

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 1:22-cr-392 (DLF)
	)	
ABU AGILA MOHAMMAD	)	
MAS'UD KHEIR AL-MARIMI,	)	
Defendant.	)	

DEFENDANT'S SUPPLEMENTAL REPLY
REGARDING PROPOSED FACT TESTIMONY AND EXPERT TESTIMONY
PURSUANT TO FEDERAL RULE OF EVIDENCE 702 AND
DAUBERT v. MERRELL DOW PHARMACEUTICAL

As Mr. Al-Marimi has previously argued, the testimony of Mr. Tiedge as an expert in the field of “aviation security and the Air Carrier Standard Security Program regulations from the late 1980s” should be limited to that which is justified by his knowledge, skill, experience, training, or education, or his own observations. ECF 364, 400. But the treatment of his testimony necessarily depends on the nature of the testimony, how the government seeks to elicit certain information, and which Federal Rule of Evidence governs admissibility. As with prior witnesses, Mr. Tiedge’s blended role as a fact witness and expert witness and his reliance on hearsay from various sources as a basis for some of his conclusions gives rise to potential issues during his testimony that are difficult to foresee in advance.

ARGUMENT

Mr. Al-Marimi has previously raised the following issues regarding testimony from Mr. Tiedge:

- (a) The potential inadmissibility of hearsay testimony, if introduced through Mr. Tiedge’s role as a fact witness;

- (b) the risk of the jury overvaluing his fact testimony, by virtue of the fact that he is qualified as an expert on limited topics;
- (c) the potential need for admonishing the jury about Mr. Tiedge's role or a jury instruction stating the same; and
- (d) the fact that, depending on the source, hearsay is not necessarily admissible, simply by virtue of its introduction through an expert.

ECF 364, 400.

At this time, Mr. Al-Marimi does not raise any specific objections to the proposed expert testimony from Mr. Tiedge, as outlined in the government's expert notice and its response to Mr. Al-Marimi's initial motion. ECF 383. But, as this Court is aware, the admissibility of hearsay as relied on by an expert depends heavily on the facts of the case. Accordingly, should Mr. Tiedge testify to facts or conclusions that do not come from the sources that can reasonably be inferred from the government's notice, Mr. Al-Marimi will make the appropriate objections at that time.

As this Court is aware, issues regarding the admissibility of hearsay and Mr. Al-Marimi's Confrontation Clause rights have arisen in other hearings and pretrial depositions in this case. On at least one occasion, the government argued that such objections had been waived, and this Court found that the government had, in fact, been placed on notice through defense pleadings. Mr. Al-Marimi seeks only to preserve his right to object, should the government seek to elicit testimony or rely on evidence that is inconsistent with the notice it has provided.

Regarding Mr. Tiedge, the government's expert notice states:

Mr. Tiedge's opinions and conclusions are based on his regulatory investigation of Pan American Airlines at Frankfurt Airport as carried out from approximately January 2-9, 1989. That investigation included Mr. Tiedge's personal observation of Pam Am's and Alert's operations at Frankfurt Airport, the interviews he and his supervisor conducted, and his review of records gathered during the course of that regulatory investigation.

ECF 383-1, at 3–4. The government's notices goes on to say that “these [opinions] are not an exhaustive or complete recitation of testimony that may be offered.” *Id.* at 4. While the government has provided copies of interviews and statements to the defense – both by and of Mr. Tiedge – it has not provided a line-by-line analysis of his conclusions and the specific interview, report, or statement on which each of his conclusions is based.¹ Therefore, without knowing the basis by which the government will move to introduce any particular piece of evidence or testimony at issue, Mr. Al-Marimi cannot, at this time, anticipate any and all objections to its admissibility.

Accordingly, Mr. Al-Marimi wishes to make clear for the record that, should any testimony, evidence, or exhibits come in through lines of questioning other than those detailed in the government's notice and response, he reserves his right to object to its admissibility.

¹ To be clear, Mr. Al-Marimi does not argue that they are obligated to do so. But, in the absence of such specific detail regarding the sources of his testimony, Mr. Al-Marimi is unable to identify any and all objections which may need to be raised by counsel to provide a zealous defense in his case.

CONCLUSION

While Mr. Al-Marimi does not object to the potential testimony as currently presented by the government, he reserves the right to object to testimony that is not admitted in the manner or for the purposes outlined in the government's response brief or expert notice.²

Respectfully submitted
By Counsel,

/s/
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² Mr. Al-Marimi raises the above objections based on the notice of expert testimony filed by the government. He reserves the general right to object to testimony or exhibits as appropriate at trial.