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' MOTION TO BAR TESTIMONY OF DR. ALEXANDER OBOLSKY

INTRODUCTION

Plaintiffs Ben Baker and Clarissa Glenn allege that they were wrongfully arrested by a group of corrupt police officers led by former Chicago Police officer Ronald Watts, and that they were subsequently wrongfully convicted for drug crimes they did not commit. *See Baker v. City of Chicago*, 483 F. Supp. 3d 543, 550 (N.D. Ill. 2020). Their convictions have since been overturned, and they both received Certificates of Innocence.

Relevant to this lawsuit, Mr. Baker was arrested on false charges in March 2005, and then both Mr. Baker and Ms. Glenn were wrongfully arrested in December 2005. *Id*. Mr. Baker went to trial on the March 2005 arrest and testified in detail that Watts shook him down for money and framed him. The Court did not believe it at the time, and Mr. Baker was convicted on two counts of possession of a controlled substance and sentenced to fourteen years of prison on each count. *Id*. at 551. After that conviction, Mr. Baker and Ms. Glenn realized that they had no reasonable chance of beating the December 2005 case, and they both pled guilty to the charges from that arrest so that Ms. Glenn could avoid a prison sentence and could instead raise their children. *See id*. After Mr. Baker had already served a significant amount of his prison sentence, Watts and his

crew were finally exposed as corrupt. Mr. Baker and Ms. Glenn's wrongful convictions were vacated, and they filed this lawsuit. *Id*.

Mr. Baker and Ms. Glenn are pursuing federal civil rights claims and analogous state-law claims as a result of their wrongful arrests and convictions, including the December 2005 charges to which they pled guilty. It may not be intuitive to many jurors that innocent people plead guilty, and certainly the reasons that innocent people might plead guilty would not be intuitive to the average juror. Therefore, Plaintiffs retained Dr. Allison Redlich, a psychologist and professor in the Department of Criminology, Law and Society at George Mason University, to testify about this phenomenon known as "false guilty pleas"—meaning guilty pleas made by people who were factually innocent. Dr. Redlich is unquestionably an expert in this area. She is a leading scholar who has conducted significant research and published many papers on this very topic. Other courts have recognized her expertise and allowed her to testify about the factors that may lead to false guilty pleas.

Defendants have retained Dr. Alexander Obolsky in an attempt to rebut Dr. Redlich's opinions. Dr. Obolsky is a forensic psychiatrist. Dr. Obolsky has never conducted any research in the area of false guilty pleas, and he has never read any research in the area other than briefly reading through some of Dr. Redlich's papers while preparing his report in this case. Nonetheless, Defendants want Dr. Obolsky to tell the jury that Dr. Redlich's research is not valid and cannot be relied upon. As an initial matter, this is not proper expert testimony. The Court will decide whether Dr. Redlich's opinions are sufficiently reliable. Even if it was proper expert testimony, Dr. Obolsky is not qualified to give that testimony. During his deposition in this case, Dr. Obolsky explained that he was qualified to rebut Dr. Redlich's research because "I can think." Ex. 1 (Obolsky Baker Dep.) at 97:7-97:8. That quote says it all. If, as Dr. Obolsky

believes, anyone who "can think" is able to poke holes in Dr. Redlich's research, then an expert is not needed. Dr. Obolsky's acknowledgement that his ability to question Dr. Redlich's research comes from his ability to "think" rather than some specialized knowledge he has from his training or experience dooms his attempt to offer expert testimony rebutting Dr. Redlich's research.

Dr. Obolsky also wants to tell the jury that Mr. Baker and Ms. Glenn met the constitutional standard for a legally competent guilty plea to the charges stemming from their December 11, 2005 arrest. The opinion should be barred. It is a legal conclusion, and experts are generally not allowed to opine on legal conclusion. It is not reliable because it is based on speculation and on a purported "fact" that does not exist, namely that Mr. Baker and Ms. Glenn were under oath when they pled guilty (they were not). The opinion is also problematic based on his own testimony that such a determination should not be made without a proper medical examination, which has not been conducted in this case.

OPINIONS AT ISSUE

Dr. Redlich opined in this case that the pleas entered by Ben Baker and Clarissa Glenn bore numerous hallmarks of false guilty pleas. Dr. Redlich's report discusses three key findings from the research that she and others have conducted about false guilty pleas: (1) not all defendants who plead guilty are factually guilty; (2) not all defendants who plead guilty had sufficient information to make an informed decision to plead guilty; and (3) not all defendants who plead guilty did so voluntarily. Ex. 2 (Redlich Report) at 2. Dr. Redlich then went on to discuss her opinion that Baker and Glenn's pleas had the following hallmarks of being false: (1) prosecutors made a package deal, whereby Baker and Glenn would receive reduced sentences only if both pled guilty; (2) based on the record at the time, it would have been futile for Baker and Glenn to proceed to trial; and (3) Baker and Glenn both got extreme discounts from the

maximum sentence they could have received had they gone to trial and lost. Ex. 2 (Redlich Report) at 11-13.

Dr. Obolsky is not a psychologist and has not conducted or reviewed any research regarding false guilty pleas other than reviewing a small number of articles that Dr. Redlich has authored or co-authored. Ex. 1 (Obolsky Baker Dep. at 102:1-102:20) (noting that he may have read one or two Redlich articles years ago, but would be guessing as to which ones); *Id*. at 102:21-105:1 (listing articles from Dr. Redlich that he reviewed in connection with his expert work in Watts cases). In short, he has no expertise in the area of false guilty pleas, or guilty pleas period. Dr. Obolsky acknowledges that he is not an expert on guilty pleas. Nonetheless, he purports to offer a rebuttal to Dr. Redlich, opining that the way to determine whether a criminal defendant is false is "[t]hrough the established legal processes including trial and plea bargaining." Ex. 3 (Obolsky Report) at 8. He further opines that one cannot determine whether a guilty plea is false by examining the risk factors that Dr. Redlich identifies because those factors are also at times found in guilty pleas that are not false. Ex. 3 (Obolsky Report) at 7-15. Not only does he not have any foundation to make such a claim, but it is for the Court to determine whether Dr. Redlich's research is sufficient for her to offer an opinion in this case. It is not a proper subject of expert testimony.

Dr. Obolsky's report indicates that he also plans to tell the jury that "Mr. Baker and Ms. Glenn entered a guilty plea knowingly, intelligently, and voluntarily," which is another way of saying that they were legally competent to plead guilty. Ex. 3 (Obolsky Report) at 1; Ex. 1 (Obolsky Baker Dep.) at 72:8-72:14. Dr. Obolsky is a forensic psychiatrist who examines individuals to offer opinions about whether they are legally competent to face trial (or to plead guilty). As a general matter, he is qualified to examine individuals and render an opinion on their

competence to stand trial (or to plead). But he has testified that when an issue of competency is raised, an examination must be conducted to determine whether an individual is legally competent. Ex. 4 (Obolsky Waddy Dep. at 75:7-75:13 ("In cases where – the issue of competency is raised, the only way to answer that is through an evaluation); Ex. 1 (Obolsky Baker Dep.) at 73:25-74:23 (confirming that examination is necessary when issue of competency is raised). No such examination was conducted here.

Dr. Obolsky's opinion that Mr. Baker and Ms. Glenn were legally competent to plead guilty is also based on inaccurate "facts" and speculation. Specifically, Dr. Obolsky relies on the "fact" that Mr. Baker and Ms. Glenn were under oath when they pled guilty even though they were not, and he speculates that Mr. Baker told Ms. Glenn about how plea bargaining works because he had a criminal record.

With respect to the "fact" that Mr. Baker and Ms. Glenn were under oath, Dr. Obolsky opines that Mr. Baker and Ms. Glenn's pleas were "voluntary as articulated by the current legal standards" because they were under oath when they entered their pleas. Ex. 3 (Obolsky Report) at 13, 15. In addition to being a legal conclusion that is not proper expert testimony, the position is not based in reality: the transcript from the plea hearing shows that Mr. Baker and Ms. Glenn were not under oath. When presented with this evidence during his deposition, Dr. Obolsky doubled down on his error and insisted that a reference to Mr. Baker and Ms. Glenn's lawyer waiving "reswearing" during the sentencing hearing meant that they were being "resworn" under oath. Ex. 1 (Obolsky Baker Dep. at 162:17-164:8). He is wrong.

The reference was to their lawyer waiving the right to insist that the probable cause statement for the reduced charges be "resworn." Matthew Mahoney, the lawyer who represented Mr. Baker and Ms. Glenn, has since confirmed that they were not under oath and that reswearing

waived the right to have the new charges for the plea bargain sworn. Ex. 5 (Mahoney Decl.) ¶ 2. Beyond the irony of a forensic psychiatrist insisting that two lay people understood everything about their plea hearing in real time even though he misunderstood it with the benefit of unlimited time to review the written record and numerous attorneys to ask if he needed clarification, Dr. Obolsky must be precluded from giving opinions such as this one that are not based in fact.

Then Dr. Obolsky speculates that even though Ms. Glenn had never been arrested before the December 11, 2005 arrest at issue in this case, she was familiar with the plea bargaining system because her partner, Mr. Baker, had been arrested before and had presumably told her about his experience. Dr. Obolsky admits that he has no information to back up that conclusion, and instead is making an assumption to that Mr. Baker and Ms. Glenn talked about that issue. Ex. 1 (Obolsky Baker Dep.) at 160:6:161:18.

LEGAL STANDARD

"[A]ll witnesses who are to give expert testimony under the Federal Rules of Evidence must be disclosed under Rule 26(a)(2)(A)." *Musser v. Gentiva Health Servs.*, 356 F.3d 751, 756 (7th Cir. 2004). Federal Rules of Evidence 702 and 703 govern the admissibility of expert witness testimony. Fed. R. Evid. 702. Opinion testimony is admissible only if the expert's "specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue," and then only if the testimony is "based on sufficient facts or data" and "the product of reliable principles and methods," which the expert has "reliably applied." Fed. R. Evid. 702. The expert's opinion must be based on "knowledge," not merely "subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590; *Brown v. Burlington N. Santa Fe Ry. Co.*, 765 F.3d 765, 772 (7th Cir. 2014).

The trial judge occupies a "gatekeeping role" and must scrutinize proffered expert testimony to ensure it satisfies each requirement of Rule 702. *Daubert*, 509 U.S. at 592-93, 597. Part of the Court's gatekeeping role is to ensure that opinions are based on reliable science. *See*, *e.g.*, *Harris v. City of Chicago*, 14 C 4391, 2017 WL 3142755, at *5 (N.D. Ill. July 25, 2017) (decision of whether an expert's opinion is based on reliable science is "a legal conclusion for the Court's resolution pursuant to *Daubert* and Rule 702"). By contrast, it is not proper for an expert to testify that another expert's opinion is not based on reliable science. *Id*.

The proponent of the expert evidence bears the burden of establishing, by a preponderance of the evidence, that the requirements set forth in Rule 702 and *Daubert* have been satisfied. *Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009). This rule applies not only to scientific testimony but to all expert testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). A *Daubert* inquiry ultimately requires a two-step analysis: first, a determination of the expert's reliability, and second, whether the proposed expert testimony is relevant and aids the trier-of-fact. *Cummins v. Lyle Industries*, 93 F.2d 362, 367-68 (7th Cir. 1996). A trial court should exclude expert testimony that is not pertinent to a disputed issue in the case even if the methodology underlying the testimony is sound. *Smith v. Ford Motor Co.*, 215 F.3d 713, 719 (7th Cir. 2000).

ARGUMENT

I. Dr. Obolsky cannot opine on whether Dr. Redlich's opinions are based on a solid scientific foundation.

Dr. Obolsky devotes a significant amount of effort to questioning Dr. Redlich's research on false guilty pleas. In short summary, Dr. Obolsky asserts that Dr. Redlich's opinions are not valid because the same factors that appear in false guilty pleas also appear in some guilty pleas made by people who are in fact guilty. Ex. 3 (Obolsky Report) at 6-7. His report does not cite or

discuss a single one of Dr. Redlich's papers, and the report does not reveal which, if any, of her papers he relied on for his report. He first identified which of Dr. Redlich's articles he reviewed during his deposition. Ex. 1 (Obolsky Baker Dep. at 102:1-102:20) (noting that he may have read one or two Redlich articles years ago, but would be guessing as to which ones); *Id*. at 102:21-105:1 (listing articles from Dr. Redlich that he reviewed in connection with his expert work in Watts cases). He noted that he agreed with Dr. Redlich's methodology. Ex. 1 (Obolsky Baker Dep.) at 116:6-116:6. And he could not identify a single specific thing he disagreed with in any of Dr. Redlich's research that he reviewed. Ex. 1 (Obolsky Baker Dep.) at 136:8-136:12 (I don't think there is anything that comes to mind that I disagree with" in Dr. Redlich's articles that he reviewed). Nonetheless, during his deposition, Dr. Obolsky went so far as to say that the conclusions Dr. Redlich draws from her research on false guilty pleas are "bunk," "pure bunk," and "nonsense." Ex. 1 (Obolsky Baker Dep.) at 114:23-115:13. Dr. Obolsky should not be permitted to offer this type of testimony at trial. For one, whether Dr. Redlich's research is sufficiently reliable to support her opinions in this case is a question for the Court to answer. Second, even if it was appropriate expert testimony, Dr. Obolsky is not qualified to give that testimony.

A. Dr. Obolsky cannot opine on whether Dr. Redlich's opinions are based on a solid scientific foundation.

The Court, not an opposing expert, should decide whether Dr. Redlich's research about false guilty pleas is sufficiently reliable to support her opinions.

Courts in this district have addressed this same issue in a closely analogous context a number of times. Specifically, plaintiffs in wrongful conviction cases that involve false confessions routinely disclose experts to discuss risk factors common in such confessions. For example, in *Chatman v. City of Chicago*, the plaintiff hired "Dr. Melissa Russano Rodriguez to

opine on the circumstances that may lead to a false confession. *Chatman v. City of Chicago*, 14 C 2945, 2018 WL 11426430, at *2 (N.D. Ill. Oct. 23, 2018). The defense hired Dr. Michael Welner to rebut the testimony of Dr. Russano. No. 14 C 2945, 2018 WL 11426158, at *2 (N.D. Ill. Oct. 30, 2018). Dr. Welner attempted to testify that the studies cited by Dr. Russano were "unreliable and biased." *Id*. at *4. The court in *Chatman* barred that opinion, agreeing with plaintiff that the task of evaluating whether there is a sufficient foundation or methodology for an expert opinion is part of the Court's gatekeeping function under *Daubert*. *Id.* at *3-4 ("Plaintiff contends that these opinions should be barred because [t]he task of evaluating whether there is a sufficient foundation or methodology to Dr. Russano's opinions is part of [the] Court's gatekeeping function under *Daubert*. The Court agrees.") (internal quotations omitted); *see also Harris v. City of Chicago*, No. 14 C 4391, 2017 WL 3142755, at *5 (N.D. Ill. July 25, 2017) ("Professor Cassel's opinion concerning the science upon which Dr. Leo relied is not only a legal conclusion for the Court's resolution pursuant to *Daubert* and Rule 702 . . . .").

The Court should reach the same result here and bar Dr. Obolsky from telling the jury that Dr. Redlich's research is not sufficiently reliable, let alone that it is "bunk," "pure bunk," or "nonsense." *See Chatman*, 2016 WL 11426158, at *4 (barring Welner's opinion that was "non-responsive to any opinion offered by Dr. Russano"); *Good Shepherd*, 323 F.3d at 564 (affirming exclusion of expert testimony that "was largely on purely legal matters and made up solely of legal conclusions").

B. Dr. Obolsky is not qualified to rebut Dr. Redlich's research even if that would be proper expert testimony.

Dr. Obolsky is a forensic psychiatrist. He has never conducted any research on false guilty pleas. He has barely even read Dr. Redlich's research and could not identify any specific points of disagreement with the papers he did read. He acknowledged during his deposition that

he is not an expert on guilty pleas. Ex. 1 (Obolsky Baker Dep.) at 136:19-137:1). Rather than having any expertise on the relevant topic of false guilty pleas, Dr. Obolsky claims that he is qualified to rebut Dr. Redlich's research because: (1) he is a doctor, and doctors use reasoning and judgment to answer questions; and (2) he can think. Ex. 1 (Obolsky Baker Dep.) at 95:10-96:8.

By Dr. Obolsky's logic, anyone who has experience in any profession that involves exercising judgment and solving problems would be qualified to rebut Dr. Redlich's testimony. That is not the standard for expert testimony. Rather, they must bring specialized knowledge to bear. Dr. Obolsky does not have any specialized knowledge that makes him qualified to rebut Dr. Redlich's research or her conclusions based on that research. Fed. R. Evid. 702. Just "because a doctor has a medical degree does not make him qualified to opine on all medical subjects." *Gayton v. McCoy*, 593 F.3d 610, 617 (7th Cir. 2010). Here, Dr. Obolsky attempts to take it a step further and say that just because he "has a medical degree," he is qualified to testify about problems that he perceives in social science research regarding false guilty pleas, a topic he has never before studied and on which he admits he is not an expert. The Court should not allow him to do so. *See id*. (where doctor did "not have specialized cardiac or pharmacological knowledge upon which to base his conclusion that these drugs had a reasonable probability of saving her life if taken in the days before her death, the district court did not err in excluding it"); *see also United States v. Truitt*, 938 F.3d 885, 889-890 (affirming decision that barred forensic psychologist from testifying about "charismatic groups" because he "had no experience" with those groups, and experience with similar groups did not qualify him to talk about other groups).

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

Dr. Obolsky opines that Mr. Baker and Ms. Glenn's guilty pleas were entered knowingly, voluntarily, and intelligently, meaning that they were legally competent to plead guilty. Ex. 3 (Obolsky Report) at 1. This testimony should be barred for multiple reasons.

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

Dr. Obolsky's opinion that Mr. Baker and Ms. Glenn were legally competent to plead guilty is based on made up facts and speculation.

In particular, Dr. Obolsky's report twice states that the pleas were "voluntary" under the relevant legal standards because they were made under oath. Ex. 3 (Obolsky Report) at 13, 15; Ex. 1 (Obolsky Baker Dep.) at 93:9-95:9, 162:17-167:8. During his deposition, he confirmed that this was an important consideration for his opinion. Ex. (Obolsky Baker Dep.) at 94:23-95:9.[1]

The indisputable facts, however, show that Mr. Baker and Ms. Glenn were not under oath when they pled guilty. When confronted with the fact that the transcript does not show Mr. Baker or Ms. Glenn being sworn in, Dr. Obolsky doubled down on his opinion, latching onto a reference about waiving "reswearing." Dr. Obolsky insisted that the reference meant that Mr. Baker and Ms. Glenn were sworn in and also that they would have understood as much. He is simply wrong. The reference to waiving "reswearing" has nothing to do with Mr. Baker or Ms. Glenn being under oath. Rather, the attorney was waiving the right to sworn charging documents. Ex. 5 (Mahoney Decl.) at 3-4.

[1] In another case that is part of the *Watts Coordinated Proceedings*, the Court noted the potential importance of whether the particular plaintiff was under oath when they pled guilty. *In re Watts Coordinated Pretrial Proceedings*, 19-CV-1717, 2022 WL 9468206, at *8 n. 7 (N.D. Ill. Oct. 14, 2022). It is reasonable to think that jurors might be interested in that issue as well, and it would be particularly inappropriate to allow an expert to falsely testify that the Plaintiffs pled guilty under oath if they did not, or to offer an opinion based on that faulty premise.

Dr. Obolsky also opines that Ms. Glenn entered a knowing and voluntary plea because, in part, she understood the process from Mr. Baker's prior experience as a criminal defendant. But at his deposition, he acknowledged that this was just an assumption that Mr. Baker and Ms. Glenn had previously discussed the process of guilty pleas, not something based on any evidence. Ex. 1 (Obolsky Baker Dep.) at 159:3-161:8. Testimony that Ms. Glenn understood the guilty plea process from Mr. Baker's prior experience would be pure speculation (in addition to being unduly prejudicial and allowing in otherwise inadmissible prior bad act evidence).

Experts are not entitled to offer opinions that have no factual basis. *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"). And it is axiomatic that expert testimony cannot be based on subjective belief or speculation. *See Daubert*, 509 U.S. at 590; *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010); *see also Brown v. Burlington N. Santa Fe Ry. Co.*, 765 F.3d 765, 772 (7th Cir. 2014) ("Rule 703 requires the expert to rely on 'facts or data,' as opposed to subjective impressions") (quoting Fed. R. Evid. 703); *see also Glover*, 479 F.3d at 517 (7th Cir. 2007) (expert testimony, like other evidence, is subject to Rule 403 analysis and exclusion); *see also Simmons*, 2018 WL 11391877, at *2 (same).

Here, Dr. Obolsky's opinion on legal competence to plead guilty is heavily influenced by his reliance on faulty "facts" and speculation. That means that not only should he be barred from testifying about the "facts" that are not facts and be barred from speculating, but his entire opinion that Mr. Baker and Ms. Glenn were legally competent to plead guilty must be barred.

See Simmons, 2018 WL 11391877, at *2 (barring PTSD diagnosis when critical parts of basis for opinion were speculation).

Finally, 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. Ex. 4 (Obolsky Waddy Dep. at 75:7-75:13 ("In cases where – the issue of competency is raised, the only way to answer that is through an evaluation); Ex. 1 (Obolsky Baker Dep.) at 73:25-74:23 (confirming that examination is necessary when issue of competency is raised).

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

Dr. Obolsky's opinion that Mr. Baker and Ms. Glenn were legally competent to plead guilty is also a legal conclusion. Experts are not allowed to testify about legal conclusions. *See*, *e.g.*, *Aponte v. City of Chicago*, No. 09-CV-8082, 2011 WL 1838773 at *2 (N.D. Ill. May 12, 2011) ("[W]hen an expert offers an opinion regarding the application of a legal standard like 'probable cause' or 'reasonable suspicion,' an expert's role is 'limited to describing sound professional standards and identifying departures from them.") (quoting *West v. Waymire*, 114 F.3d 646, 652 (7th Cir. 1997); *see also In re Ocean Bank*, 481 F. Supp. 2d 892, 899 (N.D. Ill. 2007) ("expert testimony on both legal conclusions and on the meaning of the statutory provisions (or 'legislative history') is improper").

Along the same lines, 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. Ex. 3 (Obolsky Report) at 8. This is a legal conclusion, but also unhelpful to the jury. First, criminal trials do not determine whether people are innocent. Second, this case is

part of the legal process, and one of the relevant issues for the jury will be whether Mr. Baker and Ms. Glenn were in fact innocent.

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,

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