UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
at COVINGTON

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA **PLAINTIFF**

V. **DEFENDANT'S RESPONSE TO THE UNITED STATES' FIRST MOTION IN LIMINE**

RONALD E. WEINLAND **DEFENDANT**

* * * * *

May it please the Court, Defendant Ronald E. Weinland, through undersigned counsel, for his response to the United States' First Motion in Limine, states as follows:

INTRODUCTION

The United States' First Motion in Limine asks this Court for an Order excluding the proposed testimony of the Defendant's expert witnesses Norman Williams, Taylor Trusty, and David and Douglas Schoepf. [DE #34] The United States contends that the proposed expert testimony of Mr. Williams and Mr. Trusty should be excluded because they are not qualified as experts under Federal Rule of Evidence 702 and because their testimony is irrelevant and unreliable under Federal Rules of Evidence 401, 402, and 403. The United States also contends that the Schoepf's proposed expert testimony should be excluded under Rule 702.

However, as explained below, the proposed testimony of the Defendant's expert witnesses is not subject to exclusion under Rule 702. All of the Defendant's proposed experts have the sufficient experience necessary to qualify the individuals as experts to offer an opinion on the particular subjects outlined in the Defendant's expert notice. Further, the proposed

testimony of Mr. Williams and Mr. Trusty is relevant and reliable and not subject to exclusion under Rules 401, 402 and 403. Finally, the Schoepfs' proposed testimony is relevant to the matters at issue in this action and such testimony will help the jury understand the evidence or determine a fact at issue. For these reasons, the United States' First Motion in Limine should be denied.

ARGUMENT

A. Norman Williams's Proposed Testimony

The Court should permit Mr. Williams's proposed testimony because of his clear technical and specialized knowledge and significant experience regarding criminal tax investigations and financial investigations. Further, his proposed testimony will be both relevant and helpful to the jury. Finally, the unsubstantiated EEOC complaint raised by the government is, at most, a matter best reserved for cross-examination of Mr. Williams.

1. Mr. Williams's Experience Alone is Sufficient to Qualify Him as an Expert

Federal Rule of Evidence 702 states that a witness may qualify as an expert by the witness's "knowledge, skill, experience, training **or** education." (emphasis added). Thus, as the government concedes in its motion, an expert can be qualified solely based upon his experience. *See* Fed. R. Evid. 702, Notes of Advisory Committee on 2000 Amendments (noting that "the text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience"). "Whether a proposed expert's experience is sufficient to qualify the [individual as an] expert to offer an opinion on a particular subject depends on the nature and extent of that experience." *United States v. Cunningham*, 2012 U.S. App. LEXIS 8786, at *48 (6th Cir. Ky. 2012).

Surprisingly, the United States glosses over Mr. Williams's twenty-six years of experience as a Special Agent with the IRS Criminal Investigation Division and attempts to

ignore the various roles and duties that Mr. Williams's performed during his lengthy tenure with the IRS. For example, Mr. Williams spent the first thirteen years of his career as an IRS Special Agent conducting successful tax and financial investigations to prove unreported income and testifying extensively about the results of such investigations. He then spent the remaining thirteen years of his career with the IRS as a supervisory special agent that supervised all financial investigations conducted by 12-15 special agents assigned to Lexington, Louisville and Florence, Kentucky. As a supervisory agent, Mr. Williams continued conducting financial investigations on his own and also reviewed and edited hundreds of other financial investigative reports that were prepared by the agents that he supervised. In addition, Mr. Williams made numerous financial training presentations to investigative agencies, commercial bankers and regulatory agencies.

Moreover, the United States attempts to brush away Mr. Williams's significant experience as a special agent by referring to his experience as stale without even addressing the fact that Mr. Williams experience did not end when he retired from the IRS. For the last thirteen years, Mr. Williams has provided comprehensive financial investigation services through his business Williams Financial Investigations, LLC, and has stayed current with IRS policies and procedures. Mr. Williams has also continued to receive annual professional development training. Mr. Williams's extensive experience is clearly sufficient to qualify him as an expert to offer an opinion on subjects identified in the Defendant's expert notice.

2. Mr. Williams's Opinion Testimony is Relevant and Helpful to the Jury

Mr. Williams's proposed opinion testimony is relevant to the issues at trial and it will be helpful to the jury in understanding the evidence or determining a fact at issue. Mr. Williams's expert testimony will be able to address areas of the Defendant and his wife's recordkeeping

practices and financial transactions that will assist the jury in evaluating the Defendant's state of mind. Such expert testimony has been permitted in this Circuit. *See United States v. Geiger*, 303 Fed. Appx. 327, 331 (6th Cir. Tenn. 2008) (unpublished). Further, Mr. Williams's testimony will also assist the jury in understanding and evaluating complex tax concepts such as expense reimbursements under an accountable plan. Because of "the complexity of the federal tax code, courts have found that expert testimony on the subject of taxable income can assist the jury." *United States v. Dimora*, 2012 U.S. Dist. LEXIS 829, *123-124 (N.D. Ohio Jan. 4, 2012) (holding that "testimony as to whether bribes constitute taxable income would be appropriate expert testimony"); *See Also United States v. Monus*, 128 F.3d 376, 386 (6th Cir. 1997).

Additionally, because of Mr. Williams's sophisticated training and experience concerning financial investigations and criminal tax investigations, Mr. Williams has a specialized knowledge that "is neither available to the ordinary witness, nor within the full understanding of the average person." *United States v. Vallone*, 2008 U.S. Dist. LEXIS 14410, 13-15* (N.D. Ill. 2008). Thus Mr. Williams's expert testimony based on his specialized knowledge and experience should be admitted "given the assistance such an individual can provide to the jury in this complex matter." *Id.* (citations omitted).

3. Mr. Williams's Opinion Testimony is Reliable

The United States' contention that Mr. Williams's testimony does not rely on objective measures and accepted methodologies fails to recognize that the United States has already identified its method of proof in this case as the specific item method. The Internal Revenue Manual provides clear guidelines and instruction as to how a special agent is to use and properly document each method of proof. *See, e.g.*, Internal Revenue Manual, 9.5.9. Mr. Williams's testimony regarding the investigation will draw primarily from Mr. Williams's twenty-six years

of training, teaching and experience using the specific items method of proof and his review of the policies and procedures governing such an investigation under the Internal Revenue Manual. As a result, the government's concern that Mr. Williams's testimony will be unreliable is unfounded.

Finally, the United States' personal attack on Mr. Williams's integrity and judgment based on an unsubstantiated EEOC complaint is disconcerting. The government's claim should have no impact on the Court's consideration of Mr. Williams's proposed testimony, and, at most, is a matter best left for the government to address through cross-examination of Mr. Williams.

B. Taylor Trusty's Proposed Testimony

The Court should permit Mr. Trusty's proposed testimony given his specialized knowledge and expertise concerning a matter that is relevant to this case. As discussed above, an expert can be qualified solely based upon his or her experience. In fact, "[i]n certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert testimony." *See* Fed. R. Evid. 702, Notes of Advisory Committee on 2000 Amendments. It is hard to imagine any field of expertise where that statement is more appropriate than in computer and technology related fields. Technology giants such as Apple, Microsoft, Twitter and Facebook were all either founded or co-founded by individuals that did not have a college degree or any other formal professional training.

Despite his limited formal educational experience, Mr. Trusty's "real world" experience is robust. As stated in his curriculum vitae, Mr. Trusty has approximately eleven years of experience designing, building and hosting websites. In addition, he has approximately seven years of experience as the president and owner of Blackstone Media Network, LLC, a leading website development and online marketing agency with approximately ten employees and over

100 local, regional and national clients. Thus, Mr. Trusty has significant experience developing and pricing various website design, website hosting and general information technology services for countless clients and potential clients. Numerous small, medium and large businesses, from national clients to large regional accounting firms to local banks, have all entrusted their most critical marketing and client interaction platform (i.e., their website) to the capable hands of Mr. Trusty and his staff. Further, his expertise in this area has been recognized by local advertising associations and a local publication.

Notwithstanding Mr. Trusty's clear expertise regarding the matters for which the Defendant has proposed Mr. Trusty will testify, should the United States still have any reservations as to his reliability, any perceived "deficiencies in his professional background or credentials could [be] probed on cross-examination—'the traditional and appropriate means of attacking shaky but admissible evidence.'" *Cunningham*, 2012 U.S. App. LEXIS 8786, at *49-50 (6th Cir. Ky. 2012) *quoting Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

As a result, Mr. Trusty clearly qualifies as an expert under Rule 702 to testify about the fair market value of the various technology services that the Defendant anticipates the evidence at trial will show Jeremy Weinland provided to the church. With regard to the government's relevancy objection, the Defendant should not be precluded from proffering expert testimony regarding Jeremy Weinland's services simply because the United States is unaware of any specific evidence of what services, if any, Jeremy Weinland actually provided to the church. Again, the Defendant anticipates the evidence at trial will show that Jeremy Weinland provided various computer and technology related services to the church. Mr. Trusty's expert testimony will assist the jury in better understanding such evidence. *See* Fed. R. Evid. 702(a).

C. David or Douglas Schoepf's Proposed Testimony

In its motion, the United States appears to concede that both David and Douglas Schoepf have sufficient "knowledge, skill, experience, training or education" to be qualified to testify as an expert under Rule 702 concerning the matters outlined in the Defendant's expert notice. The United States raises no concerns about the qualifications, expertise or reliability of either David or Douglas Schoepf.

Rather, the United States argues that the Schoepfs' testimony would be "irrelevant and confusing" because: (1) the Defendant chose to take the parsonage exemption for all of the tax periods at issue; (2) the United States does not dispute the Defendant may legitimately claim the parsonage exemption; and (3) the IRS has already credited the Defendant for the fair market value of his home office space. The government's attack on the Schoepfs' proposed testimony fails. As the government affirms in its motion, there is no dispute that the Defendant, as a minister, was entitled to legitimately claim an exclusion from gross income under 26 U.S.C. § 107 for what is commonly referred to as a "parsonage allowance." Additionally, there is no dispute that the Defendant did in fact claim a parsonage allowance under 26 U.S.C. § 107 for all of the tax periods at issue.

Further, the United States mischaracterizes the effect of the Defendant's claimed "parsonage allowance" by claiming that in permitting the Defendant to claim a "parsonage allowance" during the tax periods at issue, the IRS has in some way "credited the Defendant for the fair market value of his home office space." A minister is permitted to claim both a "parsonage allowance" under 26 U.S.C. § 107 and deduct business expenses related to the qualifying business use of a home office as long as the minister does not duplicate such home office costs in computing the exempt housing allowance. *See* Minister Audit Technique Guide, *available at*: http://www.irs.gov/businesses/small/article/0,,id=210018,00.html#Expenses. The

Defendant would have been entitled to a "parsonage allowance" whether or not he chose to secure an office for the church in available commercial space or operate the church out of his home as he did. 26 U.S.C. § 107

Yet, these issues are irrelevant to any effort to exclude or limit the Scheopfs' proposed testimony. The Schoepfs' proposed testimony is not being offered to affirm or validate the Defendant's claimed parsonage allowance nor is it being offered to support a business expense deduction for the Defendant's recognized business use of the home. Thus, there is no risk that the Schoepf's testimony will confuse the jury regarding those issues.

It is understood that the United States intends to put on evidence at trial to support its allegation that the Defendant improperly used church funds to pay part of the cost to acquire the Defendant's current residence. As the United States concedes in its motion in limine, the Defendant "operates the church out of his home." As the United States also concedes, the Defendant "could have secured an office for the church" in leased space outside of his home. The Schoepf's proposed testimony would focus solely on the fair market value of commercial lease space in Northern Kentucky similar to the office space in the Defendant's home that was used for church purposes during the tax periods at issue. Such testimony is clearly relevant to the state of mind of the Defendant and it will help the jury evaluate any evidence at trial regarding the use of church funds to pay part of the acquisition cost of the Defendant's residence.

CONCLUSION

For each of these reasons, the Court should deny the United States' First Motion in Limine.

A proposed order is submitted herewith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2012, I electronically filed this document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to Robert K. McBride, Robert.McBride@usdoj.gov.

By: /s/ J. Christopher Coffman
J. CHRISTOPHER COFFMAN
Counsel for Ronald E. Weinland