PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 16-4351

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ALANDA FORREST,

Appellant

v.

KEVIN PARRY, PHM; Camden City Police Officer; JASON STETSER, PHM; Camden City Police Officer; CITY OF CAMDEN; CITY OF CAMDEN DEPARTMENT OF PUBLIC SAFETY; WARREN FAULK; PAULA DOW; DEPARTMENT OF THE TREASURY, State of New Jersey; JOHN DOES I-IV

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On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. Action No. 1-09-cv-01555)
District Judge: Honorable Robert B. Kugler

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Argued November 15, 2018

Before: GREENAWAY, JR., BIBAS, and FUENTES,
*Circuit Judges*.

(Filed: July 10, 2019)

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OPINION

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GREENAWAY, JR., *Circuit Judge*.

In *Beck v. City of Pittsburgh*, we were faced with what we deemed "a question of considerable interest in [a] period of alleged rising police brutality in major cities across the country"—what is sufficient evidence from which a jury can infer that a municipality adopted a custom of permitting its police officers to use excessive force? 89 F.3d 966, 967 (3d Cir. 1996). More

than two decades later, the interest and allegations persist, and, as it would appear, so does the question.

The evidence in this case demonstrates that the Internal Affairs Unit ("Internal Affairs") of the since-disbanded Camden Police Department was woefully deficient in investigating civilian complaints about officer misconduct. Citing *Beck*, the District Court found this to be sufficient. However, the Court narrowed the case to only this evidence, and, as a result, did not consider its significance when combined with the non-Internal Affairs-related deficiencies in Camden's supervision and training of its police officers. This occurred in two phases: first, the District Court unilaterally divided Appellant, Alanda Forrest's 42 U.S.C. § 1983 municipal liability claim into three theories, labeled failure to supervise through Internal Affairs, failure to supervise, and failure to train, and, second, it then associated the evidence pertaining to the deficiencies in Internal Affairs to only the first theory.

Forrest argues that this resulted in errors at various stages. At summary judgment, it resulted in a grant in favor of Camden on the failure to supervise and train theories. On the parties' motions in limine, the Court improperly excluded evidence that was material to the § 1983 theory that survived summary judgment, and effectively awarded summary judgment on the state law negligent supervision claim which it had previously deemed triable. The jury instructions then confused the relevant law regarding the sole surviving claim.

We agree. The artificial line, drawn by the District Court, between what were ostensibly theories with largely overlapping evidence resulted in erroneous rulings as to what was relevant, as well as instructions as to what law the jury was to apply. We will therefore reverse those aspects of the District Court's rulings that resulted in error, vacate part three of the jury verdict, and remand for further proceedings consistent with this opinion.

## I. BACKGROUND

### A.

On July 1, 2008, two police officers kicked down several doors of the residence at 1270 Morton Street, Camden, New Jersey ("1270 Morton"). According to Forrest, his encounter with the officers began with him pinned between the wall and the door of the upstairs bedroom, which had been kicked open. He heard his acquaintance, Kennedy Blevins, twice scream, "why you beating on me[?]" Pl.'s Resp. Br. Ex. 64-a, at 105:10–17, ECF No. 144-76. One officer asked, "where the drugs at?" and Blevins twice responded, "I don't know what you talking about." *Id.*

Just a few hours earlier, Forrest had just finished work for a housing contractor at a house across the street. He went to 1270 Morton Street to speak with some acquaintances. He and one such acquaintance—Shahede Green—had been on the porch for a while when the two noticed a police car "coming down the opposite direction" on a one-way street. *Id.* at 96:3. It was

around midnight at this point, so Forrest decided to call a cab. The two went inside as Forrest waited for the cab to arrive. While waiting, Forrest heard a number of sounds that caused him to be alarmed, all of which culminated in what sounded like someone kicking the front door.

At the time, the house was occupied by Forrest, Green, Blevins, and two women. One of the women was known as Hot Dog and the other, Kesha Brown. Forrest left Green and Hot Dog downstairs, and went upstairs to Blevins's room. Brown was also upstairs, in bed in what is referred to as the "front room." *Id.* at 106:22–23. As Forrest began explaining to Blevins that the front door had been kicked, Blevins's bedroom door was kicked open. Being near the bedroom door, Forrest reflexively stepped back, and was immediately covered by the door. Forrest remained pinned between the door and the wall, fearing that he would immediately be shot by an officer if he came out from behind the door.

Through the opening between the door and the wall, Forrest heard Blevins's screams. He saw another officer come up the stairs, and moments afterwards, heard Brown scream. Forrest saw the officer "doing something with his arm," but could not make out what the officer was doing. *Id.* at 107:9–11. Eventually, the officer told Brown to go downstairs. The officer then entered Blevins's room, where Forrest, Blevins, and the other officer were located. One of the officers swung the door away from Forrest, and hit him in the face, knocking him out. When Forrest regained consciousness, an officer, later identified as Kevin Parry, was on top of

him. Officer Parry repeatedly punched Forrest in the face. Officer Parry then handcuffed Forrest, and the officers—Parry and Jason Stetser—dragged Forrest down the stairs. Forrest suffered a laceration to his ear, facial bruising, and injuries to his knees.[1]

Officer Parry placed Forrest in the back seat of the supervising Sergeant's vehicle. Officer Parry proceeded to tell Forrest that any drugs found in the house would be attributed to him. The Sergeant, Dan Morris, then took Forrest to a vacant parking lot, at which point Forrest asked "I'm bleeding like crazy. Why you got me here? Why don't you take me to the hospital?" Pl.'s Resp. Br. Ex. 64-b, at 134:19–21, ECF No. 144-77. Sergeant Morris allegedly ordered Forrest to shut up, and said, "my officers don't plant drugs on people." *Id.* at 136:25–137:2. Officers Parry and Stetser arrived soon after, and Sergeant Morris passed something to Officer Parry.

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[1] Brown's testimony corroborates the account provided by Forrest, up to and including his being dragged down the stairs. For example, she testified that Forrest was behind the door of Blevins's room when she walked into the upstairs hallway, and that, after Forrest was hit in the face with the door, one officer "beat him up pretty bad," at one point "hit[ting] him in the head with a flashlight[.]" Pl.'s Resp. Br. Ex. 44, at 44:3–6, ECF No. 144-20. According to Brown, the officer hit Forrest "so many times" that "[h]e urinated all over himself[,]" "his face was swollen," and "his head was full of blood." *Id.* at 45:6–11. Brown further testified that 1270 Morton belonged to her, she was renting a room to Blevins, Green was her boyfriend, and Hot Dog was visiting on the day of the incident. And that she was "asleep and . . . naked from the waist down," when an officer entered the front room with a flashlight. *Id.* at 20:18–24.

Forrest was taken to the hospital to be treated thereafter. When the attending nurse inquired as to what caused his injuries, he simply told her that he tripped and fell. The officers had previously warned that if Forrest said any more, they would charge him with having assaulted five officers.

**B.**

In the police report he prepared regarding this incident, Officer Parry wrote that he had observed Forrest engaging in a hand-to-hand drug transaction on the porch of 1270 Morton, and that Forrest initiated the physical altercation with him and Officer Stetser. Officer Parry testified to that version of events before the grand jury and claimed that Forrest was in possession of 49 bags of a controlled dangerous substance. Forrest was subsequently charged with possession of a controlled substance, possession with intent to distribute, possession within one thousand feet of a school, and resisting arrest.

Forrest filed a complaint with Internal Affairs on July 21, 2008. He alleged that he was assaulted by Officer Parry "and his partner," which resulted in "a cut ear [that] required stitches, [bruises] on [his] knees, pain in [his neck], and headaches." Def.'s Mot. Ex. 33, ECF No. 138-4 at 59. The complaint went nowhere, so he wrote a follow-up letter two months later. The letter reiterated the assault charges and indicated that Internal Affairs had yet to respond to Forrest's initial complaint. Forrest ultimately pleaded guilty to

possession with intent. He was sentenced to three years and eighteen months in a New Jersey state prison.

Forrest served eighteen months of that sentence. He was released when Officer Parry later admitted that he had falsified the police report regarding the incident with Forrest. Specifically, Sergeant Morris, and Officers Parry and Stetser were three of five officers that were charged with, and pleaded guilty to, conspiracy to deprive individuals of their civil rights. Officers Stetser and Parry admitted to filing false reports, planting drugs, and lying under oath in front of grand juries, at suppression hearings, and at trials. The investigation into their activities resulted in judgments vacated, charges dismissed, or pending indictments forfeited in over 200 criminal cases. As to Forrest in particular, Officer Parry admitted that he did not observe a hand-to-hand drug transaction, but falsely included that in the report he had prepared.[2]

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[2] Camden emphasizes that Forrest nonetheless admitted that his plea was not coerced, but rather free and voluntary. Appellees' Br. 7. In addition, at argument, it represented that there remains a dispute as to whether Forrest "was engaged in drug possession." Oral Arg. Audio at 23:30–24:10. Forrest puts forth that this may not have been the first time that he freely and voluntarily entered a guilty plea to an offense he believed he did not commit. He testified that, in those circumstances, he does not like "putting [his] life in somebody else's hand" and that he would much rather take his own chances. Pl.'s Resp. Br. Ex. 64a, at 60:15–20, ECF No. 144-76. Thus, if he thinks he is "getting another break," he takes the plea. *Id.* at 60:20–22.

He attributes this approach to when he chose to go trial in a case brought against him when he was a minor. He testified that

## C.

While still in prison, Forrest brought this action in federal court in the District of New Jersey. By April 2015, his was one of approximately 89 lawsuits brought against the City of Camden ("Camden") based on the actions of the above-referenced officers. Camden proposed a global settlement for these suits,[3] but Forrest opted out. He moved forward with his claims, which included a municipal liability claim under 42 U.S.C. § 1983, a conspiracy claim under 42 U.S.C. § 1985(3), and a state law claim for negligent supervision.[4] Camden moved for summary judgment on all counts in March of 2015. Despite the breadth of

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sometime in 1971, two police officers lured him from the porch of his mother's home in Camden, accused him of having committed a robbery, and arrested him. He did not take a plea, but "went all the way to court with it." Pl.'s Resp. Br. Ex. 64, at 37:4–5, ECF No. 144-75. He was found guilty and ended up serving seven months in a juvenile correctional facility before he was told that a mistake had been made. Forrest ultimately laments the situation, stating, "I think that might have damaged me." *Id.* at 38:23.

[3] It has no bearing on the analysis in this case, but Camden also disbanded its police department, and formed a new one. *See*, *e.g.*, Kate Zernike, *To Fight Crime, a Poor City Will Trade In Its Police*, https://www.nytimes.com/2012/09/29/nyregion/overrun-by-crime-camden-trades-in-its-police-force.html.

[4] Forrest's conspiracy claim did not survive summary judgment, and he does not mention this claim in his opening brief. Any argument as to this claim is therefore waived. *See United States v. Pelullo*, 399 F.3d 197, 222 (3d Cir. 2005) ("It is well settled that an appellant's failure to identify or argue an issue in his opening brief constitutes waiver of that issue on appeal." (citations omitted)).

Camden's motion, its brief only mentioned Forrest's municipal liability claim under § 1983.

Forrest responded in kind, with a singular focus on his § 1983 claim. His brief opposing summary judgment divided that claim into two: first, he argued that, through its policy or custom of permitting officers to be "essentially unsupervised," Camden was "the moving force" behind the constitutional deprivation of his rights, Pl.'s Resp. Br. 30, ECF No. 144; and second, that Camden's failure to train and supervise their officers constituted "a deliberate indifference to the rights of persons those officers would come into contact with," *id.* at 34. The evidence he cited reflects the police department's troubled history in the years leading up to Forrest's arrest, and is best described in six segments, all of which pertain to Camden's supervision and investigation of its officers.

First, the New Jersey Attorney General ("NJAG") had been commissioned to conduct a review of Camden's police operations on five separate occasions prior to Forrest's arrest, in 1986, 1996, 1998, 2002 and, most recently, 2006. The NJAG twice appointed the Camden County Prosecutor to oversee the police department, once in 1998, and the other in 2003. One of the NJAG reports warned that Camden's failure to commit manpower and resources to proactively managing police misconduct would place it "in the position of failing to adequately protect the civil rights of its citizens and sets the stage for significant civil liability." App. 128. More specifically, with a backlog of over 350

uninvestigated complaints in 2002, the same report expressly cautioned:

> The number of open investigations is simply unacceptable and overwhelms whatever progress the unit may have accomplished since our last review. . . . The failure to *immediately* address the complaint backlog and, over the longer term, ensure that the backlog *does not reoccur on a regular basis*, could lead one to conclude that the City of Camden and the police department are *deliberately indifferent* to the conduct of its police officers and the civil rights of its citizens.

App. 123 (emphases added).

Second, Camden did not address the backlog. Rather, it maintained an extensive, recurring backlog in the years leading up to Forrest's arrest. The backlog was as high as 487 complaints in 2004, and 461 in 2005, and, though declining, remained in 2006 and 2007, at 205, and 175, respectively. As to complaints regarding excessive force, which Forrest's complaint and follow-up letter alleged, Camden was investigating and closing a mere fraction, and sustaining an even smaller number. Taken together, Camden sustained about 1% (7 of 622) of the complaints alleging serious misconduct from 2004 to 2008, consisting of excessive force, improper arrest, improper search, and differential treatment.[5]

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[5] Excluding Forrest's, there were six complaints lodged against Officer Stetser in that span, including one for excessive

Third, the evidence suggests that the investigations that were conducted were seriously deficient. A representative example is an Internal Affairs investigative memorandum where the investigator did not interview witnesses, but rather solely based the determination on the incident reports authored by the officers involved. The memorandum derived from an investigation into a complaint filed against Officers Stetser and Parry about a year before Forrest's arrest and which contained allegations that were nearly identical to Forrest's. Indeed, the complainant alleged the officers planted drugs on him. The Internal Affairs investigator concluded that this complaint was "unfounded," which means that the complainant was "lying, more or less." Pl.'s Resp. Br. Ex. 48, at 30:11–15, ECF No. 144-27. This finding was premised on the incident report prepared by Officer Parry, which stated that he and Officer Stetser observed the complainant engage in a drug transaction in an alleyway. The investigation into this complaint revealed that two similar complaints had been filed against Officer Stetser, and that the incident report for both—prepared by Stetser—also stated that each complainant was separately observed engaging in a drug transaction.[6]

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force, one for improper arrest, and one for harassment/improper detainment. Officer Parry was the subject of two complaints during the same time frame, one of which does not appear on the mechanism used to track such complaints.

[6] The investigation into these complaints was prompted by a request from the complainant's lawyer to access the other two complaints.

The fourth segment is the testimony of former high officials in the police department, including the former Chief of Police, a former Deputy Chief, the former Supercession Executive,[7] and the Sergeant who took over Internal Affairs in 2009. Their combined testimony reflects that, in the years leading up to and including the year of Forrest's arrest, there were deficiencies with how the department tracked officer whereabouts, there were no performance reviews (contrary to recommendations by the 2006 NJAG report) and the sergeant-to-officer ratio was two to three times more than recommended.

Specifically, John Scott Thomson ("Chief Thomson"), who became Chief of the now-defunct Camden Police Department in 2008 and is now Chief of the newly-established Camden County Police Department, testified. He explained that, prior to his taking over the department and at the time of Forrest's arrest, the police department "relied upon what you wrote on your log to determine where you were" and that "an officer could [theoretically] write anything they wanted down [, since] there just wasn't a checks and balance (sic) on it." Pl.'s Resp. Br. Ex. 42-a, at 57:11–13, 65:5-8 ECF No. 144-16. The Supercession Executive testified that he

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[7] The NJAG appointed the Camden County Prosecutor to "supercede the management, administration and operation" of the police department in 2003. App. 103. The Camden County Prosecutor later installed a Supercession Executive to, *inter alia*, manage the day-to-day activities of the police department, and represent the County Prosecutor in overseeing all department activities. The Supercession Executive was installed in 2006 and remained until 2008.

was not aware of another major police department that did not have a performance evaluation system. Yet despite his and the NJAG's recommendations, Camden failed to implement such a system throughout the entirety of his term.

Edward Hargis, who was Deputy Chief from 2004 through January of 2008, doubled down on that testimony, stating, "[a]fter [the NJAG 2006 report] was issued, we started designing a performance evaluation [system], but then it did not become much of a concern." Pl.'s Resp. Br. Ex. 40, at 35:15–36:17, ECF No. 144-8. Along those lines, the Sergeant who took over Internal Affairs in 2008 testified that the officer-to-sergeant ratio is supposed to be five to seven officers to a sergeant. Yet, between 2004 and 2009, the Supercession Executive stated that "they were woefully over in number" in some commands, with "12, 15 plus to a sergeant." Pl.'s Resp. Br. Ex. 41-b, at 137:1–6, ECF No. 144-13.

Chief Thomson ultimately commented that one of the most pressing problems facing the department when he took over in 2008 was a "culture of apathy and lethargy"—by which he meant that there were no "mechanisms of accountability," and, as such, "CPD was an organization in which you could have the greatest cop in the world or the laziest cop in the world. . . ." Pl.'s Resp. Br. Ex. 41-c, at 37:23–39:4, ECF No. 144-15.

Fifth, Officers Parry and Stetser were aware of the alleged inadequacies in supervision. Officer Parry explained that he continued to engage in illicit behavior

even when Sergeant Morris could no longer cover for him as his supervisor. When asked whether he was concerned that a Sergeant who was not a party to the conspiracy would "discover what was going on," Officer Parry responded, "No. . . . Because, like I said, nobody seemed to care." Pl.'s Resp. Br. Ex. 68, at 36:2 to 37:7, ECF No. 144-87. He noted that, in fact, supervision was worse after Sergeant Morris stopped supervising him, stating:

> Because the more sergeants had to do, the more that—you know, the more paperwork that had to be completed for our squad, the less they were on the street and there was no supervision for them . . . [B]ecause before if you were on regular patrol, if you were at a job, a sergeant was on the street with you. They would show up a lot of times. Sergeants were getting so, you know, backed up with paperwork, they were really never around. . . . These guys, like I said, they would take their liberties because they knew that nobody was going to be around and they had to answer no questions.

*Id.* at 28:22 to 29:17. And when Sergeant Morris was their supervisor, Officer Parry testified that he and Officer Stetser had no concern about their misconduct, as it was very rare that a Captain or Lieutenant would show up or review their reports. Nor did concern about complaints being filed with Internal Affairs ever cross their mind. Worse yet, Officer Stetser also testified that, Lieutenant Pike, his supervisor at one point, "most likely" knew that he was writing false reports

and accepted them. Pl.'s Resp. Br. Ex. 54-a, at 40:16–18, ECF No. 144-43.

Sixth, Officer Vautier, a fellow officer at the time, testified about two incidents in which Officer Stetser engaged in questionable behavior in front of his superiors without reprimand. The first took place in Spring of 2007 when Officer Stetser put drugs in a Lieutenant's bag in front of the entire squad as a prank. According to the officer, the Lieutenant discovered this and did nothing. The officer also testified that he reported this, as well as that Officer Stetser bragged about passing out drugs at parties, to a Sergeant within Internal Affairs. The Sergeant responded by confirming that there had been other complaints about Officer Stetser's passing out drugs at parties, but never wrote anything down and kept the report off the record. The second incident was in May of 2007, and involved a Sergeant who conducted an integrity test on Officer Stetser, whereby he placed a precise amount of an illegal substance in a bag and handed it to Officer Stetser to turn it in before the end of the day. Officer Stetser failed—he was given 45 bags and only turned in 30.

* * *

Camden prevailed. The District Court granted partial summary judgment. It divided Forrest's § 1983 claim into three theories that it devised. Each theory was then associated with a specific subset of the above segments, without consideration of the segments' combined impact on any particular theory. The result is

that, along with Forrest's state law negligent supervision claim, only one of the theories was considered to have the evidentiary support necessary to survive summary judgment. This surviving theory was then narrowly framed as a failure to supervise through the Internal Affairs process, which again reflected the Court's view that supervision-related deficiencies that were apparent elsewhere were not relevant to the incident with Forrest.

The jury returned a verdict in favor of Camden on the § 1983 theory that was presented to them. In parts one and two of the verdict form, it unanimously found that Officers Stetser and Parry violated Forrest's Fourth Amendment right to be free from excessive force and to be free from false arrest. But, in part three, the jury found that Forrest had not proved that these deprivations of his constitutional right resulted from Camden's actions.

Forrest appealed.

## II. DISCUSSION[8]

Forrest challenges the District Court's rulings at various stages of the underlying proceedings. At summary judgment, he argues that the District Court erred in granting Camden's motion on any portion of his § 1983 claim. Regarding the Court's rulings at the

[8] The District Court had jurisdiction under 28 U.S.C. §§ 1331, 1367(a); we have jurisdiction over appeals from all final decisions by the District Court under 28 U.S.C. § 1291.

motions in limine hearing, he argues that it effectively awarded summary judgment on his state law negligent supervision claim, and improperly excluded evidence that was material to the remaining portion of his § 1983 claim. Lastly, Forrest contends that the Court issued jury instructions that were erroneous and prejudicial as to the § 1983 claim.

We agree that there were several errors below, beginning with some of the District Court's rulings at summary judgment. Indeed, the Court unilaterally divided Forrest's claim into three theories it devised—failure to supervise through the Internal Affairs process, failure to supervise, and failure to train. To support that division, the District Court considered the Internal Affairs-related evidence—consisting of segments one through four—as only supporting the first theory. In turn, the first theory was the only that survived summary judgment. We conclude that aspects of all three theories should survive when the evidence, consisting of segments one through six, is considered in its entirety. Moreover, the District Court's subsequent efforts to exclude the segments that supported the theories that did not survive summary judgment resulted in erroneous evidentiary rulings as to what was relevant, as well as incorrect instructions as to what claims the jury was required to consider and the requisite legal elements. We will therefore reverse the portions of the District Court's summary judgment and evidentiary rulings that resulted in error, vacate part three of the verdict rendered by the jury, and remand for further proceedings.

## A. Summary Judgment

### 1. Standard

Our review of a district court's decision at summary judgment is plenary, and we apply the same standard as the District Court. *See Halsey v. Pfeiffer*, 750 F.3d 273, 287 (3d Cir. 2014). We determine whether the moving party has established that there is no genuine dispute of material fact and is entitled to judgment as a matter of law. *See Wharton v. Danberg*, 854 F.3d 234, 241 (3d Cir. 2017) (citing Fed. R. Civ. P. 56(a)). We view all facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor. *Id.* The elements of the underlying claim are central to our determination, as a fact is only material if it might affect the outcome of the suit under the governing law. *See Scheidemantle v. Slippery Rock Univ. State Sys. of Higher Educ.*, 470 F.3d 535, 538 (3d Cir. 2006). We therefore begin our discussion with an examination of the underlying elements of the species of § 1983 claim that Forrest presented to the District Court.

As we recently reiterated, a § 1983 claim against a municipality may proceed in two ways. *Estate of Roman v. City of Newark*, 914 F.3d 789, 798–99 (3d Cir. 2019). A plaintiff may put forth that an unconstitutional policy or custom of the municipality led to his or her injuries, *id.* at 798 (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978)), or that they were caused by a failure or inadequacy by the municipality that "reflects a deliberate or conscious choice," *see id.*

(internal quotation marks omitted) (quoting *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 215 (3d Cir. 2001)). The latter avenue arose in the failure-to-train context, but applies to other failures and inadequacies by municipalities, including those related to supervision and discipline of its police officers. *Id.* at 798–99 ("[Plaintiff] has not pled a municipal policy . . . [but] has . . . adequately pled that the City failed to train, supervise, and discipline its police officers.").

Plaintiffs that proceed under a municipal policy or custom theory must make showings that are not required of those who proceed under a failure or inadequacy theory, and vice versa. Notably, an unconstitutional municipal policy or custom is necessary for the former theory, but not for the latter, failure or inadequacy theory. *Id.* at 798 ("[F]or failure-to-train claims . . . [,] a plaintiff need not allege an unconstitutional policy.") (citing *Reitz v. County of Bucks*, 125 F.3d 139, 145 (3d Cir. 1997)). This difference can be significant because a plaintiff presenting an unconstitutional policy must point to an official proclamation, policy or edict by a decisionmaker possessing final authority to establish municipal policy on the relevant subject. And, if alleging a custom, the plaintiff must evince a given course of conduct so well-settled and permanent as to virtually constitute law. *Id.* On the other hand, one whose claim is predicated on a failure or inadequacy has the separate, but equally demanding requirement of demonstrating a failure or inadequacy amounting to deliberate indifference on the part of the municipality. *See id.* This consists of a showing as to

whether (1) municipal policymakers know that employees will confront a particular situation, (2) the situation involves a difficult choice or a history of employees mishandling, and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights. *Carter v. City of Philadelphia*, 181 F.3d 339, 357 (3d Cir. 1999).

Although we have acknowledged the close relationship between policy-and-custom claims and failure-or-inadequacy claims, *Barkes v. First Corr. Med.*, 766 F.3d 307, 316–17 (3d Cir. 2014), the avenues remain distinct: a plaintiff alleging that a policy or custom led to his or her injuries must be referring to an unconstitutional policy or custom, and a plaintiff alleging failure-to-supervise, train, or discipline must show that said failure amounts to deliberate indifference to the constitutional rights of those affected. That is not to say that the plaintiffs cannot be one and the same, with claims sounding in both. They can. *See id.* at 798–99 ("[Plaintiff] has sufficiently alleged a custom of warrantless or nonconsensual searches . . . [and] has also adequately pled that the City failed to train, supervise, and discipline its officers.").

2. Analysis

With that understanding, recall that, in his brief opposing summary judgment, Forrest purported to divide his § 1983 municipal liability claim into two theories. One alleged that a policy or custom of "essentially unsupervised" officers was the "moving force" behind

the constitutional deprivation of his rights. Pl.'s Resp. Br. 30, ECF No. 144. The other alleged that Camden's failure to train and supervise their officers constituted deliberate indifference to the rights of individuals with whom the officers would come into contact. *Id.* at 34.

The District Court did not adopt that framing, and instead further divided the claim into three separate theories. It described them as, first, "that [Internal Affairs] was inadequate and provided no accountability for Stetser and Parry[,]" second, "that the City's supervisory structure and inadequate monitoring system left Stetser and Parry unsupervised[,]" and third, "that Stetser and Parry received inadequate training because training about how to recognize and eradicate excessive force and misconduct was necessary." App. 14 (internal quotation marks omitted). Further, the District Court enunciated the legal requirements for all three theories as that Forrest had to demonstrate a policy or custom as to the alleged failures or inadequacies *and* that said policy or custom amounted to deliberate indifference.[9]

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[9] In setting forth the law, the District Court purports to rely on our decision in *Beck*. *See* App. 7 (citing *Beck*, 89 F.3d at 972, for the proposition that, "[w]hile the Supreme Court originally fashioned 'the deliberate indifference' doctrine in the context of a city's alleged failure to train its police officers, the Third Circuit has since adopted this standard in *other policy and custom situations*." (emphasis added)). The portion of *Beck* cited by District Court quotes language from our decision in *Simmons v. City of Philadelphia*, 947 F.2d 1042 (3d Cir. 1991), which references a policy or custom of deliberate indifference. However, contrary to what the District Court's opinion suggests, neither *Beck* nor

Forrest does not challenge the District Court's ruling regarding the first theory—that a policy or custom of inadequate supervision through Internal Affairs amounted to deliberate indifference—as it survived summary judgment. But he does take issue with how he was allowed to proceed on that claim. We take up those challenges in subsections (B), (C), and (D). We now turn our focus to Forrest's challenges to the District Court's ruling regarding his failure-to-supervise and failure-to-train theories.

At the outset, we emphasize that, properly considered, there are two ways in which Forrest's § 1983 claim against Camden may have proceeded: first, that Camden's policy or custom of permitting excessive force, false arrest, or other constitutional violations led to Forrest's injuries; and/or second, that Camden's failure to supervise, discipline, or train its officers amounted to deliberate indifference to the rights of the individuals with whom those officers would come into contact. As a result, the bare notion that a custom or policy of "essentially unsupervised" officers led to Forrest's injury has no basis in law. *See* Pl.'s Resp. Br. 30, ECF No. 144. We therefore consider his claim as

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*Simmons* established a species of § 1983 municipal liability predicated on the existence of an unconstitutional policy or custom of or amounting to deliberate indifference. *Beck* involved a claim regarding an unconstitutional policy or custom of tacitly authorizing police officers to use excessive force in violation of the Fourth Amendment. *Beck*, 89 F.3d at 968. Similarly, *Simmons* involved an alleged policy that violated the Eighth Amendment—that is, one of "deliberate indifference to the medical needs of intoxicated and potentially suicidal detainees." *Simmons*, 946 F.2d at 1064.

sounding in the latter—that Camden's failure to supervise, investigate, and train its officers amounted to deliberate indifference.

Despite incorrectly announcing that Forrest had to demonstrate an unconstitutional policy or custom of, or amounting to, deliberate indifference, the District Court treated Forrest's claim as we will: it properly conducted a deliberate indifference analysis for each alleged failure on the part of Camden. However, it divided up the quantum of evidence to the detriment of Forrest's failure-to-supervise theory and adopted an unduly narrow view of the evidence supporting Forrest's failure-to-train theory.

Per the evidentiary division, the lion's share of the evidence we laid out in Section I.C.—four out of the six segments—was associated with only the first theory, which the Court labeled "Failure to Supervise, Investigate, and Discipline." App. 16. This consisted of the evidence that Internal Affairs had substantial backlogs and was not adequately investigating complaints in the years leading up to Forrest's arrest, as well as the evidence of a lack of adequate supervision based on the absence of a system of progressive discipline and any mechanism to track officer performance.

Despite its overlap with the first theory, the second theory, labeled "Failure to Supervise," App. 21, was limited to the evidence pertaining to Camden's failure to track officer whereabouts, "CPD's supervisory structure, and generally inadequate supervision of its officers' day-to-day activities. . . ." App. 21–22. The District

Court did not mention the evidence suggesting that the particular officers at issue engaged in illicit conduct knowing that that [sic] they were not being supervised, and the testimony regarding the two incidents that should have alerted the officers' superiors but did not. Nor did the Court consider how, if taken together, the quantum of evidence laid out in Section I.C. supported a failure-to-supervise theory. Camden's motion was ultimately denied as to the "Failure to Supervise, Investigate, and Discipline" theory, but granted as to the "Failure to Supervise" theory. App. 21–22.

A different, yet equally problematic narrowing occurred with regard to the third theory, labeled "Failure to Train." App. 22. The District Court construed this theory as merely focusing on the inadequacies in Camden's training program, as it pertained to Officers Stetser and Parry. *See* App. 22–23 (stating, "Plaintiff has not adequately demonstrated that the training Parry and Stetser received was so deficient as to reflect [Camden]'s deliberate indifference to constitutional rights."). It then granted Camden's motion.

We will reverse the District Court's grant of summary judgment on the failure to supervise theory, and, to the extent that it overlooked Forrest's allegations regarding the training supervisors received, also its ruling on the failure to train theory.

*a. Failure to Supervise*

The evidence presented by Forrest may convince a reasonable jury that Camden's failure to supervise and discipline its officers amounted to deliberate indifference to the rights of individuals with whom those officers would come into contact. The record would support a finding that Camden's policymakers knew that their officers would require supervision, that there was a history of officer supervision being mishandled, and that, in the absence of such supervision, constitutional violations were likely to result. Indeed, the evidence suggesting that the particular officers at issue engaged in illicit conduct—often consisting of false arrest and excessive force—knowing that that [sic] they were not being supervised, and that there were a few incidents that should have alerted the officers' superiors, but did not, is significant. Those evidentiary points combined with the NJAG reports, the evidence regarding Internal Affairs' complaint backlog and other deficiencies, and the testimonies offered by Chief Thomson, the Supercession Executive, former Deputy Chief Hargis, and the Sergeant who took over Internal Affairs in 2009, is sufficient to withstand a motion for summary judgment.

Camden argues that Forrest cannot demonstrate a nexus between the deprivation he suffered and Camden's conduct because, in the months leading up to Forrest's arrest, its hands were tied. To support that argument, it cites its internal processes: when Internal Affairs received a complaint, it forwarded that complaint to the Camden County Prosecutor's Office

("CCPO"), and took no further action. *Id.* at 8. It left the investigation entirely up to the CCPO. *Id.* Camden asserts that this process was in effect with respect to Officers Stetser and Parry in 2008, and, as such, Internal Affairs's investigations of those officers were stayed up to and through the time of Forrest's arrest. *Id.* at 8.

We reject this argument for two reasons. First, as the District Court pointed out, Camden's own submission demonstrates that the CCPO did not take over investigations into Officers Stetser and Parry until September 16, 2008, well over two months after Forrest's arrest. *See* Def.'s Mot. Ex. 29, ECF No. 138-4 at 13. Second, even assuming that was not the case, there is a genuine dispute of material fact as to whether Internal Affairs's investigation would have resulted in Forrest's arrest (and the surrounding incident) being prevented. Indeed, even when Camden did investigate complaints against these officers, its investigation amounted to a review of the false reports they prepared, and thus resulted in no disciplinary action against the officers.

We will therefore reverse the District Court's decision granting summary judgment as to the § 1983 claim that Camden's failure to supervise its officers amounted to deliberate indifference to the rights of individuals with whom those officers would come into contact.

*b. Failure to Train*

As to the failure to train theory, Forrest's arguments to the District Court did not only focus on the training Officers Stetser and Parry received, but also the training that supervising officers received. Pl.'s Resp. Br. 35 (arguing that "training session[s] for officers, supervisors and command officers about how to recognize and eradicate excessive force and misconduct [are] necessary"). Forrest reiterates the same two-part argument on appeal: that "the training provided to Stetser and Parry . . . was inadequate" and "[s]imilarly, training for supervisors was deficient, as sergeants did not receive training geared toward officer discipline." Appellant's Op. Br. 40.

We agree with the District Court that evidence regarding the training that officers received is insufficient as a matter of law. The alleged deficiency in a training program must be closely related to the alleged constitutional injury because "[i]n virtually every instance where a person has had his or her constitutional rights violated by a city employee, [said] plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 392 (1989) (citation omitted).

Here, even if we accept that, based on the sheer volume of complaints, Camden had to have known that it had a problem with officers violating the constitutional rights of citizens, the link between that and the alleged deficiencies in the training program is simply

too tenuous. The officers knew that their conduct was criminal, and, as the encounter in this case shows, used their authority to pressure victims to refrain from immediately reporting their activities. As a result, there is no proof from which to infer that implementing the changes to the training program that Forrest suggests would have made any difference. Lastly, in terms of awareness, the testimonial evidence from higher officials point to supervision and accountability as the critical issues, not training.

The opposite is true of the evidence regarding the inadequacies in training that supervisors received. Camden policymakers knew or should have known that supervisor-level officers would be confronted with officer misconduct, whether first hand or via complaints and reports from others, and that the wrong choice—failure to report or admonish—would lead to the sort of behavior that occurred here: officers whose behavior caused the deprivation of constitutional rights, but who had no reason to change that behavior. And, although the situation does not necessarily involve a difficult choice, the evidence here demonstrates a genuine dispute of material fact as to whether supervisors had a history of mishandling this choice.

Indeed, the sheer volume of complaints from outsiders, coupled with the absence of any internal response may lead a reasonable jury to conclude that Camden was aware of supervisors mishandling or being unable to handle their duties. This is even more pronounced when one examines the testimonies of higher officials who expressed great concern that

officers were not being adequately supervised, and called for various measures to address that reality, including a formal performance evaluation system and a reduction in the supervisor-to-officer ratio. *See also* App. 128 (warning that Camden's failure to commit manpower and resources to proactively managing police misconduct would place it "in the position of failing to adequately protect the civil rights of its citizens and set the stage for significant civil liability.").

The call for these measures was warranted and the need for training apparent. The testimony provided by Officers Stetser and Parry reflects that they were aware that supervision was lacking, whether co-conspirator Sergeant Morris covered for them or not. Officer Stetser, in particular, explained that one of his supervisors "most likely" knew that he was writing false reports, and accepted them. Pl.'s Resp. Br. Ex. 54-a at 40:16–18, ECF No. 144-43. The record further provides ample basis for this confidence. Recall that Officer Stetser failed an integrity test administered by a supervising officer, and pranked another by planting drugs in the supervising officer's bag. When this was reported to a Sergeant in Internal Affairs, the Sergeant merely responded with his own account of similar behavior by Officer Stetser in other contexts. *See Supra* Section I.C., Segment Six.

The foregoing demonstrates Camden's policymakers were aware that Camden needed a large shake up in its supervisory regime. It also raises significant questions as to whether Camden's supervisor-level officers were adequately trained on how to discipline and

combat officer misconduct when it was brought to their attention, including the kinds of misconduct—false arrest and excessive force—that led to Forrest's injuries. Thus, while we agree that Forrest's claim regarding the adequacy of the training officers received fails on causation grounds, we conclude that a genuine dispute of material fact exists as to whether the need for more or different training for supervisors was obvious, and the failure to provide that was very likely to result in a violation of constitutional rights. We will therefore reverse the District Court's summary judgment ruling as to this iteration of Forrest's § 1983 claim.

### B. Motions in Limine

Forrest presents two challenges to the District Court's decisions on the motions in limine. He argues that the District Court improperly granted summary judgment on his state law negligent supervision claim, and excluded evidence that was material to his surviving § 1983 claim. We agree—the District Court *sua sponte* granted summary judgment without providing the procedural safeguards the Federal Rules of Civil Procedure require before judgment on the merits can be granted. We also agree that the Court's evidentiary rulings constituted an abuse of discretion, as they stemmed from an incorrect, narrow view of Forrest's surviving § 1983 claim.

1. State Law Negligent Supervision Claim

The District Court ruled that Forrest's state law negligent supervision claim survived summary judgment. But there is no mention of the claim for the remainder of the proceedings, including at trial. On appeal, Forrest contends that the District Court effectively granted summary judgment on that claim at the motions-in-limine hearing. Appellant Op. Br. 42–43. He argues that this is clear from District Court's opening remark at that hearing that the only remaining claim was the failure to supervise through Internal Affairs. *Id.* at 43. Camden counters that Forrest waived this issue by failing to object when the District Court made that remark. Appellee Resp. Br. 40. We first address the District Court's remark and its effect, and then the question of plain error.

*a. The District Court's Remark*

It is well-settled that district courts may grant summary judgment *sua sponte*, so long as the losing party is given notice when summary judgment is being contemplated. *See* Fed. R. Civ. P. 56(f) (permitting a *sua sponte* grant "[a]fter giving notice and a reasonable time to respond . . . "); *Gibson v. Mayor & Council of City of Wilmington*, 355 F.3d 215, 222 (3d Cir. 2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986)); *see also Otis Elevator Co. v. George Washington Hotel Corp.*, 27 F.3d 903, 910 (3d Cir. 1994). The purpose is to give the losing party the opportunity to marshal all the evidence that would be used to oppose

summary judgment. *Gibson*, 355 F.3d at 224. Along those lines, although motions in limine are not designed to eliminate claims or theories, *see Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1069 (3d Cir. 1990), the Federal Rules of Civil Procedure do not prohibit a grant of summary judgment when said motions have been filed. Whenever the summary judgment ruling is made, the court must provide the parties with adequate notice and an opportunity to oppose. *Id.* at 1069–70 (finding notice inadequate where neither the parties nor the court suggested the possibility of trial not going forward).

In the past, we have determined that a motion in limine resulted in a *sua sponte* grant of summary judgment based on an express statement by the district court, *see Brobst v. Columbus Servs. Int'l*, 761 F.2d 148, 154 (3d Cir. 1985) (quoting the district court as having stated, "The court finds, *as a matter of law*, that . . . ") (emphasis added), or, indirectly, by way of the court having eliminated the evidentiary basis for a claim, *see Bradley*, 913 F.2d at 1069–70.

The situation here is different. The District Court did not make an express statement, at least not one outright purporting to grant summary judgment. Nor did it necessarily eliminate the evidentiary basis for Forrest's state law negligent supervision claim, given the evidentiary overlap with his surviving § 1983 claim. Instead, Forrest's argument is premised on the District Court's lone remark that, "This is the only claim left in the case, the failure to supervise through the Internal Affairs process." App. 345. But these are

differences without a distinction. The principle remains: whether expressly or in effect, a district court may not grant summary judgment without providing the losing party notice, or a notice-equivalent, and an opportunity to oppose. *See Gibson*, 355 F.3d at 223 (citing *Otis*, 27 F.3d at 910).

Thus, as we ordinarily would, we examine whether the Court granted summary judgment on Forrest's state law negligence claim, and, if so, whether Forrest had adequate notice and an opportunity to oppose.

By itself, the District Court's remark that "the failure to supervise through the Internal Affairs process" was "the only claim left in the case" is ambiguous, at best. By the time the District Court makes this statement, the case had been narrowed to two claims: a § 1983 claim on the theory that "[Camden]'s Internal Affairs system was inadequate and provided no accountability . . . [,]" App. 14; and a state law negligent supervision claim "on the theory that the internal affairs department provided inadequate supervision of its officers," App. 24. Thus, a remark that the only remaining claim is the failure to supervise through Internal Affairs leads one to ask: is it the § 1983 or the state law? The answer can be found in the remainder of the Court's other statements at the motions-in-limine hearing, as well as the jury instructions and verdict form.

The remainder of the Court's motions-in-limine statements demonstrate that the remark at issue was referring to the § 1983 claim as the only remaining

claim. Specifically, in the moments before making the remark Forrest cites, the District Court stated, "I'm going to start with the order in which [the motions] were filed on the docket. And the first is number 164, which is defendant's motion to bar evidence unrelated to the Monell claim." App. 345. The Court then proceeded to explain that "there are no training claims left in the case," and, having narrowed the surviving municipal liability claim to the theory involving the inadequate supervision provided through Internal Affairs, stated, "This is the only claim left in the case, the failure to supervise through the Internal Affairs process." *Id.*

The jury instructions and verdict form further demonstrate that Forrest's state law claim was not the claim being referred to as the only one remaining. This claim is absent from the portion of the jury instructions that sets forth what the jury was to consider. Instead, the jury is instructed that, "[t]he plaintiff, Alanda Forrest, is suing under Section 1983. . . ." App. 456. As to the verdict form, the portion identifying the claims against Camden singularly asks,

> "Has plaintiff proven by a preponderance of the evidence that the deprivation of Alanda Forrest's constitutional right(s) was the proximate result of a well-settled policy of inadequate supervision by the City of Camden of its officers, including Jason Stetser and/or Kevin Parry?"

App. 442.

This singular ask is particularly significant because, as the District Court noted at summary judgment, Forrest's state law negligent supervision claim was an independent claim, with distinct elements. *See* App. 24. Notably, the claim is not limited to injuries arising from constitutional violations, and neither requires that the plaintiff's injuries result from a well-settled policy or custom nor a showing of deliberate indifference. Rather, the consensus is that a negligent supervision claim under New Jersey law only requires a relatively straightforward negligence showing—that is, that the employer knew or had reason to know the employee exhibited dangerous characteristics, that there was a reasonable foreseeability of harm to others, and that the negligent supervision was the proximate cause of the injuries. *Panarello v. City of Vineland*, 160 F. Supp. 3d 734, 769 (D.N.J. 2016); *see also Smith v. Harrah's Casino Resort of Atl. City*, 2013 WL 6508406, at *3 (N.J. Super. Ct. App. Div. 2013) ("Several jurisdictions have held that a claim of negligent supervision requires proof of the same elements recited by our Supreme Court . . . with respect to a claim of negligent hiring.").

With all that in view, we conclude the District Court's statement amounted to a *sua sponte* grant of summary judgment as to Forrest's state law negligent supervision claim.

We also conclude that the Court did so without providing Forrest with notice and an opportunity to respond. Indeed, prior to its *sua sponte* grant, the Court held that Forrest's state law negligent supervision

claim would be tried, and had not made any interim rulings that would contradict that. *See* App. 23–24. So, as of the time of the Court's remark, Forrest had no reason to believe that this claim was at risk of an adverse summary judgment ruling.[10]

*b. Plain Error*

Camden argues that even if the District Court's grant constituted error, we should not reverse because Forrest waived this issue by failing to object. Forrest counters that the failure to object can be excused because the issue qualifies under our plain error doctrine. We agree with Forrest.

Where a timely objection is not raised below, we reverse only where the grant constitutes plain error. *See Gibson*, 355 F.3d at 225 n.4 (citing *United States v. Knight*, 266 F.3d 203, 206 (3d Cir. 2001)). In this context, this is true where we find (1) an error, (2) that is plain—i.e., clear and obvious—and (3) the error

[10] Forrest points to the Joint Pre-Trial Order as evidence that he had reason to believe that his state law negligence claim would be tried. However, the document is, at best, ambiguous on this point. Under a subsection labeled "PLAINTIFF'S LEGAL ISSUES:" it lists the issue of whether "[Camden was] negligent in failing to adequately supervise and monitor the actions of its police officers." Joint Pretrial Order 35, ECF No. 161. But, like the District Court's remark, it does not specify whether this is referring to the state law negligent supervision claim or Forrest's § 1983 claim. For our purposes, it is enough that the District Court's summary judgment opinion indicated that this claim would be tried, and the record is devoid of any interim ruling or reference that suggested otherwise.

affected the defendant's substantial rights. *See Walden v. Georgia-Pacific Corp.*, 126 F.3d 506, 522 (3d Cir. 1997); *see also Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 166 (3d Cir. 2004). Even then, we exercise our power to reverse "sparingly"—that is, only for "serious and flagrant" errors jeopardizing "the integrity of the proceeding." *Pennsylvania Environmental Defense Foundation v. Canon-McMillan School Dist.*, 152 F.3d 228, 234 (3d Cir. 1998).

The District Court's *sua sponte* grant constituted such an error. It is well established that noncompliance with the notice provisions of the Federal Rules deprives a court of the authority to grant summary judgment. *See* Fed. R. Civ. P. 56(f) (permitting a *sua sponte* grant only "[a]fter giving notice and a reasonable time to respond . . . "). And, as a result of the District Court's noncompliance, the plaintiff was deprived of a jury trial on a claim that the Court previously deemed triable—in other words, a designation that a reasonable jury could find in his favor—despite there being no change in the quantum of evidence between the designation and subsequent deprivation.

The seriousness of this error cannot be overstated: it not only deprived a litigant of his day in court, but it effectively designated a matter for the jury and then stepped into the jury's province to decide the same matter. All of this occurred without any explanation, and in a procedural setting that serves an entirely different function: on the parties' motions in limine, rather than on a dispositive motion. *See Gibson*, 355 F.3d at 224 (issuing a cautionary note that "the *sua sponte*

grant of summary judgment, without giving notice to the parties, is not the preferred method by which to dispose of claims . . . because [courts] run the risk of unduly prejudicing the parties . . . [and] such grants . . . can have serious, if unintended, consequences.").

We will reverse and remand, with the instruction that the claim should go to the jury unless the District Court seeks to grant summary judgment on it. If the Court so seeks, it may grant summary judgment only after providing adequate notice and opportunity for Forrest to oppose.

2. The District Court's Evidentiary Rulings

A ruling on the admissibility of evidence is reviewed for abuse of discretion. *Forrest v. Beloit Corp.*, 424 F.3d 344, 349 (3d Cir. 2005). There is an abuse of discretion if the district court's decision "rests upon a clearly erroneous finding of fact, errant conclusion of law, or an improper application of law to fact." *Id.* (quoting *Oddi v. Ford Motor Co.*, 234 F.3d 136, 146 (3d Cir. 2000)).

The District Court excluded evidence of conduct that (a) post-dated Forrest's arrest,[11] (b) was not

[11] In a footnote, Forrest also argues that the District Court's exclusion of evidence that pre-dated his arrest was improper. Appellant's Br. 45 n.13. This evidence included the 2002 NJAG report which warned that the failure to immediately address the complaint backlog could lead to an adverse finding on deliberate indifference. It also included complaints regarding Sergeant Morris, who supervised Officers Stetser and Parry during Forrest's arrest. For all the same reasons we set forth below, the exclusion

specific to Internal Affairs, and (c) related to other wrongdoing by Officers Stetser and Parry. It found this evidence inadmissible on the grounds that it was insufficiently related to the theory that Camden failed to supervise through the Internal Affairs process.

Under the Federal Rules, relevant evidence is generally admissible, and irrelevant evidence is not. Fed. R. Ev. 402. Yet the bar for what constitutes relevant evidence is low. *See*, *e.g.*, *Failla v. City of Passaic*, 146 F.3d 149, 159 (3d Cir. 1998) ("The test of relevance under the Federal Rules of Evidence is low."); *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 783 (3d Cir. 1994) (describing the Federal Rules as having a "low threshold of relevancy"). The test is whether the evidence has "*any tendency* to make a fact more or less probable than it would be without the evidence," where "the fact is of consequence in determining the action." Fed. R. Ev. 401 (emphasis added).[12]

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of that evidence constituted an abuse of discretion—the evidence is highly relevant to determining deliberate indifference on the part of Camden.

[12] Camden appears to suggest that the evidence was properly excluded under Federal Rule of Evidence 403, which, in broad terms, permits the exclusion of relevant evidence if its probative value is substantially outweighed by its prejudicial effect. However, the District Court excluded the evidence at issue on Rule 401, relevancy grounds. In addition, Camden does not (and we cannot) identify what prejudice, if any, would result from admitting the evidence at issue. We thus construe Camden's arguments as speaking to relevancy alone and proceed accordingly. *See* Appellee Br. i. (characterizing the District Court's rulings as "[p]roperly [e]xcluding [i]rrelevant" evidence and testimony).

The District Court framed the facts of consequence in this case as only those that demonstrated a failure to supervise through the Internal Affairs process. In so framing the case, the District Court concluded that (a) evidence that post-dated Forrest's arrest was not relevant because it was not causally connected—that is, such evidence would not have helped Internal Affairs prevent the incident with Forrest; (b) testimonies by Chief Thomson, the Supercession Executive, and the Camden County Prosecutor were not relevant because they were not specific to Internal Affairs, but referred to the police department in general; and (c) the complaints against Officers Stetser and Parry were not relevant because they did not concern planting drugs or excessive force.

The District Court's framing of the case was unduly narrow and incorrect. Forrest's sole surviving claim was not that Internal Affairs failed to supervise, but, more broadly, that Camden failed to investigate and discipline its officers, and that failure amounted to deliberate indifference to the rights of those to whom those officers would come into contact. To that effect, evidence is not irrelevant merely because it does not show causation, does not specifically pertain to one unit of Camden's police department, or does not focus on the particular activities carried out by the officers that were involved in Forrest's encounter. It is only irrelevant if it bears on no aspect of the overarching theory and its underlying elements. With that framing in mind, we conclude that the District Court's evidentiary

rulings constituted an abuse of discretion as to the evidence set forth above.

*a. Post-arrest evidence is highly relevant to whether Camden's failure amounted to deliberate indifference.*

At the outset, causation is not the *sine qua non* of relevance. The post-arrest evidence included Forrest's complaint, the follow-up letter that he sent to Internal Affairs, and other Internal Affairs complaints regarding similar misconduct by Officers Stetser and Parry.[13] Although the failure to investigate those complaints could not have caused Forrest's alleged injuries, they are highly relevant to whether Camden was deliberately indifferent to a continued pattern of police misconduct. Specifically, Camden's handling of complaints after Forrest's arrest is highly relevant to demonstrating that it maintained the same practice prior to and at the time of said arrest.

We held as much in *Beck*. 89 F.3d at 967–68. The case involved a college student, Beck, who brought an excessive force claim against the City of Pittsburg [sic]. *Id.* at 969–70. He alleged that an officer used excessive force in the process of arresting him for driving under

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[13] We need not reach Forrest's argument that the District Court excluded the Sergeant who took over Internal Affairs's testimony that, when he took over in May of 2009, "there were a lot of [Internal Affairs] cases open . . . and the investigations weren't done," in addition to other department-wide deficiencies. *See* Appellant Br. 49–50. The District Court ruled that the Sergeant would be permitted to testify about "the 400 open [Internal Affairs] cases." *See* App. 365.

the influence. *Id. Inter alia*, Beck produced evidence that several complaints had been filed alleging similar acts of excessive force by the officer, some before and some after his arrest, but none of them were sustained or resulted in discipline. *Id.* at 970. As to the pre-arrest complaint, we stated, "[it] may have evidentiary value for a jury's consideration [as to] whether the City and policymakers had a pattern of tacitly approving the use of excessive force." *Id.* at 973. We found that the post-arrest complaint could support an inference that policymakers knew, or should have known of the officer's behavior, and, "because the complaints . . . came in a narrow period of time and were of a similar nature," they could also support an inference that policymakers knew of the officer's "propensity for violence when making arrests." *Id.*

The same is true of the evidence that was excluded by the District Court here. Forrest's complaint was filed days after his arrest, with a follow-up note not long after that. In addition, the complaints in this case also came in a narrow period of time and are of a similar nature. Indeed, the three related complaints are dated December 27, 2007, August 12, 2008, and August 26, 2008, which is less than two months removed from Forrest's arrest or, in the case of the first, may have pre-dated his arrest or was made less than six months after.[14] In terms of the nature of the incidents, the first

[14] The parties dispute this issue. The ambiguity arises because the document containing the testimony states that the "Date of Occurrence" is December 27, 2007, App. 236, but the

complaint contained allegations that Officers Stetser and Parry threw drugs on the floor and claimed that they belonged to the complainant. The second alleged that Officer Stetser was taking drugs from drug dealers and putting them on other people. And the third was that Officer Stetser slammed a minor onto his marked vehicle, falsely accused the minor of having drugs on his person, and threatened to arrest everyone inside the minor's residence.

This evidence clearly lends credence to the notion Camden was aware of related, concerning conduct by its officers and had not responded. It was therefore an abuse of discretion to exclude this evidence merely because it was not causally related to the incident involving Forrest.

*b. The excluded testimonies are highly relevant to Camden's investigative and disciplinary inadequacies, as well as the issue of deliberate indifference.*

The excluded testimonies consisted of Chief Thomson's statement that, when he became Chief, "the greatest weakness of [Camden] was a culture of apathy and lethargy," in which there was "no mechanism of accountability in place"; Supercession Executive Venegas's testimony that Camden failed to implement the NJAG 2006 report's recommendations, which included a recommendation to implement formal personnel evaluation and progressive discipline processes; and,

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questioner says the date on which the testimony is being given is December 1, 2009.

the Camden County Prosecutor's testimony that he received allegations in 2005 that Officer Stetser engaged in criminal activity and referred those allegations to Internal Affairs for investigation. We examine each, in turn.

The District Court's conclusion that Supercession Executive Venegas's testimony was not relevant is belied by the fact that it cited the crux of that testimony in its opinion denying Camden's summary judgment motion. Specifically, the opinion states,

> In August 2006, Arturo Venegas began his duties as Supercession Executive, and his consulting agreement implied that the Police Department lacked "clear standards of performance for the police department and its employees" and a "system of progressive discipline that holds both employees and their managers accountable for performance and behavior." While this evidence does not compel a finding of *Monell* liability, it *aids* Plaintiff in establishing genuine issue of material fact suitable for a jury.

App. 20 (emphasis added). Simply put, evidence that aids a plaintiff in establishing a genuine dispute of material fact more than meets the low threshold set by Rule 401.

In addition, the record is clear that both Chief Thomson and Supercession Executive Venegas were directly responsible for all of Camden Police, including Internal Affairs. Their testimony regarding Camden's across-the-board investigatory and disciplinary

deficiencies is thus highly relevant to establishing Camden's awareness of, and response to, those deficiencies.

Finally, the District Court excluded the Camden County Prosecutor's testimony that the office received allegations against Stetser in 2005 and referred those allegations to Internal Affairs. Internal Affairs's records do not reflect that referral or a subsequent investigation. *See* App. 392–93. The District Court deemed this evidence irrelevant because there was no evidence that Camden received the referral. Camden defends that ruling on the additional ground that the incident involved an informant who could not identify a picture of Officer Stetser.

This argument and the District Court's basis are beside the point. As Forrest points out, when viewed in conjunction with the fact that Internal Affairs had instances in which certain complaints were missing, a reasonable jury could construe this as further evidence of the inadequacy of Camden's investigatory regime.

*c. The excluded other-misconduct complaints further demonstrate Camden's investigative deficiencies and is also highly relevant to the issue of deliberate indifference.*

The excluded other-misconduct complaint was dated May 28, 2008, a few months prior to Forrest's experience. The complainant alleged that on May 1, 2008, he was approached by two officers when he came out of a Chinese restaurant after ordering food. Officer

Stetser approached and greeted the complainant in a nice manner, but then proceeded to "jump in his face all of a sudden (literally face to face) yelling, 'Motherfucker, you been watching me, motherfucker!' " App. 341. The officers then handcuffed and searched the complainant, who then proceeded to explain that he only came out for some food. The officers thereafter walked the complainant back to their police van and handed him a summons for loitering before releasing him.

The District Court excluded this evidence because "Well, it has nothing to do with planting drugs or [excessive force]," despite previously acknowledging that it contained an allegation that Officer Stetser "wrongfully arrested someone." App. 376–77. Further, while the complaint itself concerned the issuance of a wrongful ticket, the underlying conduct is analogous to what the officers exhibited with Forrest a few months later—that is, abruptly approaching unwitting civilians and flagrantly ignoring Fourth Amendment prohibitions. Thus, given the temporal proximity and the similarities between the incident and Forrest's own experience, the District Court's decision to exclude this evidence as irrelevant amounted to an abuse of discretion.

For the foregoing reasons, we conclude that the District Court abused its discretion when it excluded evidence that post-dated Forrest's arrest, albeit not specific to Internal Affairs or strictly related to other wrongdoing by Officers Stetser and Parry.

### C. Jury Instruction Errors

Forrest did not object to the instructions provided to the jury. The errors he alleges here have therefore not been preserved. Rule 51(d)(2) provides that we "may consider a plain error in the instructions that has not been preserved . . . if the error affects substantial rights." *Harvey v. Plains Tp. Police Dept.*, 635 F.3d 606, 609 (quoting Fed. R. Civ. P. 51(d)(2)). Under that standard, we reverse only if the error is "(1) fundamental and highly prejudicial or if the instructions are such that the jury is without adequate guidance on a fundamental question and (2) our refusal to consider the issue would result in a miscarriage of justice." *Id.* at 612 (quoting *Alexander v. Riga*, 208 F.3d 419, 426–27 (3d Cir. 2000)). We therefore proceed by first considering whether the District Court committed an error, and if so, whether the error meets the threshold for reversal.

The jury instructions errors are twofold: first, the instructions confuse the jury as to the legal requirements for each species of § 1983 liability, and, second, it narrows the jury's focus to only evidence pertaining to Internal Affairs and Officers Stetser and Parry.

Per the former, recall that the onus of demonstrating an official policy or custom only falls on a plaintiff whose municipal liability claim is predicated on an unconstitutional policy or custom, but that such a plaintiff need not show deliberate indifference on the part of the municipality. On the other hand, a plaintiff advancing a claim predicated on a municipality's failure or inadequacy in training, supervision, or otherwise is

spared from demonstrating the existence of an unconstitutional policy or custom but must make the deliberate indifference showing. To the contrary, the jury here was incorrectly instructed that, in order to find a municipal liability for inadequate supervision, it had to find that Camden adopted a policy or custom of inadequate supervision amounting to deliberate indifference to the fact that it would "obviously result in the violation of an individual's right to be free from unlawful arrest and excessive force." App. 463–64.

Indeed, in relevant part, the instructions begin by stating that the jury must find "that an official policy or custom of [Internal Affairs] caused the deprivation [of his constitutional rights]." App. 462. And, after presenting the requirements for determining whether a policy or custom existed, it frames Forrest's claim as "[Camden] adopted a policy of inadequate supervision and that this policy caused the violation of [Forrest's] right[s]. . . ." App. 463. It then immediately follows with instructions that the jury must also find that Internal Affairs failed to adequately supervise Officers Stetser and Parry, and that said supervision amounted to deliberate indifference. App. 463–64. The result is confusion as to whether the policy or custom finding is antecedent to reaching the deliberate indifference inquiry, or if the two are intertwined in some other way.

Per the second error, the instructions frame the case as solely pertaining to the adequacy of Internal Affairs's supervision of Officers Stetser and Parry, rather than the adequacy of Camden's supervision and

investigation of its officers in general. Specifically, the instructions state that,

> In order to hold the municipality liable for the violation of [Forrest's constitutional rights] . . . , you must find that [Forrest] has . . . proved by preponderance of the evidence . . . [that] [f]irst, [Internal Affairs] failed to adequately supervise *Stetser* and *Parry.* Second, [Internal Affairs]'s failure to supervise *Stetser* and *Parry* amounted to deliberate indifference. . . . Third, [Internal Affairs]'s failure to adequately supervise[ ] proximately cause[d] the violation . . .

App. 463–64 (emphasis added). Further, in instructing the jury on the elements of deliberate indifference, the Court again directed the jury to examine whether "[Internal Affairs] knew that Jason Stetser and Kevin Parry would confront a particular situation." *Id.*[15]

In contrast, the legal requirement for deliberate indifference is whether "(1) municipal policymakers know that *employees* will confront a particular situation; (2) the situation involves a difficult choice or a

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[15] Forrest argues that the District Court also instructed the jury on the failure-to-supervise theory that did not survive summary judgment, rather than the failure to investigate and discipline theory that did. But the District Court repeatedly referred to the surviving theory as one for failure to supervise, but only through Internal Affairs. *See* App. 463 ("[O]fficials within [Internal Affairs] are policymaking officials for the issue of whether [Camden] inadequately *supervised* its officials and *investigated* [I]nternal [A]ffairs complaints.") (emphasis added). We are therefore not persuaded that what Forrest asserts amounted to error.

history of employees mishandling; and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights." *Carter*, 181 F.3d at 357 (emphasis added). It is not narrowed to the particular employees in the case. Notably, as the record makes clear, the Chief of Police had ultimate authority over Camden's police department and Internal Affairs but is not properly considered within Internal Affairs. We therefore conclude that the instructions provided to the jury regarding Forrest's § 1983 claim constituted error.[16]

We also conclude that both errors meet the threshold for reversal. The District Court's instructions narrowed the universe of evidence that the jury could rely on to only evidence that pertained to Internal Affairs'

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[16] At argument, Camden made the case that the jury instructions were not erroneous because they were consistent with the Third Circuit's Model Jury Instructions. As we recently reiterated, despites [sic] their label, the Third Circuit Model Jury Instructions are not drafted by members of this Court, and are thus "neither law nor precedential." *See Robinson v. First State Cmty. Action Agency*, 920 F.3d 182, 189–90 (3d Cir. 2019). We nonetheless have observed that it is unlikely that "the use of a model jury instruction can constitute error." *Id.* at 190 (quoting *United States v. Petersen*, 622 F.3d 196, 208 (3d Cir. 2010)). To that effect, the instructions regarding inadequate training or supervision claims do not suggest that a showing of a policy or custom is required, but merely that a program was inadequate, that this inadequacy amounted to deliberate indifference, and proximately caused the violation complained of. *See* Third Circuit Model Civil Jury Instruction 4.6.7. Similarly, on deliberate indifference, the same set of instructions ask whether the entity at issue knew that "*employees* would confront a particular situation." *Id.* (emphasis added). For the reasons we have set forth, we are not persuaded that the District Court's instructions were consistent.

supervision of Officers Stetser and Parry, to the exclusion of its broader investigatory inadequacies. It also left the jury without guidance on the fundamental question of what it needed to find to conclude that Camden was or was not liable. Our failure to consider either error would result in a miscarriage of justice. We therefore consider both. As Part 3 of the jury verdict is the only aspect that concerned Camden's liability under § 1983, we will vacate that aspect of the verdict.

## III. CONCLUSION

For all of the above reasons, we will reverse the above-specified aspects of the District Court's summary judgment and evidentiary rulings, vacate part three of the jury verdict, and remand for further proceedings consistent with this opinion.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 16-4351

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ALANDA FORREST,

Appellant

v.

KEVIN PARRY, PHM; Camden City Police Officer; JASON STETSER, PHM; Camden City Police Officer; CITY OF CAMDEN; CITY OF CAMDEN DEPARTMENT OF PUBLIC SAFETY; WARREN FAULK; PAULA DOW; DEPARTMENT OF THE TREASURY, State of New Jersey; JOHN DOES I-IV

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On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. Action No. 1-09-cv-01555)
District Judge: Honorable Robert B. Kugler

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Argued November 15, 2018

Before: GREENAWAY, JR., BIBAS,
and FUENTES, *Circuit Judges*.

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JUDGMENT

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(Filed Jul. 10, 2019)

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was argued on November 15, 2018.

On consideration whereof, it is hereby ORDERED and ADJUDGED by this Court that (1) the District Court judgment entered April 18, 2016 is vacated in part, specifically as to part 3 of the jury verdict; (2) the District Court order entered October 20, 2015 is reversed in part; and (3) the District Court order entered March 15, 2016 is reversed in part and the matter is remanded to the District Court for further proceedings. All in accordance with the Opinion of this Court. Costs taxed against the Appellee.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: July 10, 2019

NOT FOR PUBLICATION (Doc. No. 138)

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CAMDEN VICINAGE**

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| ALANDA FORREST<br>Plaintiff,<br>v.<br>JON S. CORZINE, et. al.,<br>Defendants. | Civil No<br>09-1555 (RBK/JS)<br>**OPINION**<br>(Filed Oct. 20, 2015) |

**KUGLER**, United States District Judge:

This matter comes before the Court on Defendant City of Camden's ("the City") motion for summary judgment (Doc. No. 138) on Plaintiff Alanda Forrest's ("Plaintiff") claims as set forth in Plaintiff's Fourth Amended Complaint ("Complaint"). (Doc. No. 64.) For the reasons set forth herein, Defendant's Motion for Summary Judgment is granted in part and denied in part.

## I. FACTUAL BACKGROUND[1]

This matter relates to criminal charges brought against five former officers of the Camden Police Department ("CPD"). (Def.'s SMF ¶¶ 1, 12.) Three of those officers, Officers Jason Stetser ("Stetser"), Kevin Parry ("Parry"), and Dan Morris ("Morris") pleaded guilty to conspiracy to deprive individuals of their civil rights. (Id. ¶ 57.) Stetser's and Parry's convictions stemmed from criminal conduct in which they engaged while serving on the CPD, including filing false reports; conducting illegal searches of properties; providing informants with drugs, money, and food in exchange for information; planting drugs on individuals to create criminal liability; and lying under oath in front of grand juries, suppression hearings, and trials. (Id. ¶¶ 39, 41, 45.) During their time with the CPD, Stetser and Parry were always partnered with one another. Morris, Stetser and Parry's supervisor, knew of and encouraged their criminal behavior. (Id. ¶¶ 33, 51.) As a result of the investigation into Stetser and Parry, 214 criminal cases had judgments vacated, charges dismissed, or pending indictments forfeited. (Pl.'s SMF

[1] When considering a defendant's motion for summary judgment, the Court views the facts underlying the claims in the light most favorable to the non-moving party. See Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., Inc., 998 F.2d 1224, 1230 (3d Cir. 1993). Here, Defendant's Statement of Material Facts ("Def.'s SMF") is largely undisputed by Plaintiff. (See Pl.'s Resp. to Def.'s Statement of Facts ("Pl.'s SMF") ¶¶ 1-80, Doc. No. 144 (disputing only those facts alleged in paragraphs 11, 29, 32, 57, 52, 68).) Therefore, the Court will rely on Defendant's Statement of Undisputed Material facts, Plaintiff's Supplemental Statement of Material Facts, and the exhibits contained in the Record.

¶ 124.) Included among those 214 cases was Plaintiff's criminal drug conviction, the surrounding circumstances of which serve as the basis for the instant litigation. Those circumstances, taken in the light most favorable to Plaintiff, are as follows.

On July 1, 2008, Plaintiff was working for a housing contractor at 1263 Morton St., a residence in Camden, New Jersey. (Dep. of Alanda Forrest ("Forrest Dep."), Doc. 144, Ex. 64a 88:17-25.) Shortly after finishing work around 9:30 p.m., he walked across the street to speak to some acquaintances, namely Shahid Green ("Green") and a woman named "Hot Dog," both of whom were hanging out and drinking on the porch of 1270 Morton Street. (Id. 94:17-95:18.) Plaintiff, Green, and Hot Dog noticed a police car driving down the street and decided, given the time of night, to go inside. (Id. 96:1-9.) Sometime thereafter Plaintiff heard what he thought was a kick at the door. (Id. 103:12-15.) He went upstairs to talk to "Skeet," a resident of 1270 Morton St. who was in an upstairs bedroom, about the kick at the door. (Id. 103:32-104:4.)

Shortly thereafter, the bedroom door was kicked in. Plaintiff remembers being hit in the face but does not remember who hit him. (Id. 108:1-9.) He awoke to Parry holding him down and hitting him in the face. (Id. 108:18-22.) Stetser was apparently standing nearby watching. (Id. 12-16.) Parry handcuffed Plaintiff and dragged him down the stairs.[2] (Id. 119:11-19.) Plaintiff

[2] Plaintiff cannot remember if Stetser assisted Parry in dragging him down the stairs.

suffered a laceration to his ear, bruising to his face, and injuries to his knees.[3]

Plaintiff was then placed in the back of Morris's police vehicle. (Id. 122:23-123:5.) Parry allegedly told Plaintiff that whatever drugs were found in the house would be attributed to Plaintiff. (Id. 123:16-20.) Morris drove Plaintiff to a parking lot on Ferry Avenue and kept him there for approximately thirty minutes before Parry and Stetser arrived and drove him to the hospital for medical treatment. (Id.) Plaintiff received stitches for the laceration to his ear. According to Plaintiff, he reported to the nurses that his injuries were the result of a fall because Parry threatened to charge him with assault if he told the medical professionals the truth. (Id. ¶ 128.) After receiving treatment, Plaintiff was taken to the Camden County Correctional Facility. (Dep. of Alanda Forrest, Feb. 1, 2012 ("Forrest Dep.") Doc. 144, Ex. 64b at 144-47.)

Parry's major incident report written recounts the events leading to Plaintiff's arrest much differently. The report states that Plaintiff was arrested for possession and possession with intent to distribute after Parry and Stetser allegedly witnessed Plaintiff engaging in a hand-to-hand drug transaction on the porch of a residence located at 1270 Morton Street. (See Major Incident Report, Doc. 138, Ex. 24.) The report also states that Plaintiff initiated the physical altercation.

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[3] Plaintiff has offered the deposition of Lakesha Primus, a resident of 1270 Morton Street who was present when the events ensued. Her testimony largely supports Plaintiff's version of events. (Dep. of Lakesha Primus, Doc. 144, Exs. 44 & 44a, 44:20-54:20.)

Parry testified before a grand jury to this version of events and claimed that Plaintiff was in possession of 49 bags of a controlled dangerous substance. (Pl.'s SMF ¶ 133.) Parry has since conceded that he falsified the events as recorded in his report. (Def.'s SMF ¶ 64.) He and Stetser witnessed no hand-to-hand drug transaction but falsely recorded as much in order to create probable cause for Plaintiff's arrest.[4] (Id. ¶ 65.) Likewise, Plaintiff denies distributing drugs and resisting arrest. (Pl.'s SMF ¶ 129.)

Plaintiff complained to Internal Affairs regarding the events surrounding his arrest. Defendants attach a complaint filed by Plaintiff on July 21, 2008, shortly after Plaintiff's arrest. The Complaint alleges that Officer Parry and "his partner" caused Plaintiff to sustain a laceration to his ear requiring stitches, bruises on his knees, and pain in his neck and back. (Def.'s Br., Doc. 138, Ex. 33.)[5]

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[4] Parry testified in Bayard's and Figueroa's criminal proceedings that he falsified the reports. (Def.'s SMF ¶ 64 (citing the transcript of Parry's testimony).) However, in their depositions in preparation for the instant case, Stetser and Parry stated that neither remembers the particular events surrounding Plaintiff's arrest. (Def.'s SMF ¶ 62.)

[5] Plaintiff also attaches a letter sent to the Internal Affairs Division on September 25, 2008 reiterating his allegations of excessive force and an October 21, 2008 letter to then-Governor Corzine alleging that Stetser and Parry had fabricated charges against him. (Doc. 144, Ex. 43.) However, the Court did not consider these documents in rendering its decision because Plaintiff did not produce them during discovery. (See Decl. of Daniel Rybeck, Doc. No. 150, Ex. 8.)

Despite these complaints, Plaintiff pleaded guilty to possession and served eighteen months in a New Jersey state prison. (Forrest Dep. 165:17-23.) Plaintiff contends that he entered into the plea bargain at the request of his wife. (Forrest Dep. 159:12-25.) However, at his plea hearing, Plaintiff told the Court that he gave his plea freely and voluntarily and denied being coerced into entering his plea. (Forrest Dep. 160-61.)

Plaintiff's Complaint asserts multiple claims against the City of Camden,[6] including claims for negligence (Count VI) and conspiracy (Count VIII), and a Monell claim pursuant to 42 U.S.C. § 1983 (Count VII). Plaintiff's Monell claim alleges that the City of Camden was deliberately indifferent to the officers' "prior incidents of unjustified violations [and] aggressive behavior" and to "allegations of planting false evidence upon innocent victims." (Compl. ¶ 39.) This deliberate indifference, Plaintiff avers, was a "substantial contributing factor" in the officers' use of force and filing of false charges against the Plaintiff. (Id. ¶ 38.) Defendant filed the instant motion for summary judgment, arguing primarily that Plaintiff has demonstrated no policy or custom of Camden as required by Monell. Because these issues have been briefed by the parties, the Court proceeds to a discussion of the merits.

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[6] Plaintiff's Complaint names both the City of Camden and the City of Camden Department of Public Safety. However, the proper Defendant is the City of Camden. See Padilla v. Twp. of Cherry Hill, 110 Fed. App'x 272, 278 (3d Cir. 2004) ("[B]ecause the Police Department is merely an administrative arm of the local municipality, [it] is not a separate judicial entity.").

## II. DISCUSSION

### A. Standard for Summary Judgment

Summary judgment is appropriate where the Court is satisfied that "there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see Celotex Corp. v. Catrett, 477 U.S. 317, 330 (1986). A genuine dispute of material fact exists only if the evidence is such that a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When the Court weighs the evidence presented by the parties, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

The burden of establishing the nonexistence of a "genuine issue" is on the party moving for summary judgment. Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1080 (3d Cir. 1996). The moving party may satisfy its burden either by "produc[ing] evidence showing the absence of a genuine issue of material fact" or by "'showing'—that is, pointing out to the district court —that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325.

If the party seeking summary judgment makes this showing, it is left to the nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, to survive summary judgment, the nonmoving party must "make a showing sufficient to establish the

existence of [every] element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Furthermore, "[w]hen opposing summary judgment, the nonmovant may not rest upon mere allegations, but rather must 'identify those facts of record which would contradict the facts identified by the movant.'" Corliss v. Varner, 247 Fed. App'x. 353, 354 (3d Cir. 2007) (quoting Port Auth. of N.Y. and N.J. v. Affiliated FM Ins. Co., 311 F.3d 226, 233 (3d Cir. 2002)).

In deciding the merits of a party's motion for summary judgment, the Court's role is not to evaluate the evidence and decide the truth of the matter, but to determine whether there is a genuine issue for trial. Anderson, 477 U.S. at 249. Credibility determinations are the province of the fact finder, not the district court. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

### B. Municipal Liability under § 1983

Plaintiff suggests three theories of § 1983 liability.[7] First, Plaintiff appears to suggest that the City's Internal Affairs system was inadequate and provided no accountability for Stetser and Parry. (Pl.'s Br. 32, 34.) Second, Plaintiff alleges that the City's supervisory structure and inadequate monitoring system left Stetser and Parry unsupervised. (Id. ¶ 32.) Lastly,

[7] Because Plaintiff's brief cited little to no case law, the Court was largely left in the dark as to which recognized theories Plaintiff's case relies.

Plaintiff asserts that Stetser and Parry received inadequate training because training "about how to recognize and eradicate excessive force and misconduct" was necessary. (Id. 30-35.) The Court addresses each of Plaintiff's theories in turn.

It is axiomatic that a plaintiff may not hold a municipal entity liable under 42 U.S.C. § 1983 on a theory of respondeat superior. See Monell v. Dep't of Soc. Servs. of City of N.Y., 436 U.S. 658, 691 (1978). Rather, to establish a § 1983 municipal liability claim that will survive a motion for summary judgment, a plaintiff must offer evidence of a particular municipal policy or custom, "whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy," that contributed to Plaintiff's injury. See id. at 694.

After identifying a policy or custom, a plaintiff then must establish causation by showing how the municipality's deliberate conduct under that custom was the "moving force" behind the injury alleged. See Bd. of Cnty. Comm'rs. of Bryan Cnty, Okla. v. Brown, 520 U.S. 397, 404 (1997). Where the policy "concerns a failure to train or supervise municipal employees," this burden involves demonstrating "that the failure amounts to deliberate indifference to the rights of persons with whom those employees will come into contact." Thomas v. Cumberland Cnty, 749 F.3d 217, 222 (3d Cir. 2014) (internal quotation marks and citation omitted). "[T]he deficiency in training [must have] actually caused the constitutional violation." Id. (quoting City of Canton,

Ohio v. Harris, 489 U.S. 378, 391 (1989) (internal quotation marks omitted).

While the Supreme Court originally fashioned the "deliberate indifference" doctrine in the context of a city's alleged failure to properly train its police officers, the Third Circuit has since adopted this standard in other policy and custom situations. Beck v. City of Pittsburgh, 89 F.3d 966, 972 (3d Cir. 1996). In general, a municipality may be liable under § 1983 if it tolerates known illegal conduct by its employees. Id. In such circumstances, it can be said to have a custom that evidences deliberate indifference to the rights of its inhabitants if (1) policymakers were aware that municipal employees had deprived others of certain constitutional rights; (2) it failed to take precautions against future violations; and (3) this failure led, at least in part, to the plaintiff's suffering the same deprivation of rights. See id. (citing Bielevicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1990)).

**i. Failure to Supervise, Investigate, and Discipline**

Plaintiff asserts, albeit in not as precise of terms, that the City of Camden's Internal Affairs Department had such an extensive backlog of complaints that many were improperly investigated or went uninvestigated altogether. (See Pl.'s Br. 32, 34.) The pivotal case in this circuit for Plaintiff's theory is Beck v. City of Pittsburgh, 89 F.3d 966 (1996). There, the Third Circuit recognized that a § 1983 claim for damages against a

municipality could survive summary judgment where the plaintiff offered evidence suggesting that the municipality's chief law enforcement policymaker knew about and acquiesced in the use of excessive force by city police officers. 89 F.3d 966 (3d Cir. 1996). In Beck, the plaintiff offered multiple pieces of evidence in support of his claim, including a series of detailed excessive force complaints against the defendant police officer who had allegedly injured the plaintiff, none of which were sustained or resulted in disciplinary action. Beck, 89 F.3d at 969-70. The plaintiff also introduced testimony showing that the department treated each complaint against an officer as an independent event triggering no review of any previous unsustained complaints against the officer. Id. at 969. Lastly, the plaintiff offered an internal report acknowledging that the department had a problem with officers using excessive force. Id. at 970, 975. Accordingly, the Third Circuit panel reversed the trial court's grant of judgment as a matter of law in favor of the defendant municipality. Id. at 976.

Since the Beck decision, trial courts in this circuit have grappled with the issue of what type of evidence a plaintiff must adduce in support of a Monell municipal liability claim under § 1983 in order to survive summary judgment. For instance, statistical evidence alone, "isolated and without further context," generally may not justify a finding "that a municipal policy or custom authorizes or condones the unconstitutional acts of police officers." Merman v. City of Camden, 824 F. Supp. 2d 581, 591 (D.N.J. 2010) (citing Strauss v.

City of Chi., 760 F.2d 765, 768-69 (7th Cir. 1985)). Instead, if a plaintiff wishes to rely principally on statistics, she must also show why those prior incidents were wrongly decided and "how the misconduct in those cases is similar to that involved in the present action."[8] See Franks v. Cape May Cnty., No. 07-6005, 2010 WL 3614193, at *12 (D.N.J. Sept. 8, 2010).

In this case, when viewing the facts in the light most favorable to Plaintiff, the Court concludes that Plaintiff has met his burden and demonstrated a genuine issue of material fact. Plaintiff has offered statistical reports and testimony from Lt. Sosinavage, the Internal Affairs Director from 2004 to 2008, that the department was suffering from a significant backlog of complaints in the years leading up to Plaintiff's arrest. Sosinavage testified that the department in those years was investigating and closing only a tiny fraction of its excessive force complaints.[9] Of those complaints

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[8] One way to do this could be to show that the officer whom a plaintiff accuses of using excessive force has been the subject of multiple similar complaints in the past. See Beck, 89 F.3d at 975; see also Garcia v. City of Newark, No. 08-1725, 2011 WL 689616, at *3-5 (D.N.J. Feb. 16, 2011) (showing that the six individual defendants together accounted for more than 55 complaints for excessive force and false arrest in the 11 years prior to the incidents at issue). Alternatively, when such evidence against the particular officer is not available, a trial court in this District has found sufficient a plaintiff's submission of a sample of forty excessive force complaints from the relevant police department bearing similarities to her own case and arguably evidencing a tendency on the part of the Internal Affairs division to insulate officers from liability. Merman, 824 F. Supp. 2d at 593-94.

[9] For example, in 2004, there were 176 open excessive force cases, 76 of which were pending from 2003, and the department

investigated, an even smaller number were sustained. Indeed, from 2004 to 2008, the department sustained only one excessive force complaint. (Sosinavage Dep., Doc. No. 144, Ex. 48, 132:6-133:9.) The backlog seems to have been a recurring issue with the CPD's internal affairs department. A 2002 Report from New Jersey's Division of Criminal Justice advised that "[t]he failure to immediately address the complaint backlog and, over the longer term, ensure that the backlog does not reoccur on a regular basis, could lead one to conclude that the City of Camden and the police department are deliberately indifferent to the conduct of its police officers and the civil rights of its citizens."[10] (2002 Report at 45, Doc. 144, Ex. 38.) Although, standing alone, this is the type of statistical evidence that cannot support a finding of municipal liability under § 1983, see Merman, 824 F. Supp. 2d at 591, when coupled with Plaintiff's additional evidence, the Court finds it instructive.

Plaintiff also introduces internal affairs records showing that Stetser and Parry were the subjects of internal affairs complaints prior to Plaintiff's arrest. Internal Affairs files reveal that Stetser had six internal affairs complaints lodged against him between 2004 and July 2008—not including Plaintiff's—

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closed only eleven. Thus, 167 excessive force cases from 2003 and 2004 were still open in 2005. In total, there were 487 cases held over in the year 2004. (Dep. of John Sosinavage, Doc. No. 144, Ex. 48, 42:25-47:18.)

[10] The Court recognizes that this Report was written six years prior to Plaintiff's arrest. However, given CPD's uninterrupted backlog of civilian complaints, the Court finds it relevant.

including one for excessive force, one for improper arrest, and one for harassment/improper detainment. (Pl.'s Br., Doc. 144, Ex. 58a at 4 (showing Stetser's internal affairs "index card."); id., Ex. 57.) Parry was the subject of two internal affairs complaints during this time period, although notably, one does not appear on the "index card" in Parry's IA files.[11]

The Court recognizes that in many cases in which courts have denied summary judgment, plaintiffs have offered stronger evidence of consistently filed complaints than is offered here. See Beck, 89 F.3d at 983 (denying summary judgment where plaintiff introduced that the officer had five prior complaints filed against him in five years, all of which alleged similar misconduct); Garcia, 2011 WL 689616 at *3-5 (D.N.J. Feb. 16, 2011) (denying defendant municipality's motion for summary judgment on plaintiff's § 1983 claim when plaintiff presented evidence that the six individual defendants together accounted for more than 55 complaints for excessive force and false arrest in the 11 years prior to the incidents at issue); Merman, 824 F. Supp. at 593 (allowing the case proceed when plaintiff introduced, among other things, evidence that the Camden Police Department received ten civilian complaints alleging police brutality stemming from events surrounding Plaintiff's arrest). However, the Court

[11] Stetser and Parry also had three complaints filed against them after Plaintiff's July 1 arrest. However, because they were filed after Plaintiff's original excessive force complaint, the Court finds them irrelevant in determining whether the department should have known that Stetser and Parry were at risk of violating Plaintiff's civil rights. (See Pl.'s Br., Doc. 144, Exs. 55, 56, 59.)

does not find the number of complaints filed against the officers to be dispositive. Here, the allegations contained in the complaints and the thoroughness of the related investigations further influence the Court's decision.

For example, the first recorded excessive force complaint alleged against Stetser was "not sustained," which simply means than an allegation could not be proved or disproved at that time. (Sosinavage Dep., Doc. 144, Ex. 48, 30:7-10.) Thus, a factfinder could reasonably conclude that the "not sustained" complaints might actually represent evidence of prior constitutional violations. The "unfounded" complaint was filed on August 29, 2007, more than a year before Plaintiff's arrest, and contains allegations nearly identical to those Plaintiff now alleges and to which Stetser and Parry later admitted.[12] (Pl.'s Br. Ex. 58.) A disposition of "unfounded" means that the investigator determined that the reported incident "did not occur" and that the complainant was "lying more or less." (Sosinavage Dep. 30:11-15.) Yet, the investigation of Mr. Whitley's complaint appears to have been less than thorough. An Internal Affairs investigative memorandum indicates that the department interviewed no witnesses or even the officers. In fact, it appears the investigator made

[12] As far as the Court can tell, the "complaint" came in the form of a motion filed by Harold Whitley's attorney seeking the personnel records of Parry and Stetser. The complaint states that Stetser and Parry planted evidence on Whitley, whom they had arrested on drug charges. Whitley's counsel also relayed that two other individuals had alleged the same misconduct against Officer Stetser. (See Doc. 144, Ex. 58.)

his determination after examining only the major incident reports accompanying the arrests.[13] (Id.)

There is also evidence in the record that the department's internal operations were in disarray in the years leading up to Plaintiff's arrest. The Attorney General of New Jersey had directed the Camden County Prosecutor's Office to take over the management of the Camden Police Department. In August 2006, Arturo Venegas began his duties as Supercession Executive, and his consulting agreement implied that the Police Department lacked "clear standards of performance for the police department and its employees" and a "system of progressive discipline that holds both employees and their managers accountable for performance and behavior." (Consulting Agreement at 3 ¶ g, Doc. 144, Ex. 36.) While this evidence does not compel a finding of Monell liability, it aids Plaintiff in establishing genuine issue of material fact suitable for a jury.

Defendant argues that Plaintiff cannot establish a nexus because the Camden County Prosecutor's Officer ("CCPO") suspended the CPD's investigation of Stetser and Parry pending the CCPO's criminal investigation into the officers. (Def.'s Br. 21) However, based on the exhibits cited by Defendants, the CCPO did not take over the CPD's investigation until September 16,

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[13] The memorandum indicates that the IA investigator looked only at the major incident reports authored by the respective officers, after which the investigator found "no evidence that would substantiate any violations of Rules and Regulations or inappropriate behavior on the part of any officer involved." (Id.)

2008, more than two months after Plaintiff's arrest. (Def.'s Br. Ex. 29.)[14] The evidence on which Plaintiff relies questions the adequacy of the Internal Affairs investigations in the years leading up to Plaintiff's arrest. "Were a jury to credit [P]laintiff's proofs that the City inadequately investigated its officers' alleged use of excessive force and other constitutional violations and failed to properly supervise and discipline its officers, a reasonable fact-finder could, in turn, conclude that the City's action, or lack thereof, constituted deliberate indifference and proximately cause plaintiff's injuries." Merman, 824 F. Supp. 2d at 594. The causal link is not too tenuous, and therefore, the question whether the municipal policy or custom proximately caused the constitutional infringement should be left to the jury. Bielevicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1990). As such, the Court denies Defendant's Motion for Summary Judgment with respect to Plaintiff's Monell claim premised on his failure to investigate theory.

The Court's decision does not imply that the City's handling of civilian complaints was wholly improper or unfair. The Court simply finds that the Plaintiff has provided enough evidence to present his case to a jury. A jury is free to disagree with Plaintiff's theory and find that the City's internal affairs investigations were

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[14] The deposition of Mark Chase, an Assistant Prosecutor at the CCPO, reveals that the CCPO first learned of allegations against Stetser, Parry, and others in January 2008, but that the investigation was in the City of Camden's hands until September 2008. (Def.'s Br., Ex. 28, 54:1-8; 59:19-69:4.)

adequate and did not proximately cause Plaintiff's constitutional injury. The Court does not consider the merit of Plaintiff's claim or Plaintiff's ability to satisfy each element of liability.[15] The Court simply concludes that it cannot rule against Plaintiff's Monell claim against the City as a matter of law at this time.

### ii. **Failure to Supervise**

Plaintiff also alleges that the CPD's supervisory structure and generally inadequate supervision of its officers' day-to-day activities caused Plaintiff's constitutional injuries. (Pl.'s Br. ¶¶ 30, 32, 33.) The Court notes that Plaintiff cites no case law in support of its position and introduces no expert testimony to opine on the CPD's supervisory structure or monitoring equipment. Nonetheless, after considering the evidence on which Plaintiff relies, the Court finds the Plaintiff has not identified a genuine issue of material fact for trial on this theory. Plaintiff has not shown how the CPD's supervisory structure or its failure to equip its vehicles with monitoring capabilities would have prevented Stetser and Parry from engaging in criminal activity.

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[15] The Court also recognizes that Plaintiff does not have an expert to opine on the adequacy of CPD's Internal Affairs investigations. Although this fact may affect Plaintiff's ability to convince a jury, it is not a death knell at this stage. See Beck, 89 F.3d at 975-76 ("As for drawing inferences from the evidence regarding the adequacy of the investigatory process, we again agree with Beck that 'to require expert testimony to prove this fact is ridiculous. It is not beyond the ken of an average juror to assess what a reasonable municipal policymaker would have done with the information in this case.' ").

Moreover, there is also "not a single precedent which holds that a governmental unit has a constitutional duty to supply particular forms of equipment to police officers." Plakas v. Drinksi, 19 F.3d 1143, 1150 (7th Cir. 1994). In fact, Defendant's expert certified that the electronic monitoring of its officers' activities, instituted sometime after Plaintiff's arrest, "far exceeds the practices of law enforcement nationwide." (Def.'s Br. 5.) The causal link is simply too tenuous to withstand a motion for summary judgment.

**iii. Failure to Train**

Plaintiff asserts that "[t]he failure to train . . . Stetser and Parry was a deliberate indifference to the rights of persons" with whom the officers came into contact. (Pl.'s Br. 34.) Specifically, he first argues that the failure to train was "obvious" given the way tests were administered and graded. (Id. ¶ 35.) Plaintiff also argues it was necessary for the CPD to periodically publish to officers its "use of force policy and the code of conduct" and provide effective training to officers and supervisors "about how to recognize and eradicate excessive force and misconduct." (Id. at 35.)

In resolving the issue of a city's liability for failure to train, as Plaintiff alleges here, "the focus must be on adequacy of the training program in relation to the tasks the particular officers must perform." City of Canton, 489 U.S. at 390 (1989). The identified deficiency in a city's training program must also be closely related to the plaintiff's constitutional injury because

"[i]n virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident." Id. at 392 (citation omitted). Thus, Plaintiff's claim yields liability against the City of Camden only where Plaintiff can show that the City's failure to train constituted deliberate indifference to the constitutional rights of its inhabitants.

Plaintiff has not adequately demonstrated that the training Parry and Stetser received was so deficient as to reflect the City of Camden's deliberate indifference to Plaintiff's constitutional rights. Plaintiff admits that Parry and Stetser received training on, inter alia, morals and ethics, the use of force, and arrests. (Def.'s SMF ¶ 3, 13.) Plaintiff also concedes that both Parry and Stetser knew that their clandestine conduct, namely planting drugs on individuals, falsifying police reports, fabricating arrests, etc., were criminal acts not in accordance with the department's policies. (Id. ¶¶ 17-22, 27.)

Instead, Plaintiff simply asserts that the testing procedures and training were so obviously inadequate as to constitute deliberate indifference. However, Plaintiff has not sufficiently shown how the City's testing procedures caused Stetser and Parry to engage in blatantly criminal conduct. The same can be said about Plaintiff's contention that the CPD should have more frequently published its excessive force policies. The Court finds nothing in the record to connect Stetser's and Parry's flagrantly criminal conduct to the City's

failure to more frequently publish its excessive force policies. Indeed, as Plaintiff concedes, it appears to the Court that Stetser and Parry engaged in criminal conduct in spite of their training and not because of it. (See Def.'s SMF ¶ 50.) Accordingly, Defendants motion is granted with respect to Plaintiff's Monell claim premised on the City's failure to train Stetser and Parry.

### C. Negligence

Count VI of Plaintiff's Complaint alleges that the City of Camden was negligent "in failing to adequately supervise or monitor the actions of police officers who were involved in the incident, including without limitation, Parry and Stetser." (Compl. ¶ 33.) Defendants contend that Count VI is simply another iteration of Plaintiff's Monell claim and therefore compels summary judgment because "respondeat superior or vicarious liability will not attach against a municipal defendant." See Def.'s Br. at 15. However, although not mentioning the tort by name, Plaintiff appears to state a cause of action under New Jersey law for the tort of negligent hiring, supervision, and retention. See Hottenstein v. City of Sea Isle City, 977 F. Supp. 2d 353, 369 (D.N.J. 2013) (identifying the elements of this tort action). New Jersey law allows plaintiffs to assert claims against municipalities for negligent supervision of their employees. Clemons v. City of Trenton, No. 10-cv-4577, 2011 WL 194606, at *1 (D.N.J. Jan. 20, 2011) (citing Hoag v. Brown, 935 A.2d 1218 (N.J. Super. Ct. App. Div. 2007)). Moreover, "a claim based on negligent hiring or negligent supervision is separate from a

claim based on respondeat superior." Hoag, 935 A.2d at 1230. The Court finds that Plaintiff has provided enough evidence to withstand Defendant's Motion for Summary Judgment on Plaintiff's theory that the internal affairs department provided inadequate supervision of its officers.

### D. Conspiracy

In Count VIII, Plaintiff alleges a conspiracy claim against the City of Camden. Plaintiff's conspiracy claim asserts that Parry and Stetser conspired amongst themselves to deprive Plaintiff and others of their constitutional rights.[16] (Fourth Amended Compl. ¶¶ 45-52.) Although Defendant did not move for summary judgment in its initial brief, district courts have the power to grant summary judgment sua sponte when appropriate. See Powell v. Beard, 288 Fed. App'x. 7, 8-9 (3d Cir. 2008).

As explained *infra*, it is well settled that a municipality is liable under § 1983 only where a municipal policy or custom caused the constitutional violation at issue. Monell, 436 U.S. at 691. Thus, the City of Camden is not liable for a conspiracy between Parry and Stetser unless an official policy or custom underlies the conspiracy. See Weiland v. Palm Beach Cnty. Sheriff's Office, 792 F.3d 1313, 1330 (11th Cir. 2015) ("While this Court has never had occasion to hold that a conspiracy

[16] Although Plaintiff does not specifically identify the cause of action, the court interprets Plaintiff's complaint to assert a cause of action under 42 U.S.C. § 1985(3).

claim against a municipality must include the existence of a policy or custom underlying the conspiracy, that has to be so.") Holding otherwise would subject the City of Camden to § 1983 liability on a theory of respondeat superior, which the courts have long held is prohibited. Here, the claim hinges liability on the theory that the City "should have been aware of [the officers'] conspiracy." (Compl. ¶ 51.) Because a municipal entity cannot be found liable solely on a theory of respondeat superior, the Court grants Defendants motion for summary judgment with respect to Count VII [sic] of the Complaint.

## III. CONCLUSION

The Court concludes that summary judgment is unwarranted on Plaintiff's § 1983 claim and negligent supervision claim because material disputes of fact still exist. An appropriate order shall enter today.

Dated: 10/20/2015

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

NOT FOR PUBLICATION (Doc. No. 138)

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CAMDEN VICINAGE**

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|---|---|
| ALANDA FORREST<br>Plaintiff,<br>v.<br>JON S. CORZINE, et. al.,<br>Defendants. | Civil No<br>09-1555 (RBK/JS)<br>**ORDER**<br>(Filed Oct. 20, 2015) |

**KUGLER**, United States District Judge:

**THIS MATTER** having come before the Court on Defendant City of Camden's ("the City") motion for summary judgment (Doc. No. 138) on Plaintiff Alanda Forrest's ("Plaintiff") claims as set forth in Plaintiff's Fourth Amended Complaint ("Complaint") (Doc. No. 64.); and the Court having considered the moving papers; and for the reasons expressed in this Court's Opinion issued today;

**IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED** as to Count XIII (Conspiracy);

**IT IS HEREBY FURTHER ORDERED** that Defendant's Motion for Summary Judgment is **DENIED** as to Counts VI (Negligent Supervision) and Counts VII (Monell liability pursuant to 42 U.S.C. § 1983). With respect to Count VII, Plaintiff may proceed on his

theory that the City's Internal Affairs Investigations were inadequate. (See Op. 8–13.).

Dated: 10/20/2015

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

NOT FOR PUBLICATION (Doc. Nos. 164–177)

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CAMDEN VICINAGE**

| | |
|---|---|
| ALANDA FORREST<br>Plaintiff,<br>v.<br>CITY OF CAMDEN<br>Defendants. | Civil No 09-1555 (RBK/JS)<br>**ORDER**<br>(Filed Mar. 15, 2016) |

**KUGLER**, United States District Judge:

**THIS MATTER** having come before the Court on the motions in limine of Plaintiff Alanda Forrest ("Plaintiff") and Defendant City of Camden ("Defendant"); and the Court having considered the moving papers; and for the reasons expressed at the hearing held on March 14, 2016;

**IT IS HEREBY ORDERED** that Defendant's motion to exclude evidence irrelevant to Plaintiff's claim (Doc. No. 164) is **GRANTED** with respect to (1) Sgt. Dan Morris's history of excessive force complaints; (2) Chief John Scott Thomson's testimony; (3) the internal affairs ("IA") investigation of Plaintiff's IA Complaint he made after his arrest; (4) the accreditation of the CPD police force; (5) the lack of IA reports in personnel files, (6) training on the use of force, (7) the failed sting operation; and (8) Sgt. Wysocki's

testimony on (a) the lack of communication between supervisors and officers, (b) random patrol, (c) random checks conducted on June 23, 2009, and (d) falsification of reports since May 2009. Defendant's motion is **DENIED** with respect to Joseph Wysocki's testimony regarding the 400 open internal affairs complaints.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar the testimony of Arturo Venegas (Doc. No. 165) is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar the testimony of internal affairs records (Doc. No. 166) is **GRANTED** with respect to Complaint Nos. 08-295, 08-301, 08-137, and 08-222. Defendant's motion is **DENIED** with respect to Complaint no. 07-211 and the statistical evidence on the IA department.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar the testimony of Benjamin Vautier (Doc. No. 167) is **DENIED**.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar the testimony of Christine Tucker (Doc. No. 168) is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar testimony of Kevin Blevins (Doc. No. 169) is **DENIED WITHOUT PREJUDICE**.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar the testimony of Mark Chase regarding a 2005 investigation involving Jason Stetser (Doc. No. 170) is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to offset any future jury verdict by Plaintiff's prior superior court settlement (Doc. No. 171) is **DENIED WITHOUT PREJUDICE** pending the outcome of trial.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar Plaintiff from testifying as to medical diagnoses (Doc. No. 176) is **DENIED**.

**IT IS HEREBY FURTHER ORDERED** that Defendant's motion to bar the testimony of Edward Hargis (Doc. No. 177) regarding the recommendations of the Blue Ribbon Panel is **DENIED**. Edward Hargis is permitted to testify to the relevant portions of the recommendations, namely the portions concerning the lack of oversight and supervision of officers.

**IT IS HEREBY FURTHER ORDERED** that Plaintiff's motion to preclude the expert testimony and report of John T. Ryan ("Mr. Ryan") (Doc. No. 172) is **DENIED**. Defendants are permitted to provide the Court and Plaintiff with a supplemental report of Mr. Ryan and make Mr. Ryan available to Plaintiff for a pre-trial deposition at the cost of Defendant.

**IT IS HEREBY FURTHER ORDERED** that Plaintiff's motion to preclude testimony regarding the training of Jason Stetser and Kevin Parry (Doc. No. 173) is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Plaintiff's motion to bar evidence of Plaintiff's prior

criminal background (Doc. No. 175) is **DENIED WITHOUT PREJUDICE**.

**IT IS HEREBY FURTHER ORDERED** that for the reasons expressed on the Record at the hearing held on March 14, 2016, Plaintiff's claims against Defendants Kevin Parry and Jason Stetser are **DISMISSED**.

Dated: 03/15/2016

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 16-4351

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ALANDA FORREST,

Appellant

v.

KEVIN PARRY, PHM; Camden City Police Officer; JASON STETSER, PHM; Camden City Police Officer; CITY OF CAMDEN; CITY OF CAMDEN DEPARTMENT OF PUBLIC SAFETY; WARREN FAULK; PAULA DOW; DEPARTMENT OF THE TREASURY, State of New Jersey; JOHN DOES I-IV

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Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and FUENTES,* *Circuit Judges*.

(Filed Aug. 6, 2019)

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and

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* Judge Fuentes's vote is limited to panel rehearing only.

a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Joseph A. Greenway, Jr.
Circuit Judge

Dated: August 6, 2019
Lmr/cc: Elizabeth A. Rose
John C. Eastlack, Jr.
Georgios Farmakis
Lilia Londar
Daniel E. Rybeck

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

| | |
|---|---|
| **ALANDA FORREST,**<br>**Plaintiff,**<br>**-vs-**<br>**CITY OF CAMDEN; CITY OF CAMDEN DEPARTMENT OF PUBLIC SAFETY; CAMDEN CITY POLICE OFFICER KEVIN PARRY; CAMDEN CITY POLICE OFFICER JASON STETSER; JOHN DOES I-IV.**<br>**Defendants.** | **CIVIL ACTION NUMBER:**<br>**09-1555** |

Mitchell H. Cohen United States Courthouse
One Jon F. Gerry Plaza
Camden, New Jersey 08101
March 14, 2016

**BEFORE:**

**THE HONORABLE ROBERT B. KUGLER**
**UNITED STATES DISTRICT JUDGE**

**APPEARANCES:**

BEGELMAN ORLOW & MELLETZ
BY: PAUL R. MELLETZ, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

WEIR & PARTNERSHIPS LLP
BY: JOHN C. EASTLACK, JR.
DANIEL E. RYBECK, ESQUIRE
ATTORNEYS FOR DEFENDANTS

[2] (Open Court)

THE DEPUTY COURT CLERK: All rise.

THE COURT: Good afternoon. Have a seat.

MR. MELLETZ: Good afternoon.

MR. EASTLACK: Good afternoon, Your Honor.

THE COURT: All right. Let's start with the appearances of counsel. We'll start with Mr. Melletz for the plaintiff, please.

(See appearances on the cover page)

THE COURT: I figure you must be Mr. Rybeck. We have a number of in limine motions to go over. And then I want to talk about the trial and the logistics of the trial.

Okay, we will start, I'm going to start with the order in which they were filed on the docket. And the first is number 164, which is defendant's motion to bar evidence unrelated to the Monell claim. The opposition is document number 190.

Now, there are no training claims left in the case. This is the only claim left in the case, the failure to supervise through the Internal Affairs process. It's a little difficult to decide some of these in limine motions because so much is depending on the context of the motion, and without there being a trial, it's difficult. But defendant has listed beginning at page four of its brief all of which appear on the Joint Final Pretrial Order

that they think it should be [3] barred. So let's talk about them.

One of the issues I want to talk about is why, Mr. Melletz, these do not, many of these do not qualify as subsequent remedial measures under 407.

MR. MELLETZ: Yes, Your Honor. The reason is that we contend we're not seeking to do it for that purpose, but to show the culture and problems that the supervision of the Police Department had, and that there could have been some of these things taken care of if they had a better organization of it. And in the context of the culture, for example, the officers were not having to indicate where they were. There was no way of tracing where they were at times, which goes to the supervision.

THE COURT: Well, it was in their logs. The question is whether their logs were accurate. Now they have a system electronically where they can be traced throughout the city. But that's a subsequent measure, was it not? That was adopted after your client had been arrested.

MR. MELLETZ: It was true, your Honor, that was adopted after he was being arrested.

THE COURT: Don't you want to show they should have done that before, that that would be good police practices they should have done before?

MR. MELLETZ: Yes, your Honor. And, but at the same time, the reports from the Attorney General's office had [4] various recommendations, not as specific

as, well, do this and do that, but in terms of, well, there should be better control over them. Over the officers.

THE COURT: But you're acknowledging that the new measures permit the City supervisors to exercise better control over the officers, correct?

MR. MELLETZ: Yes.

THE COURT: So that's a subsequent remedial measure. Isn't that protected under Rule 407? You're using it to show that the measures they used to have were inadequate under the law. But 407 says you can't do that, doesn't it?

MR. MELLETZ: Yes, your Honor, it does. But what I'm indicating, your Honor, is we're not saying that we want to use it for that purpose, but to – as showing that the people were not able to be supervised at the same time, because there just wasn't any ability or interest to supervise them. They just were taking their logs.

THE COURT: Well, that's not the point you raise in your brief. You raised in your brief, you're saying you want to be of the exceptions under 407 to show feasibility, and you want to use it to show feasibility, that's what your brief argues. And my question to you is where does the defendant ever argue it's not feasible to have done these things?

MR. MELLETZ: Well, the defendant, I believe his expert report indicates that there was no necessity for all [5] this money to be spent, and it was not a standard for some of these measures to be taken.

THE COURT: Well, he says that the measures that were being taken met the Attorney General standards for Internal Affairs and all that. We'll get to that because that's a subject of another point of your motion. But the defendant, as I understand it, has never raised the defense that it was not feasible to institute these kinds of things, such as the automatic vehicle location, the real time tactical operation information center, the video camera in the sky, the Shot Spotter, the microphones, the Guardian system, things of that nature. I've never seen a defendant say these were not feasible at the time.

MR. MELLETZ: That's correct, your Honor.

THE COURT: Well, don't you have a problem then, under 407?

MR. MELLETZ: Yes, your Honor. But my concern is that some of the items, not the shots or the being able to find shots going on, but the idea of a system that they could be better supervised by location and communication is where we're seeking or concentrating on.

THE COURT: All right. Well, let's talk about Sergeant Morris' Internal Affairs complaints, complaints against Sergeant Morris. I'm not sure what that's got to do – first of all, how is that relevant to your claim that [6] the City failed through IA to adequately supervise Parry and Stetzer?

MR. MELLETZ: Well, if the – their immediate supervisor had a history in the past of problems

concerning excessive force, then it would indicate that he's not going to be a proper supervisor for that type of problem, in his mindset. And that's where we're going.

THE COURT: But the claim that remains is the Internal Affairs. What does the fact that, assuming it's a fact, that there are Internal Affairs complaints against Sergeant Morris in the past got to do with what Internal Affairs was doing with Stetzer and Parry? Stetzer and Parry violated your client's rights.

MR. MELLETZ: Yes.

THE COURT: What do the complaints against Morris have to do with what steps Internal Affairs was taking against Stetzer and Parry?

MR. MELLETZ: That, in terms of Internal Affairs, nothing, your Honor.

THE COURT: How is it even relevant under Rule 401? Forget about 403 at the moment, how is it even relevant under 401 that there have been complaints? And I don't know any details about these complaints against Sergeant Morris.

MR. MELLETZ: The only contention that we have, your Honor, is that if Sergeant Morris had in the past been using [7] excessive force himself, then he was not going to be going out and looking for his people, Parry and Stetzer, to be – whether they were doing excessive force. And that is strictly our argument, your Honor.

THE COURT: Well, is there any evidence that Morris knew that there wouldn't be any consequences to Parry and Stetzer if there were complaints against Parry and Stetzer for use of excessive force?

MR. MELLETZ: Well, the only connection we have, your Honor, is – with Morris is that our client indicates that he was taken in the car by Morris, kept in a parking lot for about half an hour when he needed medical attention, and then taken to a hospital. And he was obviously bleeding and had been injured at that time.

Now, I agree that Morris did not physically see the beating, he came immediately thereafter while it was still on the scene.

THE COURT: Well, if you're suggesting that Morris violated your client's rights, you should have sued him, shouldn't you?

MR. MELLETZ: Yes, your Honor. And we did not.

THE COURT: All right. Well, I'm going to grant the motion as to the past complaints against Morris for excessive force, and I'm going to grant the motion as to paragraph 7 through 9 of the Pretrial Order which has to do with the [8] microphones, the video camera, the automatic vehicle location and things of that nature.

As to paragraph 6 of the Pretrial Order, these are, just so the record is clear, these are part three of the Plaintiff's contested facts beginning on page two. Paragraph 6, John Scott Thomson became Chief of Police on August 1st, 2008. He identified the greatest

weakness of the Camden Police Department when he became Chief to be the culture of apathy and lethargy. There was no mechanism of accountability in place, there was no baseline standard – I'm not even sure what that means. What's it got to do with Internal Affairs?

MR. MELLETZ: Again, your Honor, that Internal Affairs is part of the whole system in the police department, and that this culture of apathy and lethargy and no mechanism of accountability in place, no baseline standard, would have included the Internal Affairs.

THE COURT: Where does it say that? Where does the Chief say that there was a problem in Internal Affairs?

MR. MELLETZ: He did not say it, your Honor, in this area. He would be called as a witness is my intention to discuss that with him.

THE COURT: Well, okay. I mean he can testify about Internal Affairs, I guess. But your paragraph number 6 really isn't relevant to the issues in the case. So I'll grant the motion as to that.

[9] Now, I'm not sure where this is, but in defendant's brief, page five, you have a number 3. Plaintiff complained to CPD IAD concerning his arrest, and plaintiff claims no investigation was undertaken by CPD IAD of his complaint.

What exactly – I know, I mean you're alleging that your client complained to IAD, Internal Affairs, correct?

MR. MELLETZ: Yes.

THE COURT: What is your understanding of what happened to that complaint?

MR. MELLETZ: My understanding is, your Honor, that it sat for a period of time. There was some investigation, but nothing of any real substance, and that basically was it. And my client would write letters.

THE COURT: Well, was it ever closed with any finding?

MR. MELLETZ: No. I don't believe there was.

THE COURT: So, it remains pending to this day; is that correct?

MR. MELLETZ: Technically, I suppose so.

THE COURT: Okay. Mr. Eastlack.

MR. EASTLACK: Yes. Judge, with regard to that, in the New Jersey Attorney General Guidelines it indicates that if there is – I mean he was interviewed, and I think it's acknowledged by the plaintiff. He's not saying he wasn't interviewed, he's not saying there wasn't any investigation [10] done. But once that matter morphed into a criminal investigation, that essentially is stayed. And that under 48:14-147, which is the statute that governs how municipal police officers are investigated in the State, there's a 45-day rule. There

are a litany of cases that indicate that – because if you have sufficient information to charge, you're supposed to do it within 45 days. But if there is then a criminal law investigation as to the allegations that are made, which ultimately at some point there was an investigation into Stetzer, then that investigation gets pulled. In fact he was prosecuted in this case and there was a guilty finding following a Federal indictment. I mean he's gone, he's not a police officer.

I mean, I would agree the City of Camden, if nothing was done with regard to either Mr. Stetzer or Mr. Parry with regard to their actions, that would be an issue. But here you have a criminal law prosecution, they're no longer police officers. I mean it's well beyond just even an Internal Affairs investigation. They're done. So, that's the – getting into, you know, how the investigation of this matter may have – well, first of all, that doesn't impact upon the alleged assault that took place upon the plaintiff here. I mean the assault took place. And the investigation, you know, prior to that of Mr. Parry's actions, if there had been complaints by the plaintiff that he was being harassed or [11] assaulted by either of these two officers and the police department did nothing, then I think the plaintiff's argument may hold some water.

But here, I mean, if the complaint was made about the very incident that he comes to court to complain about there wouldn't have been a causal connection or relationship to the fact that he engaged in this activity, and as a result was assaulted. There's a lack of causal connection with regard to the incident itself, but then

the plaintiff's claiming that the reason why it's relevant is because – I guess it wasn't really articulated like this in the brief, but that, well, since it's now – it's remained open or it wasn't further investigated beyond what happened, then that somehow impacts upon his claim. And I don't believe that it does, I don't believe it could establish.

THE COURT: I think what the plaintiff is saying in their brief, in Mr. Melletz's brief, is that there's the lag, a normal lag of time between the day he was arrested and in pleading guilty and then going to jail. And Mr. Melletz's point is had a proper investigation been done, the city would have known early on that this was bogus and could have prevented his incarceration long before they released him from jail.

MR. EASTLACK: Well, once again, and this is – you know, the City I think appropriately followed the New Jersey [12] Attorney General Guidelines. The City has an obligation under those guidelines to turn over any allegation that is criminal law in nature to the prosecutor's office. And that was done in this case. Once the prosecutor's office begins to investigate, the local authorities – and there's a lot of deposition testimony about this in this case from other individuals, Mark Chase being one of them, and others that were taken in this case, that talk about that process. And once the prosecutor's office, that was the initial entity that had it, then it went to the Attorney General's office and the U.S. Attorney's office got involved, that forecloses the local authorities from investigating that. It says it right in the guidelines themselves, it goes to

a higher level of authority when there's criminal law allegations made. And so the Camden City Police Department didn't even have the right to, without authority and approval from the prosecutor's office, and frankly remanding it back, saying we're not going to take any action, here, you take it back, they don't have the authority to begin their investigation on that.

THE COURT: All right, thank you.

Mr. Melletz, there is no – I'm having trouble seeing the causal connection between what happened after the arrest with the Internal Affairs investigation and the violation of your client's rights by Stetzer and Parry. What's the relationship?

[13] MR. MELLETZ: Well, your Honor, the point that we're making is that it shows that again the Internal Affairs people were not supervising Stetzer and going into an investigation of them, they just were doing nothing. The letter from the Camden County Prosecutor's Office, Mr. Chase, didn't come until months later. And that their only requirement was at that point not to specifically talk, at that point talk to Parry or Stetzer. It did not mean that they could not have put them on desk duty. Now, as to –

THE COURT: It wouldn't have helped your client.

MR. MELLETZ: That's true, but an investigation, other than talking to them or starting to look around may have been able to show that, gee, maybe

there is something to all these complaints, including Mr. Forrest.

THE COURT: But that still doesn't help your client. He's already been arrested by this point.

MR. MELLETZ: Yes, but he hasn't gotten out. He's still in jail.

THE COURT: Because he pled guilty. But be that as it may, I'm going to grant the motion as to the investigation based upon the complaint by the plaintiff subsequent to his arrest. I just don't see the relevance, there's no evidential value whatsoever as to why and when and how his rights were violated.

Now, you also in paragraph 18 said the Camden Police [14] Department in 2008 was not accredited. What does that mean?

MR. MELLETZ: That they were not an accredited organization, they did not get, did not – and for years they did not seek to become accredited. Doesn't mean that they can't have a police department, but it is just a step to show that they have tried to improve themselves in terms of their management responsibilities.

THE COURT: Accredited by whom?

MR. MELLETZ: There is an organization that accredits them, I could not tell you off the top of my head, but there is an organization that they could apply for accreditation.

THE COURT: Well, what's the legal impact of them being accredited or not being accredited?

MR. MELLETZ: It is just again showing that they were not taking into account possible management, for example, the organization – the manuals and procedures and protocols of the Camden Police Department at that time had been taken just completely whole by copying the Los Angeles Police Department in 1973 procedures and policies. Then in 1993 they added a few more from another police department. But if they had been working to become accredited, they would have developed their own policies and procedures.

THE COURT: Says who? And why?

MR. MELLETZ: I believe –

THE COURT: Why weren't they, their own policies and [15] procedures, even if they got them from someone else?

MR. MELLETZ: To narrow it down to make it applicable to their organization and their city.

THE COURT: Had they been accredited, would the Internal Affairs procedures be any different?

MR. MELLETZ: I cannot say that specifically.

THE COURT: Then I don't understand how it could possibly be relevant. You can't even tell me what the name of the organization is, you can't tell me it has any legal significance whatsoever to be accredited or not be accredited, and you can't tell me whether it

would have affected the Internal Affairs procedures. So I can't see the relevance of being accredited or not. I'll grant the motion as to that.

MR. MELLETZ: Okay.

THE COURT: The use of force reports not put in personnel file, I assume that means files with an S. They were kept in the Internal Affairs office. I don't understand why that's relevant. How did that prevent your client's rights or anybody's rights from being violated?

MR. MELLETZ: If a copy was in the individual files of the officers, there would be a showing of what they've had problems in the past. And that would be a red flag procedure.

THE COURT: But there is a copy, somebody's keeping a copy in Internal Affairs, right?

MR. MELLETZ: Yes.

[16] THE COURT: So if you go to Internal Affairs and you say, in 2008 when your client was arrested, I want to see all the complaints about Stetzer, would you be able to find them?

MR. MELLETZ: Hopefully. I don't know.

THE COURT: So how does it help to prevent the violations of citizen rights to have another copy in another file somewhere?

MR. MELLETZ: Make sure that if someone is looking up at Stetzer or Parry they have it, not depend

upon them going and taking another step to go look someplace else in the office.

THE COURT: Well, why wouldn't your first thought be to go to Internal Affairs to see what other complaints there were against them? That's where the records are, right?

MR. MELLETZ: Yes.

THE COURT: If the Chief was concerned about this, the Chief at the time was concerned about this, wouldn't it be normal for him or her to go to Internal Affairs and say, hey, what have you got on Stetzer, what have you got on Parry,

MR. MELLETZ: And look every place to see what you have, yes.

THE COURT: I don't know what you'd look, because I don't know how they kept the records. So why then would you then go to their – I don't know how many files they even keep on officers. Why would you go to some other personnel file [17] then, when everything is centralized in Internal Affairs?

MR. MELLETZ: The only thing I would indicate, your Honor, is that it's assuming that someone's going to take an extra step, and that's –

THE COURT: You're assuming the extra step is to go to Internal Affairs. I'm asking why isn't the extra step then to go to personnel files. The first initial step would be go to Internal Affairs, if they've got the files, then whatever the evil is you to seek to rectify by

having an ability to gather all the information about a particular police officer doesn't exist because it's there, correct?

MR. MELLETZ: Yes.

THE COURT: I'll grant the motion as to that, the use of force reports.

Training is out of the case.

Now, there was a sting operation three months after your client was arrested. Apparently it was unsuccessful. What happened?

MR. MELLETZ: Why was it unsuccessful?

THE COURT: Why was the sting operation unsuccessful?

MR. MELLETZ: Because the police officers realized it for a number of reasons.

THE COURT: Which police officers, Stetzer and Parry?

MR. MELLETZ: Yes.

THE COURT: Okay.

[18] MR. MELLETZ: What the sting operation was was Stetzer and Parry were told that there was a van, suspicious van in a particular location and they were sent to go there. That van was there, at first they didn't want to go there but they were instructed again to go there. They went there, first thing that they do is they look at the registration to see who it's registered

to, the Gloucester Township Police Department. That, I would submit, is a red flag. But in any event, they look inside, they find that there is money in there, and it's all brand new hundred dollars [sic] bills right from a bank, which doesn't seem logical that drug dealers are going to be having that in their possession there. The drugs, as I understand it, supposed drugs, were not real drugs.

Then in addition to that, they heard a noise and they looked up and they saw that there was a camera taking pictures of them, a very loud camera with click, click, click, which they heard. They immediately then went to this building where the camera was, which was right next to the alley, and tried to get in. The doors were locked. That's where the prosecutor's officers were and the Internal Affairs people. And that those people inside called the police, their contact at the police department to get these, Parry and Stetzer out of there. So they reported to them, hey, there's – I believe they said it was a shooting. But they reported to them, and you are needed someplace else, go now, to get them from [19] arresting the people who were trying to catch them. That was the sting operation.

THE COURT: This is three months after your client's arrest, so what has it got to do with Internal Affairs and preventing the violation of your client's rights?

MR. MELLETZ: What it has to do, your Honor, is that it shows that the Internal Affairs could have done something earlier. The argument is well, gee, we can't

do anything because it's in the prosecutor's hands. Part of this was part of the prosecutor's office that had worked and planned with it, but some sort of sting operation could have been tried earlier. And I believe that this, after this there wasn't any sting operation tried at all. And the police officers were still never taken off duty, which I understand would not help my client who was already in jail.

THE COURT: If your client – or if Stetzer and Parry had been in a car accident, weren't on duty the day your client was arrested, it would have prevented it too. You're saying it shows they could have done a sting operation earlier. Well, so what. I don't understand how that protects your client. What's that got to do with Internal Affairs? Just because Internal Affairs didn't take them off the street, what's your argument, that Internal Affairs didn't take them off the street before July 1st, 2008?

MR. MELLETZ: Yes.

[20] THE COURT: Okay, I'll grant that motion as to that. I don't see any relevance whatsoever as to the failed sting operation three months post.

Then there's paragraph 8, page six of defendant's brief involving Sergeant Joseph Wysocki, who became in charge of Internal Affairs in May of 2009, which is ten months post-arrest. I frankly don't understand any of this. These are changes that were made subsequent to the arrest of the plaintiff, apparently. It was started on June 23, 2009, since May of 2009. And when he came to Internal Affairs there were 400 open cases. I

understand that relevance, but the other ones I don't understand what the relevance of it is to this case. So I don't know what to do about that, because I don't even know what it means.

For instance, paragraph 8A says from 2004 to 2009 an officer had no requirement to contact the sergeant frequently. Now the officer has to contact the sergeant every 20 minutes. I don't know what you're talking about.

Mr. Eastlack, what are you talking about, what does that mean?

MR. EASTLACK: I'm going to let Mr. Rybeck answer this, your Honor.

THE COURT: Yes, Mr. Rybeck.

MR. RYBECK: Your Honor, this is from the plaintiff's Joint Pretrial Order that we're trying to bar this evidence.

[21] THE COURT: You didn't put the paragraph number, so I didn't pick that up.

MR. RYBECK: I'm sorry, your Honor, it was paragraph 4 on page seven. At the end of – sub-paragraph at the end, it was for all the above paragraphs.

THE COURT: All right. Okay. I gotcha. All right. Now I understand what you're talking about.

Mr. Melletz, these are all changes that were made well after your client was arrested. So don't we have a Rule 407 problem again?

MR. MELLETZ: Yes, your Honor, except for the last one as to the 400 open cases going back to 2004, and that – and it is the portion prior to my client's arrest where there was no requirement to contact his supervisor on a frequent basis.

THE COURT: Well, what, how would that have changed things if there was some – if there was a requirement, as apparently there is now, that you have to contact the sergeant every 20 minutes, how would that have changed what happened at the scene on July 1st, 2008? The sergeant was there.

MR. MELLETZ: He came afterwards, yes.

THE COURT: Right. And, you know, they all lied, there's no question they lied. How would that change what happened? Because they would have been required to contact Sergeant Morris, who was a co-conspirator and went to prison, [22] too.

MR. MELLETZ: Yes.

THE COURT: All right. Well, other than the last part about the 400 open cases, I'm going to grant that motion.

All right. The next one is, this is the defendant's motion number 165 to bar the testimony of Arturo Venegas, V-E-N-E-G-A-S. And he was not a sworn law enforcement officer. He says he had no role whatsoever in Internal Affairs, he was the supersession executive who was brought in on August 1st of 2006, presumably by the State or county, I don't know who brought him in. But apparently plaintiff wants him to testify about

the final report of the Attorney General's Advisory Commission on Camden Public Safety.

I'm not sure what you, Mr. Melletz, exactly what – and this comes up in a couple more of these motions, this September 2006 final report of the Attorney General's Advisory Commission. What is it about this that you think is relevant to your claim in this case that the Internal Affairs failed to properly do its job and your client's rights ended up being violated?

MR. MELLETZ: The report indicates there were problems of management and accountability. No evaluations were processed of officers for example, no, no standards of accountability as to – including the Internal Affairs disciplinary matters.

[23] THE COURT: Where does it say that in the report, please? What specific parts of the report do you think are relevant?

MR. MELLETZ: Bear with me a moment, your Honor?

THE COURT: Sure.

(Brief pause)

MR. MELLETZ: Your Honor, the, what we are referring to here is – bear with me a moment?

(Brief pause)

MR. MELLETZ: That the report indicates that there are deficiencies in the accountability and that that would include, though it doesn't specifically say

Internal Affairs, it makes it clear that it's throughout the management of the police department.

THE COURT: Well, be more specific.

MR. MELLETZ: Okay.

THE COURT: There is no mention of Internal Affairs in this entire report.

MR. MELLETZ: That is correct, your Honor.

THE COURT: And the purpose of the report, Attorney General Harvey set this commission up to identify those structural and organizational changes the department would have to make to reduce violence and serious crimes in the city.

MR. MELLETZ: Again, have accountability, as they [24] call it, and the accountability would be through the Internal Affairs.

THE COURT: Give me a page and paragraph that you are specifically referring to that you think impacts the workings of Internal Affairs.

MR. MELLETZ: Page ten. The report should – this is referring to a report from the prosecutor to the Attorney General each year. The report should include analysis of crime statistics and such other factors as will permit the Attorney General to make an informed decision on when outside supervision of a police department should be discontinued. The whole idea of this commission was to see when they were going to be able to get, and these are my words, not theirs, their act together to eliminate supervision.

THE COURT: Well unfortunately we can't introduce your words to the jury. The question is what's the relevance of the words of this report. And reporting the statistics to the Attorney General doesn't seem to me to be implicating anything that has to do with Internal Affairs.

(Brief pause)

MR. MELLETZ: That would be the only thing, your Honor. It does not mention specifically Internal Affairs.

THE COURT: Well, I'm hard pressed, then, to understand why there's any relevance whatsoever to this report, other than to say that Camden had problems, Camden [25] Police had problems. Well, that's well known. The question before the Court and before the jury is going to be specifically procedures utilized by Internal Affairs on whether or not failure to do certain things violated the plaintiff's constitutional rights. And this report, as far as I can tell by reading it, adds nothing to that. There's no relevance, and any minimal relevancy it might have is greatly outweighed by unfair prejudice because they get into all kinds of things about what's going on with the police department, the people, you know, continue to reduce the number of organizational silos, require all field officers to successfully complete training in problem solving police technique, vest the district commanders, require district commanders to successfully complete sensitivity and cultural training. Amend the 28-day plan. Improve internal communications. Reorganize and

strengthen the comp, c-o-m-p, stat, s-t-a-t, process. I don't even know what that is. And all that kind of stuff.

So, I'm going to grant that motion.

MR. EASTLACK: Your Honor, could I just ask a question?

THE COURT: Yes.

MR. EASTLACK: Is it the Court's rule that Mr. Venegas' testimony then is not relevant and is barred?

THE COURT: Well, that's what was in your motion.

[26] MR. EASTLACK: Right, that's what we had asked because he was going to testify, number one, about Internal Affairs, which he said he didn't know anything about. And secondly, to testify about this report. So I don't know of anything else that Mr. Venegas was going to offer, so . . .

THE COURT: I don't know either, but that motion as to those areas is certainly granted.

MR. EASTLACK: All right. Thank you, your Honor.

THE COURT: We have the next one is defendant's number 166, bar certain Internal Affairs records. This whole issue of Internal Affairs records is perplexing to me because I have so little information about them. But we seem to be focused on five things. And these are Internal Affairs records number 07-211,

08-295 – I'm sorry, maybe 271, I may have miswritten that. Hang on a minute.

07-211, this is Mr., I guess it's Whitley, although in plaintiff's brief it's Whitely and Whitley, but we'll see. Apparently sometime in August of 2007, Internal Affairs was notified that a lawyer apparently representing Mr. Whitley wanted the personnel records of Parry and Stetzer in order to defend the case against Mr. Whitley, whatever case it is, I have no idea. What happened after that, I have no idea. Why that's relevant, I'm not sure, because I'm not sure what the complaints about Mr. Whitley were in this case.

What were the complaints of Mr. Whitley, Mr. Melletz?

[27] MR. MELLETZ: If I may, your Honor?

(Brief pause)

MR. MELLETZ: Mr. Whitley, your Honor, had been stopped and he contended that he had been planted the drugs, that he did not have any drugs on him. Specifically, your Honor –

THE COURT: Did he file a complaint with Internal Affairs that Stetzer and/or Parry planted drugs on him?

MR. MELLETZ: I believe so, your Honor, as is part of what was submitted, that's Bates stamp 14330, 14331, 14332. That was the major incident report that was involved with it.

THE COURT: And you don't reference that in your brief.

MR. MELLETZ: I apologize, your Honor.

THE COURT: What happened?

MR. MELLETZ: He was accused of, supposedly observed selling drugs and having drugs in his pocket.

THE COURT: And?

MR. MELLETZ: And he denies that.

THE COURT: Well, didn't he pled [sic] guilty? When I read the defendant's brief, he pled guilty.

MR. MELLETZ: Yes.

THE COURT: So he pleads guilty, and then what happens to the IA complaint?

MR. MELLETZ: Then they did not do anything in terms [28] of this particular IA file number, 07-211.

THE COURT: Right. What should they have done if the guy pled guilty?

MR. MELLETZ: Well, your Honor, I believe he submitted a complaint to the police – to Internal Affairs, and I submit that even though you're pleading guilty, they should investigate, especially if they have other complaints concerning them.

THE COURT: I don't understand why they should. If the complainant/defendant pleads guilty to possession of narcotics after having made a report that

they were planted on him, and he goes into court under oath and says I had the drugs and I'm guilty, tell me why Internal Affairs should continue that investigation.

MR. MELLETZ: Not unheard of, unfortunately it's not unusual for people to plead guilty when they're not, just to take a plea bargain.

THE COURT: My question is why should Internal Affairs then continue to – I mean are you suggesting they have a duty to independently investigate this case even after a guilty plea?

MR. MELLETZ: If they have several complaints over periods of time about the same police officers, then yes.

THE COURT: That's not exactly the question I asked you. You're telling me Internal Affairs has an obligation to [29] investigate a police officer against whom there are several different complaints over a period of time. I'm not suggesting that they shouldn't, I'm suggesting if one of the complainants pleads guilty and says I had the drugs after having told Internal Affairs I didn't have any drugs, what's the duty on the part of Internal Affairs to investigate further? Is there some Attorney General Guideline, is there some standard in the business of Internal Affairs investigations, is there some statute or regulation that says you should continue your investigation?

MR. MELLETZ: No, there is no such specific regulation. But if there is a number of complaints

concerning the same police officers, and that these complaints seem to be similar, then maybe they should – not maybe. We contend that they should have reopened the investigation. The investigation was not very thorough.

THE COURT: And done what exactly? Once the defendant, the complainant's pled guilty, what do you do now?

MR. MELLETZ: When you see other complaints, you say hey, I'm going to start and look over again with this first one, and maybe we should talk some more to people.

THE COURT: We should talk to the complainant and tell him to withdraw his guilty plea?

MR. MELLETZ: No, talk to the complainant and say why did you plead guilty? Which was true, were you lying about [30] the guilty plea, or are you giving us a phony story when you speak to us?

THE COURT: And that's the obligation of the police?

MR. MELLETZ: I think it's the obligation of Internal Affairs, not on the one investigation, but when there were other investigations, other complaints about the same police officers.

THE COURT: Well, I am unaware of any law that imposes a duty on a police department to question a complainant/defendant who has pled guilty in a court

of law under oath, and question him and suggest to him that he shouldn't have.

MR. MELLETZ: But my question – my point, your Honor, is prior to his having pled guilty, we contend that the investigation was inadequate. Prior to the – so the fact that he subsequently pled guilty, okay, stop that investigation, but they weren't doing anything before.

THE COURT: What should they have done before?

MR. MELLETZ: They should have investigated, they should have talked to everybody.

THE COURT: What did they do?

MR. MELLETZ: As a practical matter, as far as we could see, all they did was talk to the complainant.

THE COURT: Do you know what they did? Does anybody have the facts as to what Internal Affairs did with [31] Mr. Whitley's, assuming he filed a complaint?

MR. EASTLACK: Judge, I do. It's attached to our brief. They did speak to the complainant, they did gather the police reports, they did investigate the matter. As a matter of fact, it was, the investigation was performed by Sergeant Robert Turner. He investigated the matter, he gathered all the reports, and they found out actually one of the people that was mentioned by Mr. Whitley actually, if that name was actually true that was provided by him, that his name could not be found and it didn't exist as being somebody else who

also supposedly had – was the subject of a wrongful arrest by Mr. Stetzer. They looked through the files and didn't find any such person. So, there was an investigation and it was found that it was unfounded as a result of pleading guilty.

MR. RYBECK: Judge, there was never a complaint, per se, submitted by Mr. Whitley. They got the motion to disclose the personnel records to the Office of the Public Defender. Internal Affairs took it upon themselves to investigate the matter based upon that motion.

MR. EASTLACK: Yes, Mr. Whitley did not actually initiate it himself, the Internal Affairs Department initiated it on their own after they received notice that there was a motion that was made for this, and they then promptly investigated it.

THE COURT: All right, let's go to 08-295, which is [32] Antwyan, A-N-T-W-Y-A-N, Rolax, R-O-L-A-X. I don't know when he made the complaint, but apparently he complained he was falsely arrested by Parry and Stetzer, and the arrest having taken place on December 27, 2007.

MR. RYBECK: Mr. Rolax complained on December 1st, 2009, your Honor.

THE COURT: Okay. So if he didn't complain, Mr. Melletz, until 17 months after your client was arrested, how is this notice to Internal Affairs that there's a problem?

MR. MELLETZ: It isn't, your Honor.

THE COURT: All right. So I don't see any relevance to Mr. Rolax's case.

08-301. Something about a Dorothy Johnson? She was interviewed August 26, 2008 by Internal Affairs. And she made a complaint that Stetzer planted drugs on someone else?

MR. RYBECK: Yes, your Honor. They were actually interviewing Ms. Johnson about a different matter and she brought up the issue herself.

THE COURT: This again is well after the plaintiff had been arrested, correct? So how is this notice to Internal Affairs that there's a problem with Mr. Stetzer planting drugs on individuals if this information didn't come to the attention of Internal Affairs until seven weeks after the arrest?

MR. MELLETZ: But, your Honor, the incidents occurred [33] prior to my client. So that if when they received the information, the question is whether they should have conducted an investigation concerning my client's complaint.

THE COURT: Seven weeks after your client is arrested, someone volunteers to Internal Affairs that Stetzer planted drugs on someone else. How does that change the way Internal Affairs dealt with Stetzer and Parry before your client's arrest?

MR. MELLETZ: Not before my client's arrest, your Honor. Before my client's release, while he was in jail.

THE COURT: All right. I don't see the relevance of that. That will be granted.

08-137, Chris Dixon, D-I-X-O-N. And this is a May 28, 2008 complaint by Chris Dixon. This is a complaint against Stetzer and Galiazzi, who is not a defendant in the criminal or civil case. And what happened to that?

MR. RYBECK: Your Honor, in the brief of complaints submitted in the Joint Final Pretrial Order the entire file was listed by the plaintiff.

THE COURT: Do you know what happened though?

MR. RYBECK: Off the top of my head I do not recall, your Honor. This was a complaint about the individual wrongfully being charged with loitering for CDS. There wasn't an allegation that they were planting drugs on him or excessive force, it was just the issuance of a wrongful [34] ticket, essentially.

THE COURT: All right. Mr. Melletz, what's this got to do with planting drugs or excessive force? Why should Internal Affairs getting a complaint from a citizen that a police officer wrongfully arrested someone on some ordinance violation have alerted Internal Affairs that there was a problem with this officer?

MR. MELLETZ: Involving the question of harassment of –

THE COURT: What do you mean harassment? You say harassment in your brief. What did the complainant actually say happened?

MR. MELLETZ: Bear with me, your Honor?

(Brief pause.)

MR. RYBECK: Your Honor, Exhibit 4 of our motion, it's the third to last page of the complaint.

MR. MELLETZ: This one is the Exhibit 4. There he contended that Mr. Dixon ordered some food and purchased a beverage to drink while waiting on food. While waiting on the food, several young guys came into the store, laughing and joking out loud. That's the police report – it's the person making the report's brief and complaint. What he was contending was he was being harassed by the police officer.

THE COURT: Well, it has nothing to do with planting drugs or . . .

[35] MR. MELLETZ: No.

THE COURT: All right. Well, I'm going to grant that motion.

Now, the last one is 08-222, and this is Vivette, V-I-V-E-T-T-E, Skinner, something involving a juvenile son, but it was August 12th of 2008. Or August 2nd, 2008, which is after the arrest. So how does this put Internal Affairs and the City of Camden on notice that there's a problem? Assuming it had anything to do with this kind of a problem that we're talking about.

MR. MELLETZ: This, your Honor, would be again not to stop the arrest, because it came after the arrest, but shortly after the arrest, and would be the prosecution and the, you know, the keeping him in jail

pending bond and bail. And the incident occurred of stopping a person, accusing him of selling illegal drugs. And the last page of volume five, or rather item 5 of their brief has that page of the complaint.

THE COURT: Well, for similar reasons that's granted.

Now, the statistics. Mr. Melletz, do you have somewhere in the Pretrial Order somewhere the precise statistics that you want to try to use in this trial?

MR. MELLETZ: Yes, your Honor.

THE COURT: Where is it in the Pretrial Order? I'm not suggesting it's not there, I just can't find it.

MR. MELLETZ: The Pretrial Order?

[36] THE COURT: Yeah.

MR. MELLETZ: Unfortunately, your Honor, when I grabbed all the stuff to come here today, that was the one thing I didn't bring.

THE COURT: Well, how about if I give you a copy and you can just look at it and tell me where it is in the Pretrial Order, because I'm having difficulty understanding what the statistics are. Both sides are arguing about statistics, and I want to get what the precise statistics are that you plan to introduce.

(Brief pause)

MR. RYBECK: Judge, I don't believe I saw in the plaintiff's exhibits any actual documents, but there

was testimony from some certain witnesses that they were questioned about, that's why I made this motion.

MR. MELLETZ: Yes, your Honor. What they're referring to is statistical reports and testimony from Lieutenant Sosinavage, S-O-S-I-N-A-V-A-G-E. I

THE COURT: I understand that, Mr. Melletz. My question is, where is it in the Pretrial Order? I don't find a spot where it lists for me exactly what the numbers are that you want the jury to hear.

MR. MELLETZ: Number 19, page five. 2005, there were 96, I can continue reading or . . .

THE COURT: No, that's good. Thank you.

[37] MR. MELLETZ: Okay. And maybe another paragraph, I stopped there.

THE COURT: All right. 22 also, 19 and 22. 19 says in 2005 there were 96 new excessive force cases plus 167 carryover cases, for a total of 263 cases. None were sustained, 28 exonerated, 42 not sustained and six unfounded. Total IA cases were 861, in 2006 there were 78 more excessive force cases and total new cases of 350.

Paragraph 22, in 2004/2005 no complaints in IA were sustained on serious charges. In 2006, one was sustained. In 2007, five were sustained. In 2008, one was sustained. In these five years, out of 622 serious complaints, seven were sustained. This is approximately 1 percent.

Okay. You know, in the Beck case, which is what you're relying on, there were a heck of a lot more that involved the officers, the specific officers. But what do juries do with this information, Mr. Melletz?

MR. MELLETZ: Well, I believe, your Honor, the jury can consider that information with all the other testimony of the trial and determine whether there were adequate investigations, whether there were – whether the Internal Affairs was supervising what was going on.

THE COURT: Compared to what? What's the jury to compare it to, to come to the conclusion or reach the inference you want them to reach, that the investigations must [38] have been inadequate if these are the numbers?

MR. MELLETZ: I would submit, your Honor, that they, after hearing all the testimony, can, you know, comparing to what would be within their reasonable belief as jurors, fact finders. I don't think that it needs to be a particular standard that says, hey, they have to have so many find guilty or not guilty.

THE COURT: How do the juries have any knowledge whatsoever as to what's appropriate for Internal Affairs investigations in a police department in New Jersey?

MR. MELLETZ: Well, your Honor, I submit –

THE COURT: Do you have testimony from somebody about that, some police officer? I know you're going to have an expert, but are you going to have

testimony from a police officer as to how this works, the system works?

MR. MELLETZ: Yes, it was my intention to have the Internal Affairs people describe how their system works and what they were doing, how they were backlogged and how they were understaffed and that they needed to have more people.

THE COURT: How does the jury draw the inference that there should have been more disciplinary action as a result of all these filings of the complaints? Don't they have to know what the complaints were about? Don't they have to know, you know, whether they were unfounded, whether or not they should have been unfounded? Don't they have to know that? I mean [39] how are they going to evaluate that there were certain complaints that the Internal Affairs should have done something about but didn't, how do they evaluate that?

MR. MELLETZ: Well, I think that in looking at the statistics and how things had been and listening to the police officers explaining what the culture was and the atmosphere of the – and how they were understaffed, that – and what they did, what they didn't do, that they can come to a conclusion, their own conclusion. And hearing the testimony of my client as to what happened to him with his excessive force situation.

THE COURT: What do you mean what happened to him?

MR. MELLETZ: In terms of being hit and beaten by these two officers.

THE COURT: Mr. Eastlack, what's your response, please?

MR. EASTLACK: Judge, Mr. Rybeck.

THE COURT: Mr. Rybeck, your response?

MR. RYBECK: This is exactly the type of situation that Judge Hillman addressed in the Berman case, your Honor, where people file complaints for any number of reasons. Without going into prior complaints and why they should or should not have been sustained, I outlined this on page seven and eight of my brief.

THE COURT: Right.

MR. RYBECK: Without going into the – all right, [40] there were these case [sic]. Well, can you explain why one of them should have been sustained. The plaintiff can't do that because your Honor just barred the only other Internal Affairs cases listed in the Joint Final Pretrial Order. There's no other cases going to be exhibits that can show that Internal Affairs should have sustained more cases.

THE COURT: Well, I think the plaintiff's point is a little more subtle than that. Plaintiff's point is they weren't doing anything, not that they just were finding these complaints unfounded when they should have been sustained. They weren't doing anything because of the backlog. There's so many cases they're

overwhelmed and don't have enough people, they never get around to investigating most of them.

MR. RYBECK: There's no evidence that they didn't investigate these complaints. They were eventually investigated, your Honor.

THE COURT: You have hundreds of cases carried over to the next year, by definition they weren't investigated, right?

MR. RYBECK: Eventually they were, your Honor.

THE COURT: I don't know, according to the statistics he cites, they weren't.

MR. RYBECK: Well, with the amount of complaints that come in a year, if you had 400 complaints for that year and they investigate say 400, they're going to keep having new [41] cases and keep having to investigate them, your Honor. It's not like they're never getting to these cases. And without saying that, okay, there was a delay in investigating these cases, plaintiff will have to show that somehow that was the driving force behind his arrest and the plaintiff can't draw that causal connection, your Honor.

THE COURT: Well, I don't know whether he can or not, but the statistics align. I'm going to deny your motion and permit the plaintiff to introduce evidence of the backlog and the inability of the Internal Affairs in the years preceding the arrest of the plaintiff to deal with the backlog and clear those cases one way or the

other. You made your point about the causal connection, but we'll see what the testimony is.

All right. The next one is, this is the testimony – defendant's motion to bar the testimony of Benjamin Vautier, V-A-U-T-I-E-R, 167. Objection is 198.

And Mr. Melletz, this is a guy who was a cop, I don't know if he still is, or what happened.

MR. MELLETZ: No, he's not.

THE COURT: He said some things in his deposition testimony about seeing Stetzer, number one, at parties draw his gun and claimed to be a drug dealer from Camden. I'm not sure what that's got to do with any of this. And that he thinks he saw – he saw Stetzer had seized drugs but hadn't turned them in. He complained about it but nothing was done. [42] But he didn't really know whether Stetzer had turned in the drugs or not the next day. He's a little equivocal on that. But last but not least, he admits he lied to Internal Affairs about another matter, so I'm not sure why that even helps you. Why do you think this even helps you? What does this get you, this testimony with Vautier?

MR. MELLETZ: Because he had – he went and spoke to an Internal Affairs officer to make a complaint about Stetzer, and that nothing was done about it. And that was before my client was arrested.

THE COURT: Well, Question: Do you remember whether you told Turner, who was the Internal

Affairs investigator, about your suspicions that Stetzer was stealing drugs?

Answer: I did say that, I did mention that I saw him take drugs at the end of the day. And he would say that he would turn them in tomorrow. And I told Turner my problem was tomorrow never came.

This was in 2007. And then he had this stuff about the writing on the walls and all that, which is irrelevant. So . . .

MR. RYBECK: Your Honor, Mr. Vautier says he doesn't know if tomorrow never came, he had no idea whether the drugs were turned in.

THE COURT: No, I know. He says that later. So, but that's what you want him to say, is that he told Internal Affairs that Stetzer didn't turn the drugs in, said he was [43] going to turn them in tomorrow, doesn't know whether tomorrow ever came, but not really sure whether he did or not. That's what you want him to testify to?

MR. MELLETZ: And I believe, your Honor, that he would testify to the fact that he saw Stetzer have these bags, yes. And he didn't – he saw – he knew he didn't turn them in.

THE COURT: All right. That's it.

MR. MELLETZ: Well –

THE COURT: Even though he's going to say he lied to Internal Affairs about another matter, and even

though he's going to say he's not really sure whether he turned them in or not, you want him to testify.

MR. MELLETZ: Yes.

THE COURT: Okay.

MR. EASTLACK: Judge, I still think that this gets to an area of, you know, talking about a possibility, not some probability.

Also, on May 18 of 2008 Vautier does indicate in his deposition testimony that he was contacted by Internal Affair Detective Vincent McCalla about the Stetzer issue that he had complained of, and McCalla advised Vautier that Stetzer's paperwork was squared away.

THE COURT: Right.

MR. EASTLACK: So I don't – it's just beyond – I [44] don't know what Mr. Melletz may want him to say, but if it doesn't have the probative value that would supply to this jury about whether or not Stetzer was actually taking drugs, and assuming that, let's say, the Internal Affairs just did nothing with this, it would still be problematic because he doesn't know. So, I don't – I think the prejudice outweighs the probative value because, number one, he doesn't know. He says tomorrow never came, but then acknowledges that it was investigated by Internal Affairs, who said Stetzer's paperwork was in fact squared away. So . . .

THE COURT: Doesn't mean it was.

MR. EASTLACK: No, I understand.

THE COURT: Doesn't mean that everything was okay.

MR. EASTLACK: No, it doesn't mean everything was okay, but it does mean that it was investigated by Internal Affairs. It doesn't mean nothing was done by Internal Affairs.

THE COURT: Well, you can certainly raise that point. I'm going to deny the motion. It's going to be for the jury to decide whether they believe him. He does say that Stetzer took drugs, had packages of drugs, didn't turn them in that day. He believes they weren't turned in, although he's not sure. The jury's going to have to decide whether to believe that or not.

MR. RYBECK: Judge, there's one more issue if I could [45] ask the Court to address? Regarding an incident where Mr. Stetzer – I mean Mr. Vautier says he sees Stetzer – Stetzer gets the sting operation with the supervisor, and they say – this is what plaintiff put in his brief, I just want this issue to be addressed. And he says, like 20 bags were put in the house and then he only took back 12 in the car.

THE COURT: Right.

MR. RYBECK: In his deposition Mr. Vautier testified he never complained – told Internal Affairs about that.

THE COURT: Right.

MR. RYBECK: So if Internal Affairs never heard about that, I don't think he should be allowed to say that to the jury.

THE COURT: He can't be, that's why I focused just on what I focused on.

MR. RYBECK: Okay. I just want that to be clear. I apologize.

THE COURT: He can't talk about the writing on the walls and all that other – pulling a gun out at a party and all that kind of stuff.

MR. RYBECK: Thank you, your Honor.

THE COURT: Christine Tucker. Now a municipal court judge.

MR. EASTLACK: She is, your Honor.

THE COURT: And she – I'm not sure why you'd want [46] her to testify. She can't give any opinion testimony as a sitting judge, but she can certainly testify about facts. She's a former business administrator, she had nothing to do with Internal Affairs.

Mr. Melletz, what exactly do you expect her to say, she signed – in your brief you say she signed off on all disciplinary matters. That the city police were under the control of the Camden County Prosecutor's Office supersession order and there was a backlog of Internal Affairs cases. What do the first two things have to do with anything?

MR. MELLETZ: She was the business administrator, a person who was hiring, firing, disciplinarian in an appeal position. And that she would be able to explain the history of the problems of the police department in terms of supersession and investigation.

THE COURT: What do the problems have to do with the Internal Affairs?

MR. MELLETZ: Well, part of them I would submit were, again, this atmosphere of what was going on. She did not have anything to do with Internal Affairs, except if those people, for example the deputy chief, one of the deputy chiefs was a complainant about Internal Affairs to that person, and she took care of that in the sense that she was the administrative law officer.

THE COURT: What's it got to do with Stetzer and [47] Parry?

MR. MELLETZ: It doesn't.

THE COURT: I'm going to grant the motion. She doesn't have any relevant information.

The next one is defendant's motion 169 to bar the testimony of Kevin Blevins, B-L-E-V-I-N-S. Apparently nobody can find him. He witnessed the assault?

MR. MELLETZ: Yes, your Honor. And as I advised counsel this morning, by coincidence, lucky or whatever, we managed to find him, we think, Friday afternoon. I had given up, to be quite bluntly, I had given up, and we discovered that we had been using the wrong first name. Apparently he has a first and

middle name, and we had been using – looking for Kevin, and there's a Kennedy Blevins who is now in the Burlington County jail. And my associate had to be in Mount Holly this afternoon and she was going to stop there and find out if this is the same Kevin – Kennedy Blevins who we believe it would be.

THE COURT: Well, if it's the same guy, you'll let Mr. Eastlack know and he'll take his deposition.

If you want.

MR. EASTLACK: We will, Judge.

THE COURT: So that motion is denied without prejudice.

All right. Defendant's motion to bar the testimony of [48] the Assistant Prosecutor Mark Chase about a 2005 investigation of Stetzer, that's number 170. And then there's a 201 came in. I'm really not sure what the plaintiff wants to use Mr. Chase for, I don't even know if he's a still an assistant prosecutor. But apparently there was an informant for another police agency, Evesham Police Department, who said that Stetzer was in a bar in Waterford asking for drugs. So they set up an investigation, as far as I can determine. But this informant could not identify the picture of Mr. Stetzer, so they closed – the Camden County Prosecutor's Office closed the investigation. And I don't know what happened after that.

How is any of this relevant, Mr. Melletz? What's this got to do with Internal Affairs in Camden?

MR. MELLETZ: Again, your Honor, prior to our client being arrested there was this concern or complaint about one of the officers, and that it was never resolved or investigated adequately, we contend. And what his testimony would be is, A, there was this report –

THE COURT: Not adequately investigated by whom?

MR. MELLETZ: It was remanded to the – came back to the Internal Affairs for administrative investigation.

THE COURT: And what happened? When did that happen and what happened as a result?

MR. MELLETZ: Well, it was a 2005 investigation and it was remanded for administrative investigation, and we don't [49] have any records to show it, it's not on the card, unless it's one of those numbers that I don't recognize on his index card.

THE COURT: Again, I'm not sure how you prove this has anything to do with Internal Affairs. How do you connect this with Internal Affairs when the prosecutor's office closes it out because the informant can't even identify Stetzer's picture as the person seeking drugs at this bar, and then we don't know what happens after that?

MR. MELLETZ: All we know is it was sent back for administrative investigation.

THE COURT: I don't even know what that means. Do you know what that means?

MR. MELLETZ: My understanding is that Internal Affairs would have been able to investigate because it was now a criminal matter.

THE COURT: What do you mean it was now a criminal matter? It wasn't a criminal matter.

MR. MELLETZ: The county prosecutor would only be involved if there were investigations of police officers involving criminal complaints.

THE COURT: Right.

MR. MELLETZ: If it was not a criminal complaint, then it would be sent back to the Internal Affairs.

THE COURT: Okay. Let's assume that happened here, and that's a big assumption because I'm not sure what the [50] evidence is going to show. Let's assume that happened, and at some point somebody in Internal Affairs gets something from the prosecutor's office saying we closed the criminal investigation, and what else it says, who knows. We don't know what happens next, do we?

MR. MELLETZ: No, but the fact that it's not shown on any of the Internal Affairs cards for either Stetzer or Parry would indicate, hey, maybe nothing was happening, and again, that was part of the problem back before 2008.

THE COURT: Well, couldn't it also indicate that they never even got the referral?

MR. MELLETZ: They should have. It was sent back for administrative, it should have gone to the Internal Affairs. That's my understanding.

THE COURT: Well, a lot of things should have happened. I'm not interested in what should have happened, I'm interested in the facts. What actually happened. You're going to have to establish what happened, and that Internal Affairs actually got the referral. I mean that's step number one. And then we have to know what Internal Affairs did with it. That's step number two. This is before it even becomes relevant in the slightest bit. If you can demonstrate to me what – you know, that these things happened, that they got the referral and they did nothing, then I'll listen to you. But in the meantime I'm going to grant the motion.

[51] The next one is 171, the offset argument. Plaintiff apparently got a settlement from the State of New Jersey, $32,908.45. The defendant argues that they're entitled to an offset in this. Neither side even cites Title 52 section 4C-2b, which says, "shall be offset by any award of damages awarded under this act." But I don't need to decide that issue of the offset. We'll see if there's a – if there's a verdict for the plaintiff, we'll deal with it then. But for now that's denied without prejudice.

Defense motion 176, bar plaintiff from testifying as to medical diagnosis. Mr. Melletz, exactly what is

your client going to say about his injuries as a result of that beating, the alleged beating?

MR. MELLETZ: The beating, your Honor, he's going to say while he was beating, he peed himself.

THE COURT: That's it?

MR. MELLETZ: Well, in terms of what they're arguing, he's also going to be testifying about how he was bleeding –

THE COURT: That's what I want to know, exactly what's he going to say?

MR. MELLETZ: He's going to say that he was bleeding from his head around his ear. That he was dragged down the steps, he was beaten with flashlight and also by fists.

THE COURT: Okay.

MR. MELLETZ: He was unconscious, came back to be [52] conscious a period of time, then dragged down. The police officers indicated while they were beating him, stop resisting. He said I'm not resisting, how can I be resisting? You're on top of me. They drag him down, scraping his knees, bleeding from his knees. They put him in the car or truck of Sergeant Morris, took him to the, Morris took him to a parking lot and waited there for about 20 minutes. And he kept saying to Sergeant Morris, take me to the hospital, take me to the hospital, I'm bleeding. And Morris indicated to him, my cops don't plant drugs. My client says who's talking

about – I didn't say a word about drugs to you. I'm bleeding, will you please take me to the hospital.

Finally Parry and Stetzer come over, they take him to the hospital. On the way to the hospital they tell him, if you tell anybody that we struck you, that's how you got injured, then we're going to put all the drugs that we got at that house on you. And they stood next to him when the nurse asked him what happened, and he did not tell the nurse the truth.

THE COURT: When did he urinate himself?

MR. MELLETZ: When he was being beaten at the location.

THE COURT: Okay. So he's bleeding and he's urinating himself, bumps, bruises, I mean . . .

MR. MELLETZ: Yes.

[53] THE COURT: Okay. Fine. Thank you.

Why can't he be able to testify to urinating himself?

MR. RYBECK: I just don't want him to say that, I had broken bones, I had this medical diagnosis, something of that nature. He can say I was getting hit and I urinated myself, that's fine, he can say what actually happened. We don't want any kind of medical actual diagnosis from him.

THE COURT: He won't.

All right. That motion is denied. He can testify as to his physical symptoms including urinating himself during the course of the alleged beating.

Defendant's motion 177, this again gets to the recommendations of the advisory commission, and this is the testimony of Edwin Hargis, H-A-R-G-I-S. And again,

Mr. Melletz, you can tell me, but what is it in this report that is relevant to your claims in this case?

MR. MELLETZ: Our contention, your Honor, is that the blue ribbon panel recommended elimination of police tactics that are ineffective and offensive to citizens. And one such policy involved officers wearing ski masks they gave as an example in the report. That the recommendation that complaints were filed about misconduct of officers and ineffective oversight.

THE COURT: Well –

MR. MELLETZ: And the department charged with that [54] investigation is the Internal Affairs.

THE COURT: Well, you lifted the actual quote a little bit out of context. The actual quote at page 12 of this report is that, for instance, the department has permitted some undercover officers to wear modified ski masks to conceal their identity while participating in narcotics raids. Let's assume that's a policy. Here's the sentence in question, and this is what is not – this is what's quoted out of context. Because what the real sentence says is, community members claim that some of those officers, unrestrained by effective oversight

and supervision and incapable of being recognized, have engaged in unacceptable behavior and even misconduct. It's not a conclusion of the commission, that's a statement of some community members telling, apparently in a hearing or something, the members of the panel, of this commission, that this is going on.

Now, how does that translate into better Internal Affairs procedures, that the city needs better Internal Affairs procedures?

MR. MELLETZ: Well, the conclusion of the commission was to eliminate the use of policing tactics, and I'm reading from above that paragraph, eliminate the use of policing tactics that are ineffective and offensive to the community. In consultation with the community at large, develop alternative tactics that effectively combat crime and [55] disorder, while building and preserving community support, trust and confidence.

And our contention, your Honor, is that since Internal Affairs is in charge of the disciplining of the officers violating rules and regulations, and investigating complaints of the community against police officers, that it would necessarily be involving Internal Affairs supervision.

THE COURT: So you want the jury to know that the part that begins with community members claim, to the end of that paragraph on page 12. Those last two sentences.

MR. MELLETZ: Yes.

THE COURT: Okay. Doesn't this seem to implicate the oversight by Internal Affairs, isn't this some evidence that the city is on notice that better oversight is needed to combat unacceptable behavior and misconduct?

MR. EASTLACK: Judge, I – what it's speaking to is what certain members of the community, unnamed, supposedly know about or believe are problems for the community for how police – what the police tactics are in interdicting crime, and interdicting specifically drug crime. The fact that some community members complained that – about the police tactics in interdicting crime doesn't translate into that there's a problem with Internal Affairs. I mean if they, you know, if the – and again, we don't even know who these community members are, or what class of community members there are that [56] were complaining, let's say, of modified ski masks to protect the police officers' identities. I mean there very well could be, and I'm sure there are reasons why officers would want to protect their identity if they're undercover officers.

So, you know, this talks about having a better dialogue and better relationship and discussions with, and having fruitful discussions with the community on how to allay their concerns about how undercover police officers are investigating crime. But it doesn't have to do with Internal Affairs oversight of the Police Department. And so, you know, I think there's a disconnect there in what Mr. Melletz is able to bring into court, what this Court has already ruled and what this paragraph says. And I think it's so removed, here we

have – you know, again these are unnamed members of the community, and I think that part of – one of the goals of this report was to try to, you know, develop better relationships with the community, at least that's one of the stated goals. And, you know, getting I guess more community friendly police tactics is one of those things. But they don't even discuss the, you know, they would eliminate the modified ski masks to protect the identity of the officers. It doesn't get into alternatives as to how they would do that. I assume that that was the type of the discussion that may have flowed from this.

But again, incorporating and reading into it Internal [57] Affairs as a – into this paragraph, I think you have to read into it. You have to be, you know, an attorney who does this work, or a judge who deals with these cases to read into it. It's certainly not something that the jurors should be able to read into unless there's some police expert that's going to come testify on behalf of Mr. Melletz and say that that is part and parcel of it, and there just isn't anybody who's going to do that.

THE COURT: Well, he doesn't need an expert. I'm going to deny the motion as to these two last sentences on page 12 of this report. It does say that there is – there are complaints from the community, this is what it says, there are complaints from the community that there are some officers unrestrained by effective oversight and supervision who have engaged in unacceptable behavior and even misconduct. The department must eliminate those ineffective practices that

alienate important segments of the community. And it goes on. I think that the plaintiff should be able to argue that in 2006 there was notice to the police department that there were members of the community complaining that officers were engaging in unacceptable behavior and even misconduct. And the place where that's supposed to be combatted is Internal Affairs.

All right. Let's take a five minute break, then we'll get the remaining plaintiff's motions, okay? And we'll talk

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