UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

BAILEY WHITE, real party of interest and administrator of the estate of SHANDLE MARIE RILEY, *et al.*, *Plaintiffs*, v. HAMILTON COUNTY GOVERNMENT, *et al.*, *Defendants*.	)	Lead Case No. 1:19-cv-304 Member Case Nos. 1:19-cv-305 1:20-cv-20 1:20-cv-44 1:20-cv-17 Judge Travis R. McDonough Magistrate Judge Christopher H. Steger

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MEMORANDUM OPINION

Before the Court are motions for partial summary judgment filed by Defendant Hamilton County Government ("County") against Plaintiffs Shandle Riley (Doc. 556),[1] James Mitchell and Latisha Menifee (Doc. 557), and Maxwell Jarnagin (Doc. 559). For the reasons explained below, those motions (Docs. 556, 557, 559) will be **GRANTED.** The County also filed a summary-judgment motion on Plaintiffs Abigail Knox and Katherine Johnson's claims (Doc. 558), which the Court will **GRANT IN PART** and **DENY IN PART**.

Also before the Court are motions to exclude testimony from Plaintiffs' police-practices expert, Dr. Geoffrey Alpert, filed by Defendants Daniel Wilkey (Docs. 594, 601), the County

[1] The County does not move for summary judgment against Riley, Mitchell, and Jarnagin on their state-law claims, conceding that Wilkey's pending indictments render such a motion meritless. (Doc. 556, at 1; Doc. 557, at 2; Doc. 559, at 2.)

(Doc. 599), Jacob Goforth, Tyler McRae, and Bobby Brewer (collectively) (Doc. 596). For the reasons that follow, the motions (Docs. 594, 596, 599, 601) will be **GRANTED**.

I. BACKGROUND

A. Plaintiffs' Backgrounds

At all relevant times, Daniel Wilkey, Jacob Goforth, Tyler McRae, and Bobby Brewer were law-enforcement officers for the Hamilton County Sheriff's Office ("HCSO"). (Doc. 424-1, at 2 in Case No. 1:20-cv-17.) Plaintiffs bring claims against the County that center on its alleged deliberate indifference to violations of their constitutional rights that demonstrate a pattern, custom, or practice of allowing its employees to violate the constitutional rights of citizens. The circumstances underlying each of Plaintiffs' alleged constitutional injuries are briefly summarized below.

i. Jarnagin

Jarnagin's claims against Wilkey arise from a traffic stop and alleged unconstitutional search that occurred in Hamilton County, Tennessee, on March 30, 2019. (*See* Doc. 1-1, at 2–3, in Case No. 1:20-cv-44.) During that traffic stop, Jarnagin asserts, Wilkey ordered him out of the car, handcuffed him, and "searched" him by inappropriately touching his genitals. (*Id.* at 3.)

On December 17, 2019, Jarnagin filed suit against Defendants Daniel Wilkey and the County in the Circuit Court for Hamilton County, Tennessee ("Hamilton County Circuit Court"). (*See* Doc. 1 in Case No. 1:20-cv-44.) The case was subsequently removed (*id.*) and consolidated with other cases against Wilkey, the County, and other Defendants (Doc. 53).

ii. Riley

Riley's claims against Wilkey and Goforth stem from a traffic stop that took place on February 6, 2019. (Doc. 553-8, at 3.) When Wilkey was patting Riley down after finding

marijuana in her vehicle, she testified that he inappropriately touched her crotch. (Doc. 625-1, at 10.) Additionally, Wilkey's dashcam video shows him directing Riley to lift her shirt and jump up and down during the search. (*Id.* at 8–9; *Wilkey Dashcam Video* at 21:48:23.) Riley claims Wilkey then assured her that he would only write her a citation in lieu of arresting her if she let him baptize her. (Doc. 625-1, at 5.) Riley then followed Wilkey to Soddy Lake, where Goforth met them and recorded Wilkey baptizing Riley. (*Id.* at 21–22; Doc. 553-8, at 4.)

On October 1, 2019, Riley filed suit in the Hamilton County Circuit Court (Doc. 1-1), and, on October 29, 2019, the County removed the action (Doc. 1). In the complaint, Riley asserts the following claims against both Wilkey and Goforth in their individual capacities: (1) freedom of religion; (2) failure to protect and render aid; (3) unreasonable seizure; (4) unreasonable search; and (5) various state-tort claims. (Doc. 1-1, at 12–25.) Both Wilkey and Goforth moved for summary judgment on all remaining claims against them. (Docs. 411, 553 554.) The Court has ruled on the motions, granting them in part and denying them in part (Docs. 492, 682).

iii. Knox & Johnson

On April 18, 2019, Wilkey pulled over a vehicle with Plaintiffs Johnson and Knox as passengers. (Doc. 1-2, at 5 in Case No. 1:20-cv-17; Doc. 3-2, at 2 in Case No. 1:20-cv-20.) After the driver admitted she and some of the other passengers had been smoking marijuana, Wilkey searched each occupant as McRae, another on-duty officer who had arrived on the scene, stood watch. (*Wilkey Dashcam Video* at 22:54:52–23:01:12.) Knox and Johnson, whose searches occurred out of view of Wilkey's dashcam, claim Wilkey touched them inappropriately. (*Knox Interview Video* at 11:05:20–11:06:35; *Johnson Interview Video* at 11:25:07.)

On December 16, 2019, Knox and Johnson filed actions in the Hamilton County Circuit

Court (Doc. 3 in Case No. 1:20-cv-20; Doc. 1 in Case No. 1:20-cv-17). On January 14 and 16, 2019, the County removed Johnson and Knox's actions, respectively, to federal court with Wilkey and McRae's consent (Doc. 3 in Case No. 1:20-cv-20; Doc. 1 in Case No. 1:20-cv-17). In their complaints, Knox and Johnson assert the following claims against both Wilkey and McRae in their individual capacities: (1) failure to protect and render aid; (2) unreasonable seizure; (3) unreasonable search; and (4) various state-tort claims. (Doc. 1-2, at 16–29 in Case No. 1:20-cv-17; Doc. 3-2, at 16–29 in Case No. 1:20-cv-20.) Wilkey and McRae moved for summary judgment on all remaining claims against them. (Docs. 542, 550.) The Court ruled on the motions, granting them in part and denying them in part (Doc. 683).

iv. Mitchell/Menifee

Mitchell's claims against Wilkey and Brewer arise from a traffic stop occurring on July 10, 2019, during which Wilkey and Brewer pulled over a vehicle driven by Latisha Menifee with James Mitchell as a passenger. (Doc. 1-1, at 9 in Case No. 1:19-cv-305; Doc. 611-2, at 3–4.) After Mitchell admitted to having just smoked marijuana and Brewer located drugs on Mitchell's person, Wilkey and Brewer's dashcam captured Wilkey tackling Mitchell and repeatedly punching him. (*Wilkey and Brewer Dashcam Video*, at 21:29:30–21:33:13.) Wilkey then put on gloves and performed an invasive search of Mitchell while on the side of the road and in front of Menifee. (*Id.* at 21:38:03–21:39:39.) Mitchell was diagnosed with a thigh contusion, a scalp contusion, a possible anal fissure, and possible back and neck strain as a result of Wilkey's actions. (Doc. 611-8, at 2–3.) Mitchell and Menifee claim they saw Brewer, who was present throughout the stop, punch Mitchell while on the ground, though it is unclear from the dashcam footage to what extent Brewer participated. (Doc. 610-2, at 38–39, 46–47.)

On October 1, 2019, Mitchell and Menifee[2] jointly filed an action in the Hamilton County Circuit Court (Doc. 1-1 in Case No. 1:19-cv-305), and, on October 29, 2019, the action was removed to this Court and later consolidated with other related cases (Doc. 1 in Case No. 1:19-cv-305). In the complaint, Mitchell asserts the following claims against both Wilkey and Brewer in their individual capacities: (1) excessive force; (2) failure to protect; (3) unreasonable seizure; (4) malicious prosecution; (5) unreasonable search; (6) deprivation of equal protection; and (7) various state-tort claims. (Doc. 1-1, at 15–33 in Case No. 1:19-cv-305.) Wilkey and Brewer each moved for summary judgment on all remaining claims against them. (Docs. 610, 611.) The Court ruled on the motions, granting them in part and denying them in part (Doc. 681).

v. Wilkey's Indictment

On July 11, 2019, following the circulation of footage from Mitchell's traffic stop where Wilkey is seen performing an invasive search and striking Mitchell multiple times, the Hamilton County District Attorney opened a criminal investigation into Wilkey's actions. (Doc. 657-2, at 11–12, 480.) That same day, former Hamilton County Sherriff Jim Hammond directed that Wilkey be placed on administrative leave with pay pending the outcome of the criminal and internal investigations. (*Id.* at 607.) On December 10, 2019, Wilkey was indicted by a Hamilton County Grand Jury on forty-four counts related to incidents occurring during his time as an HCSO officer occurring between April 1, 2018, and July 10, 2019. (Doc. 657-3, at 751–794; Doc. 424-4, at 166–67 in Case No. 1:20-cv-17.)

[2] All of Menifee's claims have been dismissed; because the Court ruled that no reasonable juror could find she suffered the constitutional violations complained of, the County cannot be liable for its officers' actions relative to her. (Doc. 681, at 1.)

B. HSCO Background

i. Training

To comply with Tennessee Code Annotated § 38-8-107, all HCSO deputies "must be a graduate of an approved law enforcement training academy and certified by the Peace Officers and Standards Training Commission ("P.O.S.T.")." (Doc. 424-1, at 3 in Case No. 1:20-cv-17.) HCSO has been certified by the Commission on Accreditation for Law Enforcement Agencies ("CALEA"), which is "the highest possible accreditation in the law enforcement community" and is reflective of compliance with "some 684 stringent requirements on policy, procedures[,] and training." (Doc. 424-4, at 159–60 in Case No. 1:20-cv-17.)

According to HSCO Captain Spencer Daniels, who was the training officer for HCSO from November 2018 through February 2020, P.O.S.T. training includes over 400 hours of training on a curriculum that features "training in constitutional law on the restraint of police power versus citizens as dictated by court decisions in the area of the First, Fourth, Fifth, Sixth, and Eighth Amendments." (Doc. 424-1, at 19–20 in Case No. 1:20-cv-17 (cleaned up).) Though P.O.S.T. only imposes annual requirements, HCSO requires more frequent trainings. (*Id.* at 20.) The training varies each year but always incorporates a traffic-stop component that instructs on searches and seizures. (*Id.* at 20–21.)

In addition to in-service training, officers are required to periodically review and acknowledge they have read HCSO-specific policies. (*Id.* at 21.) One such policy states that officers are to conduct strip searches only in a controlled, private environment. (Doc. 657-2, at 87.) According to Miriam Monzon, HCSO's Professional Standards and Accreditation Manager, all HCSO employees "received electronic HCSO policies and updates to policies[] and have indicated electronically that each of them has read and understood the updates." (Doc. 424-4, at

159–60 in Case No. 1:20-cv-17.) Daniels confirmed in his deposition that there is "no formal actual class on [the strip-search policy,]" because the "[p]olicy pretty much covers [it]." (Doc. 657-2, at 214.) Daniels also noted that "the county jail really focuses on [the strip-search policy,]" presumably because the jail serves as the "controlled environment" in which strip searches are ordinarily performed. (*Id.* at 213, 215.) Brewer testified that he received a digital copy of HCSO's policies through the software "Policy Tech" and that he had to "go in and read and check if [he] had read it or not." (*Id.* at 414.) When asked what a strip search was, Brewer explained, "it is the showing of genitalia . . . to show if there's been any kind of contraband on your body." (*Id.* at 416.) Wilkey and Goforth also both confirmed they received the policies. (*Id.* at 366–67 (Wilkey testifying that he received a copy of the policy manual on his computer and had to read and sign it), 405 (Goforth confirming he received the policies and that "[c]ertain policies would have [] a brief questionnaire at the end").)

Wilkey, Goforth, Brewer, and McRae were all up to date with training requirements at the time of the events underlying the suits. Each graduated from approved basic law-enforcement training academies, satisfied all criteria to be P.O.S.T.-certified law enforcement officers, remained "continuously certified throughout their employment[,]" and "scored satisfactorily on evaluations." (Doc. 424-1, at 4 in Case No. 1:20-cv-17.) Daniels also confirmed that "Wilkey was exposed to far more training than most rookie law enforcement officers" upon starting at HCSO; in addition to undergoing eight weeks of field training as a lateral hire,[3] which Daniels states included training on searches and seizures, Wilkey attended annual training in November of 2018. (*Id.* at 22.) This training featured a high-risk Strategies and Tactics of Patrol Stops ("S.T.O.P.S.") session, which involved instruction on traffic-stop

[3] Wilkey was hired by the HCSO in February of 2018. (Doc. 657-2, at 667.)

searches, as well as Fair & Just Policing in Tennessee training, which also involved instruction on search issues. (*Id.*) Officers McRae, Goforth, and Brewer also attended the training. (*Id.* at 23–24.)

ii. Internal Affairs

Lieutenant David Sowder served as head of Hamilton County's Internal Affairs Division ("IA") until March of 2021, at which time he assumed the role of Lieutenant over Special Operations. (Doc. 657-2, at 62.) In his deposition, Sowder described the functions performed and procedures followed by IA. Sowder confirmed that IA "tr[ies] to" resolve investigations into complaints filed against HCSO officers within forty-five days, as per HCSO's written policy. (*Id.* at 123.) If an investigation cannot be completed within that time limit, a request for an extension should be made to the Chief Deputy or the Sheriff. (*Id.* at 123–24.) A report must be completed as part of an investigation, and it must contain one of the following conclusions of fact before it is presented to the Sheriff for his review: (1) Unfounded: The allegation was proven false; (2) Policy/Training Failure: The action was consistent with policy or training, but review of the relevant policy or training may be needed; (3) Exonerated: The complained-of act occurred, but it was justified, lawful, and proper; (4) Not sustained: The investigation turned up insufficient evidence to clearly prove the complaint's allegation(s); (5) Sustained: The investigation turned up sufficient evidence to clearly prove the complaint's allegation(s); or (6) Matter of Record: A case may be administratively closed and returned to at a later date when the investigation cannot at that time conclusively disprove the complaint's allegations. (Doc. 657-3, at 295–96.)

Sowder also briefly testified about the "code of silence," which he defined as an unspoken rule that "you didn't talk on another police officer." (Doc. 657-2, at 63–65.) Sowder

stated that, approximately thirty-five years ago, he witnessed the "code of silence" in operation when he reported an officer he witnessed using excessive force to his sergeant, but no investigation was initiated. (*Id.*) When asked whether the "code of silence" was a "kind of culture of the department," Sowder clarified, "[b]ack then, yes." (*Id.* at 66.)

IA performed multiple investigations regarding the events underlying Plaintiffs' § 1983 claims. From the record, the first complaint against Wilkey was filed in late April 2019. On April 29, 2019, Aviana McKenzie—the driver of the vehicle in which Knox and Johnson were passengers—filed a formal complaint with HCSO's IA regarding Wilkey's treatment towards her during the stop.[4] (Doc. 657, at 19; Doc. 657-2, at 523.) According to an IA memo dated April 30, 2019, "[t]he other girls [in the vehicle] wished to file an internal complaint as well." (Doc. 657-2, at 521.) On April 30, 2019, Chief Deputy Austin Garrett emailed Sowder to "[p]roceed with [the] investigation." (*Id.* at 522.)

The complaint was turned over to the Criminal Investigation Division ("CID"), a division that handles allegations appearing criminal in nature, which ultimately "concluded the claim the occupants made regarding the actions of Deputy Wilkey was false." (*Id.* at 528.) CID Detective Rice found through her investigation that McKenzie falsely claimed Wilkey touched her genitals during the search and, as a result, "took out juvenile attachments" against her. (*Id.*) On June 19, 2019, McKenzie was taken to the Juvenile Detention Center for "filing a false report regarding

[4] Specifically, McKenzie claimed Wilkey inappropriately touched her crotch when he retrieved the marijuana pipe from her underwear during the stop. (Doc. 657-2, at 523, 526.) While the Court's review of the video did not show this to be the case, Wilkey's manner of searching McKenzie and the passengers' description of their own searches raises questions. Because the Court found genuine disputes existed as to whether Knox and Johnson's searches were as invasive as they described, it denied summary judgment on their unreasonable-search claims (Doc. 683).

the complaint on Deputy Wilkey." (*Id.* at 524, 534.) IA closed its investigation on November 7, 2019, and exonerated Wilkey of "unbecoming conduct." (*Id.* at 528.)

Robert D. Lee, a Sergeant in IA during the relevant time period and now the Lieutenant in charge of IA, confirmed "there are no records of any complaints against Wilkey until April of 2019" when McKenzie filed a complaint. (Doc. 424-4, at 163–64, 166 in Case No. 1:20-cv-17.) Lee stated that he initiated several IA investigations into Wilkey's actions from that point on, beginning on April 30, 2019. (*Id.* at 164.)

Lee represents that Kelsey Wilson, an individual whose encounters with Wilkey underlie a number of the indictments against him,[5] "did not file a complaint as to any traffic stop by Daniel Wilkey or any other deputy," and, for this reason, "HSCO IA was not aware of this event until December 10, 2019, when the indictments were returned against Deputy Wilkey." (*Id.* at 166–67.) Similarly, Lee states neither Riley nor Jarnagin filed a complaint with IA; IA opened an investigation into Wilkey's traffic stop of Riley after it was made aware of the events that transpired during the stop.[6] (*Id.* at 167.) That investigation was opened September 25, 2019, and

[5] Wilson was, at one point, a plaintiff in this consolidated case. She claimed Wilkey unlawfully searched and seized her several times during his tenure as a HCSO deputy and brought claims against the County, alleging her injuries stemmed from an inadequate failure to screen and supervise its officers. (Doc. 1-2, at 4–14 in Case No. 1:20-cv-16.) This Court granted in part and denied in part Wilkey's motion to dismiss Wilson's claims on August 5, 2020 (Doc. 243). In that order, the Court dismissed all of Wilson's claims against the County because they implicated conduct occurring outside the relevant statute-of-limitations period. (*Id.* at 17.) The Court ultimately dismissed all of Wilson's claims against Wilkey with prejudice for failure to prosecute and failure to cooperate in discovery. (Doc. 465.)

[6] In the write-up for IA's investigation into Riley's baptism, it is noted that Goforth was asked about the baptism by his superiors "several days or weeks later." (Doc. 657-2, at 470.) The report also states that Wilkey discussed the baptism with his superior, Sergeant Carson, "on or about March 19th or 20th, 2019." (*Id.*) According to the report, Wilkey and Carson engaged in a text conversation after Carson asked if he performed a baptism in which Wilkey asked if he was in trouble. (*Id.*) Carson responded that Wilkey "needed to separate work and church a bit,

was completed on November 12, 2019, resulting in sustained neglect-of-duty and unbecoming-conduct violations against Wilkey and, against Goforth, failure to report violations of rules and orders. (Doc. 657-2, at 465–71.) Though the investigation resulted in sustained violations, apparently neither Wilkey nor Goforth was notified of this outcome. (*Id.* at 371–72 (Wilkey testifying that he did not know he had ever had any sustained allegations in HCSO), 406 (Goforth testifying he did not know he had a sustained complaint against him in his record).)

The day after Wilkey's indictment, "Chief Deputy Garrett instructed Lieutenant Sowder to conduct an internal investigation into the criminal indictments handed down on Deputy Wilkey." (*Id.* at 602.) Sheriff Hammond made a public statement that same day, assuring HCSO would "follow a specific process as to how [Wilkey's] employment status is addressed during the investigative phase and once formal charges have been issued." (*Id.* at 669.) He also pledged he would "continue to cooperate with the District Attorney's Office and provide any evidence or records necessary to aid in their investigation." (*Id.*)

On December 10, 2019, IA opened an investigation into the incidents underlying the criminal indictments brought against Wilkey. (Doc. 424-4, at 168 in Case No. 1:20-cv-17.) Upon a finding that the violations should be sustained, IA scheduled a due-process hearing for December 30, 2019, and sent notice of the hearing to Wilkey. (*Id.*) On December 27, 2019—three days before the hearing—Wilkey resigned. (*Id.*)

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and they will talk later." (*Id.*) Wilkey replied, "[i]s there a policy on that?" (*Id.*) Carson advised that he had not looked yet but was sure "they can make one fit." (*Id.*)

Carson stated in his IA interview that he and Lieutenant Kinsey later met with Wilkey in person regarding the baptism and "gave him a verbal reprimand/ verbal counseling." (*Id.*) Carson also spoke with Goforth, warning him that "if anything like that ever happened again, he needed to report it immediately." (*Id.*) Deputy Chief King also gave Wilkey a verbal warning, advising him that "baptizing someone while working[] did not fit in any [HCSO] procedures in law enforcement[,]" and that he "needed to keep his law enforcement duties separate from his religious duties while on duty." (*Id.*)

IA opened a separate investigation into Mitchell's traffic stop on July 11, 2019, after a video of the incident showing Wilkey's use of force and invasive search was circulated; neither Mitchell nor Menifee ever filed a complaint.[7] (Doc. 657-2, at 480.) In a memo directing IA to investigate the incident, Chief Deputy Garrett noted that the Hamilton County Attorney General had ordered that the TBI and the FBI conduct a criminal investigation into Wilkey's actions. (*Id.*) Garrett later approved Sowder's request via a letter dated October 14, 2019, that "the case be placed in suspension until the criminal investigation is concluded." (*Id.* at 481.) IA's investigation of Mitchell's traffic stop has been pending for over two years and has yet to be completed. (*Id.* at 81.)

IA has investigated complaints of other HCSO officers' use of excessive force in the past, and Plaintiffs provide documentation related to four such investigations, none of which resulted in termination. These investigations apparently represent only a fraction of excessive-force complaints investigated by IA; Lee noted in his testimony that "HCSO Deputies have been disciplined and terminated for the use of excessive force in other matters." (Doc. 424-4, at 166 in Case No. 1:20-cv-17.)

The first is Goforth's alleged use of excessive force against Anthony Parham on August 28, 2016, while Parham was being processed at the Hamilton County Jail. (Doc. 657-3, at 10, 20.) Parham filed a complaint with IA on December 6, 2016, and the investigation was completed on January 19, 2017. (*Id.* at 20–21.) As part of the investigation, Sowder interviewed multiple involved parties and spoke with Parham. (*Id.* at 11–12.) According to the transcripts of interviews conducted with Goforth and the other involved officer, both deny using excessive

[7] On July 11, 2019, the day after Wilkey strip-searched and punched Mitchell, Sheriff Hammond "directed that Deputy Wilkey be placed on 'Administrative Leave with Pay' pending the outcome of both the criminal and internal investigations." (Doc. 657-2,. at 607.)

force on Parham, and the report states there is no video showing the alleged use of force. (*Id.* at 20–21.) IA did not sustain charges against Goforth due to a lack of "sufficient evidence to support the violations," though a jury later found that Goforth used unreasonable force against and battered Parham. (*Id.* at 21, 78–80.)

The second is Deputy Blake Kilpatrick's alleged use of excessive force against Charles Toney on December 3, 2018, during his arrest. (*Id.* at 84.) Sowder opened an administrative review of the incident after he was notified of a Facebook post of the arrest and of Toney's claim that he was subjected to excessive force. (*Id.*) The investigation was later upgraded to a full IA investigation at the direction of former HCSO Chief Deputy Bill Johnson. (*Id.* at 85–86.) While the investigation was pending, Kilpatrick was placed on administrative leave. (*Id.* at 86.) The investigation was not completed until nearly two-and-a-half years later and did not sustain the excessive-force complaint due to lack of evidence "either to prove or disprove the allegation." (*Id.* at 180, 229.) The report detailed the lack of evidence as follows: (1) Sowder was "unable to interview [Toney] due to [his] refusing to contact [IA]"; (2) there was no body camera video of the incident available for review; (3) a witness to the arrest refused to give a statement for fear of retaliation by Toney; and (4) it was unclear whether Toney's injuries were caused by Kilpatrick or by Toney wrecking his ATV the night before. (*Id.* at 228.)

Another is Rodney Terrell's allegedly unlawful use of a taser on Nancy Mason on March 21, 2015, after she was uncooperative in removing her jewelry following arrest. (*Id.* at 546.) On or about March 26, 2015, IA began an investigation, which included reviewing videos from the incident and interviewing over eight involved parties, including Mason. (*Id.* at 547.) Based on its review of the evidence, IA sustained the excessive-force complaint against Terrell, finding that Mason "was not a physical threat at the time of the Taser deployment." (*Id.* at 601.) Terrell

received a written reprimand, a letter of counseling, and an order to retrain. (*Id.* at 407.) On October 28, 2015, Terrell was promoted to Corrections Lieutenant, replacing another deputy who had retired. (*Id.* at 743; Doc. 657-2, at 186.) When asked why Terrell was promoted, Sheriff Hammond stated the following:

> [There is a] process . . . anytime there's an opening to another rank it goes to a committee who then looks at who's eligible for promotion. They then generally interview all the ones that are eligible and they make a recommendation on who should move forward. When that comes to me, it's already been looked at by the others. I rarely go into a lot of background on the individuals[] because these happen so often.

(Doc. 657-2, at 187.)

The last is Daniel Hendrix's alleged assault of inmate Leslie Hayes on August 15, 2015, which allegedly occurred upon booking when Hendrix transported Hayes to a Correction's Corporation of America facility. (Doc. 657-3, at 414.) IA opened an investigation into the incident two days later after reviewing the Correction's Corporation of America's report of the incident, and the investigation was completed on October 8, 2015. (*Id.*) While the investigation was pending, Hendrix was placed on suspension with pay. (*Id.* at 415.) After completing the investigation, IA sustained complaints of excessive use of force and unbecoming conduct against Hendrix, finding "there was enough evidence to prove that [Hendrix] was in violation." (*Id.* at 445–46.) Hendrix received a written reprimand, a letter of counseling, and an order to retrain. (*Id.* at 409.)

When asked why certain IA investigations—namely, those involving Mitchell's traffic stop in 2019 and Toney's arrest in 2018—took significantly longer than the prescribed forty-five-day threshold, Sowder cited the department's limited resources: "[W]e do have other cases. I wish we had more manpower." (Doc. 657-2, at 81.) Sowder testified that only he and one or two other officers worked at IA in 2019. (*Id.* at 119.) Sowder also noted in deposition that,

when TBI is conducting a criminal investigation into an officer who is also the subject of an IA investigation, he will "wait until [the TBI's] case is done, and [he] get[s] their case and look[s] at their [sic] interviews to see if there's policy violations in their interviews." (*Id*. at 138.) Additionally, Sowder specified that the delay in Toney's case stemmed from his desire to interview U.S. Marshals and other involved individuals. (*Id.* at 139–40.) Lee also testified that "no further investigation into matters [involving Wilkey that were] not already investigated was warranted since no discipline[] or training could be imposed on Wilkey after his resignation." (Doc. 424-4, at 168 in Case No. 1:20-cv-17.)

II. *DAUBERT* MOTIONS

All Defendants have moved to exclude the testimony of Dr. Geoffrey Alpert, a police expert witness Plaintiffs retained to testify about police-practice issues (Docs. 594, 596, 599, 601). Plaintiffs have submitted a ninety-one-page expert report prepared by Dr. Alpert that primarily describes the supposed "code of silence" operating at HCSO; according to Dr. Alpert, HCSO's adoption of a "code of silence" caused Plaintiffs' constitutional injuries and is evidenced by HCSO's allegedly inadequate investigations of complaints against its officers, its noncompliance with certain HCSO policies, and the actions of some of its officers. (*See generally* Doc. 622-1, at 85–91.) If Plaintiffs can demonstrate HCSO operated pursuant to a code of silence—that is, had a deeply ingrained custom of ignoring or discouraging complaints

of officer misconduct—that served as the moving force behind their injuries, they may be able to hold the County liable. *See* infra Section III.B.ii.[8]

A. Legal Standard

Federal Rule of Evidence 702 governs the admissibility of testimony by expert witnesses and provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702; *see Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 588–95 (1993) (construing Rule 702). However, "the Rule 702 inquiry [is] 'a flexible one.'" *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999) (citations omitted). "*Daubert* makes clear that the factors it mentions do *not* constitute a 'definitive checklist or test'" and "adds that the gatekeeping inquiry must be 'tied to the facts' of a particular 'case.'" *Id.* (emphasis in original) (quoting *Daubert*, 509 U.S. at 591, 593). The Sixth Circuit has identified three requirements for admissibility under Rule 702: (1) "the witness must be qualified by 'knowledge, skill, experience, training, or education'"; (2) "the testimony must be relevant, meaning that it 'will assist the trier of fact to understand the evidence or to determine a fact in issue'"; and (3) "the

[8] Though Defendants filed separate motions, they advance substantially similar arguments, and both Wilkey and the County noted that their motions incorporate or rely upon those filed by other Defendants. (Doc. 594, at 3 (Wilkey stating that his motion "incorporates the argument of any other Daubert motions filed by any co-defendant"); Doc. 599, at 1 (the County noting that it relies on "all relevant arguments advanced by any other Defendant in their respective Daubert Motions").) Plaintiffs also elected to address all motions with a single brief, noting that "all of the motion[s] raise the same or similar arguments." (Doc. 622, at 2 n.1.) Accordingly, the Court will take up Defendants' motions collectively.

testimony must be reliable." *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 528–29 (6th Cir. 2008) (quoting Fed. R. Evid. 702).

With respect to the first requirement, courts consider whether the expert's qualifications "provide a foundation for a witness to answer a specific question," as opposed to considering his or her qualifications in the abstract. *Burgett v. Troy-Bilt, LLC*, 579 F. App'x 372, 376 (6th Cir. 2014) (citing *Berry v. City of Detroit*, 25 F.3d 1342, 1351 (6th Cir. 1994)). The party offering the expert testimony must prove the expert's qualifications by a preponderance of the evidence. *Id.* (citing *Sigler v. Am. Honda Motor Co.*, 532 F.3d 469, 478 (6th Cir. 2008)).

To determine whether expert testimony is relevant, a court must, as a preliminary matter, consider whether the proffered expert testimony is relevant under Rule 401. *Daubert*, 509 U.S. at 587 (citing Fed. R. Evid. 401). Rule 401 provides that "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. The testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue." *Daubert*, 509 U.S. at 591 (quoting Fed. R. Evid. 702). "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." *Id.* at 591 (citations omitted). In addition to relevance as defined in Rule 401, "Rule 702's 'helpfulness' standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility." *Id.* at 591–92. This aspect of the relevance requirement—described in *Daubert* as "fit"—concerns whether the method on which the testimony is based is scientifically valid for the "pertinent inquiry" in the case. *Id.* !

Reliability, the third requirement, is assessed using the factors set out in Rule 702 itself—whether the testimony is based on sufficient facts or data, whether the testimony is the product of

reliable principles and methods, and whether the principles and methods used were reliably applied. *In re Scrap Metal*, 527 F.3d at 529 (citing Fed. R. Evid. 702). To be reliable, an expert's testimony must be supported by "'good grounds,' based on what is known." *Id.* (quoting *Daubert*, 509 U.S. at 590). A reliable expert opinion also "rests upon a reliable foundation, as opposed to, say, unsupported speculation." *Id.* at 529–30 (citations omitted). Courts "generally permit testimony based on allegedly erroneous facts when there is some support for those facts in the record." *Id.* at 530. Thus, reliability—distinct from "credibility and accuracy"—focuses on the methodology employed rather than the conclusions drawn. *Superior Prod. P'ship v. Gordon Auto Body Parts Co., Ltd.*, 784 F.3d 311, 323 (6th Cir. 2015) (quoting *In re Scrap Metal*, 527 F.3d at 529); *see Daubert*, 509 U.S. at 595.

In determining whether expert testimony "is the product of reliable principles and methods," Fed. R. Evid. 702(c), courts may consider whether the methods and principles have been and are capable of being tested, whether they have been subjected to peer review and publication, their known or potential rate of error, and whether they are generally accepted within the relevant scientific community. *See Daubert*, 509 U.S. at 593–94; *see also United States v. Mallory*, 902 F.3d 584, 592–93 (6th Cir. 2018) (noting that all the factors do not necessarily apply in every case). The inquiry, however, is flexible, and the district court may also consider other factors that bear on the reliability of the expert's testimony. *See Kuhmo Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 149–50 (1999) ("[A] trial court should consider the specific factors identified in *Daubert* where they are reasonable measures of the reliability of expert testimony."); *see, e.g.*, *Johnson v. Manitowic Boom Trucks, Inc.*, 484 F.3d 426, 434–35 (6th Cir. 2007) (approving consideration of the extent to which an expert's opinion was prepared solely for litigation in determining its reliability).

"[R]ejection of expert testimony is the exception, rather than the rule," *In re Scrap Metal*, 527 F.3d at 530, and "Rule 702 should be broadly interpreted on the basis of whether the use of expert testimony will assist the trier of fact," *Burgett*, 579 F. App'x at 376 (quoting *Morales v. Am. Honda Motor Co., Inc.*, 151 F.3d 500, 516 (6th Cir. 1998)). "A court should not use its gatekeeping function to impinge on the role of the jury or opposing counsel." *Id.* at 376–77; *see also Daubert*, 509 U.S. at 596 ("Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.").

Additionally, as the United States Supreme Court explained in *Daubert*, "a judge assessing a proffer of expert scientific testimony under Rule 702 should also be mindful of other applicable rules." 509 U.S. at 595 (citing Rule 403, among other examples); *see also id.* ("Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses." (citations and internal quotation marks omitted)). Pursuant to Rule 403,

> The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Fed. R. Evid. 403. Rule 403 provides an independent basis to exclude expert testimony that otherwise comports with the Federal Rules of Evidence. *See, e.g.*, *United States v. Semrau*, 693 F.3d 510, 516 (6th Cir. 2012).

A district court may, but need not, hold an evidentiary hearing to aid in the decision of whether to admit expert testimony. *See Kuhmo Tire*, 526 U.S. at 152 ("The trial court must have the same kind of latitude in deciding *how* to test an expert's reliability, and to decide whether or

when special briefing or other proceedings are needed to investigate reliability, as it enjoys when it decides *whether or not* that expert's relevant testimony is reliable." (emphasis in original)); *Nelson v. Tenn. Gas Pipeline Co.*, 243 F.3d 244, 249 (6th Cir. 2001).

B. Analysis

i. Qualifications

The Court acknowledges that Dr. Alpert possesses a number of relevant qualifications and accolades—one of them being a doctorate in criminology. However, Dr. Alpert's background does not greenlight all police-related testimony he may offer. As Plaintiffs point out, the Sixth Circuit has specifically stated Dr. Alpert is qualified to testify on and assess police operations in *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893 (6th Cir. 2004), when it noted Dr. Alpert, serving as an expert witness on officers' use of excessive force, possessed credentials signaling "considerable experience in the field of criminology." *Id.* at 909. But critical to the *Champion* court's favorable evaluation was the nature of Dr. Alpert's testimony in that case. Instead of opining about "the impact of police policies upon a large group of officers" as in *Berry v. City of Detroit*, 25 F.3d 1342 (6th Cir. 1994), a Sixth Circuit case in which the court excluded the expert's testimony, Dr. Alpert testified on "the proper actions of individual officers in one discrete situation[, excessive force,]" about which Dr. Alpert possessed particularized knowledge. *Champion*, 380 F.3d at 908. Thus, the *Champion* court regarded Dr. Alpert as qualified because of his "considerable experience in the field of criminology *and* because he was testifying concerning a discrete area of police practices about which he had specialized knowledge." *Id.* at 909 (emphasis added).

But, in this case, Dr. Alpert's report offers opinions on numerous police actions about which he does not appear to possess comparable "specialized knowledge." A prime example is

Wilkey's traffic stop of Riley. Dr. Alpert does not profess to have any experience relating to the First Amendment or religious issues, yet he concludes in his report that an officer "performing a Christian baptism while on duty is highly improper, serves no law enforcement purpose, is an abuse of power[,] and a *violation of the separation of church and state*." (Doc. 622-1, at 86 (emphasis added).) While Dr. Alpert is permitted to discuss the reasonableness of Wilkey's actions in light of standard police practices about which he possesses specialized knowledge, here Dr. Alpert neither references standard police practices nor any knowledge he might have that permits him to draw such a conclusion.[9]

ii. Relevance

Even if Dr. Alpert is said to possess specialized knowledge regarding all subject matter he opines on, the lack of relevance of the bulk of Dr. Alpert's testimony jeopardizes its admissibility. Though Dr. Alpert's report nears a hundred pages, the vast majority of it merely summarizes or recites deposition testimony and HCSO records and procedures. Defendants aptly describe in their brief the irrelevance of this duplicative material:

> An extensive factual record exists in this case, and the fact witnesses and documents in the record are the appropriate means by which this evidence should come in rather than allowing Plaintiffs to add undue weight to the evidence by presenting it through an expert witness. The factfinder is capable of understanding whether Wilkey and the Officers did X or Y without the help of an expert. Moreover, the witnesses themselves can also speak to what happened in these cases . . . .

[9] The scope of Dr. Alpert's testimony is not clearly set forth, and occasionally, such as in his discussion of Riley's baptism, he appears to opine on the propriety of individual officers' actions. Nonetheless, the report seems to be offered primarily in support of Plaintiffs' *Monell* claims; as Wilkey notes in his motion to exclude the testimony, Dr. Alpert "does not opine on whether the activities of the subject officers in conducting searches were indeed correct. His report examines the inner workings of the HCSO but fundamentally fails to examine the searches and procedures followed by Deputy Wilkey to any appreciable degree." (Doc. 595, at 8.) Accordingly, the Court understands Dr. Alpert's references to individual-officer actions to be in service of his overarching opinions relating to the County's liability rather than that of individual officers.

(Doc. 598, at 11.) As this Court has recently noted, the presentation of "observations that could be made . . . by a lay observer . . . will not help the jury determine any fact in issue" and would instead "likely lead to needless jury confusion and delay." *Daycab Company, Inc. v. Osman*, No. 3:20-cv-63, 2022 WL 2286202, at *8–9 (E.D. Tenn. June 23, 2022) (citing Fed. R. Evid. 403).

The primary "opining" Dr. Alpert does is in describing the apparent "code of silence" he believes permeates HCSO. (Doc. 622-1, at 85.) Dr. Alpert's overarching conclusion is that HCSO "appears to accept and endorse the 'code of silence' by the manner in which it investigates complaints" and tolerates officer misconduct. (*Id.* at 64; Doc. 657, at 14 (quoting Dr. Alpert's report).) But that supposed insight will not assist jurors given that it lacks meaningful connection to the report's belabored summary of the record. The general format of Dr. Alpert's "conclusions' is a retelling of an occurrence derived from the record, immediately followed by a broad supposition that the aforementioned event serves as evidence of HCSO's adherence to a code of silence. (*E.g.*, Doc. 622-1, at 86–88.) For example, in one such "conclusion," Dr. Alpert notes that Wilkey and Brewer performed a roadside strip search on Mitchell in violation of HCSO policy, that Sheriff Hammond issued a public statement about his intention to investigate the search, and that no IA investigation of the incident was completed. (*Id.* at 86–87.) Dr. Alpert then, without elucidating any connection to those occurrences, concludes they present "compelling evidence that [] HCSO operates pursuant to a code of silence." (*Id.*) Such a leap is unlikely to offer jurors any guidance in understanding the evidence or resolving a factual dispute; rather, it threatens to usurp their role. *See Daubert*, 509 U.S. at 591 (noting that, to be relevant, expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue") (cleaned up); *see also Brown v. City of Shelbyville*, No. 1:19-cv-152, 2020 WL 13173275, at *9 (E.D. Tenn. Sept. 17, 2020) (finding an expert's

testimony on police-officer practices irrelevant in part because "he merely reviewed the evidence that the jury will review[] and made conclusory statements based upon his interpretation of the events"); *Swink v. Mayberry*, No. 4:17-cv-791, 2018 WL 2762549, at *2 (E.D. Mo. June 8, 2018) ("Although Federal Rule of Evidence 704 states that 'an opinion is not objectionable just because it embraces an ultimate issue,' the opinion 'must be helpful to the trier of fact' and cannot 'merely tell the jury what result to reach[.]'") (alteration in original) (quoting Fed. R. Evid. 704 advisory committee notes).

iii. Reliability

Concerns regarding the reliability of Dr. Alpert's conclusions also warrant exclusion. Rather than ask that a court take his "word for it," an expert relying on his own experience in reaching his conclusions "must explain how that experience leads to the conclusion[s] reached . . . and how that experience is reliably applied to the facts." *Thomas v. City of Chattanooga*, 398 F.3d 426, 432 (6th Cir. 2005). Yet Dr. Alpert frequently fails to connect his expertise with his conclusions. In one instance, Dr. Alpert opines that "the failure of [] HCSO to provide adequate policies, training, supervision, and discipline of its deputies was the underlying cause and proximate cause of the misconduct committed by Wilkey and its other deputies." (Doc. 622-1, at 90–91.) Dr. Alpert bases this conclusion on his "review of the evidence" without explaining the knowledge or experience he used to arrive at it. (*Id.* at 90.) Reliability concerns also crop up in considering Dr. Alpert's dependence on materials provided by Plaintiffs to determine the existence of a pattern or custom at HCSO. The sample he reviewed was arguably not representative; though the County provided over a hundred IA reports for review, Dr. Alpert only drew from a handful in confirming the presence of a "code of silence" at HCSO. (Doc. 600, at 2; Doc. 599-1, at 2.)

Because it finds that Dr. Alpert's testimony is unlikely to assist jurors in determining whether HCSO has a custom or practice of failure to report, discipline, or investigate officer misconduct and fails to adequately explain the process by which he reached his conclusions, the Court will grant Defendants' motions to exclude his testimony (Docs. 594, 596, 599, 601) as it relates to the County's liability.

III. MOTIONS FOR SUMMARY JUDGMENT

The County also moves for summary judgment as to Plaintiffs' claims against it for *Monell* liability (Docs. 556–59). For the reasons that follow, summary judgment will be granted in favor of the County as to all federal claims.

A. Standard of Law

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court views the evidence in the light most favorable to the nonmoving party and makes all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nat'l Satellite Sports, Inc. v. Eliadis Inc.*, 253 F.3d 900, 907 (6th Cir. 2001).

The moving party bears the burden of demonstrating that there is no genuine dispute as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Leary v. Daeschner*, 349 F.3d 888, 897 (6th Cir. 2003). The moving party may meet this burden either by affirmatively producing evidence establishing that there is no genuine issue of material fact or by pointing out the absence of support in the record for the nonmoving party's case. *Celotex*, 477 U.S. at 325. Once the movant has discharged this burden, the nonmoving party can no longer rest upon the allegations in the pleadings; rather, it must point to specific facts supported by evidence in the

record demonstrating that there is a genuine issue for trial. *Chao v. Hall Holding Co., Inc*., 285 F.3d 415, 424 (6th Cir. 2002).

At summary judgment, the Court may not weigh the evidence; its role is limited to determining whether the record contains sufficient evidence from which a jury could reasonably find for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). A mere scintilla of evidence is not enough; the Court must determine whether a fair-minded jury could return a verdict in favor of the non-movant based on the record. *Id.* at 251–52; *Lansing Dairy, Inc. v. Espy*, 39 F.3d 1339, 1347 (6th Cir. 1994). If not, the Court must grant summary judgment. *Celotex*, 477 U.S. at 323.

B. Analysis

Section 1983 of Title 42 of the United States Code provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any . . . person . . . to the deprivation of any rights . . . secured by the Constitution and laws [of the United States], shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

The Supreme Court has held that municipalities and other local governments "can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). *Monell* clarified that local governments can also be liable under § 1983 for "constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision[-

]making channels."[10] *Id.* at 690–91. A local governmental entity, however, "cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.* at 691 (emphasis in original); *see also id.* at 694 ("Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983."). A plaintiff seeking to subject a municipality to § 1983 liability for the actions of its officers "must show that the alleged federal right violation occurred because of a municipal policy or custom." *Thomas,* 398 F.3d at 429 (citing *Monell,* 436 U.S. at 694).

A plaintiff may pursue any of four possible avenues to prove the presence of a municipality's illegal policy or custom: (1) by pointing to the existence of an illegal official policy or legislative enactment; (2) by demonstrating that an official with final decision-making authority ratified illegal actions; (3) by proving the existence of a policy of inadequate training or supervision; or (4) by showing there is a custom of tolerance or acquiescence of federal rights violations. *Jackson v. City of Cleveland*, 925 F.3d 793, 828 (6th Cir. 2019) (citing *Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013)). A custom or policy—whether implicit or explicit—must be "so widespread as to have the force of law[,]" as characterized by the "persistent practices of state officials." *Gregory v. Shelby Cnty.*, 220 F.3d 433, 442 (6th Cir. 2000); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167 (1970).

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[10] A *Monell* claim may only succeed when a reasonable jury could find the underlying alleged constitutional violation occurred. Apart from Jarnagin, the Court has already made this determination as to Plaintiffs' claims. Because the Court granted summary judgment on Plaintiffs' claims related to Wilkey's use of window tint as a basis for a traffic stop, it will not address Plaintiffs' *Monell* arguments as to that alleged violation.

i. Formal Illegal Policy

Plaintiffs do not appear to argue any alleged constitutional violation was caused by an explicit policy of the County. (*See* Doc. 657, at 41 (Joint Plaintiffs[11] noting that "HCSO had proper written policies that were based on national law enforcement standards set forth by CALEA"); Doc. 563, at 13 (the County confirming that "Plaintiff does not allege that a constitutional violation was caused by enforcement of any express *policy* . . . .") (emphasis in original).) Rather, Plaintiffs focus on the three remaining paths to demonstrate *Monell* liability.

ii. Ratification of Subordinate's Unconstitutional Action by Final Decision Maker ("Single-Act" Theory of Liability)

The County challenges the viability of Plaintiffs' ratification, or "single-act," theory of *Monell* liability. Unlike other *Monell*-liability theories, ratification by an official with final-decision-making authority does not necessarily require proof of a pattern or custom. *Scott v. Louisville/Jefferson Cnty. Metro Gov't*, 503 F. Supp. 3d 532, 537 (W.D. Ky. 2020); *see also Cretacci v. Hare*, No. 4:19-cv-55, 2021 WL 202997, at *11 (E.D. Tenn. Jan. 20, 2021) ("[A] plaintiff would not need to establish a pattern of past misconduct where the actor was a policymaker with final policymaking authority.") (quoting *Burgess*, 735 F.3d at 479). Instead, a "single decision by [a municipality]—whether or not that body had taken similar action in the past or intended to do so in the future"—can impose liability under § 1983, "because even a single decision by such a body unquestionably constitutes an act of official government policy." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986) (citations omitted).

[11] Because Knox, Johnson, Mitchell, and Riley are all represented by the same counsel, who filed a single response brief consolidating their arguments, the Court will refer to this group of Plaintiffs as "Joint Plaintiffs."

Ratification can occur when an official acting with final decision-making authority either (1) affirmatively approves "of a particular decision made by a subordinate" or (2) fails to "meaningfully investigate and punish allegations of unconstitutional conduct." *Feliciano v. City of Cleveland*, 988 F.2d 649, 656 (6th Cir. 1993); *Wright v. City of Euclid*, 962 F.3d 852, 882 (6th Cir. 2020) (citation omitted); *Meyers v. Cincinnati Bd. of Educ.*, 343 F. Supp. 3d 714, 729 (S.D. Ohio 2018) (first citing *Meyers v. City of Cincinnati*, 14 F.3d 1115, 1118–19 (6th Cir. 1994); and then citing *Leach v. Shelby Cnty. Sheriff*, 891 F.2d 1241, 1246–48 (6th Cir. 1989)).

To succeed on either method, a plaintiff must identify a final decisionmaker—an official possessing "final authority to establish municipal policy with respect to the action ordered"—who ratified the allegedly unconstitutional act. *Flagg v. City of Detroit*, 715 F.3d 165, 174 (6th Cir. 2013) (quoting *Pembaur*, 475 U.S. at 480–81); *see Brown v. Chapman*, 814 F.3d 447, 462 (6th Cir. 2016) ("[A ratification] theory of municipal liability . . . applies only when the ratification was carried out by an official with final decision-making authority.") (citations omitted). A plaintiff must also demonstrate that "a deliberate choice to follow a course of action is made from among various alternatives by the official . . . responsible for establishing final policy with respect to the subject matter in question." *Burgess*, 735 F.3d at 479 (internal quotation marks omitted) (quoting *Pembaur*, 475 U.S. at 483). And "that course of action must be shown to be the moving force behind . . . the plaintiff's harm." *Id.* (citing *Pembaur*, 475 U.S. at 484–85).

Assuming Plaintiffs properly identified a final policymaker,[12] Plaintiffs have not shown they are able to demonstrate that individual's actions served as the moving force behind their

[12] Joint Plaintiffs have not clearly specified a deliberate choice that a final decisionmaker made that resulted in their injuries. Their complaints and briefing center blame on the County rather

injuries. Though a ratification theory of liability does not always require proof of a pattern, Sixth Circuit precedent makes plain that after-the-fact approval of an investigation that does not itself harm the plaintiff is insufficient to establish *Monell* liability. *See id.* ("[Holding that after-the-fact approval is a sufficient basis for liability] would effectively make [the municipality] liable on the basis of *respondeat superior*, which is specifically prohibited by *Monell*.") (citation omitted); *see also David v. City of Bellevue*, 706 F. App'x 847, 853 (6th Cir. 2017) (noting that Supreme Court precedent requires a plaintiff to show that "action *pursuant to* official municipal policy caused their injury" and that "[a]n action cannot be pursuant to something that has not yet occurred") (emphasis in original) (internal quotation marks omitted) (citing *Connick v. Thompson*, 563 U.S. 51, 60 (2011)). Yet this is exactly what Jarnagin[13] and Joint Plaintiffs argue: that the County's post-hoc failure to adequately investigate allegations of officer misconduct effectively ratified the allegedly unconstitutional acts. (*See* Docs. 657, at 38; Doc. 660, at 15.) Joint Plaintiffs cite *Wright v. City of Canton*, 138 F. Supp. 2d 955 (N.D. Ohio 2001),

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than the Sheriff for supposedly ratifying officers' conduct. (*See, e.g.*, Doc. 657, at 37 ("Plaintiff has provided significant evidence that HCSO failed to even open Internal Affairs investigations into many of the complaints . . . ."), 38 ("Plaintiffs submit that Hamilton County ratified Deputy Wilkey's actions . . . .").) Such generalizations may be insufficient to attribute a ratifying action to the County through a final decisionmaker. *See Brown*, 814 F.3d at 462 (affirming the district court's grant of summary judgment because the plaintiff "does not name a final decisionmaker, but rather alleges that the Cleveland police department, as a whole, ratified the officers' conduct"). Nonetheless, the Court will assume for the sake of analysis that Plaintiffs have adequately attributed the actions they complain of to a final policymaker.

[13] Jarnagin argues the County effectively ratified Wilkey's allegedly unconstitutional search of Jarnagin through its "selective use of internal affairs investigations." (Doc. 660, at 14.) But Jarnagin never made a complaint to IA and relies on Wilkey's later indictment on charges related to his search to instigate such an investigation. (Doc. 671, at 7); *see Morrison v. Bd. of Trs.*, 529 F. Supp. 2d 807, 825 (S.D. Ohio 2007), *aff'd*, 583 F.3d 394 (6th Cir. 2009) ("[A defendant] cannot be said to have a policy of ratifying unconstitutional conduct by failing to properly investigate a complaint when no complaint was made.")

in support of the proposition that "[r]atification[14] can [] occur when the policymaker fails to meaningfully investigate the alleged unconstitutional conduct." (Doc. 657, at 37.) But, as the Sixth Circuit has affirmed in response to a nearly identical argument, "under Supreme Court precedent, plaintiffs must show that 'action *pursuant to* official municipal policy' caused their injury. An action cannot be pursuant to something that has not yet occurred."[15] *David*, 706 F. App'x at 853 (emphasis in original) (internal citation omitted) (quoting *Connick*, 563 U.S. at 60); *see also Arbuckle v. City of Chattanooga*, 696 F. Supp. 2d 907, 927 (E.D. Tenn. 2010) ("[A] faulty investigation *after* the alleged incident does not establish that the City was the 'moving force' behind a constitutional violation.") (emphasis added) (citations omitted).

Plaintiffs' reliance on *Leach* and *Marchese v. Lucas*, 758 F.2d 181 (6th Cir. 1985), in support of their ratification theory of liability is also misplaced. (Doc. 657, at 38–39; Doc. 660, at 15–16.) These cases do not, as Plaintiffs seem to assume, permit a decisionmaker's failure to investigate a report of police misconduct to create municipal liability. *See Meirs v. Ottawa Cnty.*, 821 F. App'x 445, 453 (6th Cir. 2020) (disagreeing with the similar "precedential support the plaintiff seeks to attribute to [*Marchese* and *Leach*]" and clarifying that "a single instance of a failure to investigate . . . is insufficient to infer a policy of deliberate indifference") (citations

[14] Both parties conflate the ratification and custom-of-tolerance theories of *Monell* liability. The Court understands Joint Plaintiffs to be relying on *Wright* to advance a custom-of-tolerance argument, as Joint Plaintiffs go on to argue that "the IA process at HCSO is simply a sham process utilized by the HCSO to protect itself from liability." (Doc. 657, at 37–38.) Additionally, the Court already discussed why a final policymaker's after-the-fact failure to investigate or discipline an alleged violation is insufficient evidence of a ratification claim.

[15] Other courts have outright dismissed *Wright* as wrongly decided. *See Greenlee v. Miami Twp.*, No. 3:14-cv-173, 2015 WL 631130, at *8 n.5 (S.D. Ohio Feb. 12, 2015), *aff'd* (Sept. 23, 2015) ("[T]his Court believes that *Wright* was wrongly decided."); *cf. Guglielmo v. Montgomery Cnty.*, 387 F. Supp. 3d 798, 826 (S.D. Ohio 2019) (regarding *Greenlee*'s analysis as "persuasive" and agreeing that a causal link between a county's failure to investigate and the constitutional violation at issue is required to support a claim).

and internal quotation marks omitted); *Pineda v. Hamilton Cnty.*, 977 F.3d 483, 494–95 (6th Cir. 2020) ("Since *Leach* and *Marchese*, [] we have clarified the scope of th[e] 'ratification' theory . . . . Because municipal liability requires an unconstitutional 'policy' or 'custom,' we have held that an allegation of a single failure to investigate a single plaintiff's claim does not suffice. As a result, a claim based on inadequate investigation requires not only an inadequate investigation in this instance, but also a clear and persistent pattern of violations in *earlier* instances.") (cleaned up) (emphasis added). Such a reading effectively "by-passes the requirements of *Monell*" by enabling post-harm conduct to serve as the "moving force" of the alleged violation. *Tompkins v. Frost*, 655 F. Supp. 468, 472 (E.D. Mich. 1987). Rather, *Marchese* "makes a post-injury failure to investigate a fact which may permit an inference that the misconduct which injured the plaintiff was pursuant to an official policy or custom." *Id.*; *see also Leach*, 891 F.2d at 1248 (noting that the sheriff's failure to investigate the underlying incident and punish responsible parties served as "*[f]urther* evidence of a policy of deliberate indifference" in addition to the sheriff's deliberate indifference to fourteen other similar instances of misconduct) (emphasis added). Such an inference, without more, is insufficient to support a finding of municipal liability under a ratification theory.[16] *Tompkins*, 655 F. Supp. at 472 n.3; *City of Okla. City v. Tuttle*, 471 U.S. 808, 105 (1985) (plurality opinion). Because Plaintiffs appear to rely only on

[16] Evidence of a county's post-injury failure to investigate can, in some cases, "rise[] to the level of a policy of acquiescence that in itself was the 'moving force'" of the injury. *Woodby v. Bradley Cnty.*, No. 1:07-cv-3, 2008 WL 5245361, at *11 (E.D. Tenn. Dec. 16, 2008) (citation omitted). The strength of the inference depends on "the nature of the notice given" and whether the decisionmaker "intentionally or recklessly failed to take appropriate action." *Tompkins*, 655 F. Supp at 472. The Court will consider the inferential value of Plaintiffs' evidence of the County's post-injury failure to investigate in its discussion regarding their "custom of tolerance" theory of liability in Section IV.B.iv, *infra*.

post-injury investigative deficiencies in advancing a ratification argument, they have not provided sufficient evidence to support liability under this theory.

iii. Failure to Train[17]

The Supreme Court has stated that "[a] municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick*, 563 U.S. at 61 (citing *City of Okla. City*, 471 U.S. at 822–23). Nonetheless, "[i]n limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." *Id.* To establish municipal liability based on a failure to train, "a plaintiff must show that: '(1) the training program was inadequate to the task the officer must perform; (2) the inadequacy is a result of the municipality's deliberate indifference; and (3) the inadequacy is closely related to or actually caused the plaintiff's injury.'" *Epperson v. City of Humboldt*, 140 F. Supp. 3d 676, 684 (W.D. Tenn. 2015) (quoting *Bonner–Turner v. City of Ecorse,* 627 F. App'x 400, 414 (6th Cir. 2015)) (cleaned up).

As a preliminary matter, Plaintiffs fail to demonstrate there is a genuine dispute as to the adequacy of HCSO's training. Despite Joint Plaintiffs' sweeping accusation that the County

[17] Joint Plaintiffs seem to abandon an argument made in their complaints. Though the County's alleged failure to screen Wilkey and other HCSO officers is described in each complaint and addressed by the County in its summary-judgment motions, Joint Plaintiffs' do not in their response brief advance a failure-to-screen argument. (*See generally* Doc. 567.) Because Joint Plaintiffs do not address the argument in any form in their response brief, it is deemed abandoned. *See Brown v. VHS of Mich., Inc.*, 545 F. App'x 368, 372 (6th Cir. 2013) ("This Court's jurisprudence on abandonment of claims is clear: a plaintiff is deemed to have abandoned a claim when a plaintiff fails to address it in response to a motion for summary judgment.") (citations omitted). Consequently, the Court will not address it. *See Hicks v. Concorde Career Coll.*, 449 F. App'x 484, 487 (6th Cir. 2011) (holding that "[t]he district court properly declined to consider the merits of [the plaintiff's hostile-work-environment claim] because [the plaintiff] failed to address it in . . . his response to the summary judgment motion").

does not provide *any* training, the gravamen of their response seems to be the County's supposed "failure to provide *specific* training on the HCSO *policies*"—namely, policy 1.2.08 prohibiting public strip searches, policies 1.3.06 and 1.3.07 requiring the submission of use-of-force reports to IA, policy 35.1.09 establishing an early warning system for disciplining officers, policy 41.3.08 requiring officers to activate their video cameras during traffic stops, policy Chapter 52 requiring timely IA investigations, and policy Chapter 44 regarding questioning of juveniles.[18] (Doc. 657, at 34–35 (citing Doc. 657-3, at 223–342) (emphasis added).) Presumably because it is the only one directly related to the constitutional violations at issue, Plaintiffs center their failure-to-train argument on the strip-search policy. Joint Plaintiffs concede, however, that "HCSO had proper written policies that were based on national law enforcement standards set forth by CALEA," and thus appear to only take issue with the policy-training format. (Doc. 657, at 41.) But "failure-to-train liability is concerned with the *substance* of the training, not the particular instructional *format*."[19] *Connick*, 563 U.S. at 68 (emphasis added).

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[18] Though Plaintiffs do not cite to a particular HCSO policy regarding window-tint violations, they nonetheless argue the County should be liable for failure to adequately train officers on this subject. (Doc. 657, at 35.) However, because the Court has granted summary judgment as to Plaintiffs' window-tint related unreasonable-seizure claims (*See* Docs. 682, 683), any argument the County is liable for failure to train on this topic must fail. *See Scott v. Clay Cnty.*, 205 F.3d 867, 879 (6th Cir. 2000).

[19] When "read and sign" training is the only training provided by the municipality regarding governmental officials' essential roles, the format may be relevant. Such was the case in *Shadrick v. Hopkins County, Kentucky*, 805 F.3d 724 (6th Cir. 2015), in which the Sixth Circuit denied the municipality's *Monell* summary-judgment motion because nurses working in county prison received no ongoing training on how to care for inmates apart from reviewing policies regarding job responsibilities. *Id.* at 734, 740–42. The court found there was a genuine dispute as to whether nurses were required to both read and sign off on the policies. *Id.* at 740.

By contrast, in this case, the County imposes annual training obligations touching on core officer responsibilities like traffic stops, searches, and use of force. Unlike in *Shadrick*, the parties do not dispute that officers were required to both read and sign off on HCSO policies through an online program that also features brief exams on select topics. Thus, the Court finds no reason to arrive at a similar conclusion here.

Plaintiffs also fail to establish a genuine dispute as to the County's deliberate indifference to the need for sufficient training and the connection between that indifference and Plaintiffs' injuries. The Sixth Circuit has recognized "at least two situations in which inadequate training could be found to be the result of deliberate indifference": (1) "failure to provide adequate training in light of foreseeable consequences that could result from the lack of instruction" (single-incident liability) and (2) failure "to act in response to repeated complaints of constitutional violations by its officers" (pattern-of-abuse liability). *Brown*, 814 F.3d at 463 (quoting *Cherrington v. Skeeter*, 344 F.3d 631, 646 (6th Cir. 2003)). When a plaintiff pursues a single-incident theory of liability, causation can be gleaned from the "high degree of predictability" that "the failure to train would so obviously and foreseeably result in the alleged constitutional injury." *Ouza v. City of Dearborn Heights*, 969 F.3d 265, 289 n.10 (6th Cir. 2020) (citations omitted). The Supreme Court has repeatedly affirmed the viability of a single-incident theory of liability, though perhaps most famously in *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989). The *Canton* court's oft-cited example of this theory involves a municipality's failure to train police officers on the appropriate use of deadly force. *See id.*; *see also Connick*, 563 U.S. at 63–64 ("The Court [in *Canton*] sought not to foreclose the possibility, however rare, that the unconstitutional consequences of failing to train could be so patently obvious that a city could be liable under § 1983 without proof of a pre-existing pattern of violations."). Because the City of Canton "kn[ew] to a moral certainty that their [deputy sheriffs] will be required to arrest fleeing felons[,]" and "armed its [deputy sheriffs] with firearms, in part to allow them to accomplish this task[,]" the Court determined that "the need to train [deputy sheriffs] in the constitutional limitations on the use of deadly force . . . can be said to be so obvious that the

failure to do so could properly be characterized as deliberate indifference to constitutional rights." *City of Canton*, 489 U.S. at 390 n.10 (cleaned up).

Joint Plaintiffs and Jarnagin both appear to advance single-incident theories of liability, with Joint Plaintiffs arguing HCSO implements "no formal training or lesson plan dealing with HCSO policies," because deputies are "not trained on the HCSO policies, but simply required to review the policies online and check that [they] read and understood them," (Doc. 657, at 34–35), and Jarnagin attributing Wilkey's allegedly unconstitutional[20] roadside strip-search of him to the County's lack of training on HCSO's strip-search policy, (Doc. 660, at 11). The County responds that the record does not support a finding of inadequate training, deliberate indifference, or causation. (Doc. 672, at 13–16.)

The Sixth Circuit recently encountered a single-incident failure-to-train theory of liability in *Ouza*. 969 F.3d 265. In *Ouza*, the Sixth Circuit reversed the district court's grant of summary judgment because it determined a reasonable jury could find that the municipality's "failure to provide *any type of training* as to [] two recurring situations"—probable-cause determinations and use of force—amounted to deliberate indifference and was the moving force of plaintiff's injury. *Id.* at 289 (emphasis added). Though at least one defendant officer had received excessive-force and probable-cause training at the police academy, he testified that the training had occurred over a decade ago and that he had not had any training since. *Id.* at 288. While the record indicated that the officers may have received some "field training" while employed with

[20] Though the Court has ruled on the unconstitutionality of Jarnagin's search, which is a prerequisite to finding *Monell* liability, Jarnagin fails to provide sufficient evidence in support of his federal claims against the County. As a result, the Court need not reach the issue of whether Wilkey's search of Jarnagin was constitutional.

the municipality, the court noted that the municipality "does not offer any evidence of a training regime" in its summary-judgment motion. *Id.* at 288 n.9.

This case is distinguishable from *Ouza*. Unlike the municipality in that case, the County details, at length, the training provided by the HCSO in its summary-judgment briefing. As part of its description, the County notes that all HSCO Sheriff's deputies complete "mandatory training of 40 hours of P.O.S.T.-approved in-service instruction annually." (Doc. 561, at 9 (citing Daniels' declaration, Doc. 560-1, at 20).) The County also refers to Daniels's testimony confirming traffic-stop training is provided each year. (*Id.* at 10 (citing Daniels' declaration, Doc. 560-1, at 20).) Additionally, the County makes specific reference to the training each implicated officer received. The County provided documents demonstrating Wilkey, for instance, was up to date with his training at the time of the underlying incidents, having completed annual training in November 2018 on topics including searches, use of force, and traffic stops. (Doc. 561, at 10 (citing Doc. 560-1, at 22 (Daniels noting that the 2018 annual training featured training as to searches through high-risk S.T.O.P.S. and Fair & Just Policing in Tennessee trainings)).) The County included the 2018 annual training materials—including the high-risk S.T.O.P.S., Fair & Just Policing in Tennessee, and Use of Force training lesson plans—in the record, which it also references in its summary-judgment briefing. (Doc. 560-4, at 49–133.) Given the County's elucidation of the relevant and recurring training it provides its officers, application of the Sixth Circuit's conclusion in *Ouza* is not warranted here.

This case is also unlike *Canton*'s paradigmatic application of the "rare" single-incident liability exception.[21] *Connick*, 563 U.S. at 63–64. Whereas the plaintiff in that case predicated

[21] The Sixth Circuit has addressed this precise issue before, albeit in an unpublished opinion. In *Isbell v. Ray*, 208 F.3d 213 (6th Cir. 2000) (unpublished), the court held that a jailer's ignorance

his failure-to-train claim on the municipality's dearth of excessive-force training, Plaintiffs here accuse the County of failing to train officers on specific HCSO policies—most relevantly, the policy requiring officers to conduct strip searches in private places. Because officers regularly conduct traffic stops, Plaintiffs argue that inadequate training on the County's strip-search policy will inevitably result in constitutional violations. (Doc. 660, at 12–13 ("It is inevitable that an unconstitutional search will sooner or later result from a failure to train officers as to the limits of strip searches" because "[p]atrol officers like Wilkey stop drivers for minor traffic offenses often" and need to "know that there are strict limits on the kinds of searches they may perform in such recurring situations."); Doc. 657, at 32–33 (citing *Canton* and arguing the absence of adequate training ensures the violation of citizens' constitutional rights).) While Plaintiffs are correct that officers will routinely perform traffic stops that require knowledge of the permissible scope of a search, the County has provided evidence that its officers—Wilkey included—indeed receive such training. That officers do not receive additional training specific to HCSO's strip-search policy delimiting the outer bounds of permissible searches is incomparable to the *Canton* municipality's absolute failure to train on a responsibility as broad and core to an officer's duties as excessive force; a finding of inadequate training based narrowly on Wilkey's violation of HCSO's strip-search policy may signal to municipalities that they must take up the insurmountable task of providing training specific to every policy that, if not followed, is likely

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about the county's strip-search policy was insufficient to show a deliberate policy of inadequate training by the county or that "his case fits into that narrow class of circumstances in which the risk of injury is so obvious, and constitutional violations are so predictable, that the failure to train officers in strip[-]search procedure is, without more, evidence of deliberate indifference." The court was unsatisfied with the plaintiff's "conclusory statement that the risk of constitutional violation is particularly obvious because [county] deputies are authorized to conduct strip searches in a recurring set of circumstances," finding "he pointed to nothing unique about the nature of strip[-]search procedure that would place it in this narrow category of cases." *Id.* (citations omitted).

to result in a constitutional violation. It is also arguably "self-evident" that performance of an invasive roadside strip search, absent any imminent threat of harm or exigent circumstances, is impermissible and that additional training regarding HCSO's strip-search policy would have done little to prevent Wilkey from flouting it. *See Gambrel v. Knox Cnty.*, 25 F.4th 391, 411–12 (6th Cir. 2022) (holding that "no amount of additional training would have prevented [] allegedly intentional misconduct" because it was "self-evident" that officers cannot apply "gratuitous violence" to a citizen "for no apparent purpose"); *id.* at 410 ("The deliberate-indifference and causation elements regularly foreclose failure-to-train claims against municipalities when rogue employees engage in blatant wrongdoing.").

Though Joint Plaintiffs and Jarnagin's arguments possess a great deal of overlap such that much of the above discussion applies to his claim, Jarnagin also launches a causation-based argument that centers on Wilkey's apparent ignorance of HCSO's strip-search policy. (Doc. 660, at 11.) Specifically, Jarnagin argues that Wilkey's roadside strip search of him is attributable to the County's lack of training on HCSO's strip-search policy, as demonstrated by Wilkey's obliviousness to the existence of such a policy. (*Id.*) In support of his argument, Jarnagin notes that Wilkey "did not even know there was [a strip-search] policy," while, nonetheless, "maintain[ing], under oath, that his search of Jarnagin was in full compliance with his training." (*Id.* (emphasis omitted) (citing to Doc. 660-2, at 3–5, 8).) Jarnagin also states that "Wilkey continued to believe his strip searches were appropriate even after being indicted, sued civilly, and terminated from the County police force." (*Id.* at 12 (cleaned up).) If anything, this evidence establishes merely Wilkey's imperviousness to training, not that the training was inadequate. *See Stewart v. City of Memphis*, 788 F. App'x 341, 346 (6th Cir. 2019) ("[T]that a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the

city, for the officer's shortcomings may have resulted from factors other than a faulty training program.") (quoting *City of Canton*, 489 U.S. at 390–91) (internal quotation marks and citations omitted). Because Plaintiffs have not proffered evidence sufficient for a reasonable jury to find HCSO's training on its strip-search policy was inadequate, derived from the County's deliberate indifference, or served as the source of Plaintiffs' alleged constitutional violations, they cannot succeed on a failure-to-train theory of liability.

iv. Custom of Tolerance of Constitutional Violations

Finally, the County argues Plaintiffs do not point to sufficient evidence—which the County claims consists of "unrelated and sporadic events"—to support "a blanket assertion that the 'environment' created by the County was the moving force behind" their injuries. (Doc. 563, at 13.)

When making a "custom of inaction towards constitutional violations" claim, a plaintiff must demonstrate: (1) the presence of a clear and persistent pattern of unconstitutional conduct; (2) notice or constructive notice of such pattern to the municipality; (3) the municipality's tacit approval of the conduct, such that their deliberate indifference in their failure to act amounts to an official policy of inaction; and (4) that the municipality's custom was the moving force or direct causal link in the constitutional violation. *Thomas*, 398 F.3d at 429 (citation omitted); *Nouri v. Cnty. of Oakland*, 615 F. App'x 291, 296 (6th Cir. 2015) (citation omitted); *see Burgess*, 735 F.3d at 478 ("[A] custom-of-tolerance claim requires a showing that there was a pattern of inadequately investigating similar claims."). "Failing to prove even one of those four elements causes a custom of tolerance claim to fail." *Stewart*, 788 F. App'x at 347.

Evidence that a municipality failed to investigate the officer who engaged in the allegedly unconstitutional action that harmed the plaintiff is insufficient to support a "custom-of-inaction"

theory of liability. *See Ellis ex rel. Pendergrass v. Cleveland Mun. Sch. Dist.*, 455 F.3d 690, 701 n.5 (6th Cir. 2006) ("We have not found any legal support for the proposition that, in the absence of deliberate indifference *before* a constitutional violation, a municipality may be liable for simply failing to investigate or punish a wrongdoer *after* the violation.") (emphasis added). This is because predicating a *Monell* claim upon the single incident involving the plaintiff risks "collapsing . . . the municipal liability standard into a simple *respondeat superior* standard," which would serve as a "path to municipal liability [that] has been forbidden by the Supreme Court." *Nouri*, 615 F. App'x at 296 (quoting *Thomas*, 398 F.3d at 432–33); *Stewart*, 788 F. App'x at 347 (alteration in original) (quoting *Thomas*, 398 F.3d at 432–33).

Rather, "deliberate indifference" in this context is a "stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action" as evidenced by "multiple earlier inadequate investigations" of "comparable claims." *Garretson v. City of Madison Heights*, 407 F.3d 789, 795 (6th Cir. 2005) (citation omitted); *Pineda*, 977 F.3d at 495 (citation omitted). Deliberate indifference "does not mean a collection of sloppy, or even reckless[,] oversights; it means evidence showing an obvious, deliberate indifference to the alleged violation." *Thomas*, 398 F.3d at 433 (internal quotation marks and citation omitted). Such a showing supports the establishment of a "link between the local entity's failure to investigate and the plaintiff's injury," or, in other words, that an officer engaged in the unconstitutional conduct *because* he knows "from past practice that complaints of [the relevant conduct] are not investigated." *Rodgers v. Cnty. of Oakland*, No. 18-12832, 2021 WL 5280075, at *7–8 (E.D. Mich. Nov. 12, 2021) (internal quotation marks and citations omitted).

Though "a municipality's failure to investigate claims of wrongful conduct does not per se mandate a conclusion that the municipality has a policy of tolerating violations of citizens'

rights[,]" a "post-injury failure to investigate [is] a fact which may permit an inference that the misconduct which injured the plaintiff was pursuant to an official policy or custom." *Morrison v. Bd. of Trs.*, 529 F. Supp. 2d 807, 825 (S.D. Ohio 2007) (emphasis omitted) (quoting *Tompkins*, 655 F. Supp. at 472). The strength of the inference is situation-dependent; for instance, "a merely negligent or inadvertent failure to investigate would have little, if any, probative value as to whether a policy previously existed[,]" whereas "a willful failure to investigate by a county policymaker would create a very strong inference that the underlying incident of misconduct was pursuant to a policy or custom." *Tompkins*, 655 F. Supp. at 472.

Under this framework, Plaintiffs have not met their burden in demonstrating there is a genuine issue as to whether the County has a custom of systemically failing to investigate or discipline conduct similar to the alleged unconstitutional acts that served as the moving force of Plaintiffs' injuries.[22] Though Joint Plaintiffs have cited to other investigations,[23] they have not proffered sufficient evidence to demonstrate a clear and persistent pattern of unconstitutional conduct, which "must be [supported by] multiple earlier inadequate investigations and . . . concern comparable claims." *Stewart*, 788 F. App'x at 344 (citations omitted). By way of example, the plaintiffs in *Leach* successfully bolstered their claim by citing to fourteen inadequately investigated instances of similar unconstitutional behavior within a two-year period. 891 F.2d at 1247. The investigations Joint Plaintiffs take issue with involve a variety of

[22] The Court understands Joint Plaintiffs' "code of silence" argument to be relevant to this theory and notes that Sowder's testimony regarding the "code of silence" he witnessed at HCSO *thirty-five years ago* carries no weight in this analysis. (Doc. 657-2, at 66.) Sowder even clarifies that this was the culture of the department "[b]ack then," implying it is not now. (*Id.*)

[23] Jarnagin appears to base his failure-to-investigate claim primarily on the County's failure to investigate Wilkey's allegedly unconstitutional search of Jarnagin after the County was notified of Wilkey's indictment on December 11, 2019. (Doc. 660, at 15.) As the Court has already stated, this evidence is insufficient support under a ratification or custom-of-tolerance theory of liability.

allegedly unconstitutional conduct ranging from strip searches (Jarnagin in 2019, Mitchell in 2019) and excessive use of force (Mitchell in 2019, Toney in 2018, Parham in 2016, Mason in 2015, Hayes in 2015) to a forced baptism (Riley in 2019), all occurring over a four-year span. (Doc. 657, at 14–26.) Notwithstanding the issue of whether the County's investigation of each incident was adequate or whether any inadequacy was due to a willful failure to investigate, Joint Plaintiffs make no attempt to weave a unifying thread between these incidents beyond a general indictment of the County's "sham" IA department for its failure to investigate "certain complaints."[24] (*Id.* at 35–36, 38.) Nor do Joint Plaintiffs explain—again, beyond sweeping

[24] Though Plaintiffs do not undertake this endeavor, the Court will nonetheless analyze the potential connections between the investigations.

Riley's forced baptism and allegedly inappropriate touching occurred on in February 2019. Joint Plaintiffs provide no prior incidents of inadequate investigations of complaints comparable to the claims underlying Riley's encounter with Wilkey and Goforth. And though evidence of inadequately handled subsequent investigations occurring after the complained-of injury can support an inference of a custom of tolerance, it cannot be the only evidence presented. *See Kirk v. Calhoun Cnty.*, No. 19-2456, 2021 WL 2929736, at *8 (6th Cir. July 12, 2021) ("Importantly, 'an entity's failure to investigate the plaintiff's specific claim will, by definition, come *after* the employee's action that caused the injury about which the plaintiff complains.'") (quoting *Pineda*, 977 F.3d at 495) (emphasis in original).

Jarnagin's strip search occurred on March 30, 2019. Assuming Jarnagin's search and Riley's inappropriate-touching allegation are sufficiently similar, nothing in the record suggests the County had notice of the latter incident prior to the former. (Doc. 657, at 16; Doc. 563, at 20.) Plaintiffs provide no other prior instance of the County's inadequate investigation of unreasonable-search claims.

Wilkey and McRae's encounter with Knox and Johnson took place on April 18, 2019. Even if the allegedly unreasonable searches that took place during Jarnagin and Riley's traffic stops are sufficiently comparable to the touching Knox and Johnson describe (and the Court is not sure they are), the record does not suggest the County had notice of these incidents until after all three had already taken place; Jarnagin never filed a formal complaint, and, as stated above, the County did not know about Riley's stop until the fall. *Simpkins v. Boyd Cnty. Fiscal Ct.*, No. 21-5477, 2022 WL 17748619, at *13 (6th Cir. Sept. 2, 2022) (noting that "our circuit does not appear to have explained how 'similar' past incidents must be to constitute a 'pattern of similar constitutional violations' for *Monell* purposes," but finding multiple incidents involving "the use of a restraint chair as corporal punishment without any penological justification" as sufficiently similar) (quoting *Connick*, 563 U.S. at 62); (Doc. 657, at 16.) Though Wilkey and his

supervisors communicated about the baptism near the end of March, both Wilkey and Goforth were disciplined, and the incident was not communicated up the chain so as to put the County on notice of the officers' behavior. Even then, Wilkey's description of the events that night did not seem to make reference to any inappropriate touching or search, which is the only element of Riley's encounter that could be reasonably linked to Jarnagin, Knox, or Johnson.

Wilkey's strip search and use of force on Mitchell occurred on July 10, 2019. The only prior unreasonable search Joint Plaintiffs pointed to that the County had notice of was Wilkey's search of Knox and Johnson. A complaint was filed on April 30, 2019, and Wilkey was ultimately exonerated of the charges. Even assuming the investigation was inadequate and the conduct sufficiently similar, one prior incident hardly establishes a "clear and persistent pattern" of the County failing to investigate or discipline instances of unreasonable searches.

As for the use of excessive force against Mitchell, Joint Plaintiffs provide four prior related incidents with allegedly inadequate investigations: (1) Goforth's alleged use of excessive force against Parham on August 29, 2016; (2) Kilpatrick's alleged use of force against Charles Toney on December 3, 2018; (3) Rodney Terrell's allegedly unlawful use of a taser on Nancy Mason on March 21, 2015; and (4) Daniel Hendrix's alleged assault of inmate Leslie Hayes on August 15, 2015. *See supra* Section II.B.ii.

Though these four prior incidents all feature instances of alleged excessive force, two of them occurred approximately four years prior to Mitchell's incident, and IA sustained complaints of excessive force in both. Apart from Kilpatrick's two-and-a-half-year investigation, IA appears to have quickly and thoroughly completed investigations into each incident—in some cases on its own volition. Even if a jury could find these incidents sufficiently similar to Wilkey's alleged use of force against Mitchell and that IA's investigations or disciplinary responses were meaningfully deficient, four prior incidents occurring over a nearly four-year period are insufficient to establish a clear and persistent pattern of inadequately investigated or disciplined excessive-force claims. *See Cretacci*, 2022 WL 17176781, at *9 (affirming the district court's grant of summary judgment despite plaintiff's provision of multiple similar incidents that were not investigated because "three incidents, standing alone, are not sufficient to establish the consistent pattern of comparable violations necessary to demonstrate a custom of inaction regarding excessive force"); *see also Est. of Hickman v. Moore*, 502 F. App'x 459, 468–69 (6th Cir. 2012) (holding that three excessive-force complaints and the later promotion of the subject officer could not support a failure-to-discipline custom, because "[a] handful of isolated excessive force complaints occurring several years before the relevant conduct [did] not establish a 'pattern or practice' of condoning such activity"). Thus, Joint Plaintiffs have not pointed to evidence that would allow a reasonable jury "infer[] that the County has a custom 'so permanent and well settled as to constitute a custom or usage with the force of law' of ignoring claims comparable to [Mitchell's]." *Cretacci*, 2022 WL 17176781, at *9 (quoting *Jones v. Muskegon Cnty.*, 625 F.3d 935, 946 (6th Cir. 2010)) (citations omitted).

This is true even when accounting for alleged post-injury investigative deficiencies, such as extended delays in completing investigations. *See Tompkins*, 655 F. Supp at 472 (noting that a "merely negligent or inadvertent failure to investigate would have little, if any, probative value as to whether a policy previously existed," while "a willful failure to investigate by a county policymaker would create a very strong inference that the underlying incident of misconduct was

generalizations—how this apparent custom of tolerance served as the moving force behind each of their injuries.[25] Plaintiffs omit such a justification even though the causality component in this case is particularly tenuous in light of the County's insistence, without challenge from Plaintiffs, that it had not received a complaint as to Wilkey's behavior until April 30, 2019.[26] (Doc. 561, at 19.)

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pursuant to a policy or custom"). Plaintiffs have not pointed to sufficient evidence from which a jury could find that a county policymaker willfully failed to investigate Wilkey's misconduct. Prior to Wilkey's indictment, IA investigated each complaint it received involving his alleged misconduct and, at times, opened investigations even when no complaint was filed. After he was informed of Wilkey's indictment, Chief Deputy Garrett directed IA to investigate the alleged criminal actions. (Doc. 657-2, at 602.) IA did so, sustained violations against Wilkey based on the indictments, and scheduled a due-process hearing. (*Id.*) The only reason that hearing did not take place was because Wilkey resigned three days prior. (*Id.*) Though IA did not conduct individual, in-depth investigations into every incident underlying Wilkey's indictment, Lee testified that "no further investigation into matters [involving Wilkey that were] not already investigated was warranted since no discipline[] or training could be imposed on Wilkey after his resignation." (Doc. 424-4, at 168 in Case No. 1:20-cv-17.) Sowder also provided the following explanation for why some investigations take significantly longer than the prescribed forty-five-day threshold: "[W]e do have other cases. I wish we had more manpower." (Doc. 657-2, at 81.) He also testified that only himself and one or two other officers worked at IA in 2019, (*id.* at 119), and that, when TBI is conducting a criminal investigation into an officer who is also the subject of an IA investigation, he will "wait until [the TBI's] case is done, and [he] get[s] their case and look[s] at [its] interviews to see if there's policy violations in their interviews." (*Id.* at 138.) Thus, even when considering the untimeliness or incompleteness of some investigations by IA, a reasonable jury could not "infer[] that the County has a custom 'so permanent and well settled as to constitute a custom or usage with the force of law' of ignoring [comparable] claims." *Cretacci*, 2022 WL 17176781, at *9 (quoting *Jones v. Muskegon Cnty.*, 625 F.3d 935, 946 (6th Cir. 2010)) (citations omitted).

[25] Joint Plaintiffs generally argue that officers continued to act improperly because they knew they would not be held accountable for doing so. But, as previously noted, a plaintiff must show that a municipality's supposed custom of tolerance for a particular kind of unconstitutional behavior served as the moving force behind her specific injury.

[26] The only earlier potential complaint Joint Plaintiffs reference is Wilkey's communication to his supervisors about the baptism. But it is undisputed that the County (as represented by its policy makers) was unaware of this exchange until after formal complaints were filed and that Wilkey and Goforth were disciplined by their supervisors once they learned of the baptism. Even then, Riley's baptism is incomparable to any other allegation against Wilkey, precluding the possibility that any prior notice of the event could serve as the moving force behind later encounters.

Thus, Plaintiffs have not pointed to sufficient evidence from which a reasonable juror could find the County operated pursuant to an ingrained practice of tolerating constitutional violations that served as the moving force of their injuries. And because Plaintiffs have not proffered evidence to support any of the four *Monell* liability theories, their federal claims against the County fail.

v. State-Law Claims

Finally, Plaintiffs separately bring state-law claims against the County pursuant to Tennessee Code Annotated § 8-8-302. Section 8-8-302 provides that:

> Anyone incurring any wrong, injury, loss, damage or expense resulting from any act or failure to act on the part of any deputy appointed by the sheriff may bring suit against the county in which the sheriff serves; provided, that the deputy is, at the time of such occurrence, acting by virtue of or under color of the office.

Tenn. Code Ann. § 8-8-302. Section 8-8-303 waives counties' sovereign immunity for violations of § 8-8-302. Tenn. Code Ann. § 8-8-303(a). "In interpreting this statutory scheme, the Tennessee Supreme Court has held that it applies to non-negligent conduct of deputies and that these claims are generally not barred by [Tennessee Governmental Tort Liability Act] immunity." *Merolla v. Wilson Cnty.*, No. M2018-00919, 2019 WL 1934829, at *6 (Tenn. Ct. App. May 1, 2019) (cleaned up) (citing *Jenkins v. Loudon Cnty.*, 736 S.W.2d 603, 609 (Tenn. 1987)).

The County concedes it is not entitled to summary judgment on the state-law claims in Riley, Jarnagin, and Mitchell's cases and has not moved for summary judgment as to those claims. Presumably because Knox and Johnson's searches are not implicated by Wilkey's indictment, the County moves for summary judgment against the state-law claim they bring against it. Nonetheless, liability under § 8-8-302 can accrue for less than criminal conduct. *See, e.g.*, *Swanson v. Knox Cnty.* No. E2007-00871, 2007 WL 4117259, at *5 (Tenn. Ct. App. Nov.

20, 2007) ("The case before us does not involve a 'non-negligent' act, but rather a negligent act or omission to act, and therefore, Tenn. Code Ann. § 8-8-302 is not applicable."); *Hensley v. Fowler*, 920 S.W.2d 649, 651 (Tenn. Ct. App. 1995) ("We construe *Jenkins* . . . to limit actions that arise under T.C.A. §§ 8-8-301, *et seq*., to non-negligent causes of action."). Because the Court has found genuine disputes of fact as to the invasiveness of Knox and Johnson's searches, which would constitute non-negligent, wrongful acts, it will deny summary judgment as to their state-law claim against the County.[27]

IV. CONCLUSION

For the aforementioned reasons, Hamilton County's motion for partial summary judgment against Shandle Riley (Doc. 556), James Mitchell and Latisha Menifee (Doc. 557), and Maxwell Jarnagin (Doc. 559) are **GRANTED**. The Court also **GRANTS IN PART** and **DENIES IN PART** the County's summary-judgment motion against Abigail Knox and Katherine Johnson (Doc. 558). Accordingly, all § 1983 claims brought against the County by Riley, Mitchell, Menifee, Knox, Johnson, and Jarnagin are hereby **DISMISSED**.

Additionally, the Court **GRANTS** each motion to exclude testimony from Plaintiffs' police-practices expert, Dr. Alpert, filed by Defendants Daniel Wilkey (Docs. 594, 601), the County (Doc. 599), Jacob Goforth, Tyler McRae, and Bobby Brewer (collectively) (Doc. 596).

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

[27] Though only state-law claims remain against the County, the Court intends to exercise supplemental jurisdiction over them. If either party believes there is good reason to instead remand the claims to state court, the Court will entertain arguments to that effect.