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

	)	
	)	Master Docket Case No. 19-cv-01717
In re: WATTS COORDINATED	)	
PRETRIAL PROCEEDINGS	)	Judge Franklin U. Valderrama
	)	
	)	Magistrate Judge Sheila M. Finnegan
	)	

THIS DOCUMENT RELATES TO CASE NO. 16-CV-8940

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO BAR TESTIMONY OF DR. ALEXANDER OBOLSKY

INTRODUCTION

The Defendants hired Dr. Alexander Obolsky to rebut the opinions that Dr. Allison Redlich will provide in this case. Dr. Redlich has conducted decades of research on the topic of false guilty pleas, meaning guilty pleas entered by individuals who are factually innocent. Dr. Redlich plans to testify about factors that are commonly present in guilty pleas entered by factually innocent people, including the factors that were present when Mr. Baker and Ms. Glenn pled guilty to their December 11, 2005 arrest. Dr. Obolsky seeks to offer two opinions in this case: (1) that the research that Dr. Allison Redlich has conducted on false guilty pleas is not valid, an opinion he is not qualified to offer; and (2) that Plaintiffs Ben Baker and Clarissa Glenn were legally competent to plead guilty to their December 2005 arrest, an opinion that does not rebut anything Dr. Redlich will testify about and is improper in any event.

The Court should bar Dr. Obolsky from testifying. Defendants failed to respond to Plaintiffs' argument that Dr. Obolsky is not qualified to rebut Dr. Redlich's opinions. That alone justifies excluding his testimony regarding her research. Dr. Obolsky's testimony about Dr. Redlich's research should also be barred on the grounds that it is not proper expert testimony and

would not be helpful to the jury. Defendants' cursory response on those issues failed to establish that Dr. Obolsky has any admissible testimony to offer.

Dr. Obolsky's opinion that Mr. Baker and Ms. Glenn were legally competent to plead guilty is an improper legal conclusion, based on made up "facts," and is not responsive to Dr. Redlich's testimony anyway. Defendants' response dances around these issues. Defendants assert that Dr. Obolsky is not trying to opine that Mr. Baker and Ms. Glenn were legally competent to plead guilty even though Dr. Obolsky himself said he is doing that, and they generically state that experts may base their opinions on disputed facts while ignoring that Dr. Obolsky is flat out wrong about certain things he calls facts.

ARGUMENT

I. Dr. Obolsky should be barred from testifying about Dr. Redlich's research because Defendants have not established that he is qualified to do so or that his proposed testimony is admissible.

Plaintiffs' expert Allison Redlich is a psychologist and college professor who has spent decades researching and publishing papers about false guilty pleas and other criminal justice issues. Dr. Obolsky is a psychiatrist who has never conducted any research about false guilty pleas and has never even reviewed any research on the issue until he started working on this case. Plaintiffs' motion to bar Dr. Obolsky's testimony argued that he should not be permitted to testify about Dr. Redlich's research for two primary reasons: it is not proper expert testimony; and even if it was proper expert testimony, Dr. Obolsky is not qualified to offer that testimony. Indeed, a full section of Plaintiffs' motion to bar is titled "**Dr. Obolsky is not qualified to rebut Dr. Redlich's research even if that would be proper expert testimony**." Dkt. 295 at 9-10. That section of Plaintiffs' motion discussed Dr. Obolsky's education, experience, and background, cited deposition testimony, and addressed relevant cases while explaining why Dr. Obolsky is not qualified to testify about Dr. Redlich's research. *Id*.

Defendants failed to respond to Plaintiffs' arguments that Dr. Obolsky is not qualified to testify about Dr. Redlich's opinions. This should result in excluding that testimony for two reasons. First, it was their burden to show that Dr. Obolsky is qualified to testify, and by failing to explain why he was qualified to testify on that topic, they failed to satisfy their burden. *See*, *e.g.*, *Bradley v. Sheriff of Rock Island Cnty*., 412CV04008SLDJEH, 2016 WL 3198030, at *3 (C.D. Ill. Mar. 2, 2016) ("The proponent of an expert bears the burden to prove that the expert is qualified by a preponderance of the evidence."). Second, Defendants' failure to respond to Plaintiffs' argument that Dr. Obolsky is unqualified to testify about Dr. Redlich's research results in a forfeiture of any arguments to the contrary. *See*, *e.g.*, *Alioto v. Town of Lisbon*, 651 F.3d 715, 721 (7th Cir. 2011) (failure to address an argument resulted in "waiver"); *see also Ochoa v. Lopez*, 20-CV-02977, 2021 WL 4439426, at *12 (N.D. Ill. Sept. 28, 2021) ("Ochoa does not respond to this argument, and has waived it.") (Valderrama, J.).

Setting aside the issue of whether Dr. Obolsky is qualified to testify about Dr. Redlich's testimony, Defendants have not shown that he has any admissible opinions to offer. At the outset, they do not seriously contest that Dr. Obolsky should not be permitted to testify that Dr. Redlich's research is "bunk." Dkt. 328 at 5-6. And they did not respond at all to Plaintiffs' argument that Dr. Obolsky must not be permitted to say that Dr. Redlich's research is "pure bunk" or "nonsense." Defendants also acknowledge that Dr. Obolsky does not question Dr. Redlich's research methodology. *Id*. at 4. It appears that Defendants want Dr. Obolsky to be able to opine that he "evaluated [Dr. Redlich's] 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 5 (citing Obolsky Dep. at 81:15-81:19). Beyond the fact that Dr. Obolsky does not provide any

basis for his conclusion, the proposed testimony does not rebut anything that Dr. Redlich says. Dr. Redlich studies factors that are common in false guilty pleas. Her research does not attempt "to predict or decide" whether any particular guilty plea is true or false. As such, Dr. Obolsky's purported response to Dr. Redlich's research would be confusing and unhelpful to the jury. *Chatman v. City of Chicago*, 14 C 2945, 2018 WL 11426430, at *2 (N.D. Ill. Oct. 23, 2018) (barring defense expert in false confession case from offering opinion that was "non-responsive to any opinion offered by" plaintiff's false-confession expert).

II. Dr. Obolsky should be barred from testifying that Mr. Baker and Ms. Glenn entered guilty pleas that were knowing, intelligent, and voluntary.

A. Dr. Obolsky equates "knowing, intelligent, and voluntary" with "legally competent," and the Court should not let him offer this testimony.

Defendants take issue with Plaintiffs' assertion that when Dr. Obolsky opines that Mr. Baker and Ms. Glenn entered knowing, voluntary, and intelligent guilty pleas, he means that they were legally competent to plead guilty. Dtk. 328 at 2. They claim that Plaintiffs are misrepresenting Dr. Obolsky's opinion, and that Plaintiffs made that assertion "without citation." Dkt. 328 at 2, citing Dkt. 295 at 4. Defendants are wrong. Even a cursory review of Plaintiffs' motion shows that they cited Dr. Obolsky's report and his deposition testimony on this point. Dkt. 295 at 4. The cited excerpt is as follows:

> Q. So with – your opinion here was that Mr. Baker and Ms. Glenn entered a guilty plea knowingly, intelligently, and voluntarily, correct?
>
> A. Yes
>
> Q. And that – is that another way of saying they were legally competent to plead guilty?
>
> A. Yes.

Dkt. 295-1 at 72:8-72:12. Plaintiffs accurately represented Dr. Obolsky's proposed opinion about what a knowing, voluntary, and intelligent plea means. Defendants do not cite anything suggesting that Dr. Obolsky had a different meaning in mind.

Ignoring Dr. Obolsky's own testimony that he defined "knowing, voluntary, and intelligent," Defendants assert that: (1) the law in Illinois does not equate "knowing, voluntary, and intelligent" with "legally competent"; and (2) neither "Plaintiffs' counsel nor Dr. Redlich have suggested that Plaintiffs were not legally competent to plead guilty." Dkt. 328 at 2. Defendants do not explain why either of these assertions help justify the admission of Dr. Obolsky's testimony.

As noted above, Dr. Obolsky unequivocally testified that when he said Mr. Baker and Ms. Glenn entered pleas that were knowing, voluntary, and intelligent, he meant that they were legally competent. Defendants now attempt to disavow that position and say it does not accurately reflect the law. Dkt. 328 at 2. What, then, would the jury do with Dr. Obolsky's testimony on that issue if it was allowed? Defendants do not say. Similarly, Defendants accurately observe that that Dr. Redlich does not offer an opinion as to whether Mr. Baker or Ms. Glenn were legally competent to plead guilty. Rather, she will address the factors that are commonly present when innocent people plead guilty. Dkt. 328 at 2. That point further undercuts any argument that Dr. Obolsky should be permitted to offer such testimony because even if the issue of legal competence to plead guilty might otherwise be relevant, Dr. Obolsky's testimony would not rebut anything that Plaintiff needs to or is trying to prove. *See Chatman v. City of Chicago*, 2018 WL 11426430, at *4.

B. Dr. Obolsky's conclusion that Mr. Baker and Ms. Glenn were legally competent is not reliable.

Plaintiffs' motion to bar Dr. Obolsky's testimony established that his opinion regarding the voluntariness of Plaintiffs' guilty pleas was based in significant part on a counterfactual narrative and speculation. Dkt. 295 at 11-13. Specifically, Dr. Obolsky was flatly incorrect when he said that Plaintiffs were under oath when they pled guilty, and he was speculating when he said that Ms. Glenn understood the guilty-plea process based on Mr. Baker's prior experience with the criminal justice system.

Defendants do not even respond to the point about Dr. Obolsky's speculation regarding Ms. Glenn's understanding, thus waiving or forfeiting any arguments regarding that issue. Defendants address the point about Dr. Obolsky's mistake or misrepresentation regarding Mr. Baker and Ms. Glenn being under oath by complaining that Plaintiffs did not procure an affidavit from their criminal defense attorney earlier in the litigation and by saying that experts may rely on disputed facts. Dkt. 328 at 3-4. Neither of those arguments save Dr. Obolsky's testimony.

With respect to the affidavit confirming that Mr. Baker and Ms. Glenn were in fact not under oath when they pled guilty, Defendants fail to explain why the affidavit should have been procured earlier. Dr. Obolsky invented the "fact" that Mr. Baker and Ms. Glenn were under oath when they pled guilty when he issued his report. The transcript from their guilty plea does not reflect them being under oath, and they had no reason to believe that a defense expert was going to make up that "fact" any more than he might have made up any other random fact about them or their case. Therefore, they had no reason to get an affidavit from their criminal defense attorney earlier in the case. Nor do Defendants cite any authority suggesting that the affidavit was provided too late or even ask the Court to strike it from the record.

Although Defendants are correct that experts may rely on disputed facts, that principle is not relevant here because Dr. Obolsky is not relying on disputed facts. The undisputed evidence shows that Mr. Baker and Ms. Glenn were not under oath. Dr. Obolsky is the only person who says otherwise, and he has no basis for that position. Experts may not make up their own purported facts that lack an evidentiary basis. *See Lapsley v. Xtek, Inc.*, 689 F.3d 802, 809 (7th Cir. 2012) ("Rule 702 requires that expert testimony . . . have a factual basis."); *see also Simmons v. City of Chicago*, 14 C 9042, 2018 WL 11391877, at *2 (N.D. Ill. Feb. 18, 2018) ("there is a good deal of unsupported and inadmissible speculation in Dr. Hanus's report," which does not have "any support in actual evidence," making it "improper and inadmissible speculation"); *see also id*. at *10 ("there is nothing inappropriate about [an expert's] reliance on an assumed set of facts provided by plaintiffs' counsel, *so long as those facts are consistent with evidence that will be admitted*") (emphasis added).

Here, no evidence will be admitted showing that Mr. Baker and Ms. Glenn were under oath when they pled guilty because no such evidence exists. Dr. Obolsky should not be permitted to testify otherwise. And because his entire opinion regarding the validity of their pleas relies heavily on his unsupported position regarding their being under oath, the whole opinion should be barred. In fact, Defendants do not address this issue or argue against it beyond saying that experts may rely on disputed facts.

C. Dr. Obolsky's failure to examine Mr. Baker or Ms. Glenn warrants exclusion.

Plaintiffs' motion pointed out that Dr. Obolsky himself acknowledges that the proper way to determine if someone is legally competent to plead guilty is to conduct a medical examination. Neither he nor anyone else did that here, which is another reason to bar his opinion on this topic. Dkt. 295 at 12.

Defendants argue that no examination was warranted by the record, Dkt. 328 at 3, but that does not change the fact that Dr. Obolsky himself identified the proper methodology for determining whether someone is competent to plead guilty and then failed to follow that methodology here.

D. Whether Mr. Baker and Ms. Glenn were competent to plead guilty is a legal conclusion.

Finally, Plaintiffs' motion demonstrated that whether Mr. Baker and Ms. Glenn were legally competent to plead guilty is a legal issue, not a proper subject for expert testimony. Dkt. 295 at 12-13. In response, Defendants assert that Dr. Obolsky is not offering an opinion on legal competence to plead guilty (although as discussed above, he is attempting to offer that testimony). Dkt. 328 at 3. They also argue that Dr. Obolsky should be permitted to provide "concrete information against which to measure" the legal conclusion, assuming it is a legal conclusion. *Id*. But Dr. Obolsky is attempting to provide the legal conclusion itself – that Mr. Baker and Ms. Glenn were legally competent to plead guilty. He is not merely providing the jury with relevant information so that the jury can make that decision on its own. Thus, the Court should bar him from testifying on this ground as well.

Plaintiffs similarly argued that Dr. Obolsky should be barred from testifying that the only way to determine whether someone is innocent or guilty is through the legal processes including trial and plea bargaining. Dkt. 295-3 (Obolsky Report) at 8. Defendants did not respond to this argument, resulting in waiver or forfeiture. *See*, *e.g.*, *Alioto*, 651 F.3d at 721.

CONCLUSION

Dr. Obolsky seeks to testify about irrelevant issues outside his area of expertise, and sometimes based on plainly false assumptions. The Court should not let him do so. Dr. Obolsky should be barred as a witness in this case.

Respectfully submitted,

/s/ Scott Rauscher
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