IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	**Case # 1:22-cr-00121-TNM**
	:	
v.	:	
	:	
Jared Paul Cantrell	:	
Quentin G. Cantrell	:	
Eric Andrew Cantrell	:	

RESPONSE TO MOTION TO EXCLUDE THE TESTIMONY OF GUILLERMO COSSON

Defendant Quentin G. Cantrell ("QGC") hereby respectfully submits his opposition to the Government's motion to exclude QGC's expert. ("Motion," Dkt. 57.)

I. Introduction

The Government's argues three grounds for excluding Mr. Cosson's expert testimony: (1) that he is not qualified; (2) that his testimony is based on "narrow facts," and (3) that his testimony is irrelevant. As discussed below, none of these is sound.

II. Legal Standard

The Government's brief accurately states the governing black-letter law, as far as it goes, but fails to acknowledge the standard for determining whether an individual's expertise is sufficient to qualify as an expert witness pursuant to Fed. R. Evid. 702. The only requirement is that the individual have specialized knowledge that may be of assistance to the fact-finder. Assuming they have such knowledge, challenges to the credentials of the expert, such as the one raised by the Government in its motion, go to the weight of the evidence, not its admissibility. See, e.g., *Coleman v. Parkline Corp*., 844 F.2d 863, 866 (D.C. Cir. 1988).

III. Argument

A. Mr. Cosson Is More than Sufficiently Qualified

Mr. Cosson's knowledge of cell phone recording devices comes, in part, from more than a decade as an information technology professional working for major corporations. In that role, he was responsible for assisting employees with using their cell phones, including integrating data captured on

those recording devices with the company's computer system. This is part of what is implicated with his job responsibilities "developing decision support centers." Employees would use their cell phone recording devices to capture data for maintenance routines and equipment inspections; Mr. Cosson's job responsibilities included identifying defective recordings, because in such cases much more expensive diagnostic procedures were required.

In addition, Mr. Cosson spent years develops "apps," or "applications," for cell phones. Although Mr. Cosson's experience with cell phones is broader than merely cell phone recording devices, that experience has resulted in extensive knowledge of them.

With this experience in mind, the Government's objection that the word "video" does not appear in Mr. Cosson's list of qualifications is obviously irrelevant. Likewise, the Government's argument that "this case does not involve … fantasy sports," and, therefore, Mr. Cosson is unqualified because he developed a fantasy tennis app is a non-sequitur. Dkt. 57, p. 4. Indeed, the expert in *Coleman v. Parkline* had no experience with the loading elevators at issue in that case, yet he was a qualified expert because of his engineering education and experience in investigating accidents. *Id*., at 866. In exactly the same way, Mr. Cosson's experience with evaluating video and audio recordings on cell phones and integrating the resulting data with larger computer systems obviates any need for experience with the specific subject matter of this case.

The Government's suggestion that Mr. Cosson is unqualified because he has never before been called to testify is equally flawed. Obviously, there is no rule requiring past experience testifying as an expert. Indeed, the Government fails to cite (and QGC is unaware of) even a single case in which a court considered an expert's testimony to be less reliable on that ground.

B. The Facts Upon Which Mr. Cosson Relies Are More than Sufficient

The Government appears to argue that Mr. Cosson did not review a sufficient fraction of the thousands—perhaps tens of thousands—of hours of video that it contends it has produced in this case. But the Government has only identified a relatively small amount of video as being relevant to QGC's case. Mr. Cosson's report attempted to note that he had specifically reviewed the video the Government

referred to in its opposition to QGC's motion to dismiss.[1] Even if the Government presented additional evidence at trial, there simply is no rule that requires Mr. Cosson to have seen it prior to trial, much less to have stated as much in his report. Expert witnesses routinely sit in the gallery during trial, so they can observe the evidence presented and offer opinions on that evidence.

The Government also argues that "the defendant has not asked, and does not appear to know, what application was used to record the three videos." Dkt. 57, p. 5. This is an astonishing inversion of the burden of proof. In order to present recorded evidence the Government has the responsibility to establish that the evidence is a true and accurate representation of the events recorded. Particularly when, as in this case, the Government's case-in-chief relies so heavily on inferences drawn from fine details of these recordings, such as the relative volumes of sounds in the environment, it is incumbent upon the Government to lay the requisite foundation establishing that those details have not been altered by the recording process. QGC expects Mr. Cosson's testimony to establish that cell phone recordings are particularly unreliable when it comes to such details (irrespective of the application or brand of hardware). But even absent Mr. Cosson's testimony, the Government bears both the burden of production and the burden of persuasion with respect to establishing the accuracy of its recorded evidence.

C. Mr. Cosson's Testimony Is Highly Relevant to the Government's Main Argument

The Government's third argument proceeds from the erroneous assertion that "Mr Cosson does not identify any specific concern with the government's video evidence." To the contrary, his report identifies several, including: (1) the use of filters can alter the color or brightness of a video; (2) audio recordings (either alone or as part of a video recording) can alter the subject matter they capture, especially if the device, the person recording, the subject, or objects in the environment are moving; and

[1] The Government's opposition did not provide citations to the recordings, so some guesswork was involved.

(3) sound and video in a recording made of a cell phone are often poorly synchronized because of the difference in the speed of sound and the speed of light. Dkt 50, Ex. 2, p. 3.

The Government goes on to object that Mr. Cosson "traffics in general skepticism about video evidence, untethered from the actual facts of the case." Dkt. 57, p. 6. But, once again, this is the consequence of the Government's failure to lay a proper foundation for its evidence. Without a sponsoring witness who can be cross-examined, Mr. Cosson can only discuss the myriad ways in which various conscious and unconscious decisions of the person making the recording may have altered the resulting recording. That does not mean (and Mr. Cosson does not believe) that the recording is completely untethered from the recorded subject matter. But, once again, given that the Government seeks to argue for inferences to be drawn from specific, fine details of the video, Mr. Cosson's testimony will help the trier of fact to understand why those facts are or might be unreliable.

D. The Court Should Order a Trial Deposition, Rather than a Daubert Hearing

The Government asks, in the alternative, for a Daubert hearing to provide it with the opportunity to "evaulauate the proffered testimony." Although, as discussed above, the Government's objections are not grounds to exclude Mr. Cosson's testimony, the Government is obviously entitled to cross-examine Mr. Cosson to try to challenge the weight that testimony deserves. Given the needs of this case, which involves only misdemeanor charges, QGC submits that an additional hearing is unwarranted. QGC submits that a trial deposition would be a more efficient solution. Remote video depositions are common since the Covid epidemic, and can testimony to a form admissible at trial, while minimizing travel expenses and time. During such a trial deposition the Government can address all of the concerns it raises in its motion, including its challenge to the reliability of Mr. Cosson's testimony. The parties can designate the portions of the resulting deposition they believe relevant, and present those portions of the transcript at trial. In addition to saving time and expense for both QGC and the Government, this will minimize the amount of court time needed to present Mr. Cosson's testimony at trial.

Because in criminal cases such trial depositions require leave of court, QGC will move the Court via a separate motion for that relief.

IV. Conclusion

For the foregoing reasons, the Court should DENY the Government's motion.

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