



STRICTLY F/X L.L.C. v. PYROTECNICO FIREWORKS, INC.

2022 | Cited 0 times | W.D. Pennsylvania | June 29, 2022

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

STRICTLY F/X L.L.C., Plaintiff, v. PYROTECNICO F/X, L.L.C. and RONALD BLEGGI,
Defendants.

2:20-CV-00201-CCW

MEMORANDUM OPINION AND ORDER Before the Court is Defendant Pyrotecnico F/X, L.L.C.

Connolly. ECF No. 165. The Motion, which was file concurrently with the parties cross-motions for summary judgment, ECF No. 167, ECF No. 169, ECF No. 174, is now ripe for disposition.

DENIED. I. Background

concurrently with the issuance of this opinion, the Court refers to that opinion, ECF No. 229 for the background of this case.

The subject of the current Motion is Mr. Paul Connolly, who has worked at Kroll Inc. since 2014. ECF No. 166 at 1; ECF No. 161-1 at 7. Mr. Connolly is expert witness, who was engaged to analyze the devices used by Defendant Ronald Bleggi in his employment with Strictly and Pyrotecnico and to analyze access to Strictly documents contained in a particular Dropbox account. ECF No. 166 at 1; ECF No. 161-1 at 7; ECF No. 185

In connection with his engagement, Mr. Connolly filed an initial expert report, dated July 2, 2021, ECF No. 166-1 and a supplemental disclosure, dated August 12, 2021, ECF No. 166-2 (together, , and was deposed by Pyrotecnico on August 13, 2021, ECF No. 166-3.

The Connolly Report contains six conclusions regarding files on and connections between certain devices (a Seagate Hard Drive, the Pyrotecnico MacBook, the Strictly FX Surface, a Drobox account, and an LG Phone). See ECF No. 166-1 at 22 23; ECF No. 166 at 2.

II. Legal Standard



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A. Federal Rule of Evidence 702 and Daubert Standard Under Federal Rule of Evidence 702, an expert who is qualified by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case Fed. R. Evid. 702.

Dis Tyger v. Precision Drilling Corp., 832

12 (3d Cir. 2020) (citing Fed. R. Evid. 702, Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 597 (1993), and Schneider ex rel. Schneider v. Fried, 320 F.3d 396, 404 (3d [t]he overriding consideration with regard to these three requirements

Tyger at 112 (citing United States v. Velasquez, 64 F.3d 844, 850 (3d Cir. 1995)).

Pyrotecnico seeks to exclude Mr. Connolly is not qualified, and his opinions are not reliable. ECF No. 166 at 4.

III. Analysis

A. Qualifications Under Rule 702 The Third Circuit has interpreted Rule 702 s qualification requirement liberally. Pineda v. Ford Motor Co., 520 F.3d 237, 244 (3d Cir. 2008) (citing Schneider ex rel. Estate of Schneider v. Fried, 320 F.3d 396, 404 (3d Cir. 2003) and In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 741 (3d Cir. 1994) Paoli II). A broad range of knowledge, skills, and training qualify an expert Paoli II, 35 F.3d at 741. In the witness possess[es] specialized expertise Schneider, 320 F.3d at 404, the Court views both the substantive and formal qualifications liberally. Paoli II, 35 F.3d at 741. minimum qualifications, then the level of the expert s expertise goes to credibility and weight, not

admissibility. Kannankeril v. Terminix Int l, 128 F.3d 802, 809 (3d Cir. 1997) (citing Paoli II, 35 F.3d at 741).

Pyrotecnico contends that Mr. Connolly that his prior work as an electronic discovery attorney

did not involve forensics. ECF No. 166 at 5. Rather, Pyrotecnico asserts expertise is related to managing forensic investigations not actually performing such

investigations himself. Id. Strictly responds that Mr. Connolly is qualified and that his deposition and curriculum vitae detail his computer forensic experience and his experience as a consulting expert in digital forensics in multiple cases. ECF No. 185 at 5.



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Pyrotecnico contention that Mr. Connolly does not have formal training in computer forensics, but rather undergraduate degrees in English and Philosophy, ECF No. 166 at 6, is not dispositive on the issue of whether he is qualified under Rule 702. The Third Circuit has eschewed imposing overly rigorous requirements of expertise and [has] been satisfied with more Paoli II, 35 F.3d at 741. Thus, the Court turns to whether Mr. Connolly possesses and views both the Id.

The argument that Mr. Connolly is not qualified, simply because he has never testified before is also unpersuasive. In advancing this argument, Pyrotecnico fails to account for Mr. experience as consulting expert in multiple trade secrets cases and in other cases involving forensic collection, forensic evidence, and investigations. See ECF No. 166-1 at 58 61 (detailing prior experience). Further, Mr. Connolly testified that his involvement in forensic investigations started as early as 2008 and continued when he joined Kroll 1

in 2014. ECF No. 166-3 at 22:7 I was deeply involved in questions having to do with document metadata. I was involved in examining digital evidence, and, at times, because of the nature of the work, I was a consumer of forensics, computer forensic information. see also ECF No. 166-3 at 34:2 24 (noting that in his 2014 position in eDiscovery and forensic investigations would go out into the field and perform, you know, image collection, data acquisition, and come back with data and perform forensic analyses was trained by working with forensic .

Similarly, Pyrotecnico arguments that Mr. Connolly has only collected data approximately six times in the field as late as 2018 ignores that much of the data in this case

1 Mr. Connolly testified that he was hired by Duff & Phelps. After Duff & Phelps acquired Kroll, Mr. Connolly moved over to Kroll Cyber, a division that performed digital forensics and incident response, cybersecurity incident response. Duff & Phelps, itself, has been renamed as Kroll. ECF No. 166-3 at 32:14-33:11.

appears to have been collected by third parties and then analyzed by experts, such as Mr. Connolly and his team. See data in this case was often collected by a third party other than Kroll, such as Bit-x- (citing ECF No. 166-3 at 36:23-

ECF No. 185-2 ¶¶ 4, 6)).

Finally, Pyrotecnico asserts that Mr. Connolly is merely acting as a spokesperson for other experts within Kroll who conducted the investigation, rather than having done so himself, because Mr. Connolly does not independently possess expertise as a computer forensic examiner. ECF No. 166 at 6 7 (citing Dura Automotive Sys. of Ind., Inc. v. CTS Corp., 285 F.3d 609, 616 (7th. Cir. 2002)). see ECF No. 166-1 at 58 61, and deposition regarding his involvement in this case do not convince the Court that Mr. Connolly is functioning as a mere spokesperson for his team members (Mr. Johan Dorado and Mr. Joel Bowers). See ECF No. 166-3 at 37:24 was on the Pyrotecnico MacBook? A. I did. Q. And



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in what form was the data provided to you to case management tool, and I reviewed it -- personally my review was with Johan once it was in

; id. at 54:6 55:1 (testifying that both he and Mr. Dorado performed the analysis of Dropbox activity on the Pyrotecnico MacBook); id. at 55:8 16 (focus of the investigation and conferring with Johan about what we were finding and what next re finding ; id. at 60:14 61:4 (describing, with respect to the 308 files found on a hard drive, was reviewing the findings with Johan and with Joel Bowers, my two colleagues on this case, and then writing

about it looking at the output. .

From Mr. Connolly deposition, assistants in formulating his expert opinion, Dura Auto., 285 F3d at 612, and that he has reviewed and formulated the opinions contained in the Kroll report such that he is not simply acting as a spokesperson for his team members. ECF No. 166-3 at 52:6 18, 54:2 5 (process, but Johan Dorado was performing a lot of the primary forensic examination work; and we worked closely together, but he was the one who first put this -- put this into Magnet AXIOM volved in this as it was happening. But yes, Johan Dorado was deeply involved and I would say probably was the first person to go here and that he worked with his team members during the investigation. See In re Suboxone Antitrust

Litig., No. 2445 13-MD-2445, 2020 U.S. Dist. LEXIS 219949, at *56 (E.D. Pa. Nov. 24, 2020) (citing Lee Valley Tools, Ltd. v. Indus. Blade Co., 288 F.R.D. 254, 266 (W.D.N.Y. 2013)) (Where the expert was directly involved with the research, analysis or drafting of the report, even with substantial assistance from a colleague or associate, his involvement in and knowledge of the report are matters of weight, not admissibility.).

The Court concludes that in interpreting rally, Mr. Connolly has a broad range of knowledge, skills, and training sufficient to qualify as an expert in this matter. Paoli II, 35 F.3d at 741.

B. must be based on the methods and procedures of science rather than on subjective belief or unsupported speculation ; the expert must have good grounds for his on her belief. In sum, Daubert holds that an inquiry into the reliability of scientific evidence under Rule 702 requires a determination as to its scientific validity. Schneider v. Fried, 320 F.3d 396, 404 (3d Cir. 2003) (quoting Paoli II, 35 F.3d at 742 (quoting Daubert, 509 U.S. at 590)).

The Third Circuit has identified factors that a district court should consider when determining whether proposed expert testimony is reliable:

(1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique s operation; (5) whether the method is generally accepted; (6) the



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relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses. *Schneider*, 320 F.3d at 405 (3d Cir. 2003) (internal citations omitted). reliability analysis is lower than the merits standard of correctness and is flexible in nature. *United States v. Millhouse*, 346 F. App'x 868, 871 (3d Cir. 2009) (citing *Pineda*, 520 F.3d at 247-48 (internal quotation omitted) and *Paoli II*, 35 F.3d at 742 (outlining several factors to be considered)). These are neither exhaustive nor applicable in every case inquiry envisioned by Rule 702 is . . . a flexible one. *Pineda*, 520 F.3d at 248 (internal citations and quotations omitted). Pyrotecnico contends that Mr. Connolly did not perform the actual forensic analysis and failed to describe his methodology in a manner that would allow the Court to evaluate the reliability. See ECF No. 166 at 8-10 (listing descriptions of methodology in the Connolly Report); ECF No. 213 at 4-5. Strictly responds that Mr. Connolly provided

extensive, specific testimony about how he employed the forensic tools, and he provides much more detail than provided in his own report or at his deposition. methodological methodological descriptions).

A review of the Connolly Report, ECF No. 166-1 & 166-2, in conjunction with Mr. Connolly detail how he and his team analyzed the data and came to the conclusions in the Connolly Report. Compare ECF No. 185 at 6-7 (extracting testimony related to conclusions) with ECF No. 166-1 at 22-23; see generally, ECF No. 166-3 (discussing each conclusion of the Connolly Report). Further, Pyrotecnico has not challenged the reliability of any specific computer programs that Mr. Connolly and his team used in analyzing the data. Even if it had, the Court notes many of the same forensic tools (notably, Axiom, Cellbrite, Encase) own expert has described industry standard tools that allow for the processing and analysis of data, metadata of active space and unallocated space within a piece of media. No. 185-3 at 9.

In considering several factors in the flexible reliability analysis, notably whether the methods are generally accepted and the qualifications of Mr. Connolly who is testifying on such methodology, which the Court discussed in Section III.A, the Court finds that subjective belief or unsupported speculation

his use of forensic analysis tools, which he has detailed in the Connolly Report and his deposition, Mr. Connolly good grounds for his on her belief. *Schneider*, 320 F.3d at 404. Therefore,

IV. Conclusion

For the foregoing reasons, IS HEREBY DENIED.

DATED this 29th day of June, 2022.

BY THE COURT: /s/ Christy Criswell Wiegand CHRISTY CRISWELL WIEGAND United States



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District Judge

cc (via ECF email notification): All Counsel of Record

