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

BEN BAKER and CLARISSA GLENN,	)	
	)	Case No. 16 CV 8940
Plaintiffs,	)	
	)	Judge Franklin U. Valderrama
vs.	)	
	)	Magistrate Judge Shelia M. Finnegan
CITY OF CHICAGO et al.,	)	
	)	(This case is part of *In re: Watts*
Defendants.	)	*Coordinated Pretrial Proceedings*, Master
	)	Docket Case No. 19 CV 1717)

DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO BAR PLAINTIFFS' PROPOSED EXPERT ALLISON REDLICH

Defendants, City of Chicago, Philip Cline, Debra Kirby, Karen Rowan, Alvin Jones, Robert Gonzalez, Miguel Cabrales, Douglas Nichols, Jr., Manuel Leano, Brian Bolton, Kenneth Young, Jr., Elsworth Smith, Jr., Ronald Watts, and Kallatt Mohammed, by and through their undersigned counsel, file the following Reply to Plaintiffs' Response to Defendants' Motion to Bar Plaintiffs' proposed expert witness Allison Redlich, and in support thereof state as follows:

INTRODUCTION

Dr. Allison Redlich's proposed testimony in this case should be barred pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993). Her report is filled with speculation, assertions unsupported by the record, and little to no scientific analysis. Moreover, her opinions, if followed, contradict what courts have determined to be valid pleas. Courts have put in place protections of what is a freely given and knowing plea agreement which Dr. Redlich ignores. If Dr. Redlich is allowed to testify, she should be barred from discussing irrelevant topics unconnected to her opinions, and opinions given without foundation.

In their Response to Defendants' Motion to Bar [Dkt. 334], Plaintiffs argue that Dr. Redlich's opinions "are well-reasoned and fit comfortably within Rule 702 and the *Daubert*

standard." *Id*. at 17. They claim she has provided ample empirical support for her opinions, that she does not speculate, and that the reasoning allowing her to testify in false confession cases applies with equal force in the context of false guilty plea cases. Unfortunately, Plaintiffs are mistaken all on counts. Plaintiffs' Response is divided into six separate arguments - Defendants will respond to each argument in turn.

ARGUMENT

1. Dr. Redlich's opinions about false guilty pleas are unreliable and inadmissible.

Plaintiffs argue that Dr. Redlich's proposed testimony is reliable and admissible because two cases have allowed Dr. Redlich to testify about false guilty pleas. Dkt. 334 at 4. However, both cases are non-binding and unpersuasive.

In *Jones v. Cannizzaro*, 514 F. Supp. 3d 853 (E.D. La 2021), the plaintiff was found guilty at trial of several charges and then later, pleaded guilty to an additional four crimes. *Id*. at 859. The plaintiff's initial (trial) convictions were vacated for *Brady* violations and the charges against him were ultimately dismissed. *Id*. His later convictions (the four additional crimes) were vacated based on ineffective assistance of counsel in connection with his guilty pleas. *Id*. The plaintiff then brought suit against his prosecutor for alleged *Brady* violations. *Id.* To support his claims, the plaintiff presented Dr. Redlich to opine that the withholding of exculpatory evidence is a risk factor for a false guilty plea. *Id*. at 861. The Court, in allowing Dr. Redlich to testify, held empirical evidence existed supporting Dr. Redlich's claim in the form of an article she co-authored that found, based on her own research, that 10% of false guilty pleas involved a failure to disclose exculpatory evidence. *Id.* at 862.

Jones, however, is factually distinguishable. In the case at bar, there is no evidence, nor even any allegation, that a Defendant withheld exculpatory evidence, and therefore, no evidence

that withheld exculpatory evidence caused Ben Baker or Clarissa Glenn to plead guilty. More importantly, unlike *Jones,* there is no empirical evidence supporting Dr. Redlich's claims in this case.[1] Dr. Redlich claims that packaged plea deals, futility of going to trial, and extreme plea discounts are all risk factors of false guilty pleas. But there is no study, research, or empirical evidence identifying the prevalence of said risk factors in cases involving false guilty pleas as opposed to true guilty pleas, whether that rate is statistically significant, nor the extent that a risk factor must be present for there to be a danger of a false guilty plea. Dr. Redlich defines "risk factor" as "a factor that would increase the risk of a false guilty plea from an innocent defendant," Dkt. 302-3, p. 191. But she provides no statistics, no guidance as to how much any one risk factor would increase the risk of obtaining a false guilty plea.

Plaintiffs cite to *Jones* and argue "such issues should be handled on cross-examination and do not provide a basis to exclude her testimony." Dkt. 334 at 5. But again, the 2023 committee comments to Rule 702 state, "many 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 Comm. comments. Arguments about the sufficiency of an expert's basis do not always go to weight and not admissibility. In this particular case, because there is no reliable basis for Dr. Redlich's testimony, she must be barred.

Plaintiffs also claim that *Sanford v. Russell*, 387 F. Supp. 3d 774 (E.D. Mich. 2019), supports their position that Dr. Redlich should be allowed to testify. In *Sanford,* Plaintiff sought to call Dr. Redlich to testify primarily about false confessions. *Id*. at 786. While the case mentions false guilty pleas twice (*Id*. at 788), it does not provide any meaningful analysis of that topic. In

[1] This argument, "there is no empirical evidence supporting Dr. Redlich's claims," will be further explored in sections 2 and 3 below.

allowing Dr. Redlich's testimony on false confessions and false guilty pleas, the Court found that her "report included substantial background discussion on the factors that researchers have identified as correlated with false confessions," *Id.* at 786. The same cannot be said in the case at bar. There is no substantial background discussion on risk factors of false guilty pleas, the prevalence of false guilty pleas, nor any known rate of error in this particular field.

Plaintiffs also attempt to argue that since several Courts in the Seventh Circuit have allowed false-confession testimony, Dr. Redlich should be allowed to provide false guilty plea testimony. Dkt. 334 at 5. However, Plaintiffs' underdeveloped argument on this topic must be ignored, as it does not address the reliability of false guilty plea testimony. Finally, Plaintiffs claim that "the field [of false guilty pleas] is hardly novel…the concept has been recognized since the early 1800's." Dkt. 334 at 6. While the concept of innocent people pleading guilty may have existed since the inception of plea bargaining, there is almost no case law supporting Plaintiffs' argument that Dr. Redlich's proposed testimony on false guilty pleas is reliable and otherwise admissible. The fact that only one (arguably two) federal case has admitted this testimony, makes Dr. Redlich's proposed testimony very novel.

2. Dr. Redlich's failure to identify any objective way to differentiate between true and false guilty pleas weighs in favor of barring her testimony.

Plaintiffs state that "Dr. Redlich identifies factors that are common in false guilty pleas, and she does not have to identify an objective way to differentiate between true and false guilty pleas." Dkt. 334 at 6. Defendants agree with both of those propositions; however, that is what makes Dr. Redlich's testimony unreliable.

As stated in Defendants' motion, Dr. Redlich admitted in her deposition, numerous times, that the factors or hallmarks of false guilty pleas are the same as the hallmarks of true guilty pleas.

Dkt. 307 at 7. Dr. Redlich agrees that there are no hallmarks present in Baker and Glenn's guilty pleas that are not also present in true guilty pleas. *Id*.

So where does that leave us? If packaged plea deals, futility of going to trial, and extreme plea discounts are risk factors that are present in both false and true guilty pleas, and Dr. Redlich provides no statistics on which factors are more prevalent in which type of plea, how can said testimony meet the requirements of Rule 702? Said testimony does not "help the trier of fact to understand the evidence" nor is it "based on sufficient facts or data." Rule 702 (a) and (b). Thus, Dr. Redlich's inability to differentiate between true and false guilty pleas weighs in favor of barring her testimony.

3. There is no empirical evidence supporting Dr. Redlich's opinions and said lack of evidence weighs in favor of barring her testimony.

Plaintiffs argue that "the fact that Dr. Redlich does not have perfect empirical data that answers all of Defendants' questions does not mean that her testimony is unreliable or unhelpful to the jury." Dkt. 334 at 9. Defendants are not demanding "perfect empirical data." Rather, Defendants are demanding what the law requires, sufficiently reliable facts or data that will help the trier of fact understand the evidence. Dr. Redlich's opinions fail to meet these requirements and, therefore, should be barred.

Dr. Redlich repeatedly claims that the risk factors of packaged plea deals, futility of going to trial, and extreme plea discounts, "raise the likelihood" of an innocent person pleading guilty – resulting in false guilty plea. Dkt. 302-3, p. 202:15-203:7. But Dr. Redlich provides no data, no evidence as to <u>how much</u> said risk factors raise the likelihood of an innocent person pleading guilty. Dtk. 302-3, p. 203:16-204:5. Do they raise the likelihood by 1%, 10%, 20%? Moreover, how can said risk factors raise the likelihood of a false guilty plea, if they are the same risk factors found in true guilty pleas? Dkt. 307 at 7.

Plaintiffs downplay this lack of empirical evidence by citing to *Kluppelberg v. Burge*, No. 13 C 396, 2016 WL 6821138 (N.D. Ill., Sept. 16, 2026). Dkt. 334 at 10. Plaintiffs claim that this lack of empirical evidence merely identifies limitations of Dr. Redlich's methodology, not that it is unreliable. *Id*. But this position is in stark contrast with Plaintiffs' heavy reliance on *Jones v. Cannizzaro*, *supra*, where the Court's finding that empirical evidence supported Dr. Relich's testimony arose from the requirement that such evidence must exist for the testimony to be admissible. *Id.* at 862. Dr. Redlich's testimony lacks empirical support and must be barred.

4. Dr. Redlich improperly makes credibility determinations.

Plaintiffs argue that Dr. Redlich's report and testimony does not suggest in any way that she has weighted the parties' credibility and decided to tell the jury which side to believe. Dkt. 334 at 12. Defendants respectfully disagree.

Defendants do not dispute that it is permissible for an expert to give an opinion based upon factual assumptions, the validity of which are for the jury to determine, as set forth in *Richman v. Sheahan*, 415 F. Supp. 2d 929, 942 (N.D. Ill. 2006), upon which Plaintiffs rely. However, Dr. Redlich went beyond those limitations, and opined that one party was more credible than another. In coming to her conclusion that "this case bears many of the hallmarks of a false guilty plea case," Dr. Redlich admits that she is crediting Baker's and Glenn's statements "more" than the police officers' statements. Dkt. 302 at 10.

While Dr. Redlich was careful not to explicitly say that she found Baker's and Glenn's version of the events true, her testimony demonstrates that her opinions clearly infringe upon the function of the jury. Even without an ultimate opinion as to the truthfulness of Baker's and Glenn's statements, Dr. Redlich's testimony would only serve the same purpose: to impermissibly influence the jury that Plaintiffs' version of the events is true, that their guilty pleas should be

ignored or disregarded, and that the Defendants' version of the events are false. Thus, her testimony would infringe on the jury's ability to assess the credibility of witnesses, and it should be excluded. *Goodwin v. MTD Prod., Inc.*, 232 F.3d 600, 609 (7th Cir. 2000) ("[A]n expert cannot testify as to credibility issues. Rather, credibility questions are within the province of the trier of fact.").

5. The reasoning contained in the cases excluding Dr. Redlich's testimony are still persuasive today.

In *People v. Powell*, 53 Misc. 3d 171, 175 (S.C. N.Y. 2014), the court did not bar Dr. Redlich's testimony based on relevancy grounds, as Plaintiffs argue. Dkt. 334 at 13. The court specifically found that it was "insufficient under *Frye* that researchers agree that the phenomenon of false confessions exists and that interrogation tactics will likely increase the risk of law enforcement obtaining a false confession." *Id*. at 178. Similarly, it is insufficient under *Daubert* that researchers agree that the phenomenon of false guilty pleas exist and that certain hallmarks may increase the risk of inducing a false guilty plea, without any further data or objective way to meaningfully distinguish between true and false guilty pleas.

Despite Plaintiffs' claim to the contrary, the court in *People v. Oliver*, 45 Misc. 3d 765, 778 (S.C.N.Y. 2014), did not bar Dr. Redlich's testimony based on un-timeliness or relevance. Dkt. 334 at 13-14. Rather, the court found that "[T]here is no empirical support for many of [Dr. Redlich's] assertions. . . . Conspicuously absent from Dr. Redlich's submission is any scientific connection between [interrogation] techniques and false confessions…." *Id*. at 778-79. In the case at bar, Dr. Redlich has not established the rate at which the hallmarks associated with Baker's and Glenn's pleas result in a false guilty plea as opposed to a true guilty plea. Without being able to connect those dots, Dr. Redlich's testimony regarding the hallmarks present in Baker's and Glenn's pleas, hallmarks that are indisputably present in true guilty plea cases, should be barred.

Both parties appear to agree that in *Edmonds v. State*, 955 So. 2d 864 (Miss. Ct. App. 2006), the court barred Dr. Redlich's testimony by concluding, "there is no way to discern a possible rate of error in the field of false confessions." *Id.* at 878-79. Turning to the case at bar, there may be a way to discern a possible rate of error in the field of false guilty pleas, but Dr. Redlich certainly has not provided it in her report or testimony. Dtk. 302-3, p. 203:16-204:5.

6. Dr. Redlich should be barred from discussing irrelevant topics unconnected to her opinions and giving opinions without foundation.

Dr. Redlich must be barred from stating how many convictions have been overturned as a result of the alleged "Watt's scandal." Dr. Redlich testified that she sees her role in this case as, "educating the jury about the risk factors that can lead to false guilty pleas and how they may or may not be present in the case of Clarissa [Glenn] and Ben [Baker]." Dkt. 302, p. 12. Nowhere in her report or deposition testimony does she state, or imply, that the total number of overturned convictions provides support for her proposed testimony in this case. Therefore, said testimony is irrelevant to her opinions in this case. There is no need to defer ruling on this issue with respect to Dr. Redlich. Plaintiffs' argument that said evidence will be admissible through other witnesses due to their *Monell* claim, is clearly disputed by Defendants, and does not affect Dr. Redlich's testimony in any event.

Dr. Redlich must also be barred from speculating that Plaintiffs may not have had sufficient time to consider the plea offer. As Plaintiffs provided no testimony on this issue and Dr. Redlich chose not to interview them, the sole basis for Dr. Redlich's opinion is the plea hearing transcript. Dkt. 302, p. 13. However as indicated in Defendants' Motion to Bar, no reasonable reading of the plea transcript indicates that Plaintiffs were rushed into taking a plea. *Id*. As Dr. Redlich lacks any other foundation to opine about this subject, she must be barred from testifying to it.

Finally, it defies logic that Dr. Redlich recently wrote a paper where she found that "[f]alse guilty pleas are also more significantly common among drug cases and the 'no crime' type of wrongful conviction," Dkt, 334 at 16, and yet she has "no idea" how many guilty pleas, including pleas in drug cases, were taken in the United States, in Illinois, or in Cook County in the year 2006. Dkt. 302 at 14. ("I don't even know the denominator of how many guilty pleas there were, as I've already mentioned.") Dkt. 302-3, p. 113:19-114:2. To be clear, Dr. Redlich did not testify, "I'm not sure off the top of my head, but it's in my recent paper." Instead, her testimony is that she has no idea.

Plaintiffs made their knowing, intelligent, and voluntary guilty pleas in September 2006. Dr. Redlich has no foundation to opine that at the time they took their pleas, it was true that "[f]alse guilty pleas are also more significantly common among drug cases and the 'no crime' type of wrongful conviction." By assessing reliability, this Court ensures that an expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999). Defendants are not requesting, and the law does not require, absolute certainty nor perfect empirical data. But the law does require a reasonable amount of reliability, and Dr. Redlich's testimony falls short of that standard. Dr. Redlich opinions and testimony should, therefore, be barred.

CONCLUSION

For the reasons stated above and as argued in Defendants' Motion to Bar [Dkt. 302], Dr. Redlich should be barred from testifying. If the Court allows her to testify, it should bar her from testifying to topics unconnected to her opinions and opinions for which she lacks foundation.

Dated: July 15, 2024.

Respectfully submitted,

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