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BY ECF

The Honorable Richard D. Bennett
United States District Judge
United States District Court for the District of Maryland
101 West Lombard Street
Baltimore, MD 21201

Re: *United States of America v. Ayaz Qureshi*, Crim. No. RDB-22-0330

Dear Judge Bennett:

I write on behalf of the Government in the above-referenced case in advance of the hearing in connection with the Defendant's Motion to Withdraw Guilty Plea (ECF No. 20) (the "Motion"), which is currently scheduled for November 29, 2023 at 11:00 am, to (1) further address the purported "Competency Evaluation"¹ prepared by a psychologist retained by Defendant, ECF No. 20-1, and submitted in connection with Defendant's Motion; (2) provide the Court with additional legal authority germane to Defendant's Motion; and (3) provide the Court with an affidavit prepared by Defendant's former lawyer, Thomas Maronick.

Defendant's Proffered Expert Is Not Qualified, And His Opinions Are Unreliable

Defense counsel has informed Government counsel that he intends to call the author of the evaluation, psychologist Dr. Michael Mintz, as a witness at the motion to withdraw hearing.

The Government has retained Dr. David Schretlen, Ph.D, M.A., a Professor in the Department of Psychiatry and Behavioral Sciences at The Johns Hopkins University School of Medicine to address Dr. Mintz's report. Dr. Schretlen's report is attached as Exhibit 1. His CV is attached as Exhibit 2.

As noted in the Government's response in opposition to the Motion (ECF No. 20), there is a serious question as to whether Dr. Mintz—a psychologist who specializes in infant and toddler development and early childhood mental health²—is qualified to render expert opinions with respect to Defendant's competency or any sort of "developmental disability" Defendant purportedly has. Indeed, Dr. Mintz is not so qualified. Moreover, as Dr. Schretlen's report makes plain, Dr. Mintz's opinions are wholly unreliable and constitute precisely the sort of "junk science" that *Daubert* and its progeny were meant to exclude from the courtroom. To be sure, given

¹ Though styled as a "Competency Evaluation," the evaluation does not in fact address the issue of Defendant's competency. See 18 U.S.C. § 4241(a) (competency hearing examines whether "defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense").

² See Ex. 3 (Mintz CV).

Defendant's guilty plea and the fact that there will be no jury trial in this matter, *Daubert* does not strictly apply. But that does not mean that the Court cannot still carefully scrutinize Defendant's proposed expert's qualifications and the reliability of his conclusions.³

Only a witness who is “*qualified* as an expert by knowledge, skill, experience, training, or education” may offer an opinion if “the expert’s scientific, technical, or other specified knowledge will help the trier of fact to understand the evidence or to determine a fact in issue,” and the testimony is the product of reliable facts and methods that the expert has “reliably applied” to the case. Fed. R. Evid. 702 (emphasis added).

“To determine whether a witness qualifies as an expert, courts compare the area in which the witness has superior knowledge, education, experience, or skill with the subject matter of the proffered testimony.” *United States v. Tin Yat Chin*, 371 F.3d 31, 40 (2d Cir. 2004). Just “because a witness qualifies as an expert with respect to certain matters or areas of knowledge, it by no means follows that he or she is qualified to express expert opinions as to other fields.” *Nimely v. City of New York*, 414 F.3d 381, 399 n.13 (2d Cir. 2005). Indeed, as Judge Hollander has put it, “[i]t is well established that ‘general expertise is not sufficient to qualify [an expert] to testify on a matter that requires particularized knowledge, training, education, or experience.’” *United States v. Blair*, No. CR ELH-19-00410, 2021 WL 5040334, at *7 (D. Md. Oct. 29, 2021) (cleaned up); *cf. Querub v. Hong Kong*, 649 F. App’x 55, 57 (2d Cir. 2016) (excluding expert familiar only with foreign accounting standards, noting that because the expert “is not qualified to opine on [Public Company Accounting Oversight Board] standards, she has no basis for comparing them with other standards”).

Here, Dr. Mintz’s experience and training appears to be almost entirely focused on children. *See, e.g.*, Ex. 3 at 102 (noting “Child and Adolescent Track” in connection with doctorate of psychology and consistent work history involving psychological work with children). Dr. Mintz’s report appears to contain vestiges of an apparent assessment he did on a child. ECF 20-1 at 10 (“The *Organization of Materials* scale measures orderliness of work, play, and storage spaces (e.g., desks, lockers, backpacks, and bedrooms). Caregivers and teachers typically can provide an abundance of examples describing an individual’s ability to organize, keep track of, or clean up his or his belongings. Mr. Qureshi’s score on the Organization of Materials scale is elevated (T = 76, %ile = 98).”). And nothing in Dr. Mintz’s CV or report bespeaks sufficient knowledge, training, or experience to assess adults, to perform a “Competency Evaluation,” “to assess [Defendant’s] cognitive functioning as it pertains to the crimes of which he has been accused, or “to consider whether he has the cognitive or reading skills to comprehensively understand the arrangements of his plea bargain.” ECF No. 20-1 at 1. Defendant has not met his burden of establishing that Dr. Mintz, a child specialist, is qualified to render his proffered opinions about the 53 year old Defendant.

Moreover, even assuming Dr. Mintz is qualified to render those opinions, they lack a reliable basis or methodology, at least as disclosed in Dr. Mintz’s expert notice. As Dr. Schretlen’s report makes plain, Mintz’s report is riddled with errors and opinions supported only by his own *ipse dixit*. *See, e.g.*, Ex. 1 at 8-9 (“Dr. Mintz discontinued several tests before Mr. Qureshi reached the ‘ceiling,’ thereby preventing him from achieving a higher score. This invalidates many of the test results he obtained and calls the reliability and validity of other results into question.”); *id.* at 8 (“Dr. Mintz also scored nearly every measure derived from the WCST of executive functioning incorrectly.”).

³ *See, e.g., United States v. Mitchell-Yarbrough*, No. CR 18-32, 2021 WL 3738911, at *6 (W.D. Pa. Aug. 24, 2021) (noting in violation of supervised release context that proffered expert testimony was “not in line with *Daubert* and its progeny”).

Moreover, Dr. Mintz points to nothing that justifies his use of the battery of tests (or the validity or acceptability of the tests results) on Defendant, a naturalized United States citizen who speaks English as a second language. *Id.* at 8 (“In fact, the technical manual for the WAIS-IV provides no evidence that even a single person from Pakistan was included in the normative sample. It also states clearly that *no* persons whose primary language was anything other than English was included from the normative sample.”). And Mintz makes no effort to explain how his bottom-line conclusions are still supported by the test results after taking into account that the tests were not normed on non-native English speakers such as Defendant.

Dr. Mintz’s proffered testimony is unreliable, and the Court should reject it.

Defendant Did Not Require Use Of An Interpreter At The Rule 11 Hearing⁴

The Government also writes to provide the Court with additional authority bearing on Defendant’s claim that the Court should allow him to withdraw his guilty plea because he “[r]equired the assistance of an interpreter” at the Rule 11 hearing. Motion at 4. For all of the reasons already discussed in the Government’s Response the Motion, ECF No. 25, this claim is meritless.

Again, the Court twice made specific findings that Defendant could read and understand English. Tr. at 8, 9, 37, 60, 64-65. At no point did Defendant say that he did not understand what was happening during the proceeding or that he did not understand the language being spoken. At no point did Defendant ask for an interpreter or indicate that one might be helpful. At no point did Defendant say anything about wanting to make changes to the Stipulation of Facts. At no point did Defendant hesitate, pause, or equivocate when asked whether he was in fact guilty of the offense as charged. And everything about Defendant’s Rule 11 inquiry indicated that Defendant’s guilty plea was knowing, voluntary, and intelligent.

Defendant’s claim thus fails. *See, e.g., United States v. Amador*, 214 F. App’x 303 (4th Cir. 2007) (affirming denial of motion to withdraw guilty plea where defendant argued that he required an interpreter at his guilty plea but during guilty plea hearing defendant “did not request the presence of a translator at the guilty plea hearing,” “the district court made an assessment on its own motion that [defendant] understood the proceedings,” and defendant “did not give the district court reason to believe that his understanding of the proceedings was hindered by his language abilities”); *cf. United States v. Lara-Leon*, 843 F. App’x 790, 793 (7th Cir. 2021) (no plain error for district court to conduct plea colloquy without an interpreter where court “confirmed that [defendant] could speak and understand English and that his trial counsel had effectively communicated with [him] in English throughout their attorney-client relationship” and “[a]t no time during the plea hearing did the defendant ask, either himself or through counsel, to have an interpreter present at the change of plea hearing”); *United States v. Mendez*, 282 F. App’x 153, 155 (3d Cir. 2008) (rejecting argument that guilty plea was not knowing and voluntary because defendant claimed he required an interpreter where defendant “answered all of the Court’s questions in English, demonstrated no difficulty comprehending those questions, at no time said he did not understand, and never requested a Spanish interpreter” and where his counsel did not “request an interpreter or otherwise object to the use of English”).

⁴ Defendant’s lawyer has asked that an Urdu interpreter being present at the hearing in connection with his Motion, and the Government understands that an interpreter will be available for the hearing. However, an interpreter is not necessary as Defendant—a naturalized United States citizen who has lived here for over 20 years—can speak and understand English, as the Court has already found. Ultimately, the use of an interpreter at the hearing amounts to nothing more than a charade, and the Court should decline to allow Defendant to use an interpreter at the hearing.

Defendant's Claims Regarding His Past Counsel Are Not Credible

Finally, the Government provides the Court with an Affidavit prepared by Defendant's past counsel, who was present (and whom Defendant praised) at the Rule 11 hearing. *See* Ex. 4. This affidavit—in addition to Defendant's sworn testimony under oath at the Rule 11 hearing—directly contradicts the claims Defendant makes in his affidavit.⁵ This is still another reason the Court should deny Defendant's Motion.

Respectfully submitted,

Erek L. Barron
United States Attorney

By: /s/
Paul A. Riley
Assistant United States Attorney

CC: All Counsel (by ECF)

⁵ Defendant's counsel has indicated that Defendant intends to testify at the hearing in connection with the Motion despite the fact that such testimony may subject him to, among other things, a sentencing enhancement under U.S.S.G. § 3C1.1 for obstructing and impeding the administration of justice.