

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Antoine Matthews,

Plaintiff,

v.

15 Civ. 3922 (DAB)  
MEMORANDUM & ORDER

Hewlett-Packard Company,

Defendant.

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DEBORAH A. BATTIS, United States District Judge.

Plaintiff Antoine Matthews ("Plaintiff") brings this employment discrimination action against Defendant Hewlett-Packard Company ("Defendant") pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the New York State Human Rights Law ("NYSHRL"), the New York City Human Rights Law ("NYCHRL"), and 42 U.S.C. § 1981. On August 18, 2017, Defendant filed the instant Motion in Limine<sup>1</sup> seeking to preclude Plaintiff from offering the expert testimony of Dr. Gerald J. Bryant, Ph.D. ("Dr. Bryant"). For the reasons described herein, Defendant's Motion is GRANTED.

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<sup>1</sup> Defendant filed a separate Motion in Limine on the same day seeking to preclude Plaintiff from presenting evidence about the harassment he allegedly suffered after his termination from Defendant. (ECF No. 43.) Because Plaintiff has since stipulated that he will not offer such evidence, see id. No. 53, the Court does not address this second Motion, and finds it moot.

## I. Background

The Parties' familiarity with the underlying facts and allegations in this matter is assumed, and the facts will not be discussed at length here.

Briefly, Plaintiff is an African-American male who began working for Defendant in May, 2013. (Compl. ¶¶ 6, 12; Ans. ¶¶ 6, 12.) Plaintiff alleges that, beginning in June, 2013, Plaintiff's coworkers and manager began using racist language around the office. (Compl. ¶ 14.) After complaining to Defendant's managers about the use of this language, Plaintiff allegedly became the subject of workplace harassment: according to Plaintiff, on various occasions after his complaint, his coworkers called him a "snitch," cut his jacket, threatened him physically, and damaged his laptop. (Id. ¶¶ 17-19, 21, 26.) Plaintiff also alleges that he began receiving daily reprimands for the first time, and, in January 2014, did not receive an end-of-the-year bonus. (Id. ¶¶ 20, 24.) Plaintiff was ultimately terminated on May 1, 2014. (Id. ¶ 31; Ans. ¶ 31.) The Parties dispute whether the termination was retaliatory or in response to improper workplace conduct. (See Joint Pre-Trial Statement ("JPTS") at 1-2.)

On May 21, 2015, Plaintiff filed the instant lawsuit, alleging that Defendant caused a hostile work environment on

account of Plaintiff's race and then retaliated against him for complaining of the discrimination, in violation of federal and state laws. (See Compl.; ECF No. 1.) Pertinent to the instant Motion, Plaintiff also alleges that Defendant's conduct caused him to suffer severe emotional distress, for which he is seeking damages. (See JPTS at 2; Compl. ¶¶ 36-38.)

At trial, Plaintiff seeks to introduce expert testimony from Dr. Bryant, a psychologist who conducted an examination of Plaintiff and concluded that the alleged harassment at Defendant's workplace caused Plaintiff to suffer from Major Depressive Disorder ("MDD"). (See JPTS at 22; Expert Rep. of Dr. Gerald J. Bryant ("Bryant Rep.") at 4, Luke Decl. Ex. D.) Dr. Bryant prepared this Report after interviewing Defendant for approximately three hours over the course of four meetings.<sup>2</sup> (Bryant Rep. at 1; Bryant Dep. at 9:4-5, Luke Decl. Ex. B.)

Defendant submitted the instant Motion in Limine to exclude Dr. Bryant's testimony under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). Defendant argues that Dr. Bryant's Report is unreliable because (1) it does not

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<sup>2</sup> At his deposition, Dr. Bryant stated that the only document he viewed prior to writing the Report was the Complaint in this action. (Bryant Dep. at 10:15-22; 12:13-17.) Dr. Bryant additionally testified that he saw Matthews' deposition transcript after writing the Report, but that he saw nothing in the transcript that would have changed the opinions reflected in his Report. (Id. at 11:7-17, 12:13-17.)

rule out possible alternative causes of Plaintiff's psychological condition, and (2) Dr. Bryant relied solely on his interview with Plaintiff to reach his conclusion, without reviewing Plaintiff's medical records or performing additional psychological testing. In response, Plaintiff argues that these objections go to the weight of the evidence, and not its admissibility.<sup>3</sup>

## II. Discussion

Under the Federal Rules of Evidence Rule 702, a witness qualified as an expert may provide testimony only if the proposed testimony "is not only relevant, but reliable." Daubert, 509 U.S. at 589; see also F.R.E. 702. "[T]he proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements of Rule 702 are satisfied." United States v. Williams, 506 F.3d 151, 160 (2d Cir. 2007).

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<sup>3</sup> While Plaintiff dedicates much of his response to arguments about Dr. Bryant's qualifications as an expert witness and the relevance of his opinion, Defendant appears to challenge only the *reliability* of Dr. Bryant's testimony, and not its relevance or Dr. Bryant's qualifications. Although Defendant does claim that Dr. Bryant's testimony would be unfairly prejudicial under Fed. R. Evid. Rule 403, it bases this argument on the unreliability of his testimony, and not its lack of relevance to the issues in the case per se. The Court thus does not address these portions of Plaintiff's opposition.

"Daubert enumerated a list of factors that, while not constituting a 'definitive checklist or test,' a district court might consider in evaluating whether a proffered expert opinion has the required indicia of scientific reliability: whether a theory or technique had been and could be tested, whether it had been subjected to peer review, what its error rate was, and whether scientific standards existed to govern the theory or technique's application or operation." Nimely v. City of New York, 414 F.3d 381, 396 (2d Cir. 2005) (citing Daubert, 509 U.S. at 593-94). Reliability also "requires a sufficiently rigorous analytical connection between that methodology and the expert's conclusions." Nimely, 414 F.3d at 396; see also Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997) ("[N]othing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence which is connected to existing data only by the *ipse dixit* of the expert."). Indeed, to the extent that an expert's opinion touches upon the cause of a party's condition, "it will satisfy Daubert's prerequisites for reliability only if the doctor conducted a meaningful 'differential diagnosis' ruling out other possible contributing factors."<sup>4</sup> Munafo v. Metro. Transp. Auth., Nos. 98 CV-4572 (ERK),

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<sup>4</sup> "A differential diagnosis is a patient-specific process of elimination that medical practitioners use to identify the most likely cause of a set of signs and symptoms from a list of

00-CV-0134 (ERK), 2003 WL 21799913, at \*18 (E.D.N.Y. Jan. 22, 2003). "While an expert need not rule out every potential cause in order to satisfy Daubert, the expert's testimony must at least address obvious alternative causes and provide a reasonable explanation for dismissing specific alternate factors identified by the defendant." DeRienzo v. Metro. Transp. Auth., 694 F. Supp. 2d 229, 236 (S.D.N.Y. 2010) (quotation marks and citation omitted).

In this case, Dr. Bryant appears to have concluded that Defendant's workplace caused Plaintiff's MDD without performing a differential diagnosis or other analysis to rule out potential alternative factors. But as Defendant points out, Plaintiff had recently experienced a number of stressful life events that presumably could have also contributed to his MDD—including the death of his biological father in 2014 and the deaths of his mother, grandmother and grandfather between 2010 and 2011,<sup>5</sup> see

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possible causes." Ruggiero v. Warner-Lambert Co., 424 F.3d 249, 254 (2d Cir. 2005) (quotation marks and citation omitted).

<sup>5</sup> Defendant also points to a number of other potential causes of Plaintiff's MDD that Dr. Bryant fails to rule out in his Report, including legal and romantic issues as well as early childhood traumatic experiences. (See Def. MIL 7-8.) The Court notes that while Defendant's sources vary as to the exact dates of the deaths of Plaintiff's mother and grandmother—for example, Dr. Bryant testified that Plaintiff's mother died in 2012, not 2011, and Dr. Nassar's report states that Plaintiff's grandmother died in 2009, not 2010—all sources place these deaths within the five years preceding Plaintiff's employment with Defendant, and

Def.'s MIL at 7; Report of Dr. Paul Nassar ("Nassar Rep."),<sup>6</sup> Def.'s MIL Ex. 3 at 6-9; Bryant Dep. at 67:24-25, 79:10-11, 88:8-12—none of which the Report addresses or excludes as possible causes. In fact, besides noting that, when asked, Plaintiff "said that he had not" been "experiencing any other life stressors during the time that he was having difficulty at [Defendant]," Bryant Rep. at 3, the Report is largely silent as to the methodology upon which Dr. Bryant relied to form his opinion on causation.<sup>7</sup>

Plaintiff, however, argues that concerns about Dr. Bryant's methodology go to the weight of his testimony, and not its admissibility.<sup>8</sup> Although Plaintiff cites no factually analogous cases in support of this proposition, the Court is aware of a select number of cases holding that an expert's failure to perform a differential diagnosis is not necessarily fatal to the

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Plaintiff does not contest this account. (See Def.'s MIL at 7; Bryant Dep. at 67:25; Nassar Rep. at 6-7.)

<sup>6</sup> Dr. Nassar is Defendant's proposed psychiatric expert. (See Def.'s MIL Ex. 3.) His opinion is not at issue in the current Motion.

<sup>7</sup> Indeed, in his deposition, Dr. Bryant appeared to state that he simply took Plaintiff "at his word" regarding the source of his stress. (See Bryant Dep. at 43:13-25.)

<sup>8</sup> Plaintiff also argues that Dr. Bryant's testimony is reliable because of his lengthy experience interviewing and diagnosing patients. Dr. Bryant's qualifications to render his opinion do not, however, relieve the Court of its duty to ensure that he used sufficiently reliable methodology in doing so.

admissibility of the expert's testimony on causation, at least under certain factual circumstances. For instance, one line of cases allows such testimony where the expert is also the patient's treating physician. See Caserto v. Metro-North R.R. Co., No. 14-CV-7936 (JMF), 2016 WL 406390, at \*1 (S.D.N.Y. Feb. 2, 2016); Green v. McAllister Bros., Inc., No. 02 Civ. 7588(FM), 03 Civ. 1482(FM), 2005 WL 742624, at \*11 (S.D.N.Y. Mar. 25, 2005); Santoro v. Signature Constr., Inc., No. 00 Civ. 4595(FM), 2002 WL 31059292, at \*4 (S.D.N.Y. Sept. 16, 2002). But see In re Fosamax Prods. Liab. Litig., No. 1:06-cv-7631 (JFK), 2009 WL 4042769, at \*8 (S.D.N.Y. Nov. 23, 2009); Munafu, 2003 WL 21799913, at \*19. In another line of cases, courts have allowed such testimony where the connection between an injury and its source would be obvious to a layperson, as in, for example, the case where a car crash results in a broken leg. See Caserto, 2016 WL 406390, at \*1; Roman v. Sprint Nextel Corp., No. 12-CV-276 (VEC), 2014 WL 5026093, \*11-12 (S.D.N.Y. Sept. 29, 2014). These cases are easily distinguishable because, here, Dr. Bryant is not Plaintiff's treating physician, and the link between Plaintiff's MDD and the alleged harassment is not readily apparent.

Nonetheless, the Court is also aware that, in at least a few cases, courts have held that where there are otherwise sufficient indicia of reliability, the failure to perform a



differential diagnosis does not operate as a per se bar to the admissibility of expert testimony on causation. See O'Loughlin v. USTA Player Dev. Inc., No. 14 CV 2194 (VB), 2016 WL 5416513, at \*5-6 (S.D.N.Y. Sept. 28, 2016) (finding no differential diagnosis needed where, inter alia, the parties agreed that no single factor could be isolated as the cause of plaintiff's condition, the expert relied on literature, medical records, and interviews with plaintiff, and applicable law only required that the alleged cause be a substantial factor in the resulting condition); Figueroa v. Boston Sci. Corp., 254 F. Supp. 2d 361, 367 (S.D.N.Y. 2003) (finding that a failure to rule out alternative causes would go only to the weight of the evidence where the expert had formed an otherwise reliable opinion based on, inter alia, the review of witness depositions, medical records, and peer-reviewed scientific literature, and where there was a strong temporal connection between the incident and injury).

Even if the Court were to adopt such an approach, however, this case presents no such indicia of reliability. For one thing, Dr. Bryant did not review either Plaintiff's medical records or relevant psychological literature before forming his opinion. See Bryant Dep. at 10-13; compare O'Loughlin, 2016 WL 5416513, at \*4 ("Dr. Weiner's report states he relied on the following in reaching his conclusions: (i) O'Loughlin's medical

records; (ii) USTAPD records and emails; (iii) deposition testimony; (iv) a 75-minute interview he conducted with O'Loughlin and her mother in September 2014 in connection with this case; and (v) medical articles and literature, abstracts of which were attached to his report." (internal citations omitted)); Schoolcraft v. City of New York, No. 10 Civ. 6005(RWS), 2015 WL 6444620, at \*2 (S.D.N.Y. Oct. 23, 2015); Figueroa, 254 F. Supp. 2d at 367. Nor did Dr. Bryant perform any standard psychological tests in support of his diagnosis. See Bryant Dep. at 18; compare Qube Films Ltd. v. Padell, No. 13-CV-8405(AJN), 2016 WL 888791, at \*2 n. 1 (S.D.N.Y. Mar. 1, 2016) (a methodology "includ[ing] a medical history interview, patient observation, a physical examination, and administration of standard psychological tests" is "routinely accepted under Daubert."); Israel v. Spring Indus., Inc., No. 98 CV 5106(ENV)(RML), 2006 WL 3196956, at \*10 (E.D.N.Y. Nov. 3, 2006) ("[P]ersonal interviews, a medical record review, clinical rating scales, and background facts" are "the type of methodology employed to form a reliable psychiatric opinion.").

Instead, the majority of the Report consists of a simple recitation of facts about Plaintiff's personal history, which cannot, in and of itself, lend any support to Dr. Bryant's ultimate conclusion on causation. See Tchatat v. City of N.Y., 315 F.R.D. 441, 444 (S.D.N.Y. 2016); Luitpold Pharms., Inc. v.

Ed. Geistlich Sohne A.G. Fur Chemische Industrie, No. 11-cv-681 (KBF), 2015 WL 5459662, at \*3 (S.D.N.Y. Sept. 16, 2015) ("Acting simply as a narrator of the facts does not convey opinions based on an expert's knowledge and expertise; nor is such a narration traceable to a reliable methodology. Mere narration thus fails to fulfill Daubert's most basic requirements."). In fact, Dr. Bryant's opinion on causation appears to be based on little more than Plaintiff's own opinion on this issue, without the benefit of any additional or independent analysis. (See Bryant Rep. at 4.) The Report's bald repetition of Plaintiff's beliefs as to the cause of his condition simply does not reflect a methodology reliant upon Dr. Bryant's specialized knowledge or experience, and thus, cannot be considered reliable. See Hernandez v. Leichliter, No. 14-CV-5500 (AJN), 2016 WL 684038, at \*2 (S.D.N.Y. Feb. 18, 2016) ("To the extent [the expert] merely repeats or recasts the testimony of Plaintiff in order to arrive at a theory of causation, he is not testifying as an expert witness based upon specialized knowledge, but rather is acting as a conduit for another witness's testimony in the guise of an expert's opinion." (internal quotation marks, citations, and alterations omitted)); Valentin v. N.Y.C., No. 94 CV 3911(CLP), 1997 WL 33323099, at \*27 (E.D.N.Y. Sept. 9, 1997) ("An expert cannot act as a mere conduit for the opinions of other persons.").

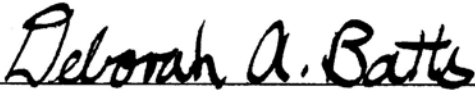
Because Dr. Bryant has not performed a differential diagnosis, is not Plaintiff's treating physician, and has not sufficiently explained the methodology underlying his opinion, his expert testimony on causation is not adequately reliable to meet the requirements of Daubert, and will be excluded.

III. Conclusion

For the reasons described above, Defendant's Motion to Exclude the Expert Testimony of Dr. Bryant is GRANTED.

SO ORDERED.

DATED: New York, NY  
December 22, 2017

  
Deborah A. Batts  
United States District Judge