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

ORDER

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.[1] 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 alleges he did not commit. *Id.* ¶ 4. Glenn pled guilty and was sentenced to one year of probation. *Id.* Plaintiffs subsequently received Certificates of Innocence. Baker and Glenn sued the Defendant Officers, several CPD supervisors,[2] and the City of Chicago (collectively, Defendants) under 42 U.S.C. § 1983 for wrongful arrests and convictions and analogous state law claims.

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

[2]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.

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 Plaintiffs' motion to bar Celeste Stack. The Court will address the remaining motions to bar in separate orders.[3]

Background

Plaintiffs Ben Baker and Clarissa Glenn allege that 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 Glenn received one year of probation. *Id.* ¶ 4. Baker served almost ten years for a crime he alleges 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. 295, Pls.' Mot. Bar Obolsky at 1. Plaintiffs then sued Watts and other Defendants. SAC.

[3]The Court previously granted Defendants' motion to bar Shairee Lacky. R. 380.

Plaintiffs and Defendants have both retained numerous experts. Plaintiffs have filed six motions to bar Defendants' experts' testimony, and Defendants have filed five[4] 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 Plaintiffs' Motion to Bar Celeste Stack (Stack). Defendants disclosed former ASA Stack to testify regarding petitions for COIs, including Baker's COI. Plaintiffs have moved to bar her opinions. R. 396, Pls.' Mot. Bar Stack.

Legal Standard

Rule 702 of the Federal Rules of Evidence governs the admissibility of expert testimony. Fed. R. Evid. 702[5]; *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

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

[5]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*.

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 Cir. 2015) (cleaned up).[6] 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).

[6]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).

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 seek to bar or limit the testimony of Celeste Stack, Defendants' proposed expert witness regarding petitions for COIs. Pls.' Mot. Bar Stack. Stack was a Cook County Assistant State's Attorney (ASA) from 1986 to 2017. *Id.* at 2. While at the Cook County State's Attorney's Office (CCSAO), she represented the CCSAO's interests in COI proceedings. *Id.* Defendants have disclosed Stack as an expert witness, as Defendants anticipate that Plaintiffs will seek to introduce into evidence Plaintiffs' COIs and argue that because they were granted COIs, Defendants violated their constitutional rights and rights under Illinois law. R. 329, Defs.' Stack Resp. at 1. Although Defendants indicate that they intend to move *in limine* to bar Plaintiffs' COIs, they disclosed Stack as an expert regarding several topics related to COIs, in the event the Court finds that Plaintiffs' COIs are admissible. *Id.* at 1–2.

Stack purports to offer the following opinions or areas of testimony related to COIs: (1) the facts and opinions from Stack's December 22, 2015 memorandum (the December 2015 Memorandum) and whether, in Stack's opinion, based upon her experience with COI proceedings as an ASA, the court would have granted either Plaintiff a COI, had it been opposed or had her opinions and knowledge been made known to the court; (2) the COI statute was not intended to be used in a lawsuit against government officials; (3) the significance of the CCSAO's choice not to intervene in a COI petition; and (4) the protocols and procedures followed by the

CCSAO for COI proceedings. Plaintiffs move to bar each opinion or opinion category. The Court addresses each proposed opinion in turn.

I. Opinions Related to Baker and Glenn's COIs from December 2015 Memorandum

Plaintiffs advance two primary bases to bar Stack's opinions related to Plaintiffs' COIs: (1) Defendants' expert disclosure does not sufficiently state Stack's opinion(s) related to Plaintiffs' COIs as required under Federal Rule of Civil Procedure 26(a)(2)(C); and (2) Stack's opinions are legal conclusions and speculative.

A. Sufficiency of Disclosure

The Court briefly addresses Plaintiffs' first argument. Rule 26 governs the disclosure of witnesses. Rule 26(a)(2) requires a party to identify any witness who will give opinion testimony within the meaning of Rules 702, 703 and 705. Fed. R. Civ. P. 26(a)(2)(A). When "the witness is not required to provide a written report, this disclosure must state: (i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and (ii) a summary of the facts and opinions to which the witness is expected to testify." Fed. R. Civ. P. 26(a)(2)(C). Defendants' Rule 26(a)(2) disclosure states in relevant part, "Ms. Stack will testify to the facts and opinions contained in her December 2015 Memorandum to Fabio Valentini in *People v. Ben Baker,* 05 CR 8982, attached hereto, and whether, in her opinion, based upon her experience with Certificates of Innocence proceedings as an Assistant State's Attorney, the Court would have granted Mr. Baker and Ms.

Glenn a Certificate of Innocence, had it been opposed or her opinions and knowledge been made known to the Court." R. 296-1, Defs.' Rule 26(a)(2) Disclosure.

Plaintiffs maintain that this disclosure is insufficient under Rule 26(a)(2)(C), because it fails to identify Stack's actual opinion regarding Plaintiffs' COIs. For example, posit Plaintiffs, does she think a court would or would not grant the COI if it had known her opinions and knowledge? Pls.' Mot. Bar Stack at 5–6 (citing *DeLeon-Reyes v. Guevara*, 2023 WL 358834, at *4 (N.D. Ill. Jan. 23, 2023) ("Stating that a witness has an opinion is not the same as stating an opinion."); *Martinez v. Aerovias de Mexico, S.A. de C.V.*, 2023 WL 5748358, at *3 (N.D. Ill. Sept. 6, 2023); *Rivera v. Aerovias de Mexico, S.A. de C.V.*, 690 F. Supp. 3d 906, 910 (N.D. Ill. 2023)). As to the disclosure that Stack will testify to the "facts and opinions" in her December 2015 Memorandum, Plaintiffs contend that the December 2015 Memorandum "is mostly bereft of any actual opinions," apart from her opinion that the CCSAO should not agree to vacate Baker's conviction for his March 2005 arrest based on Baker's pleading. *Id.* at 7. And that opinion, point out Plaintiffs, was "fluid" according to Stack's own testimony in a deposition in a related state case. *Id.* (citing R. 296-2, *Waddy v. City of Chi.*, Stack Dep. at 21–22).

As an initial matter, Defendants take issue with Plaintiffs' attack on their disclosure of Stack's opinions under Rule 26(a)(2)(C) because it is not part of the *Daubert* admissibility standard. Defs.' Stack Resp. at 3. The Court agrees. Although Plaintiffs are correct that all parties must comply with Rule 26(a)(2), this challenge should have been raised as a motion to strike Defendants' Rule 26(a)(2)(C) disclosure

of Stack during expert discovery, as the defendants did in one of the primary cases on which Plaintiffs rely, *DeLeon-Reyes*, 2023 WL 358834, at *3–4 (granting in part motion to strike two of plaintiffs' non-retained experts for failure sufficiently disclose experts' opinions in Rule 26(a)(2)(C) disclosures, but allowing plaintiffs to supplement the disclosures to comply with the Rule).

And the situation at hand is not like that in *Martinez*, 2023 WL 5748358, at *3 or *Rivera*, 690 F. Supp. 3d at 910, the other two cases cited by Plaintiffs, where the court held that the plaintiffs' treating physicians, who had been disclosed as fact witnesses only, could not opine on causation. In those cases, there was no reason for the defendants to move to strike any Rule 26(a)(2)(C) disclosures because none had been made. Here, on the other hand, as Defendants point out, Plaintiffs scheduled Stack's deposition but subsequently agreed to cancel it in exchange for her providing a declaration. Defs.' Stack Resp. at 6 (citing R. 329-1). True, Plaintiffs are correct that it is not their burden to depose Stack to determine her opinions. R. 360, Pls.' Stack Reply at 3 (citing *Martinez*, 2023 WL 5748358, at *3). But again, unlike in *Martinez*, where there was no Rule 26(a) disclosure regarding causation, here, Plaintiffs were on notice of the area of Stack's opinions, if not the exact opinion. No matter, as the Court need not definitively decide whether the disclosure was sufficient under Rule

26(a)(2)(C), because it finds the opinion inadmissible under Rule 702 and *Daubert* for the reasons discussed below.

B. Legal Conclusion and Speculation

Plaintiffs contend that Stack's opinion that a court would have denied Plaintiffs' COIs had it heard her opinions and evidence is inadmissible because it is a legal conclusion and is speculative. Pls.' Mot. Bar Stack at 8–9 (citing, *inter alia*, *Sanders v. City of Chicago Heights*, 2016 WL 1730608, at *7 (N.D. Ill. Aug. 19, 2016)); Pls.' Stack Reply at 6 (citing, *inter alia*, *Client Funding Sols. Corp. v. Crim*, 943 F. Supp. 2d 849, 863 (N.D. Ill. 2013) ("Opinions that amount to legal conclusions do not assist the trier of fact.")). Defendants disagree, insisting that Stack does not offer a legal conclusion that will determine the outcome of the case—that is, whether Defendants did or did not violate Plaintiffs' constitutional rights or their rights under Illinois law—and therefore her opinion is admissible. Defs.' Stack Resp. at 8. The Plaintiffs have the better of the argument.

"Federal Rule of Evidence 704 allows opinion witnesses to testify as to the ultimate issue in an action. But Rule 704 still does not authorize opinions to be legal conclusions." *Trexler v. City of Belvidere*, 2023 WL 415184, at *4 (N.D. Ill. Jan. 25, 2023) (citing *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 564 (7th Cir. 2003)). Here, Stack's opinion that the state court would have adjudicated Plaintiffs' COI petitions differently had the petitions been opposed or had the court heard from her is literally calling into question and proposing an alternative legal conclusion, which the court finds to be inappropriate. Put another way, the state court

was required to apply the law to the facts when granting the COIs, so in essence, Stack's opinion is that the court would have applied the law differently to different facts or arguments presented to it, which is impermissible. *See, e.g.*, *Andersen v. City of Chicago*, 454 F. Supp. 3d 808, 819 (N.D. Ill. 2020).

Moreover, even if Stack's opinion as to what the court would have done with the information Stack had regarding the COI petitions is not a legal conclusion, the Court also agrees with Plaintiffs that it is improperly speculative. Pls.' Mot. Bar Stack at 9. Although an expert may offer a "hypothetical explanation of the possible or probable causes of an event," the Seventh Circuit has cautioned that "these hypothetical alternatives must themselves have analytically sound bases so that they are more than mere speculation by the expert." *Smith v. Ford Motor Co.*, 215 F.3d 713, 718–19 (7th Cir. 2000) (cleaned up). Defendants retort that Stack's opinion is not speculative, as it is based on her education, training, and experience. Defs.' Stack Resp. at 9 (citing R. 329-2, Stack Resume).

Defendants are correct that an expert may offer testimony based on his or her experience. Defs.' Stack Resp. at 9 (citing, *inter alia*, *Andersen*, 454 F. Supp. 3d at 813); *see Artis*, 95 F.4th at 526. And, as discussed further below, the Court agrees that Stack has experience in COI petitions; however, as Plaintiffs point out, nothing before the Court—whether it is the Rule 26(a)(2)(C) disclosure itself or the December 2015 Memorandum—provides an explanation of what Stack's basis for this conclusion is. *See* Pls.' Mot. Bar Stack at 9. And the Seventh Circuit has stated that, even though an expert may be qualified by experience, Rule 702 still requires "that

the expert explain the methodologies and principles that support his [or her] opinion; he [or she] cannot simply assert a bottom line. . . . Nor may the testimony be based on subjective belief or speculation." *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010) (cleaned up). As stated above, in response to Plaintiffs' argument that Stack's opinion must be barred as speculative, Defendants respond only that Stack is qualified to offer the opinion, and they outline her extensive experience at the CCSAO and with COIs. Defs.' Stack Resp. at 8 (citing *Waddy v. City of Chi.*, Stack Dep. at 29–30; Stack Resume). But they point to nothing in the record demonstrating the facts, information, or methodology on which Stack relied to form her opinion that the state court would have denied the COI petitions if the petitions had been opposed or if Stack's knowledge had been made known to the court. *Id.* at 8–9. Indeed, as Plaintiffs point out, Stack testified during her deposition in the *Waddy* matter (a related state case involving many of the same parties and claims as the Coordinated Proceedings in federal court) that, although she believed at the time she wrote the December 2015 Memorandum that she did not think that Baker's conviction for his March 23, 2005 arrest should be vacated, her opinion was "fluid" and she declined to provide her opinion on the matter as of the October 2023 deposition. *Id.* at 7 (citing *Waddy v. City of Chi.*, Stack Dep. at 21–22). The Court finds that Defendants have not met their burden to establish the admissibility of

Stack's opinion on what the state court would have done regarding Plaintiffs' COIs with additional information or argument.

Relatedly, to the extent that Defendants intend to offer Stack's testimony that there was "no new evidence" relating to Baker's June 6, 2006 conviction that would warrant vacating his conviction, as Plaintiffs point out, the COI statute does not have a new evidence requirement. Pls.' Stack Reply at 5 (citing 735 ILCS 5/2-702(g)). So, the Court agrees with Plaintiffs that her opinions regarding whether new evidence existed would not help the trier of fact in this matter. *Id.* Moreover, Stack also acknowledged that she did not do any independent investigation, but rather formed this opinion from her review of the police reports, court transcripts, court decisions, petitions, motions, pleadings, and documents filed by Mr. Baker and his attorneys. R. 329-6, Stack Decl. ¶¶ 3–4. Defendants do not argue that Stack's review involved anything not known to her supervisors or to the state court. Defs.' Stack Resp. at 5. So, because the state court did in fact grant Plaintiffs' COI petitions, the Court finds that Stack's opinion that there was no "new evidence" warranting vacating Baker's conviction is not only irrelevant but also is a legal conclusion for the same reasons discussed above.

II. Purpose of COI Statute and Impact of CCSAO's Choice Not to Intervene in COI Petitions

Next, Plaintiffs challenge the admissibility of Stack's opinion that the Illinois legislature did not intend for the COI statute to be used in a lawsuit against government officials, as that opinion is irrelevant and unhelpful to the jury. Pls.' Mot. Bar Stack at 10. Similarly, Plaintiffs contend that Stack should be barred from

opining on the significance of the CCSAO's decision not to intervene in a COI petition,[7] arguing that her opinions on this topic are not relevant, will confuse the jury, and are unsupported. Pls.' Mot. Bar Stack at 10–12. Defendants counter that her opinion on the legislative intent and history of the COI statute is relevant and admissible because it will assist the jury in determining how much weight to put on Plaintiffs' COIs. Defs.' Stack Resp. 12. Similarly, Defendants contend that Stack's opinion regarding the CCSAO's opinions on a plaintiff's guilt or innocence is relevant to rebut any argument (to the extent it is made) that, because Plaintiffs were granted COIs, Defendants must have violated their rights because they were in fact, innocent. Defs.' Stack Resp. 12.

The Court agrees with Plaintiffs that Stack's proffered opinions are not relevant to any issue the jury will be tasked with deciding in this case and would lead to jury confusion. *See Sanders*, 2016 WL 4417257, at *5 (an expert's testimony is

[7]Stack's proposed testimony on the subject is:

> The fact that the State does not take a position on a petition does not mean that the State believes the petitioner is factually innocent. Rather, in Ms. Stack's experience, there are reasons apart from factual innocence for why the State may take no position on a petition. For example, the State may not have the resources to effectively litigate a petition for a certificate of innocence or may wish to utilize its resources to litigate other active criminal or post-conviction cases. The State may also take no position on a petition in circumstances in which they believe the petitioner is guilty, but do not believe that it could adequately rebut the petitioner's evidence contained in the petition.
>
> When the State believes an individual is factually innocent, it will "join" in the petition. Furthermore, the length of time between the filing of the petition for a certificate of innocence and the hearing on the petition, may signify a belief that an individual's innocence was not the driving force of the State's decision.

Defs.' Stack Resp. at 12 (quoting R. 296-4, *Waddy* Expert Disclosures at 13–14).

relevant under Rule 702 if it "assists the jury in determining any fact at issue in the case" and an expert's legal interpretation can confuse a jury) (quoting *Stuhlmacher v. Home Depot U.S.A., Inc.*, 774 F.3d 405, 409 (7th Cir. 2014)); *see also United States v. Lupton*, 620 F.3d 790, 799–800 (7th Cir. 2010) (interpretation of state statutes was a subject for the court, not expert testimony, and expert's opinions on state statutes was at best of limited value to the question before the jury regarding *federal* criminal statutes and at worst "unduly confusing"). The issue the jury will be tasked with deciding is whether Defendants violated Plaintiffs' constitutional rights (and/or various related state laws). The Court fails to see how Stack's opinions are useful to the jury in that endeavor; to the contrary, they would create confusion and risk devolving into a sub-trial on the purpose and meaning of a COI and the CCSOA's role in the issuance of one. *See* Fed. R. Evid. 702 (expert testimony is admissible if it "will help the trier of fact to understand the evidence or to determine a fact in issue"); *Empress Casino Joliet Corp. v. Johnston*, 2014 WL 6735529, at *11 (N.D. Ill. 2014) (barring expert's opinions where the standard the expert applied was "rather vague and [ ] at variance from what the finder of fact is called upon to decide" and would thus confuse the issues to be determined at trial). *C.f. Magnuson v. Trulite Glass & Aluminum Sols., LLC*, 2024 WL 1216338, at *13 (N.D. Ill. Mar. 21, 2024) (excluding line of questioning where "any probative value from allowing such a questionable

impeachment was exceeded by the danger of confusing the jury with potentially time-consuming subtrials, remote from the subject matter").

To the extent Defendants are concerned about the jury putting undue weight on the issuance of Plaintiffs' COIs (if admitted), the Court finds that those concerns are better addressed with a limiting instruction, like the one cited approvingly by the Seventh Circuit in *Patrick v. City of Chicago*, 974 F.3d 824, 833 (7th Cir. 2020). Nothing in this Order, however, should be taken to suggest that the Court has prejudged the admissibility of Plaintiffs' COIs. At the appropriate time, the Court will rule on the admissibility of Plaintiffs' COIs and, if necessary, any limiting instructions to the jury regarding those COIs.

Because the Court finds that Stack's opinions regarding the history and procedures surrounding COIs are inadmissible, it need not address Plaintiffs' argument that Stack is not qualified to opine on the law related to COIs. Pls.' Mot. Bar Stack at 12–13.

Conclusion

For the foregoing reasons, the Court grants Plaintiffs' Motion to Bar Celeste Stack [296].

Dated: August 20, 2024

United States District Judge
Franklin U. Valderrama