

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

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LUKASZ GOTTWALD p/k/a DR. LUKE, KASZ
MONEY, INC., and PRESCRIPTION SONGS, LLC,

Plaintiffs,

-against-

KESHA ROSE SEBERT p/k/a KESHA,

Defendant.

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: Index No. 653118/2014

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:
: Judge Shirley Kornreich

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KESHA ROSE SEBERT p/k/a KESHA,

Counterclaim-Plaintiff,

-against-

LUKASZ GOTTWALD p/k/a DR. LUKE, KASZ
MONEY, INC., and PRESCRIPTION SONGS, LLC,
inclusive,

Counterclaim - Defendants.

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EXPERT REPORT OF RENEE L. BINDER, M.D.

DECEMBER 22, 2017

QUALIFICATIONS

I am a Distinguished Professor of Psychiatry at the University of California San Francisco (UCSF), where I serve as Associate Dean for Academic Affairs in the School of Medicine and the Director of the Psychiatry and Law Program and Forensic Psychiatry Fellowship. I received my medical degree from UCSF and completed psychiatry residency at Mount Zion Hospital in San Francisco. I have a current California medical license and am board certified by the American Board of Psychiatry and Neurology in general psychiatry and forensic psychiatry. In addition to teaching, I have an active clinical practice and treat outpatients and inpatients at Langley Porter Psychiatric Hospital and Clinics in San Francisco. I founded the UCSF Rape Treatment Center and one of my areas of specialization is in the area of sexual trauma. I am past president of the California Psychiatric Association and the American Psychiatric Association, the world's largest psychiatric organization with over 38,000 members. I served as Interim Chair of the Department of Psychiatry at UCSF and the Director of the Langley Porter Psychiatric Hospital and Clinics from 2008-2011. I have published over 110 articles that have been peer reviewed. I have been qualified as an expert witness in federal court as well as in courts in California, Colorado, Utah, Arizona and Illinois.

My CV, including a list of my publications, is annexed hereto as Appendix A.

MATERIALS REVIEWED

In order to prepare this report, I have reviewed the following documents:

- Kesha Sebert's Original and First Amended Complaint (filed in California Superior Court) Plaintiffs' Second Amended Complaint (filed in New York Supreme Court)
- Kesha Sebert's First Amended Counterclaims (filed in New York Supreme Court)
- Affidavit of Kesha Rose Sebert dated August 31, 2015

- Transcript of Deposition of Kesha Sebert dated February 7, 2017
- Transcript of Deposition of Kesha Sebert dated June 23, 2017
- Transcript of Deposition of Lukasz Gottwald dated February 17, 2017
- Transcript of Deposition of Pebe Sebert dated March 27, 2017
- Transcript of Deposition of Julianne Hall dated May 25, 2017
- Transcript of Deposition of Mindy Rumph dated May 24, 2017
- Transcript of Deposition of Darren Craig, dated May 23, 2016
- Transcript of Deposition of [REDACTED] dated May 9, 2017
- Kesha Sebert medical records from Timberline Knolls
- Kesha Sebert therapy records from [REDACTED]
- Kesha Sebert medical records from [REDACTED]
- Kesha Sebert medical records from [REDACTED]

BACKGROUND REGARDING FORENSIC PSYCHIATRY AND RELATED DISCIPLINES

1. Psychiatry is a field of medicine that studies the diagnosis and treatment of disorders of thinking, feeling, and behavior. Forensic psychiatry is a subspecialty of psychiatry that applies psychiatric principles to legal questions and legal proceedings. One well known definition of forensic psychiatry is “the application of psychiatry to legal issues for legal ends, legal

purposes.” (Seymour Pollack, Forensic Psychiatry – A Specialty, 2 Bull. Am. Acad. Psychiatry & L. 1, 2 (1974).) Forensic psychiatrists make diagnostic and prognostic judgments that are informed by scientific research and clinical experience.

2. Among the expertise of a forensic psychiatrist is the assessment of motivation. Motivations may range from confusion or exaggeration, to outright malingering, to financial gain, to punishment. Not infrequently, a combination of factors is at work. Assessing motivation requires a considerable amount of clinical experience, skill, and acumen, as well as a familiarity with applicable law.

3. The method of forensic psychiatric analysis is to review all possibly relevant behavioral data. This includes medical and legal records from time periods both prior and subsequent to the events giving rise to the litigation or criminal prosecution, collateral information from deposition transcripts, and other testimony and declarations of key witnesses.

4. The American Board of Psychiatry and Neurology governs board certification in forensic psychiatry, and has offered subspecialty written examinations since 1994. Recertification is required once every ten years.

5. Psychiatrists, therapists, and other medical providers customarily keep records of the treatment they provide to patients. Custom and practice in these fields dictates that these providers keep accurate and contemporaneous records. There are a number of reasons that accurate records are important. Accurate records are necessary in order to (a) provide good care; (b) assist collaborating professionals in delivery of care; (c) ensure continuity of professional services in case of the provider’s injury, disability, or death or with a change of provider; (d) provide for supervision or peer review if relevant; (e) provide documentation required for reimbursement or required administratively under contracts or laws; (f) effectively document any decision making, especially in high-risk situations; and (g) allow the provider to effectively answer a legal or regulatory complaint. (American Psychological Association, *Record Keeping Guidelines*.)

STATEMENT OF OPINIONS, AND THE BASES THEREOF

Accepted Meaning Of The Word “Rape”

6. While the word “rape” is sometimes used cavalierly in casual conversation, professionals that study and work within the field of sexual trauma, as well the field of criminal justice, understand the term “rape” to refer to a specific category of sexual assault. For example, the United States Department of Justice defines “rape” as: *“The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”* Rape is very different from, and is a significantly more serious crime than, sexual misconduct or sexual harassment.

Existence Of False Reports Of Rape

7. Based on my professional experience and research, there can be false reports of rape. Just because someone is accused of committing a rape (or any sexual assault) does not mean that one actually occurred. Studies have suggested that the incidence of false reports varies from 2% to 8%. (Ferguson and Melouff, *Assessing Police Classifications of Sexual Assault Reports: A Meta-Analysis of false reporting rates*, Archives of Sexual Behavior July 2016; Spohn, White, Telles, *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Report*, Law and Society Review March 2014). These studies tend to define a “false” report of rape as one that is fabricated.

Commonly Understood Motivations For False Reports

8. The literature describes several known motivations for false reports. These include:

- (1) Personal financial or material gain: e.g., asserting a false claim of rape against a husband in the midst of a divorce in order to gain custody of children, or asserting

a false claim of rape against a co-worker or employer in order to get promoted or for purposes of bringing a civil lawsuit against an individual or employer and extracting a monetary settlement.

- (2) Anger/Revenge: e.g., asserting a false claim in retaliation in order to cause a former intimate partner to suffer after he or she does not continue a relationship, or asserting a false claim in anger after learning that a romantic partner had been unfaithful.
- (3) Seeking attention or sympathy: e.g., false claims asserted in order to attract attention, sympathy or validation from third parties, or false claims asserted by women with histrionic or borderline personality disorders.
- (4) Creation of an alibi/avoiding trouble: e.g., having consensual sex and later claiming it was rape to avoid consequences for adultery, or concocting a story of rape in order to detract attention away from a night of underage drinking.
- (5) Mental illness or dementia: e.g., if someone has a delusion (a psychotic false idea) or sexual hallucination that they were raped or if someone is so confused that they misinterpret reality.
- (6) Relabeling or regret/guilt: e.g., asserting a false claim of rape after a consensual sexual encounter, when feelings of guilt or regret regarding the encounter arise after the fact.

9. These (or similar) motivations for the assertion of false rape claims have been confirmed through various studies, including (i) De Zutter, Andre et al., *Filing False Vice Reports: Distinguishing True from False Allegations of Rape*, European Journal of Psychology April 1, 2016; (ii) De Zutter, Andre et al., *Motives for Filing a False Allegation of Rape*, Open Access 2017; (iii) De Zutter, Andre, *Prevalence of False Allegations of Rape in the US 2006-2010*; (iv) Lisak et al., *False Allegations of Sexual Assault: An Analysis of 10 years of reported cases*,

Violence against Women 2010; (v) Eryn O’Neal et al., *The Truth Behind the Lies: The Complex Motivations for False Allegations of Sexual Assault*, Women and Criminal Justice 2014; (vi) Spohn et al., *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports*, Law and Society Review March 2014.

10. These motivations are consistent with more generalized studies assessing the reasons why people lie, including Arcimowicz, Canterero, Soroko, *Motivations and Consequences of Lying*, Forum: Qualitative Social Research September 2015.

Summary Of Opinion Regarding Ms. Sebert’s Allegation

11. In the case at hand, Ms. Sebert has asserted that Mr. Gottwald “raped” her in a singular incident on October 5, 2005 in his hotel suite. Mr. Gottwald denies that any sexual activity occurred. It is my opinion, within reasonable medical certainty, that the facts in this lawsuit are more consistent with a false allegation of rape, rather than a true allegation.

12. In arriving at this opinion, I have considered the totality of the circumstances, including the facts Ms. Sebert states support her allegation of being drugged and raped. I base my opinion on my professional experience, education, training, academic literature I reviewed, and all of the evidentiary materials from this litigation that I reviewed.

Factors Considered In Arriving At This Opinion

13. Based on the above, I have identified the following non-exhaustive list of factors that have contributed to my opinion:

- (1) Ms. Sebert’s admitted lack of memory: Ms. Sebert has told many people that she does not remember what transpired with Mr. Gottwald on October 5-6, 2005. She has also sworn under oath, including in an affidavit submitted in connection with this litigation, that she does not recall the events of the evening of October 5. There is no objective evidence of any alleged rape, such as third party witnesses, a

contemporaneous report to a medical provider, a contemporaneous medical exam, or a rape kit. Yet, subsequently she claims that she is absolutely certain that she was raped on October 5, 2005. She reports that she “blacked out” after she left a party and has no memories until she awoke the next day in Mr. Gottwald’s hotel suite. A “blackout” occurs when, as a result of the intake of certain substances, a person’s brain does not store any memories of what is occurring. The person is unable to ever recover their memories of this time period, because the memories were not stored. Blackouts are frequently associated with excessive drinking of alcoholic beverages. Ms. Sebert testified that she believes something sexual happened on the evening of October 5, but cannot remember any details (such as what sexual activity occurred, when it occurred, where it occurred, or who it occurred with—if at all). Part of her belief was based on her recollection that she woke up naked in the bed in Mr. Gottwald’s suite. Mr. Gottwald testified that he slept on the couch and let Ms. Sebert sleep on the bed and Ms. Sebert cannot dispute this because she has no memories of Mr. Gottwald even being in the hotel room with her. Six years later, on December 12, 2011, Ms. Sebert told her therapist, [REDACTED], that she “felt as if something sexual might have happened but she didn’t know for sure.” Ms. Sebert has a history of blackouts after drinking alcohol. She has no memories of her behavior during the blackouts, just as she has no memory of what happened during the blackout of October 5. If she has no memories, it is my opinion that she cannot definitively recall that she was raped during that evening.

- (2) Ms. Sebert’s different reports of what happened: Ms. Sebert’s story about the alleged rape is inconsistent and changed multiple times. While Ms. Sebert may have made vague references to the possibility that something sexual may have occurred, it does not appear that Ms. Sebert ever used the word “rape” to describe

her recollection of any events on October 5 until approximately 2013, when she was involved in disputes about contractual negotiations with Mr. Gottwald. Initially, she said that she thinks something sexual may have happened (despite having no actual memory) and then she subsequently definitively called it a “rape.” This definitive assertion, first voiced years after the alleged incident, was made during attempts to renegotiate the terms of her music agreements, and in the context of her threats to make her rape claims public. Her story about being drugged by Mr. Gottwald also substantially changed through the years. In her February 7, 2017 deposition, Ms. Sebert testified under oath says Mr. Gottwald gave her (and she voluntarily ingested) a “sober pill.” On December 12, 2011, however, Ms. Sebert told her therapist [REDACTED] that she had a memory of her producer “slipping” drugs into her drink. While Ms. Sebert disputes this notation in the therapy records kept by [REDACTED], in my opinion and experience, and in accord with the clinical practice of therapists, the contemporaneous records kept by a therapist, who needs accurate records in order to provide effective therapy services, are quite credible. These conflicting reports suggest that Ms. Sebert has changed her story and does not remember what, if anything happened. In addition, Ms. Sebert testified in her deposition that she was vomiting in the hotel room and wanted to go to the hospital, but never did. Her friend, Julianne Hall, testified that Ms. Sebert did not want to go to the hospital, and there was no mention of vomiting.

- (3) Ms. Sebert’s prior sworn testimony denying sexual activity and drugs: Ms. Sebert testified in a 2011 deposition in a different lawsuit that Mr. Gottwald had not made sexual advances towards her, and also that Mr. Gottwald had never given her a “roofie.” She subsequently asserted that Mr. Gottwald had threatened her and, as a result, she lied in her deposition. However, Ms. Sebert never told any of

her subsequent therapists or psychiatrists ([REDACTED]), providers at Timberline Knolls, [REDACTED]) about the alleged threats by Mr. Gottwald. If she had actually been threatened and told to lie, I would expect that this event clearly would have been traumatic and would have been reported to therapists. This was never reported or described to any therapist.

- (4) Ms. Sebert's lack of report to Health Care Provider seen within a few days after alleged incident: On October 8, 2005, Ms. Sebert saw [REDACTED] who had treated her since May 17, 2004. His records say that Ms. Sebert reported she was "doing well" and "denies depression." Based on my training and experience, I consider these records credible, in accordance with the medical practice to keep accurate, contemporaneous records. This report is inconsistent with someone who was allegedly raped three days earlier.
- (5) Multiple other friendly contacts with Mr. Gottwald: After the alleged rape, Ms. Sebert continued to work with Mr. Gottwald and even stayed at his house for extended periods. Ms. Sebert also testified to interactions that were inconsistent with someone who believed she was drugged and then raped, such as her testimony that she voluntarily ingested an unknown substance in Mr. Gottwald's apartment in 2008, three years after the alleged incident. I also understand that Ms. Sebert entered into amended agreements with Mr. Gottwald after the alleged incident. These are not consistent with typical interactions with someone's alleged rapist.
- (6) Motivation for allegation of rape: There is evidence in the records that Ms. Sebert wanted to get out of her agreements with Mr. Gottwald. There also is evidence that she threatened to publicly disclose her claim of rape if he did not give her what she wanted. In addition, there is evidence that Ms. Sebert, along with other individuals with whom Ms. Sebert was close (such as her mother and her