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

BEN BAKER and CLARISSA GLENN,

Plaintiffs,

v.

CITY OF CHICAGO, *et al.*,

Defendants.

Master Docket No. 19-cv-1717
16-cv-8940
Judge Franklin U. Valderrama

SEALED ORDER[1]

Plaintiffs Ben Baker and Clarissa Glenn allege that they were falsely arrested by current and former Chicago Police Department (CPD) officers, including former Sergeant Ronald Watts (Watts), Officer Kallat Mohammed (Mohammed) among others (collectively, the Defendant Officers) as part of a shakedown scheme. R. 238, SAC.[2] Baker was convicted of one offense and pled guilty to a second and served a total of ten years in prison for a crime he did not commit. *Id.* ¶ 4. Glenn pled guilty and was sentenced to one year of probation. *Id.* Plaintiffs subsequently received

[1]Portions of the parties' briefs were filed under seal, as were many exhibits. Because this Order may contain privileged information that was submitted to the Court under seal, the Court will issue its Order under seal so the parties may meet and confer with one another about proposed redactions. The parties are to file a joint position statement by September 10, 2024 explaining what (if any) redactions are needed in the text of the Order, and why (bearing in mind the strict standard against secret filings, *see generally Mitze v. Saul*, 968 F.3d 689 (7th Cir. 2020)). That position statement may be filed under seal. After considering the proposed redactions, the Court will issue a public version of the Order.

[2]Citations to the docket are indicated by "R." followed by the docket number or filing name, and, where necessary, a page or paragraph citation.

Certificates of Innocence. Baker and Glenn sued the Defendant Officers, several CPD supervisors,[3] and the City of Chicago (collectively, Defendants) under 42 U.S.C. § 1983 for wrongful arrests and convictions and analogous state law claims. The parties have disclosed numerous expert witnesses and filed motions to bar or limit the testimony of said expert witnesses. In this Order, the Court addresses only Defendants' motion to bar Shairee Lackey and will address the remaining motions to bar in separate orders.

Background[4]

Plaintiffs Ben Baker and Clarissa Glenn allege that the Defendant Officers, led by Watts, fabricated drug or gun charges against Plaintiffs as part of a shakedown scheme. SAC. The Defendant Officers allegedly planted drugs in Baker's mailbox and subsequently on his person, and falsely arrested him on July 11, 2004 and March 23, 2005, respectively. *Id.* ¶¶ 24–29, 46–57. Baker went to trial on both cases—the first was dismissed on a motion to suppress but Baker was convicted for the second and sentenced to fourteen years in prison. *Id.* ¶¶ 41, 66. Subsequently, the Defendant Officers allegedly planted drugs in Baker and Glenn's car, and Baker and Glenn both pled guilty to possession of a controlled substance in connection with their arrest on December 11, 2005. *Id.* ¶¶ 77, 90, 95–96. Baker received a four-year sentence, and

[3]Supervisory Defendants Philip Cline, Debra Kirby, and Karen Rowan, as well as Defendant Officers Miguel Cabrales and Kenneth Young Jr. were dismissed from the lawsuit with prejudice pursuant to a stipulation of dismissal on August 14, 2024. R. 377.

[4]The Court accepts Plaintiffs' allegations from the Second Amended Complaint as true for purposes of this motion.

Glenn received one year of probation. *Id.* ¶ 4. Baker served almost ten years for a crime he did not commit. *Id.* ¶ 1.

Plaintiffs subsequently applied for, and the Circuit Court of Cook County granted, Plaintiffs Certificates of Innocence (COI) pursuant to the Illinois Petition for Certificate of Innocence statute, 735 ILCS 5/2-702. SAC ¶ 146; *see also* R. 331, Pls.' Lackey Resp. at 1. Plaintiffs then sued Watts and other Defendants. SAC.

Plaintiffs and Defendants have both retained numerous experts. Plaintiffs have filed six motions to bar Defendants' experts' testimony, and Defendants have filed five[5] motions to bar Plaintiffs' experts' testimony, all brought pursuant to the Federal Rules of Evidence 702 and 703 and the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). As stated above, this Order addresses Defendants' motion to bar Shairee Lackey (Lackey). Plaintiffs disclosed Lackey, Glenn's therapist, as a non-retained expert witness, to testify about her diagnosis that Glenn suffers from Post-Traumatic Stress Disorder (PTSD) as a result of Defendants' misconduct. Defendants move to bar Lackey's opinions. R. 294, Defs.' Mot. Bar Lackey.[6]

[5]Two of Defendants' motions attack the same expert witness, Dr. Shane, based on two different categories of opinions.

[6]Defendants filed a sealed and redacted version of their motion, R. 294, R. 308; Plaintiffs filed a sealed and redacted version of their response, R. 331, R. 332, and Defendants filed a sealed and redacted version of their reply, R. 346, R. 347.

Legal Standard

Rule 702 of the Federal Rules of Evidence governs the admissibility of expert testimony. Fed. R. Evid. 702[7]; *Artis v. Santos*, 95 F. 4th 518, 525 (7th Cir. 2024). Rule 702 allows the admission of testimony by an expert—that is, someone with the requisite "knowledge, skill, experience, training, or education"— to help the trier of fact "understand the evidence or [ ] determine a fact in issue." Fed. R. Evid. 702. An expert witness is permitted to testify when (1) "the testimony is based on sufficient facts or data," (2) "the testimony is the product of reliable principles and methods," and (3) the expert has reliably applied "the principles and methods to the facts of the case." *Id.*

The district court serves as the gate-keeper who determines whether proffered expert testimony is reliable and relevant before accepting a witness as an expert. *Daubert*, 509 U.S. 57. "[T]he key to the gate is not the ultimate correctness of the expert's conclusions," rather, "it is the soundness and care with which the expert arrived at her opinion[.]" *C.W. ex rel. Wood v. Textron, Inc.,* 807 F.3d 827, 834 (7th

[7]The operative version of Rule 702 came into effect on December 1, 2023. The Rule was amended "to clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates to the court that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule." Fed. R. Evid. 702 Advisory Committee Notes to 2023 Amendments. The Seventh Circuit has applied the preponderance standard for many years prior to the amendment, however. *See*, *e.g.*, *Gopalratnam v. Hewlett-Packard Co.*, 877 F.3d 771, 782 (7th Cir. 2017). The Advisory Committee explained that the amendment was necessary in part because "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," which is an "incorrect application" of the Rule. Fed. R. Evid. 702 Advisory Committee Notes to 2023 Amendments. However, noted the Committee "[n]othing in the amendment imposes any new, specific procedures." *Id.*

Cir. 2015) (cleaned up).[8] Under Rule 702 and *Daubert*, the district court must "engage in a three-step analysis before admitting expert testimony. The court must determine (1) whether the witness is qualified; (2) whether the expert's methodology is scientifically reliable; and (3) whether the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." *EEOC v. AutoZone, Inc.*, 2022 WL 4596755, *13 (N.D. Ill. Sept. 30, 2022) (cleaned up). The focus of the district court's *Daubert* inquiry "must be solely on principles and methodology, not on the conclusions they generate." *Daubert*, 509 U.S. at 595. The expert's proponent bears the burden of proving by a preponderance of the evidence the expert's testimony satisfies Rule 702. *See United States v. Saunders*, 826 F.3d. 363, 368 (7th Cir. 2016). District courts have broad discretion in determining the admissibility of expert testimony. *Lapsley v. Xtek, Inc.*, 689 F. 3d 802, 810 (7th Cir. 2012).

Analysis

Plaintiffs disclosed Lackey, who they characterize as Glenn's therapist, as a non-retained expert witness, to testify about her diagnosis that Glenn suffers from Post-Traumatic Stress Disorder (PTSD) as a result of Defendants' misconduct.

Defendants move to bar Lackey's opinions on two bases: (1) Plaintiffs have not met their burden of establishing that Lackey is qualified to diagnose individuals with PTSD and (2) Lackey's opinion that Glenn suffers from PTSD as a result of the alleged wrongdoing in this case is unreliable. Defs.' Mot. Bar Lackey. The Court starts with

[8]This Order uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. *See* Jack Metzler, *Cleaning Up Quotations*, 18 Journal of Appellate Practice and Process 143 (2017).

the second basis, which is twofold: Defendants argue that neither Lackey's diagnosis of Glenn's PTSD nor her opinion that the PTSD was caused by Defendants' alleged misconduct satisfy Rule 702 or *Daubert*. The Court agrees.

By way of background, Lackey is a licensed professional counselor who saw Glenn once in June 2022 for a clinical interview that lasted approximately thirty minutes. Defs.' Mot. Bar Lackey at 2–3 (citing R. 294-2, Lackey Dep. at 22–24, 48–49, 88). Glenn self-scheduled her appointment with Lackey and never returned after her June 2022 appointment, so Lackey never provided treatment for Glenn. *Id.* at 2 (citing Lackey Dep. at 32, 89–90). Lackey has no recollection of Glenn and her only records regarding their interaction consist of the initial assessment note which Lackey testified contains "very basic information" and "very general notes" that are not comprehensive, based on information related by the client's self-reporting of their symptoms, history, and current information. *Id.* (citing Lackey Dep. at 14–17, 32, 45–48, 67, 91–92, 96; R. 294-3, Glenn Initial Assessment). Lackey does not recall anything that Glenn said in the interview beyond what is in the Initial Assessment notes. *Id.* at 3 (citing Lacky Dep. 33–40).

Glenn completed several questionnaires before her clinical interview with Lackey: patient health questionnaires PHQ-2 and PHQ-9, which are screening tools for depression, and general anxiety disorder questionnaire GAD-7, which is a screening tool for anxiety. Defs.' Mot. Bar Lackey at 3 (citing Lackey Dep. at 24–30; Glenn Initial Assessment at 87350). The PHQ and GAD questionnaires are not tools for diagnosing PTSD; Lackey did not administer the PCL-5 questionnaire, a screening

tool for PTSD which has questions directed to the DSM-V's criteria for PTSD. *Id.* (citing Lackey Dep. at 56–58, 64–65). Lackey testified, however, that a patient need not complete a PCL-5 for Lackey to diagnose the patient with PTSD. R. 331, Pls.' Lackey Resp. at 4 (citing Lackey Dep. at 93–94).

The notes from the initial assessment form include short notes about events reported by Glenn: "experiences a panic attack when she sees or hears police"; "[c]onvicted then exonerated"; "IPV [intimate partner violence] by partner after divorcing husband"; "[g]uilt over children leaving college to contribute to home financially"; "[h]usband spent 10 years in prison before being released; briefly reconciled but ended due to infidelity and mistrust"; "[u]nable to start business with grant due to felony conviction." Glenn Initial Assessment at 087349. The notes further state: "History of presenting problem: Pt noted she was convicted and the[n] exonerated due to unethical behavior of police. Pt reported that during her arrest police entered without warning and her children were taken away by DCFS. Per pt, this has created a rift with her and her children. Pt endorsed having a hard time finding employment due to conviction record." *Id.*

Here, Lackey testified that, although she did not remember Glenn, based on her notes on the initial assessment, the event that satisfied the DSM-V's criteria for a PTSD diagnosis was "in relation to the police . . . because of the panic symptoms she experiences when she sees or hears the police." Lackey Dep. at 58. When asked what in Glenn's interaction with the police fit the criteria, Lackey reiterated that she did not remember Glenn, but "assume[d] that police entering without a warrant . . .

entering her residence without warning," which was "maybe . . . terrifying to her." *Id.* at 60. Defendants argue that, not only did a warrantless entry not occur, but also importantly, such an event does not constitute exposure to actual or threatened death, serious injury, or sexual violence, the DSM-V criteria for PTSD.[9] Defs.' Mot. Bar Lackey at 5, 12.

Defendants maintain that Lackey's PTSD diagnosis is unreliable because she did not adhere to the DSM-V's criteria in reaching her diagnosis because she did not identify an event of exposure to actual or threatened death, serious injury, or sexual violence, which Lackey agreed were the criteria for PTSD. Defs.' Mot. Bar Lacky at 12; *id.* at 4–5 (citing Lackey Dep. at 59–60; *see also* R. 346, Defs.' Lackey Reply at 5–6. Other courts within and outside of the Seventh Circuit have barred expert diagnoses of PTSD as unreliable where the expert did not apply the DSM criteria. Defs.' Mot. Bar Lackey at 9–10 (citing *Woods v. Olin Corp.*, 2002 WL 34371098, at *2–3 (S.D. Ill. July 9, 2002) (barring expert's PTSD diagnosis and causation opinions because expert misapplied the criteria contained in DSM-IV, relied solely on information provided by the plaintiff, did not keep complete notes of her treatment of plaintiff, and based her opinions on inaccurate facts); *Brush v. Old Navy LLC*, 687 F. Supp. 3d 452, 466–67 (D. Vt. 2023) (excluding PTSD expert because purported traumatic event did not meet the DSM-V criteria of exposure to actual or threatened death, serious injury, or sexual violence)).

[9]Because Plaintiffs do not claim that a warrantless entry is the basis for Glenn's alleged PTSD, they do not argue that such an event satisfies the DSM-V criteria for PTSD (that is, whether it constitutes exposure to actual or threatened death, serious injury, or sexual violence). The Court therefore does not weigh in on that question.

Plaintiffs retort that Lackey expressly testified that she followed the DSM-V in diagnosing Glenn with PTSD. Pls.' Lackey Resp. at 4 (citing Lackey Dep. at 17–18, 57–58). True, Lackey testified that she told Plaintiffs' counsel that, when diagnosing Glenn with PTSD, she "used the DSM5 criteria including time, and then intrusive symptoms, avoidance symptoms, cognitive and mood symptoms, and then arousal and activity symptoms to make the diagnosis." Lackey Dep. at 18. But Plaintiffs do not cite to any of her testimony where she explains *how* she applied those criteria when diagnosing Glenn. To the contrary, when specifically testifying as to how she applied the DSM-V criteria to Glenn, Lackey testified that, in order to diagnose a patient with PTSD, the patient would have had to report a traumatic event; she does not explain, however, how a "traumatic event" satisfies the DSM-V criteria of being exposed to actual or threatened death, serious injury, or sexual violence. Defs.' Lackey Reply at 5–6 (citing Lackey Dep. at 57). Although, as Lackey testified, the PLC-5 test may not be required for a PTSD diagnosis, in order for the Court to find the diagnosis reliable, there must be more in the record as to how Glenn applied the scientific method (here, the DSM-V's criteria) to the facts (here, Glenn's reported symptoms and life experiences)[10] to arrive at the PTSD diagnosis. *See, e.g.*, *Woods*, 2002 WL 34371098, at *3 ("To qualify as scientific knowledge, an assertion must be derived by

[10]Although Plaintiffs complain that Defendants "are attempting to take advantage of the fact that Ms. Lackey does not have an independent memory of Ms. Glenn" but that it is clear from Lackey's initial assessment notes and Glenn's testimony that she saw Lackey due to the trauma she experienced as a result of her wrongful arrest and conviction, Plaintiffs fail to explain how the trauma resulting from wrongful arrest and conviction (rather than trauma resulting from a warrantless entry) satisfies the DSM-V criteria, either. Pls.' Lackey Resp. at 5 (citing R. 331-1, Glenn Dep. at 21–23; Lackey Dep. at 66–67).

the scientific method.") (citing *O'Conner v. Commonwealth Edison Co.*, 13 F.3d 1090, 1106 (7th Cir. 1994)).

Additionally, as Defendants point out, Lackey saw Glenn only once for thirty minutes, two years ago, has no memory of Glenn, and has no knowledge of Glenn's current condition. Defs.' Mot. Bar Lackey at 13. Moreover, she relied only on Glenn's self-reported symptoms and history, but did not review any other medical records. Other courts within the Seventh Circuit have found diagnoses based on similarly limited interactions and review to be inadmissible under Rule 702 and *Daubert*. *See Gastineau v. UMLIC VP LLC*, 2008 WL 2498102, at *3 (S.D. Ind. June 17, 2008) (barring expert's PTSD diagnosis opinion which was based only on plaintiff's own self-reported medical history). Plaintiffs have failed to meet their burden of establishing the admissibility of Lackey's opinion that Glenn has PTSD.

Even if the Court were to find the PTSD diagnosis itself sufficiently reliable (which it does not), the Court still finds that the proffered opinion that Glenn's PTSD was caused by Defendants' alleged misconduct also fails to meet Rule 702 and *Daubert*'s reliability requirements. Although an expert "need not exclude all alternative causes certainty, . . . the failure to consider obvious potential alternative causes of [the patient's symptoms] is fatal to [the expert's] causation testimony [where] there is no evidence in the record that he [or she] followed a reliable method in forming his [or her] causation opinions." *Nolan v. United States*, 2015 WL 5159888, at *9 (N.D. Ill. Sept. 1, 2015) (citing *Gayton v. McCoy*, 593 F.3d 610, 619 (7th Cir. 2010); *Brown v. Burlington N. Santa Fe Ry. Co.*, 765 F.3d 765, 774 (7th Cir. 2014)).

As stated above, the initial assessment indicates that Glenn reported that she experienced intimate partner violence (IPV). Glenn Initial Assessment at 87349. Defendants argue that, by failing to rule out IPV as a potential source for Glenn's claimed symptoms, Lackey's opinion on causation is unreliable. *Id.* at 12–13. Lackey acknowledged during her deposition that experiencing IPV would fit within the DSM-V's criteria of being exposed to actual or threatened serious injury or actual or threatened sexual violence. Lackey Dep. at 61. Lackey did not, however, recall anything specific that Glenn told her about the IPV incidents, including whether the police responded to any incidents. *Id.*

Contrary to Plaintiffs' contention that Lackey testified that she considered IPV and did not believe it caused Glenn's PTSD, the cited testimony is that, in Lackey's opinion, it did not matter whether the arrest or the IPV occurred more recently when determining which caused Glenn's PTSD. Pls.' Lackey Resp. at 6 (citing Lackey Dep. at 75–76). Instead of timing, the diagnosis is based on the client's reported symptoms and what is distressing in her life. Lackey Dep. at 76. And as Defendants point out, Lackey testified that in her experience "there's a possibility" that seeing the police could remind a person of an event where the police were present, such as an IPV incident. Defs.' Mot. Bar Lackey at 5 (citing Lackey Dep. at 76). Lackey did not provide an explanation for her conclusion that Glenn's arrest was the cause of her PTSD rather than incidents of IPV.

Therefore, failing to explain whether or how Lackey meaningfully considered whether the IPV episodes, which she admits can fit within the DSM-V criteria, caused

Glenn's reported PTSD symptoms as opposed to Defendants' alleged misconduct, "is fatal to [Lackey's] causation testimony because there is no evidence in the record that [she] followed a reliable method in forming [her] causation opinions." *Nolan*, 2015 WL 5159888, at *9. Plaintiffs rely on *Marcial v. Rush Univ. Med. Ctr.*, 2018 WL 4237474, at *3 (N.D. Ill. Aug. 30, 2018) to argue that the failure to rule out alternative causes for a patient's symptoms is properly the subject of cross-examination rather than a reason to bar. However, as Defendants point out, in *Marcial*, the defendants did not point to any specific alternative cause that the expert ignored, whereas here, Lackey failed to explain incidents of IPV. Defs.' Lackey Resp. at 3. Additionally, in *Marcial*, the expert 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. *Id.* (citing *Marcial*, 2018 WL 4237474, at *1–2). On the other hand, here Lackey does not remember Glenn, and testified that she "assume[d]" that the police entering without a warrant was "maybe" terrifying for Glenn and therefore caused her PTSD. Lackey Dep. at 60–61. She added that her notes did not include anything to suggest that that was the case, but rather were "very general" so "someone else could pick up where [she] left off." *Id.* Her initial assessment therefore was "a starting point to delve into as to what's causing [Glenn's] issues." *Id.*

Lackey's speculative testimony as to what caused Glenn's symptoms, where she did not consider an alternative cause that she admitted fit within the DSM-V's criteria is insufficiently reliable under Rule 702 and *Daubert*. *Downing v. Abbott*

Lab'ys, 2019 WL 13398258, at *2 (N.D. Ill. Sept. 9, 2019), *aff'd*, 48 F.4th 793 (7th Cir. 2022) ("While 'an expert need not testify with complete certainty about the cause of an injury,' 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.") (quoting *Gayton*, 593 F.3d at 619); *see also Higgins v. Koch Dev. Corp.*, 794 F.3d 697, 705 (7th Cir. 2015) (explaining that "'[d]ifferential etiology' . . . is a causation-determining methodology" and "to be validly conducted, an expert must systematically 'rule in' and 'rule out' potential causes in arriving at her ultimate conclusion," so expert's causation opinion that did not do so was properly excluded). Accordingly, the Court excludes Lackey's diagnosis of Glenn's PTSD and her opinion that the PTSD was caused by Defendants' alleged misconduct.

Because the Court bars Lackey's opinion that Glenn suffers from PTSD as a result of the alleged wrongdoing in this case as unreliable, it need not determine whether Lackey is qualified to diagnose individuals with PTSD.

Conclusion

For the foregoing reasons, the Court grants Defendants' Motion to Bar Shairee Lackey [294] [308].

Dated: August 20, 2024

United States District Judge
Franklin U. Valderrama