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Federal Bench/Bar Conference - Expert Examination Panel Presentation

September 8, 2015

Peter M. Durney, Esq.
Cornell & Gollub
75 Federal Street, Suite 1200
Boston, MA 02110

Re: Rodney Smith v. Officer William Gray, John Stevens, City of Mayberry et al.
USDC: 2:26-CV-02210

Dear Atty. Durney:

At your request, I have conducted a psychiatric consultation concerning Rodney Smith in association with his litigation against Mayberry police officers. Mr. Smith is alleging that he suffered neuropsychiatric and psychiatric injuries as a result of the excessive use of force by Mayberry Police Officers on July 4, 2012.

Extensive records were reviewed in this matter and they included:

1. Police reports and EMT reports of July 4, 2010.
2. Review of records of the Beantown Medical Center.
3. Review of records of Health Care for the Homeless.
4. Review of records of the Department of Veterans Affairs and the White River VA Medical Center.
5. Review of records of Noble's Hospital Medical Center.
6. Review of the records of Rockford VA Hospital.
7. Review of the depositions (2) of Rodney Smith.
8. Review of the deposition of Officer William Gray.

Rodney Smith is a 32-year-old man who is suing Mayberry Police Officers alleging certain conditions arising out of an incident on July 4, 2012. No expert reports have been provided, but it appears that Mr. Smith is claiming posttraumatic stress disorder (PTSD) as well as postconcussive syndrome/traumatic brain injury. This report is based on the review of the records cited above. A direct examination of Mr. Smith was requested but his attorney refused and the Court did not order it.

The details of the incident are contested. It appears that Mr. Smith was approached by officers in the downtown Mayberry area and ran away. He was pursued by the police and a struggle ensued. In that struggle he sustained injuries to his cheek and side of his head. After he

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was subdued, he was taken to the police station. After some period of time it was decided that he should be seen at the Beantown Medical Center Emergency Room. He was evaluated by EMTs at the police station and they obtained a history from him that he did not sustain a loss of consciousness and was able to provide a detailed history to them. At Beantown, it was also noted that he did not lose consciousness and his mental status was unremarkable. There were no difficulties with attention or concentration, he was noted to be alert and oriented, had no memory difficulties, and provided his version of the incident to the emergency room personnel. A laceration on his head closed with skin staples. Brain imaging studies were negative. He was in the emergency room for a little over 3 hours and was then discharged back to the Westport Inn where he had been staying.

He was seen subsequently for some follow up care both at Beantown and at other facilities. On July 14th, staples were removed. At that time, there was no mention of any difficulty with memory, concentration or other cognitive functions. Weeks later, he received some attention for eye problems which he claimed were new since the incident, but eventually was found to have no significant visual problems related or unrelated to the incident.

Mr. Smith was referred for a neurological consultation by his primary care doctor at Healthcare for the Homeless Center. He was seen by Edward O'Brien, M.D. on December 15, 2012. The history he provided to Dr. O'Brien is in stark variance with the acute records and his own prior accounts. He alleged to Dr. O'Brien that he lost consciousness during the incident and that his last memory was walking down the street and then running away from the police who attacked him. He stated that he woke up in the police station and lost consciousness again, and later awoke in Beantown Medical Center.

Based on this incorrect assumption and Mr. Smith's self-report of his symptoms Dr. O'Brien concluded that he "appears to present with the symptoms of postconcussive syndrome." However, he also noted that Mr. Smith's self-reported symptom pattern was unusual in that he claimed that his symptoms improved and then worsened over time. One of his other symptoms reported was of headaches. However, by April 2012 in his last visit with Dr. O'Brien, the doctor felt his headaches had completely resolved and that he had no "obvious structural disease of the brain (TBI)." He referred Mr. Smith to the Department of Psychiatric Services.

In early February 2013, he was seen by Matthew Jacobs, a trainee in the psychiatric residency program. Dr. Jacobs continued to follow him for approximately a year and a half. Dr. Jacobs appears to have relied on the same incorrect history and subjective complaints of Mr. Smith. For example, he claimed that he lost consciousness as he had told Dr. O'Brien earlier. He also had fluctuating complaints which included difficulty sleeping, "nightmares of the incident," fatigue, and other subjective complaints. Over the year and a half he was prescribed varying medications but without sustained and dramatic success, Mr. Smith was often noncompliant, stopping taking the medications and the like.

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Dr. Jacobs also appears to have relied on a history provided by Mr. Smith with regard to prior mental health problems that is at variance with the records reviewed. For example, Mr. Smith reported multiple psychiatric admissions in the past, including an admission to Nobles Hospital at age 16 following a suicide attempt and other psychiatric admissions in his 20s because of violent behavior. The Nobles records indicate that his *first* admission to the hospital in July 2001 when he was age 20 and no prior admissions. Other aspects of the reported history and symptom patterns were inconsistently noted. Dr. Jacobs and his supervisor were wondering about the diagnosis of posttraumatic stress disorder at this initial encounter in February 2013 (“r/o PTSD 308:81”).

Dr. Jacobs followed him for the next year and a half and terminated him in June 2014. At that time the diagnosis in the chart indicated “Psychosis, not otherwise specified, Mood disorder, not otherwise specified, and r/o PTSD.” He tried to assist Mr. Smith with his chronic homelessness as well as offering to make referrals to various occupational and other support services. Mr. Smith declined some of these offers.

About 2 years after the July 2012 incident, Mr. Smith had assistance in applying to the Department of Veterans Affairs for a service connected disability and that was awarded in the fall 2014. At that point, he essentially transferred his medical care and received social supports from Beantown to the Veterans Administration system.

Mr. Smith had been in the Air Force in the years 2000-2002. He apparently received a general discharge from the service with difficulties with authority while in the service and was involved in apparent violent episodes involving others. This pattern had actually preceded his going into the Military. In the years following his discharge he worked at various temporary jobs and for many of the years leading up to the July episode he had been homeless. Following his discharge from the service, the records indicate that he had multiple children by different women. Some of the records indicate that he has 5 children all with different women, and other points in the records indicate that he has 4 children ages 13 to 5 by 3 different women. The records reviewed also indicate multiple problems including substance abuse.

An evaluation at the Veterans Administration Hospital in January 2014 noted his long history with problems with anger, violent outbursts, numerous arrests, past alcohol abuse, depression, suicide attempts, anxiety/panic attacks, years of homelessness, difficulty maintaining employment, and multiple relationships. The VA diagnosis was of a chronic adjustment disorder. On his discharge from the Military in 2002, Mr. Smith stated that he received a diagnosis at that time of Personality Disorder.

In the records reviewed Mr. Smith indicated at the Health Care for the Homeless facility in 2010 that he had been physically abused by his father and sexually abused by multiple older men in his childhood. He also repeated that history to the Veterans Administration in 2014.

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He has also given the history of alleged loss of consciousness in other medical encounters including the South Community Health Center and other encounters that he has had in various systems.

OPINION:

It appears that Mr. Smith is in effect claiming two separate diagnoses. One is post-concussive syndrome and/or traumatic brain injury, and the second posttraumatic stress disorder. In my opinion on the basis of the records reviewed neither of these diagnoses is supported to a reasonable degree of medical certainty.

Traumatic brain injury/post-concussive syndrome:

In my opinion, this diagnosis is not supported because there clearly was no loss of consciousness at the time, no anterograde or retrograde amnesia, the headache pattern as reported was atypical as noted by Dr. O'Brien, the symptoms did not follow the natural history of post-concussive syndrome/TBI, there were no obvious behavioral changes, all neurological examinations have been negative, all mental status examinations have been negative, all imaging has been negative, and there has been no neuropsychological testing to support such a diagnosis. In light of his deceptive history of the acute event to the doctors at Beantown Medical Center, there seems little reason to give credence to his allegations about his symptoms.

Posttraumatic stress disorder (PTSD):

In my opinion, this diagnosis is not supported on the basis of the medical records reviewed. Arguably, even if one credits his account of the incident, it might not be a sufficient precipitant for a true posttraumatic stress disorder, i.e., it was not actually life threatening. Given the prior life experiences of Mr. Smith, including multiple fights, violent outbursts, multiple arrests, this type of event is likely less upsetting than it might have been to someone without such a life pattern. Even if one were to accept that it might be a sufficient event to possibly trigger posttraumatic stress disorder, the typical symptom pattern of posttraumatic stress disorder is not seen here. The typical pattern of flashbacks and the typical pattern of nightmares is not reflected in these records. Specifically, there is no phobic avoidance, though Mr. Smith claims he remains suspicious of police and of white individuals. The notes of Dr. Jacobs in my opinion do not reflect the typical pattern in posttraumatic stress disorder and by the time of his last visit after a year and a half of therapy the primary diagnosis is *not* of PTSD, but rather of psychosis and mood disorder. Though I would disagree with those diagnoses as well, it appears that Dr. Jacobs regarded PTSD still only a possibility and something to be "ruled out." This term is used in medicine and psychiatry as something one is considering and will engage in a process to either establish its presence or to rule it out as a legitimate consideration.

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Thank you for requesting my opinion in this matter.

Sincerely,

Martin J. Kelly, M.D.