

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

BEN BAKER and CLARISSA GLENN,)
)
Plaintiff,)
)
v.) Case No. 16 C 8940
)
CITY OF CHICAGO, Former CHICAGO) Judge Franklin U. Valderrama
POLICE SERGEANT RONALD WATTS,)
OFFICER KALLATT MOHAMMED,) Magistrate Judge Sheila M. Finnegan
SERGEANT ALVIN JONES, OFFICER)
ROBERT GONZALEZ, OFFICER)
CABRALES, OFFICER DOUGLAS)
NICHOLS, JR., OFFICER MANUEL S.)
LEANO, OFFICER BRIAN BOLTON,)
OFFICER KENNETH YOUNG, JR.,) (This case is part of <i>In re: Watts</i>
OFFICER ELSWORTH J. SMITH, JR.,) <i>Coordinated Pretrial Proceedings</i> , Master
PHILIP J. CLINE, KAREN ROWAN,) Docket Case No. 19 C 1717)
DEBRA KIRBY, and as-yet-unidentified)
officers of the Chicago Police Department.,)
)
Defendants.)

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO BAR SHAIREE LACKEY

Defendants, KALLATT MOHAMMED, joined by RONALD WATTS, ALVIN JONES, ROBERT GONZALEZ, MIGUEL CABRALES, DOUGLAS NICHOLS, MANUEL LEANO, BRIAN BOLTON, KENNETH YOUNG, ELSWORTH SMITH, PHILLIP CLINE, KAREN ROWAN, DEBRA KIRBY, and THE CITY OF CHICAGO, (collectively “Defendants”), by their respective attorneys, submit this Reply in further support of their Motion to Bar Shairee Lackey (“Ms. Lackey”) (ECF 293 (sealed) and 308 (redacted)).

ARGUMENT

A. Plaintiffs Do Not Address Any of the Cases Cited in the Motion Barring PTSD Testimony Under Similar Circumstances

Plaintiffs make no pretense of addressing or distinguishing the case law cited in the Defendants' Motion. Plaintiffs suggest only that the cases are from "other circuits" and that Defendants did not adequately "explain" why those cases are applicable here. (Response, ECF 331 (sealed) and 332 (redacted), at 6). On the contrary, Defendants demonstrated, with specific references to both the cited cases and to the record here, *exactly* why Ms. Lackey's testimony must be barred in this case. (Motion, ECF 293 (sealed) and 308 (redacted), at 4-6, 8-13). *See Tardif v. City of New York*, 344 F. Supp. 3d 579 (S.D.N.Y. 2018) (excluding testimony that PTSD caused by false arrest because expert provided no basis for ruling out plaintiff's other traumatic experiences as the source of her injuries); *Brush v. Old Navy LLC*, 687 F. Supp. 3d 452, 466-69 (D. Vt. 2023) (PTSD expert excluded because purported traumatic event did not meet the DSM-V criteria of exposure to actual or threatened death, serious injury, or sexual violence); *Nolan v. United States*, No. 12 C 0247, 2015 U.S. Dist. LEXIS 115807, 2015 WL 5159888 (N.D. Ill. September 1, 2015) (excluding PTSD opinions because expert failed to consider obvious potential alternative causes of plaintiff's psychological symptoms); *Woods v. Olin Corp.*, No. 00-CV-0962-DRH, 2002 U.S. Dist. LEXIS 28250, 2002 WL 34371098 (S.D. Ill. July 9, 2002) (excluding expert's PTSD diagnosis and causation opinions because the expert misapplied the criteria contained in DSM-IV); *Gastineau v. UMLIC VP LLC*, No. 1:04-cv-0633-LJM-WTL, 2008 U.S. Dist. LEXIS 47173, 2008 WL 2498102 (S.D. Ind. June 17, 2008) (barring expert's PTSD diagnosis opinion which was based on plaintiff's own self-reported medical history).

Unable to align Ms. Lackey's testimony with established *Daubert* and Rule 702 standards, Plaintiffs argue that no such standards exist. In Plaintiffs' words: "There was no reason for Ms.

Lackey to delve into other potential causes of Ms. Glenn’s PTSD when the evidence clearly showed her that Ms. Glenn’s PTSD was caused by Defendants’ misconduct.” (Response, ECF 331 (sealed) and 332 (redacted), at 6). As shown above, that is not the law.

Plaintiffs cite *Gayton v. McCoy*, 593 F.3d 610 (7th Cir. 2010), a case involving inadequate medical care, for the proposition that “an expert need not testify with complete certainty about the cause of an injury.” *Id.* But that misses the point. While no expert is required to testify with *complete* certainty, “an opinion must offer more than sheer speculation about the effect of the conduct or circumstances at issue. An opinion that offers nothing more than the ‘possibility’ or ‘potential’ that a set of facts contributed to an injury provides no degree of certainty at all.” *Downing v. Abbott Labs*, No. 15 C 05921, 2019 U.S. Dist. LEXIS 251898, 2019 WL 13398258 (N.D. Ill. September 9, 2019) (excluding expert testimony and distinguishing *Gayton*). Plaintiffs cite *Marcial v. Rush Univ. Med. Ctr.*, 16-CV-6109, 2018 WL 4237474, at *3 (no Lexis citation available) (N.D. Ill. Aug. 30, 2018), for the proposition that failure to consider alternative causes of PTSD should be the subject of cross-examination and go to the weight of Ms. Lackey’s opinion. (Response, ECF 331 (sealed) and 332 (redacted), at 7). But in *Marcial*, the defendants offered no specific alternative cause that the expert ignored, *Marcial* at *3, while here Ms. Lackey ignored [REDACTED] that clearly meet the criteria of DSM-V. Moreover, the expert in *Marcial* issued a “robust” report explaining his opinion which was based in part on his review of the plaintiff’s contemporaneous mental health treatment records, discovery materials and a four-hour in-person evaluation of the plaintiff. Ms. Lackey did none of those things, and in fact does not even remember Ms. Glenn. Even if *Marcial* could be read as implying that failure to consider a known and obvious alternative cause goes only to the weight of her opinion, which it does not, that view is no longer valid after the 2023 amendments to Rule 702. “[M]any courts have held that

the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a)." Rule 702, December 2023 committee comments. The unrebutted case law cited in Defendants' Motion is on point and clearly demonstrates that Ms. Lackey's PTSD opinions are not admissible.

B. Plaintiffs' Response is Based on Misstatements of the Testimony

Having ignored the law cited in the Motion, Plaintiffs rely entirely on misstated and distorted versions of Ms. Lackey's testimony to create a valid opinion where none exists. For example, Plaintiffs state: "There is no reasonable basis in the record to argue [REDACTED]
[REDACTED]
[REDACTED]" (Response, ECF 331 (sealed) and 332 (redacted), at 5). But that is *exactly* what Ms. Lackey testified.

Q. [REDACTED]
[REDACTED]

A. [REDACTED].

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

ECF 293-2 (sealed) and 308-2 (redacted) at 60-61 (emphasis added).

Plaintiffs likewise state that Defendants did not identify “any other obvious potential causes of Ms. Glenn’s PTSD, which make sense because Ms. Glenn’s wrongful arrest and conviction are the only obvious cause.” (Response, ECF 331 (sealed) and 332 (redacted), at 5). But Ms. Lackey expressly *agreed* [REDACTED]

[REDACTED] ECF 293-2

(sealed) and 308-2 (redacted) at 59-61. Notably, the incidents that Ms. Lackey assumed caused Ms. Glenn’s emotional issues do *not* fit the DSM-V criteria, and she never testified that they did.

Plaintiffs’ assertion that “Ms. Lackey expressly stated that she followed DSM-V in diagnosing Ms. Glenn with PTSD” is also a distortion of the testimony. In one of the answers Plaintiffs cite, Ms. Lackey repeated her conversation with Plaintiffs’ counsel where she “let him know that I used the DSM5 criteria [REDACTED]

[REDACTED] ECF 293-2 (sealed) and 308-2 (redacted) at 17-18. That description does not, in fact, show that she followed the DSM-V, which is underscored by the second answer Plaintiffs cite:

Q. [REDACTED]

A. [REDACTED]

Id. at 57 (emphasis added).

[REDACTED]
[REDACTED] Ms. Lackey's own testimony shows that she did *not* follow DSM-V.

Plaintiffs next assert that Ms. Lackey "[REDACTED]
[REDACTED]" and that Ms. Lackey stated "[REDACTED]
[REDACTED]" (Response, ECF 331 (sealed) and 332 (redacted), at 6). But that is not what she said. In the cited testimony, Ms. Lackey was responding to questions concerning whether the sequence of two potential DSM-V qualifying events could render one more likely than the other to be the precipitating event causing the patient's PTSD, and she said no. She admitted that she did not know [REDACTED]

[REDACTED] ECF 293-2
(sealed) and 308-2 (redacted) at 75-76. [REDACTED]
[REDACTED]
[REDACTED]

Nor have Plaintiffs offered any support for allowing a clinician who does not remember Ms. Glenn and who saw Ms. Glenn once for thirty minutes in June 2022 to offer opinions about Ms. Glenn's mental or emotional condition at a trial in July 2024; based on notes of an intake interview that Ms. Lackey described as "very general." Based on the language of Rule 702 and established *Daubert* case law, that testimony is not admissible.

C. Plaintiffs Have Not Established that Ms. Lackey is Qualified to Diagnose PTSD

Finally, Plaintiffs have not carried their burden of establishing that Ms. Lackey is qualified to diagnose Ms. Glenn with PTSD under the circumstances of this case. Plaintiffs rely entirely on her being a licensed clinical counselor and her testimony that she "frequently" works with clients

that she has diagnosed with PTSD. (Response, ECF 331 (sealed) and 332 (redacted), at 3-4). But she offered no information about her actual experience with those patients or whether the manner of her diagnosis of Ms. Glenn was consistent with how she diagnosed those other clients. In fact, her testimony suggests that it was not:

A. There's psychological testing but it's expensive.

A. So psychological testing would be a psychologist would do a battery of tests to determine the trauma symptoms, where they're coming from, and then come up with a PTSD diagnosis.

ECF 293-2 (sealed) and 308-2 (redacted) at 64.

Plaintiffs, who notably did not retain or agree to compensate Ms. Lackey for her testimony, chose not to elicit any of that information during her deposition. Neither of the cases cited by Plaintiffs offer support for allowing Ms. Lackey's testimony in this case. In *DelGadillo v. Town of Cicero*, No. 11 C 7342, 2016 U.S. Dist. LEXIS 206652, 2016 WL 11942751 (N.D. Ill. February 11, 2016), the witness had been providing treatment to the plaintiff for two years, whereas Ms. Lackey saw Ms. Glenn once more than two years ago for a thirty-minute intake interview. In *Sanfelice v. Dominick's Finer Foods*, No. 94 C 0727, 1995 U.S. Dist. LEXIS 15213, 1995 WL 608602 (N.D. Ill. October 13, 1995), the expert had issued a report describing his methods from which the court was able to confirm that he followed the DSM-IV criteria, whereas Plaintiffs here chose not to retain Ms. Lackey to examine Ms. Glenn or prepare a report, electing instead to rely entirely on the intake assessment note for a patient that Ms. Lackey did not remember. Plaintiffs have failed to carry their burden of establishing Ms. Lackey's qualifications to offer PTSD opinions in this case.

CONCLUSION

For all of the above reasons, and those set forth in Defendants' Motion, the Court should enter an order barring Shairee Lackey from testifying at trial.

Respectfully submitted,

/s/ Sean M. Sullivan #6191677

SEAN M. SULLIVAN

Eric S. Palles
Sean M. Sullivan
Yelyzaveta (Lisa) Altukhova
Mohan Groble Scolaro, P.C.
55 W. Monroe St., Suite 1600
Chicago, IL 60603
(312) 422-9999
Counsel for Defendant Kallatt Mohammed

/s/ William E. Bazarek (with permission)

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

*Counsel for Defendants Alvin Jones, Robert
Gonzalez, Miguel Cabrales, Douglas
Nichols, Jr., Manuel Leano, Brian Bolton,
Kenneth Young, Jr., and Elsworth Smith,
Jr.*

/s/ Daniel M. Noland (with permission)

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

*Counsel for Defendants City of Chicago, Philip
Cline, Debra Kirby and Karen Rowan*

/s/ Brian P. Gainer (with permission)

Brian P. Gainer
Lisa McElroy
JOHNSON & BELL, LTD.
33 W. Monroe Street, Suite 2700
Chicago, IL 60603
Tel: (312) 372-0770
Fax: (312) 372-9818
gainerb@jbltd.com
mcelroyl@jbltd.com
Counsel for Defendant Ronald Watts

CERTIFICATE OF SERVICE

I, Sean M. Sullivan, an attorney, certify that I caused a true copy of the foregoing **Defendants' Reply in Support of Motion to Bar Shairee Lackey** to be served upon all counsel of record by electronic mail and the Court's ECF system on July 15, 2024.

/s/ Sean M. Sullivan
Sean M. Sullivan