

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**ABU AGILA MOHAMMAD
MAS'UD KHEIR AL-MARIMI,**

Defendant.

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Case No. 22-cr-392 (DLF)

**REPLY TO DEFENDANT'S RESPONSE TO GOVERNMENT'S MOTION TO
EXCLUDE THE TESTIMONY OF ANTHONY MAY**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court to exclude the proposed expert testimony of Anthony May at trial. The Court should preclude May's testimony because his expert notice is not helpful and irrelevant, and the notice is inadequate.

ARGUMENT

The defendant's arguments as to the admissibility of May's testimony fall short on two fronts. First, each of the educational "topics" is too broad to be helpful to the jury and therefore not relevant. Second, whether the defense styles May's testimony as opinion or "educating the jury," the inadequacy of the notice persists. There is no specific or "complete statement" of what the expert might say, as required by Rule 16(b)(1)(C). If May intends to limit his testimony to the conclusory statements as written, then his testimony should be excluded because it is not helpful to the jury and irrelevant. If he plans to say more or elaborate on any of these points, then his notice is insufficient.

The defense first argues that an expert can testify about background information in order to educate the jury about a particular field. ECF 388 at 1-2. The government does not dispute that can be appropriate in certain circumstances. However, the problem here is that it is not clear from

this notice how any of these vague topics would actually educate the jury as it relates to the issues in this case. For example, “opinion” 5 states:

The effects of the velocity of detonation (VOD) are based on the nature of the explosives. High explosives are designed to shatter and break with a VOD of 15,000 feet per second (FPS) to 29,000 FPS. Low explosives are designed to push and shove and have a VOD less than 15,000 FPS.

Def. Notice at 4. The government cannot adequately prepare for this expert without more information as to why this is relevant to the bombing of Pan Am Flight 103, or why the VOD is something the jury needs to consider. It seems reasonable to infer that the expert would explain that in court, but that cannot be the first time the government hears the context.

Another example is “opinion” 12:

An investigator in an explosives event should maintain an unbiased approach when examining the evidence and the effect it may have on his or her conclusions and should limit his/her post-blast investigation to the physical evidence that is available and the analysis of that physical evidence.

Def. Notice at 5. This is an overbroad statement that one would assume would be fleshed out by the expert. What is an unbiased approach? Is the expert going to opine whether that was or was not done in this case? Is the expert going to opine that certain procedures were not done according to industry standards? Will the expert opine that Feraday did not limit his investigation to the physical evidence? It is fundamentally unfair to the government to not have the level of specificity that the Rule requires. The disclosure requirement "is intended to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." Fed. R. Crim. Pro. 16, Notes to 1993 Amendment.

Almost every one of these 15 topics suffers from the same problem.¹ They are not specific enough to be relevant and helpful, and if there is some relevance, the notice is insufficient as to why.

CONCLUSION

For the foregoing reasons, the Court should GRANT the government's motion to exclude the testimony of Anthony May.

Respectfully submitted,

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¹ The government agrees that "opinion" 11, "the significance of RDX and PETN being found together indicates the probability of Semtex, however, it is possible for the two substances to be used separately in an explosion" is relevant.