mr. Blum's opinion does not

provide any insight beyond that of the officers involved. Instead of helping the jury, Mr. Blum's expert testimony will merely serve to bolster the credibility of Defendant King and parrot what each officer will already testify. *See Estate of Escobedo v. City of Fort Wayne*, No. 05-CV-424-TS, 2008 WL 656269, at *2 (N.D. Ind. Mar. 7, 2008) (citing *Zenith Elecs. Corp. v. WH-TV Broad. Corp.*, 395 F.3d 416, 420 (7th Cir. 2005) ("[O]ffering only a bottom line conclusion does not assist the trier of fact and should not be admitted."); *Giuffre*, 2017 WL 951239, at *2 ("Expert testimony cannot be offered merely for the purpose of bolstering the credibility of a party's version of the facts," because such testimony does not assist the jury in understanding the evidence and "usurps the jury's role by wrapping the lay witness in the expert's prestige and authority."); *Nunez v. BNSF Railway Co.*, 730 F.3d 681, 684 (7th Cir. 2013) ("Vouching for a lay witness is not expert testimony.").

Expert opinion testimony that an officer's use of force was reasonable is a legal conclusion. Further, the opinion that an officer's use of force followed best police practices is irrelevant. Neither of these opinions will aid the jury. If the Court allows Mr. Blum to testify, his testimony should be limited to describing the levels of force available to an officer, the takedown used by Defendant King, and the training applicable to the use of takedowns. Therefore, the opinion testimony of Mr. Blum regarding the reasonableness of Defendant King's use of force and that Defendant King followed best police practices should be excluded.

PLAINTIFF'S MOTION *IN LIMINE* NO. 9 TO BAR JAY LOSCHEN'S EXPERT TESTIMONY

On April 1, 2019, the Defendants disclosed Defendant Jay Loschen as an expert who will testify pursuant to Federal Rule of Civil Procedure 26(a)(2)(C). The Defendants disclosure states that Defendant Loschen may testify at trial regarding relevant policies, practices, and procedures

for the Urbana Police Department as well as use of force, use of force training, and the use of force continuum. (*See* Defendants' Expert Disclosures, attached hereto as Ex. 4, at 2-3).

Mr. Mann has reason to believe that Defendant Loschen will testify that Defendant King's use of force was objectively reasonable. For the reasons stated supra regarding Mr. Blum, Defendant Loschen should also be precluded from offering this opinion, as his opinion would not aid the jury and usurp the jury's function. *See Hallett*, 2009 WL 5125628, at *2; *Thompson*, 472 F.3d at 458; *McCloughlan*, 208 F.R.D. at 237-239; *Graham*, 2007 WL 781763, at *3; *Pena*, 200 F.3d at 1034.

Additionally, any testimony regarding Urbana's policies on use of force in conjunction with Defendant King's actions is neither relevant under Rule 401 nor allowed under *Thompson v. City of Chicag*o, 472 F.3d 444 (7th Cir. 2006). In *Thompson*, the Seventh Circuit held that a municipality's written policy on the proper use of force by its police officers is irrelevant to a constitutional claim that its officers used excessive force, which turns on an objective constitutional standard rather than the municipality's policies. *See id*. at 453-55 ("the violation of police regulations or even a state law is completely immaterial as to the question of whether a violation of the federal constitution has been established"); *see also Whren v. United States*, 517 U.S. 806, 815 (1996) (("[P]olice enforcement practices, even if they could be practicably assessed by a judge, vary from place to place and from time to time. We cannot accept that [constitutional protections] are so variable and can be made to turn upon such trivialities.") (internal citations omitted).

Whether Defendant King was following Urbana policy in his interactions with Mr. Mann does not assist the jury in determining whether Defendant King used excessive force in violation of the Fourth Amendment under the Constitution. Conformity with police guidelines, policies or

procedures are irrelevant, especially here, where the Court has dismissed Plaintiff's *Monell* claim. *See* Dkt. No. 38. The Defendants have failed to articulate any other relevant purpose for disclosing Urbana's policies to a jury. Therefore, Defendant Loschen should also be precluded from discussing Urbana's policies on use of force.

Furthermore, any expert opinion from Defendant Loschen would be needlessly cumulative of the disclosed opinions of Defendants' police practices expert Mr. Jon B. Blum. Defendants state in their disclosure that Defendant Loschen will testify regarding use of force and the reasonableness of Defendant King's use of force on March 19, 2017. Mr. Blum is being used for this exact purpose. Therefore, Defendant Loschen's testimony should be limited to his observations of Mr. Mann on March 19, 2017 as a lay witness.

PLAINTIFF'S MOTION *IN LIMINE* NO. 10 TO BAR TESTIMONY FROM SETH KING ABOUT STATEMENTS ALLEGEDLY MADE BY PLAINTIFF AT THE POLICE STATION

Defendant King claims that, immediately following Mr. Mann's arrest and transportation to the Champaign County Satellite Jail, Mr. Mann allegedly said to him: "If I would have resisted you, you would have been on your ass." (Police Report of Seth King, attached hereto as Ex. 5, at 8). Defendants cannot and have not produced any witness to corroborate that Mr. Mann actually made this statement. At his deposition, Mann stated, "I don't recall saying that at the time." (Deposition of Benjamin Mann, attached hereto as Ex. 6, 103:9-11). Testimony from Defendant King and the document he drafted containing this statement must be excluded from evidence.

First, under Fed. R. Evid. 403, the probative value of the statement is substantially outweighed by the danger of unfair prejudice to Mr. Mann. It is fundamentally unfair to use the statement against Mr. Mann when he has no recollection of making this statement; he was restrained at the time this statement was allegedly made; there are no witnesses to the statement

that Defendants have identified; the statement was not given under oath or recorded by audio or video; and Defendant King took no action despite this alleged threat. This statement is inherently unreliable and has little probative value considering the statement was made *after* Mr. Mann was arrested. As such, this statement allegedly given by Mr. Mann, whether introduced in testimonial or documentary form, should be excluded pursuant to Rule 403.

PLAINTIFF'S MOTION *IN LIMINE* NO. 11 TO BAR INABILITY TO PAY STATEMENTS FROM DEFENDANTS

Mr. Mann seeks to bar Defendant Officers from asserting that defendants will endure financial hardship if plaintiff is awarded any damages. The purpose of such a suggestion would be to falsely lead the jury to believe that the Defendant Officers will be personally liable for any compensatory damages assessed against them. However, Defendant Officers are indemnified for any compensatory civil rights judgments entered against them. *See* 745 ILCS 10/9-102. As such, any suggestion or argument that Defendant Officers would be liable for any compensatory award must be barred. *See Lynch v. Diamond State Trucking Inc.*, 2014 WL 12734712, at *1 (C.D. Ill. Feb. 28, 2014).

Further, Defendant Officers did not produce income or asset information when requested during discovery, and thus should be barred from claiming an inability to pay punitive damages. If the Court nonetheless finds this evidence admissible, then Mr. Mann asks for a jury instruction informing jurors that any compensatory damage award will be paid by the City of Urbana. Moreover, Mr. Mann asks that Plaintiff's counsel be permitted to inform the jury that Defendant Officers are indemnified for compensatory damages. *See Townsend v. Benya*, 287 F. Supp. 2d 868, 874 (N.D. Ill. 2003).

PLAINTIFF'S MOTION *IN LIMINE* NO. 12 TO BAR EVIDENCE OF DEFENDANT OFFICERS' AWARDS, COMMENDATIONS, OR MEDALS

Mr. Mann moves this Court for an order barring introduction of Defendant Officers' awards and commendations pursuant to Rules 402, 403, and 404(b) of the Federal Rules of Evidence. Awards or commendations received by Defendant Officers are irrelevant, unfairly prejudicial, and improper character evidence. *See Tolliver v. Gonzalez*, No. 10 C 1879, 2011 WL 5169428, at *1 (N.D. Ill. Oct. 31, 2011)(finding that officers wearing medals during trial would constitute improper character evidence); *Sughayyer v. City of Chicago*, No. 09 C 4350, 2011 WL 2200366, at *4 (N.D. Ill. June 6, 2011)(granting motion to bar evidence of officers' commendations, awards and medals).

Similarly, Defendant Officers should be barred from testifying as to any military background they may have. *See Tolliver*, 2011 WL 5169428, at *1 (excluding the defendant officer's national guard service background on the ground that his prior service "has no relevance to the matters at issue").

PLAINTIFF'S MOTION *IN LIMINE* NO. 13 TO BAR EVIDENCE OF PLAINTIFF'S PRIOR DOMESTIC INCIDENTS

Mr. Mann seeks to bar evidence of domestic incidents with his ex-girlfriend Ashanti Sturkey and his daughter Diamond Mann that occurred prior to March 19, 2017. Prior domestic incidents involving Mr. Mann are irrelevant and unduly prejudicial, and should therefore be barred under Federal Rules of Evidence 401 and 403.

Any prior domestic incidents Mr. Mann had with Ms. Sturkey or Ms. Mann are not relevant to the claims at issue. Further, serious risk of prejudice to Mr. Mann exists that outweighs the minimal probative value these incidents would have. In addition, these incidents would not show bias or a propensity to untruthfulness by Mr. Mann. "Extrinsic evidence is not admissible to attack or support a witness's 'character for truthfulness.'" *Case v. Town of Cicero*, No. 10 C 7392, 2013

WL 5645780, at *7 (N.D. Ill. Oct. 16, 2013) (citing Fed. R. Evid. 608(b)). Therefore, this evidence should be excluded from trial.

PLAINTIFF'S MOTION *IN LIMINE* NO. 14 TO EXCLUDE 911 CALL RECORDINGS FROM MARCH 19, 2017

Mr. Mann seeks to exclude the recording of the 911 call made by Koraysia Pierce on March 19, 2017 as it constitutes hearsay. Ms. Pierce's statements contained on the 911 recording are out of court statements that would only be offered by the Defendants for the truth of the matter asserted. As such, it should be excluded.

Furthermore, there is no evidence that any of the Defendant Officers heard this call before they responded to the scene at 810 Oakland Ave. Because Defendant Officers were not aware of this call before arresting Mr. Mann, the contents of this call are not relevant to the jury. *See Christmas v. City of Chicago*, 691 F. Supp. 2d 811, 816 (N.D. Ill. 2010) ("[o]nly information known to police leading up to an arrest is relevant to whether they had probable cause for the arrest.); *see also Wheeler v. Lawson*, 539 F.3d 629, 637 (7th Cir. 2008) (finding that probable cause is based upon facts known to the officer at the time of the incident, and evidence that came to light after the arrest is not relevant). Thus, this 911 call should be excluded.

PLAINTIFF'S MOTION *IN LIMINE* NO. 15 TO BAR ANY REFERENCE TO THE EXISTENCE OF PLAINTIFF'S PREVIOUSLY DISMISSED CLAIMS

Mr. Mann moves this Court for an order barring Defendants from referencing the existence of Mr. Mann's previously dismissed claims. Mr. Mann anticipates that Defendants may seek to introduce evidence at trial regarding the fact that Plaintiff brought other civil rights claims that were dismissed, specifically Plaintiff's fabrication of evidence and *Monell* claims. Mr. Mann seeks to bar mention of these dismissed claims because such evidence is not relevant and would be unduly prejudicial to his remaining claims.

Evidence is irrelevant if it does not have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable then it would be without the evidence." Fed. R. Evid. 401. Under Rule 402, irrelevant evidence is inadmissible. Fed. R. Evid. 402.

The fact that Mr. Mann's fabrication of evidence and *Monell* claims were brought and then dismissed does not tend to make any fact any more or less probable. *See, e.g., Graham*, 2007 WL 781763, at *3 ("This court agrees with Plaintiffs that evidence of these dismissed counts is irrelevant to whether Defendant used excessive force and the prejudice resulting from admission of this evidence outweighs its probative value.").

Furthermore, any probative value this evidence may have is outweighed by the unfair prejudice Mr. Mann would suffer from allowing the jury to know that certain claims were already dismissed, potentially leading the jury to believe that his remaining claims are also without merit. Therefore, this Court should bar Defendants from mentioning or providing evidence of Mr. Mann's previously dismissed claims.

PLAINTIFF'S MOTION *IN LIMINE* NO. 16 TO BAR ANY REFERENCE TO THE DETAILS OF MANN'S ARREST WARRANT

Mr. Mann seeks to exclude from evidence the details of the outstanding arrest warrant for which he was arrested on July 30, 2017. Specifically, Plaintiff requests that Defendants be barred from mentioning that the arrest warrant was for unpaid child support. The reason for the issuance of the arrest warrant is not directly relevant to the issue of his actual arrest by Defendant Officers that night or the claims he brings against the Defendant Officers in this action. Defendant Officers John Franquemont, Don McClellan, and Adam Marcotte will likely testify that the arrest warrant was not the actual reason for the presence at Mr. Mann's residence on July 30, 2017. They were there to perform a wellness check after receiving a 911 call from neighbor Tim Seaton about a

domestic. The admission of the underlying facts for the arrest warrant would be unfairly prejudicial to Plaintiff.

First, allowing the factual basis for the arrest warrant to come in at trial would put Plaintiff in a position where he would have to defend himself against the allegation that he was not paying child support; an allegation Plaintiff insists is untrue. Second, the mention of a contempt of court arrest warrant based on child support would only confuse the issues, as these facts have no bearing on Mr. Mann's civil rights claims. Further, the jury might improperly conclude that Mr. Mann is not entitled to recover for the violation of his constitutional rights because he is allegedly not supporting his child. Plaintiff takes no issue with the mention that there was an arrest warrant stemming from a civil case. However, the details surrounding the outstanding arrest warrant should be excluded. In addition, if Defendants seek to admit the actual arrest warrant into evidence, the language "Illinois Department of Healthcare and Family Services" should be redacted for the same potential for prejudice to Plaintiff. *See* Order for Writ of Body Attachment for Benjamin Mann, attached hereto as Ex. 7).

PLAINTIFF'S MOTION *IN LIMINE* NO. 17 TO BAR ANY REFERENCE THAT AWARD OF DAMAGES CONSTITUTES TAXPAYER MONEY

Mr. Mann moves this Court to bar any reference by Defendants that any award of money presents a burden on taxpayers or that such an award constitutes tax payer money. Any statement that a damages award would place a burden on the public as taxpayers is irrelevant to the issues at hand and overly prejudicial under Rules 401 and 403 of the Federal Rules of Evidence. The Seventh Circuit has confirmed that arguments that appeal to jurors' pecuniary interests as taxpayers are improper. *See Moore ex rel. Estate of Grady v. Tujela*, 546 F.3d 423, 429 (7th Cir. 2008) (finding the following statement improper: "The city is not a random amorphous entity. It's

you. We're talking about tax dollars here."). As such, this kind of argument regarding taxpayer money used for any award should be barred.

PLAINTIFF'S MOTION *IN LIMINE* NO. 18 TO BAR TESTIMONY FROM ANY POLICE OFFICER THAT DEFENDANT KING'S USE OF FORCE WAS REASONABLE

Mr. Mann seeks to bar Defendant Officers from introducing any opinion testimony that the force used by Defendant King was reasonable under the facts of this case. Whether other police officers believe that Defendant King's use of force against Mr. Mann was reasonable is neither relevant nor proper. This testimony would constitute improper lay opinion that would invade the province of the jury as fact finders and goes to the ultimate issue in the case. *United States v. Noel*, 581 F.3d 490, 496-97 (7th Cir. 2009); *United States v. Wantuch*, 525 F.3d 505, 514 (7th Cir. 2008); *see also United States v. Conn*, 297 F.3d 548, 554 (7th Cir. 2002) ("Lay opinion testimony is admissible only to help the jury or the court to understand the facts about which the witness is testifying and not to provide specialized explanations or interpretations that an untrained layman could not make if perceiving the same acts or events."). Any testimony as to the objective reasonableness of Defendant King's actions would also constitute an impermissible legal conclusion. *Jordan v. City of Chicago*, 08 C 6902, 2012 WL 88158, at *6-7 (N.D. Ill. Jan. 11, 2012).

Similarly, all Defendant Officers should be barred from testifying that Defendant King complied with the training and policies of the Urbana Police Department because such testimony is irrelevant and confusing. *See Fields*, 2018 WL 1652903, at *7 (excluding testimony from any police officer that an officer complied with police department policies, procedures, and use of force guidelines). One of the issues for the jury in this case is whether Defendant King's use of force was reasonable under the totality of the circumstances. The opinion of other Urbana police officers predicated on purported compliance with the use of force model or Urbana policies would

improperly vouch for the credibility of Defendant King. Because the assessment of a witness's credibility is within the province of the jury, Defendant Officers should not be allowed to give these opinions.

PLAINTIFF'S MOTION *IN LIMINE* NO. 19 TO BAR REFERENCE TO PREVIOUS DISMISSAL OF PARTIES AND CLAIMS

Plaintiff moves in limine to exclude any evidence, argument, or mention that Samantha Wade was once a party to this suit. Ms. Wade was dismissed from this case, and therefore is no longer a party. Plaintiff seeks to prevent Defendants from mentioning the fact that Ms. Wade was once a Plaintiff, the fact that she was dismissed, and that she brought additional claims against Defendant Officers. Any testimony or evidence relating to Ms. Wade's previous dismissal is wholly irrelevant to any issue in contention with Mr. Mann's claims against Defendant Officers. Similarly, it is appropriate to preclude testimony or evidence at trial regarding claims that have been previously dismissed by parties or on summary judgment. *Graham*, 2007 WL 781763, at *1; *Sturm v. Hedges*, No. 14-cv-848-MPB-RLY, 2017 WL 11001656, at *5 (S.D. Ind. June 21, 2017). As such, this evidence should be barred from introduction at trial.

PLAINTIFF'S MOTION *IN LIMINE* NO. 20 TO BAR EVIDENCE OR ARGUMENT THAT DEFENDANT OFFICERS WOULD SUFFER NEGATIVE CONSEQUENCES IN THEIR PROFESSIONAL CAREERS AS A RESULT OF THE OUTCOME OF TRIAL

Mr. Mann moves this Court for an order barring Defendant Officers from introducing evidence or arguing that they may suffer negative consequences in their professional careers as a result of any verdict in this trial. The impact a verdict has on any officer's career is irrelevant to the matters in this case under Rule 401. Furthermore, such testimony is speculative as Defendant Officers cannot predict what consequences, if any, may result from any verdict. Therefore, Defendant Officers should be barred from making any suggestion, reference, or inference that a verdict would create adverse professional consequences.

Respectfully submitted,

By: /s/ Natalie Y. Adeeyo
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CERTIFICATE OF SERVICE

I, Natalie Adeeyo, an attorney, hereby certify that on this day, the 3rd day of January 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such to all counsel of record.

/s/ Natalie Y. Adeeyo