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

In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	)	Master Docket Case No. 19-cv-1717
	)	Judge Valderrama
	)	Magistrate Judge Finnegan
	)	JURY DEMANDED

This Document Relates to *Ben Baker et al. v. City of Chicago*, No. 16 C 8940

DEFENDANTS' JOINT RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO BAR TESTIMONY OF DR. ALEXANDER OBOLSKY

Defendants, by and through their respective counsel, in opposition to Plaintiffs' Motion to Bar Testimony of Dr. Alexander Obolsky, state as follows:

ARGUMENT

In support of their Motion to Bar, Plaintiffs distort and contort Dr. Obolsky's opinions by conflating divergent legal concepts and by cherry-picking out-of-context sound bites from his deposition. A reasoned analysis confirms that Dr. Obolsky's opinions are based on sound principles and qualifications and will aid the trier of fact in understanding the issues on which he opines—many of the same issues on which Plaintiffs seek to have Dr. Redlich opine. Dr. Obolsky's testimony is admissible.

BAKER AND GLENN ENTERED INTO THEIR GUILTY PLEAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY

Plaintiffs claim that Dr. Obolsky's opinion that they were "legally competent to plead guilty" is unreliable because it is premised upon an erroneous assumption that the Plaintiffs were

under oath when they pleaded guilty and because he failed to conduct an examination to determine if they were "legally competent." Dkt. 295 at 3. The problem with this argument is that it misrepresents Dr. Obolsky's actual opinion, which is that Plaintiffs "entered a guilty plea knowingly, intelligently and voluntarily." Plaintiffs state without citation that entering a plea knowingly, intelligently and voluntarily "is another way of saying they were legally competent to plead guilty." (Motion, Dkt. 295 at 4). That is not the law.

In Illinois, the standard for determining whether a criminal defendant is *competent* to plead guilty is the same as the standard for determining competency to stand trial – that is, whether due to a mental or physical condition, they are unable to understand the nature and purpose of the proceedings against them or to assist in their defense. *People v. Rodriguez-Aranda*, 219 N.E.3d 481, 495 (2nd Dist. 2022), citing *Godinez v. Moran*, 509 U.S. 389, 396 (1993). Certainly, legal competency is a requirement of a valid guilty plea, but Illinois law *presumes* that a defendant charged with a criminal offense is competent. 725 ILCS 5/104-10 ("A defendant is presumed to be fit to stand trial or to plead, and be sentenced. A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense.").

Neither Plaintiffs' counsel nor Dr. Redlich have suggested that Plaintiffs were not legally competent to plead guilty, let alone offered any evidence that would counter the statutory presemption of competence. Nevertheless, as part of his analysis Dr. Obolsky scoured medical records, correctional records, Plaintiffs' affidavits, and their testimony looking for "any evidence of mental condition of mental ill being. . . . any psychological, psychiatric disorders, any cognitive disorders, any physical disorders that would cause emotional or cognitive symptoms and decline." No such evidence existed. (Exhibit 1 at 70: 16-21; 150:1-6; 152: 6-7).

Nonetheless, Plaintiffs would discard Dr. Obolsky's opinion because "the proper way to determine if someone is legally competent" is to conduct a medical examination, and Dr. Obolsky did not conduct one. Dkt. 295 at 13. But, of course, no such examination was indicated. First, there was no indication that either Baker or Glenn suffered from a mental illness or cognitive disorder. (Exhibit 1 at 70:1-2). Moreover, while it would be reasonable to conduct an interview of a party where his attorneys raised the issue of competency (*id*. at 74:5-100), Plaintiffs' attorneys have never raised the issue of their fitness to participate in the 2006 proceedings, either then or now. Nor did Dr. Redlich conduct an interview, let alone a medical examination, to form her opinions relevant to Plaintiffs' guilty pleas.

Further conflating the distinct issues of competence and voluntariness, Plaintiffs argue that Dr. Obolsky's opinion that they were "legally competent to plead guilty" is inadmissible because it is a legal conclusion. Dkt. 295 at 13. As noted, this is not Dr. Obolsky's opinion, although his opinion is predicated, in part, on the unrebutted statutory presumption that Baker and Glenn are competent. Further, "[t]here is a difference between stating a legal conclusion and providing concrete information against which to measure abstract legal concepts." *Sanders v. City of Chicago Heights*, No. 13 C 221, 2016 U.S. Dist. LEXIS 57704, *14-15 (N.D. Ill. May 2, 2016), quoting, *United States v. Blount*, 502 F.3d 674, 680 (7th Cir. 2007). Finally, assuming that the issue of competency culminates in a legal conclusion, it is an area where courts must particularly rely upon the medical expertise that Dr. Obolsky's background in forensic psychiatry provides. A review of his curriculum vitae (Dkt 295-3 at 20-30) reinforces that the issue of legal competency, to the extent it is relevant to this case, is in Dr. Obolsky's wheelhouse.

Plaintiffs also claim that Dr. Obolsky's opinion is unreliable because it is based, in part, upon the fact that Baker and Glenn were under oath when they entered their pleas, whereas "the

indisputable facts" are that they were not. Dkt. 295 at 11. These "facts" are undisputed only because Plaintiffs have attempted to interject a *post hoc* affidavit from their former defense attorney which purports to explain his conduct in the plea hearing. Dkt. 295-4. Even accepting, *arguendo*, Plaintiffs' assertion on this point, it is not sufficient to exclude Dr. Obolsky's opinion. "[E]xperts can base their opinions on disputed facts because the 'soundness of the factual underpinnings of the expert's analysis and the correctness of the expert's conclusions based on that analysis are factual matters to be determined by the trier of fact.'" *Andersen v. City of Chicago*, No. 16 C 1963, 2020 U.S. Dist. LEXIS 63847, *13-14 (N.D. Ill. April 13, 2020) (Kendall, J.) quoting *Kawasaki Kisen Kaisha, Ltd. v. Plano Molding Co.*, 782 F.3d 353, 360 (7th Cir. 2015). At trial, Plaintiffs can challenge the accuracy of the underlying evidence by using vigorous cross-examination and presenting contrary evidence. *Lapsley*, *v. Xtek*, 689 F.3d 802, 805 (7th Cir. 2012); see also *Stollings v. Ryobi Techs., Inc.*, 725 F.3d 753, 768 (7th Cir. 2013) ("The fact that an expert's testimony contains some vulnerable assumptions does not make the testimony irrelevant or inadmissible.").

DR. OBOLSKY'S ANALYSIS OF DR. REDLICH'S OPINIONS CONCERNING RISK FACTORS IS ADMISSIBLE

Plaintiffs seek to bar Dr. Obolsky's critique of Dr. Allison Redlich's research into risk factors she associates with false guilty pleas. They frame Dr. Obolsky's opinion as an attack on the validity and reliability of Dr. Redlich's opinions and, therefore, an attempt to usurp this Court's gatekeeping function under *Daubert*. A fair review of Dr. Obolsky's testimony demonstrates otherwise: When asked in his deposition about his role, he responded, "I . . . see myself as a -- a teacher or educator to the jury and the judge on these cases where one needs psychiatric expertise to form an understanding of what's going on." Exhibit 1 at 53:6-9. While Dr. Obolsky questioned whether Dr. Redlich's opinion would "bring any clarity for the judge or the jury" (*id*. at 81:9-10), he did not disagree with her methodology (*id*. at 116:10) and specifically disavowed any judgment

concerning the admissibility of her opinions. *Id*. at 86:12-15 ("I'm not the judge and I'm not on a jury. It will be up to them to decide how much weight they going to proportion to different people in their testimonies.")

Regarding Dr. Obolsky's decrying of Dr. Redlich's opinions as "bunk," it is true that Plaintiffs' counsel was able to obtain this juicy sound bite, but, in fact, Dr. Obolsky's views were significantly more nuanced. As he stated, "I hope I didn't give an impression that I think her research is bunk. It's not. This is how science starts. You start with description of the phenomenon you want to study. And her description is really good and can be extremely helpful to do further work." *Id*. at 121:16-21. The problem, in Dr. Oblosky's opinion, is this: "I evaluated her research that indicates – to see whether or not it indicates that these risk factors can be used in prospective manner, meaning to predict or decide whether the plea was true or false and found it lacking in determining this central question." *Id*. at 81:15-19. The risk factors are simply incapable of identifying a false guilty plea in any verifiable or repeatable way, and Dr. Obolsky has convincingly laid out these limitations. Thus, he provides the jury with a framework to evaluate the issues before it and the weight to be applied to Dr. Redlich's analysis.

Defendants have separately moved to bar Dr. Redlich's opinions as neither relevant nor reliable. In the event, however, that Dr. Redlich's opinions are admitted, Defendants should be able to present contrary evidence concerning the limitations of her theories in the form of expert testimony. An opposing expert "remains free to criticize [an opposing expert's] methodology, factual assumptions, and conclusions." *Brown v. City of Chicago*, No. 18 C 7064, 2023 U.S. Dist. LEXIS 45239 (N.D. Ill. March 17, 2023) (Pallmeyer, J.) In any event, even if the Court determines that describing Dr. Redlich's opinions as "bunk" is not appropriate, that phraseology appears nowhere in Dr. Obolsky's report and is not a necessary element of his opinions, which remain

well-grounded and admissible. *Chatman v. City of Chicago*, No. 14 C 2945, 2018 U.S. Dist. LEXIS 246853 at *13 (N.D. Ill. October 30, 2018). ("But it is one thing to say that the jury should not give much weight to Dr. Russano's opinions because her research does not adequately simulate actual situations, and quite another to say that it is all hogwash. Dr. Welner can testify as to the former, but not the latter.").

CONCLUSION

For all of the above reasons, Plaintiffs' motion to bar Dr. Obolsky, which is premised on misstatements of his opinions and misconceptions about the law, should be denied.

Respectfully submitted,

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