

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

**CRIMINAL ACTION NO. 11-70-DCR**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**V.**

**UNITED STATES'S MOTION IN LIMINE**

**RONALD WEINLAND**

**DEFENDANT**

\* \* \* \* \*

Comes now the United States of America, by and through counsel, and moves this Court for an Order excluding the testimony of the Defendant's opinion witnesses, Norman Williams, Taylor Trusty, and either David or Douglas Schoepf, for the reasons set forth below.

The Court should exclude the proposed testimony of Williams and Trusty because they are not qualified by knowledge, skill, experience, training, or education and because their testimony is irrelevant and unreliable, pursuant to Federal Rules of Evidence 401, 402, 403, and 702. The Court also should exclude the proposed testimony of the Schoepfs because it is irrelevant and will not help the trier of fact to understand the evidence or to determine a fact in issue. *See* FED. R. EVID. 702. For these reasons, the United States respectfully requests the Court to preclude the above-referenced witnesses

from testifying. In the alternative, the United States requests that this Court conduct a *Daubert* hearing. *See Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

## **I. PROCEDURAL HISTORY**

In May 2012, the Defendant timely filed notice of his intention to call Williams, Trusty, and one of the Schoepfs as expert witnesses. *See* Defendant's Notice of Proposed Expert Testimony, attached hereto as Exhibit 1. In this four page document, the Defendant states that Williams is expected to testify that: (1) the investigative techniques the government employed during the investigation are contrary to "IRS training and administrative guidance regarding criminal investigations"; (2) the Defendant's record keeping practices are "reasonable" under the "accountable plan rules"; and (3) the Defendant transferred money between personal and church bank accounts in accord with his determination of whether expenses should be classified as business or personal expenses. *See id.* at pp. 1-2. The Defendant's sole stated basis upon which to qualify Williams is his experience as an Internal Revenue Service criminal investigator from 1973 to 1999. *See id.* at p. 3. The Defendant also attaches Williams's curriculum vitae. *See id.* at Annex A.

The Defendant states that Trusty is expected to testify concerning the fair market value of the services the Defendant's son, Jeremy Weinland, provided to the Defendant's church during the tax periods at issue. *See id.* at p. 4. The Defendant's sole stated basis upon which to qualify Trusty is his approximately seven years experience "in pricing the types of services that Jeremy Weinland provided to the church as the president and owner

of a leading local web development and design firm.” *See id.* at p. 4. The Defendant also attaches Trusty’s curriculum vitae, which consists of less than one page and does not include any information regarding Trusty’s education. *See id.* at Annex D.

The Defendant states that either David or Douglas Schoepf is expected to testify regarding fair market rental value of commercial lease space in the Northern Kentucky area for office space comparable to the office space in the Defendant’s home that he used for church purposes during the tax periods at issue. *See id.* at p. 3. The Defendant also attaches curriculum vitae for the Schoepfs. *See id.* at Annexes B-C.

## II. APPLICABLE LAW

Federal Rule of Evidence 702 provides the benchmark for any expert testimony review. *United States v. Cunningham*, Nos. 09-5987/5998, 2012 WL 1500180 (6th Cir. May 1, 2012). Rule 702 reads as follows:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

FED. R. EVID. 702.

Under Rule 702, “expert witnesses must be qualified to testify to a matter relevant to the case.” *Surles ex rel. Johnson v. Greyhound Lines, Inc.*, 474 F. 3d 288, 293 (6th Cir. 2007). The “proffering party can qualify their expert with reference to his ‘knowledge, skill, experience, training or education.’” *Id.* However, experience alone

does not necessarily qualify an expert in his practice area. *See Cunningham*, 2012 WL 1500180 at \*17.

If an expert is qualified by “knowledge, skill, experience, training, or education,” he still must clear two additional hurdles. *See id.* First, the expert’s proposed testimony must be “relevant,” meaning that the testimony “will help the trier of fact to understand the evidence or to determine a fact in issue.” FED. R. EVID. 702; *see also Cunningham*, 2012 WL 1500180 at \*19. Second, the proposed testimony must be “reliable.” Fed R. Evid. 702. In rendering its evaluation, the district court must act as a “gatekeeper” and evaluate “the relevance and reliability of proffered expert testimony with heightened care.” *Surles*, 474 F.3d at 295.

Federal Rule of Evidence 402 states that “[e]vidence which is not relevant is not admissible,” while Rule 403 provides for the exclusion of relevant evidence if its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” FED. R. EVID. 402-03. The United States Supreme Court explained in *Daubert* that “[e]xpert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing the possible prejudice against the probative force under Rule 403 . . . exercises more control over experts than over lay witnesses.” *Daubert*, 509 U.S. at 595.

The proponent of expert testimony must prove its admissibility by a preponderance of the evidence. FED. R. EVID. 104(A); *see also*

*Botnick v. Zimmer, Inc.*, 484 F. Supp. 2d 715, 719 (N.D. Ohio 2007). A district judge has broad discretion in determining the admissibility of expert witnesses. *See Surlles*, 474 F.3d at 295; *United States v. Diaz*, 25 F.3d 392, 394 (6th Cir. 1994).

### **III. ANALYSIS**

#### **A. NORMAN WILLIAMS'S PROPOSED TESTIMONY**

The Court should exclude Williams's proposed expert testimony because he is not qualified to testify to a matter relevant to the case. In his attempt to qualify Williams, the Defendant relies almost entirely on Williams's twenty-six years experience as an IRS criminal investigator. Although Rule 702 contemplates that experience alone may be enough to qualify a witness as an expert, whether a proposed expert's experience is sufficient to qualify him depends on the nature and extent of that experience. *See Cunningham*, 2012 WL 1500180 at \*18. As courts in this Circuit have explained, "something more than time in practice would be required to qualify" a proposed expert "in a given specialty." *United States v. Gallion*, 257 F.R.D. 141, 148 (E.D. Ky. 2009) (quoting *Cicero v. Borg-Warner Auto., Inc.*, 163 F. Supp. 2d 743, 749, n.7 (E.D. Mich. 2001).

Here, Williams undoubtedly has substantial experience as an IRS criminal investigator. But experience alone does not equal expertise. Many Americans have spent thousands of hours playing musical instruments; yet, very few would be qualified to appear with the New York Philharmonic. It is abundantly clear from Williams's curriculum vitae that he has dedicated countless hours to learning and enforcing IRS

criminal investigative techniques. It is less clear that Williams has developed an expertise in this area. Neither the Defendant's Notice nor Williams's curriculum vitae indicates that he has ever written or spoken professionally on any of the issues on which he seeks to offer testimony. *See* Exhibit 1 at pp. 1-3, Annex A.

Moreover, Williams's relevant experience is stale. The Defendant intends to call Williams to testify regarding, among other matters, the government's supposed failure to investigate the Defendant according to "IRS training and administrative guidance regarding criminal investigations." *See id.* at p. 1. Yet, Williams has not been employed by the IRS since 1999. IRS training, administrative guidance, and practice has changed in the thirteen years since Williams left the agency. By way of analogy, if a federal judge who left the bench in 1999 based her testimony solely on her training and experience as a jurist, she might believe that the United States Sentencing Guidelines remain mandatory and that same-sex couples still do not enjoy a constitutional protection of sexual privacy. *See United States v. Booker*, 542 U.S. 220 (2005) (striking down provision of federal sentencing statute requiring imposition of sentences within Sentencing Guidelines range); *Lawrence v. Texas*, 539 U.S. 558 (2003) (overturning *Bowers v. Hardwick* and striking down Texas sodomy law). With nothing to set Williams apart from the hundreds of former IRS criminal investigators with similar, and perhaps more recent experience, this Court should not qualify Williams as an expert.

Assuming, *arguendo*, that the Court finds Williams qualified, it still should exclude Williams's proposed testimony regarding the nature of the government's

investigation, the Defendant's record keeping practices, and Defendant's acts of transferring money between personal and church bank accounts in accord with his determination of whether expenses should be classified as business or personal expenses. The Court should do so because the testimony is unreliable and will not help the trier of fact to understand the evidence or to determine a fact in issue. *See* FED. R. EVID. 702.

The Court should exclude testimony critical of the government's investigation because it fails to satisfy any of the general guidelines the Supreme Court provided in *Daubert*. *See Daubert*, 509 U.S. at 593-94. First, because there is no single acceptable way to conduct a criminal investigation, Williams's methods cannot be tested against the methods the IRS employed in investigating the Defendant. Second, Williams fails to cite to any peer-reviewed journals, or even IRS guidance, that might establish a generally-accepted method of conducting a tax evasion investigation. Third, Williams does not discuss the rate of error associated with either his or the government's investigative processes.

Williams's failure to rely on objective measures and accepted methodologies is particularly problematic in this instance. During his tenure at the IRS, Williams supervised Special Agent Susan Palmisano, the case agent, for approximately nine years. In 1999, Palmisano filed a complaint with the Equal Employment Opportunity Commission against Williams, alleging he discriminated against her on the basis of gender. Shortly after the EEOC investigation commenced, Williams retired from the

IRS. Though the investigation was not completed, the potential for the admission of unreliable, unsupported opinion testimony and jury confusion is obvious.

Williams's proposed testimony is unscientific, speculative, and will not assist the trier of fact. What the Defendant seeks to accomplish through Williams can and should be accomplished through vigorous cross examination. Accordingly, this Court should follow the example of other courts in this Circuit and exclude Williams's testimony regarding the quality of the government's investigative techniques. *See United States v. Olender*, 338 F.3d 629 (6th Cir. 2003) (affirming district court's finding that criminologist's proposed testimony would not assist the jury); *United States v. Veal*, 23 F.3d 985 (6th Cir. 1994) (affirming district court's finding that proposed evidence was irrelevant because jury would not be called upon to determine the quality of the government's investigation).

The Court also should exclude testimony regarding the Defendant's record keeping practices because it is irrelevant. Williams seeks to provide his opinion at trial that the Defendant and his spouse had "a methodology of their own to review and characterize personal and church expenses." *See Exhibit 1 at p. 2.* The United States does not dispute that the Defendant had a methodology to track expenses – the issue to be decided at trial is whether the Defendant willfully characterized personal expenses as business expenses so as to evade paying income taxes. Williams's opinion that the Defendant had a methodology by which he reimbursed himself does not assist the trier of fact in determining whether those expenses were legitimately excluded from his personal

income. Rather, it is a thinly veiled attempt to confuse the jury and bolster the Defendant's credibility to improperly support an inference the Defendant did not intent to evade income taxes. Accordingly, the Court should exclude this testimony as it does not have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *See* FED. R. EVID. 401.

Finally, the Court should exclude the proffered opinion testimony regarding the Defendant's acts of transferring money between personal and church bank accounts because it is irrelevant. Williams seeks to testify at trial that the Defendant "kept financial records" and that the money the Defendant and his wife "transferred from church accounts to their personal accounts during the tax periods at issue corresponds to their determination of expenses that were incurred for a legitimate church purpose." *See* Exhibit 1 at p. 2. The United States does not challenge the fact that the Defendant kept financial records, nor does it challenge the fact that the Defendant's transference of money between church and personal accounts corresponds with *his* determination of what were legitimate business expenses. Instead, the United States challenges the Defendant's determination of which expenses were of a personal nature and which were of a business nature. Accordingly, the Court should exclude this testimony pursuant to Rule 402.

#### **B. TAYLOR TRUSTY'S PROPOSED TESTIMONY**

The Court should exclude Trusty's proposed expert testimony because he is not qualified to testify to a matter relevant to this case. In his Notice of Proposed Expert

Testimony, the Defendant seeks to qualify Trusty based upon “his expertise and experience in pricing the types of services that Jeremy Weinland provided to the church as the president and owner of a leading local web development and design firm.” *See* Exhibit 1 at p. 4. The Defendant also attaches a copy of Trusty’s curriculum vitae. *See id.* at Annex D.

Trusty is not qualified to give the proffered opinion testimony. Trusty lists, on his curriculum vitae, his “Key Skills” such as “Specialized skills in hiring technical and creative people” and “Strategic Partnership Building.” *See id.* Trusty, however, fails to list any scholarly articles he has published or professional speaking in which he has engaged. Remarkably, Trusty fails even to mention his educational background. Based on the information provided by the Defendant, Trusty does not meet the standards for experts set forth in *Daubert* and under Rule 702.

Trusty’s proposed testimony also fails to meet Rule 702’s requirements for reliability and relevance. Trusty, who will base his testimony upon the experience he has developed over just seven years as the president and owner of a local web development and design firm, seeks to offer his opinion regarding the fair market value of the information technology services Jeremy Weinland provided to the Defendant’s church. *See id.* The Court should exclude this testimony because it appears to be based entirely on Trusty’s limited personal experience, and because the United States is unaware of any evidence that the Defendant’s church ever employed his son.

The church issued no Form W-2 or 1099 to Jeremy, and there is no evidence of any contract or agreement between the church and Jeremy for services rendered. The United States is aware of anecdotal information that Jeremy worked on the church's websites and assisted in translating some of this father's books, but such information is vague as to the details and there is no corroborating documentation. In addition, the United States is aware of other persons who performed computer, website, and book related services. Those persons were volunteers, except for the W-2 church employees (Ronald Weinland, Steve Dalrymple, and Audra Little). In 2008, the church paid Gregg Chris as a contractor to provide information technology services. The church did issue Jeremy a 1099 that is dated in March 2009 for \$16,835.00. This document, like the 1040 the Defendant filed in 2010 for the 2008 year and the 1040X the Defendant filed in 2011, may be evidence of the Defendant's consciousness of guilt, but it has no bearing on the Defendant's attempts to evade his tax liabilities in 2008. The 1099 issued to Jeremy was provided in reciprocal discovery. Jeremy, however, lives in Germany and there is no other reliable information that Jeremy was providing contract services to the church in 2008 or at any other time. The market value of Jeremy's purported services is irrelevant to the issue of whether the Defendant willfully evaded paying his income taxes.

Permitting Trusty's testimony would confuse the jury. Financial documents demonstrate the Defendant paid for some of the living expenses of his adult children and was reimbursed by the church. Jeremy's educational expenses, a luxury automobile, and other expenses were paid, in part, in this manner. Trusty's testimony will confuse the

jury because there is no factual basis on which the Defendant may claim Jeremy was an employee of the Church.

### **C. DAVID OR DOUGLAS SCHOEPF'S PROPOSED TESTIMONY**

The Court should exclude the Schoepfs' proposed testimony because it is irrelevant. Either David or Douglas Schoepf seeks to testify at trial regarding the fair market value of commercial lease space similar to the office space in the Defendant's home that he used for church purposes during the tax periods at issue. *See id.* at p. 3. The church, however, has neither physical facilities nor offices. Instead, the Defendant operates the church out of his home in the Triple-Crown Subdivision, Union, Kentucky. The Defendant, who solely has control over the finances of the church, could have secured an office for the church. Rather, he chose to operate the church out of his home in the Triple Crown Subdivision.

The Defendant chose to take the parsonage exemption for all of the tax periods at issue. Under this IRS exemption, "the gross income of a licensed, commissioned or ordained minister does not include the fair rental value of a home (a parsonage provided), or a housing allowance paid, as part of the minister's compensation for services performed that are ordinarily the duties of the minister." *See* IRS Topic 417 – Earnings for Clergy, *available at*: <http://www.irs.gov/taxtopics/tc417.html>. The United States does not dispute the Defendant may legitimately claim the parsonage exemption. Because the IRS already has credited the Defendant for the fair market value of his home office space, the Schoepfs' testimony is irrelevant and confusing.

**IV. CONCLUSION**

For the foregoing reasons, the United States respectfully requests that the Court exclude the proposed testimony of Norman Williams, Taylor Trusty, and David and Douglas Schoepf.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2012 the foregoing was electronically filed through the CM/ECF system, which will send notice of the filing to counsel of record.

s/ Christopher L. Nason  
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