

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

FILED
MAY 25 2022
JOHN T. FREY
Clerk of the Circuit Court
of Fairfax County, VA

FILED UNDER SEAL

**PLAINTIFF JOHN C. DEPP, II'S OPPOSITION TO DEFENDANT AMBER LAURA
HEARD'S MOTION TO EXCLUDE TESTIMONY OF BRYAN NEUMEISTER**

Plaintiff John C. Depp, II, by and through his undersigned counsel, hereby opposes Defendant Amber Laura Heard's Motion to Exclude Testimony of Bryan Neumeister. Ms. Heard's main argument is that Mr. Neumeister did not disclose certain opinions and therefore should be prevented from testifying about such opinions. These arguments are premature at this point, prior to Mr. Neumeister's testimony. Mr. Neumeister does not intend to testify about anything not disclosed in his disclosures. To the extent Ms. Heard believes testimony might exceed the scope of his disclosure, she can object at that time and the Court can hear the matter.

1. Mr. Neumeister does not intend to testify about certain items raised in Ms. Heard's motion.

Mr. Neumeister does not intend to testify about the following items raised in Ms. Heard's motion:

- Two photographs with metadata from the 1970s that were not received from the Conciliator, Mr. Young (*see* Heard Motion at 2);
- Any opinion on texts messages, emails, or recordings (*see* Heard Motion at 2);
- Any opinion on photographs of property destruction (*see* Heard Motion at 2);
- Any opinion on photographs produced by third-parties (*see* Heard Motion at 2-3);
- Ms. Heard's attorneys, the document transfer process between Ms. Heard and Mr. Depp (including the timing of such transfers), the unlicensed software utilized by Ms. Heard's experts, or that Ms. Heard's forensic imaging was Court-ordered (*see* Heard Motion at 5).

2. Mr. Neumeister should be permitted to testify at trial in accordance with his disclosures.

Mr. Neumeister's opinions were timely disclosed on January 11, 2022 *as part of Mr. Depp's affirmative case* (including that he may testify in response to facts/opinions rendered by

other witnesses). His opinions were further disclosed on February 25, 2022 in Mr. Depp's rebuttal disclosure where his January 11 opinions were incorporated by reference and he was further identified as a potential rebuttal expert. Then, Mr. Neumeister timely supplemented his opinion on April 1, 2022 in a **106-page** report that details at length the specifics to which Mr. Neumeister will testify. The testimony Mr. Neumeister intends to present at trial concerns evidence and testimony raised in Ms. Heard's case (which, again, Mr. Neumeister identified as a possibility in his January 11 affirmative disclosure). There is no prejudice to Ms. Heard as all of Mr. Neumeister's opinions were timely disclosed.

Mr. Neumeister's anticipated testimony at trial is highly relevant despite Ms. Heard's contention. The fact that the "photos" identified as Ms. Heard's trial exhibits do not have metadata reflecting they have been through a photo editing app is a red herring. Simply put the "photos" submitted as Ms. Heard's trial exhibits are **not** actual photos but are instead "screen grabs" of photos (Ms. Heard basically just took a picture of the underlying photo (a picture of a picture) for her trial exhibits). As such, the photos would not reflect having gone through a photo-editing app. The underlying photos however, which are identical in appearance to the trial exhibits, **have** gone through one of two photo-editing programs (Photos 3.0 and Photos 1.5). That is **extremely** telling. On the left of the example below are Ms. Heard's Trial Exhibits 712 and 713 (**photos that are both admitted into evidence**), which are just a "screen grab" of a photo on a mac computer (note the task bar at the top). On the right is an excerpt from Mr. Neumeister's report showing the same underlying photo that has been through the Photo 3 editing program. *See* Neumeister Report at 40 of 106.

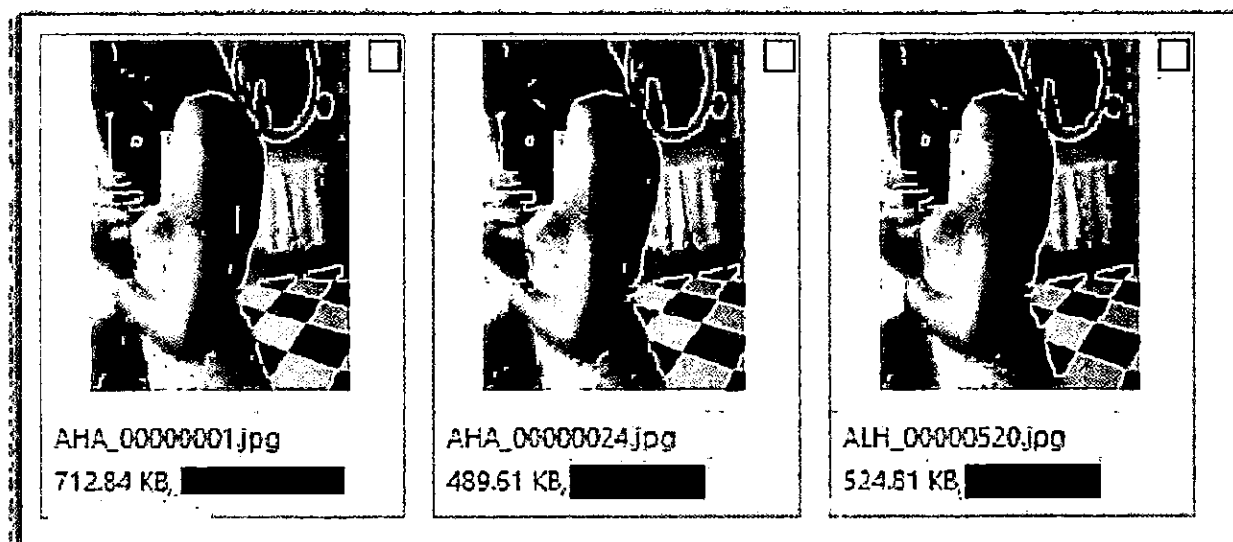
Ms. Heard mischaracterizes Mr. Neumesiter's testimony and takes certain statements out of context. *See* Heard Motion at 3. Mr. Neumeister testified in his deposition that he could not opine as to whether the photographs in his report were "visually doctored." Again, that is because *no one can*. Based on the data produced by Ms. Heard, it is impossible to tell what the originals of the photos were. For example, Ms. Heard has produced many duplicate photos that reflect that they have been altered in some capacity. There could be 5 photos that appear the same, but all have different metadata. Because no one can tell what the original photo is (it could be in that group of five, or it might not be), it is impossible to compare each of the photos which in turn makes it impossible to tell *how* it has been visually altered. *See* Tr. 260:6-18 ("Q So you're not able to offer an opinion one way or the other whether the photograph on page 21 is visually manipulated, right? A I'm able to say that it was altered because it would not hash with the -- if we had a verified original, it would not hash. In other words, it would not be the same because of compression algorithms. I think you're trying to say, can I say if it was, you know, doctored. Let's use that word. No, because we don't have an original to compare it to. You need to have something that's verified to compare it to."). This has been disclosed. *See* Neumeister Disclosure at 3 of 106 ("Ms. Heard's photographs cannot be authenticated and all of them could have been and, many of them appeared to have been, manipulated."); *see also id.* at 6 of 106 (describing how photos that appear the same have different file sizes, evidencing manipulation, but without the original photo one cannot tell *how* it has been manipulated).

4. Mr. Neumeister's contemplated testimony has been disclosed and is not speculative, hypothetical, or generalized.

Ms. Heard also argued that Mr. Neumeister testified about an undisclosed photograph technical analysis. *See* Heard Motion at 4 (regarding chromatic values, compressing reds, color tones, etc.). That also is disclosed in Mr. Neumeister's report. *See* Neumeister Report at 8 of 106

(showing charts with the color analysis referred to in Mr. Neumeister's testimony. Also, Mr. Neumeister produced to Ms. Heard as part of his report a video demonstrating how chromatic pixels, color tones, reds, etc. can be manipulated. Mr. Depp intends to play this video at trial).

Next, Ms. Heard argued that Mr. Neumeister "generally referenced '392 duplicate files' and 91 files that 'do not hash' but admitted to identifying none with specificity." *See* Heard Motion at 4. Again, that misstates Mr. Neumeister's testimony and report. *See, e.g.*, Neumeister Disclosure at 77 of 106 (below image demonstrating duplicate photos that do not hash).



Same photo, different file sizes. All show "originally photographed image", and hash values do not match between the originally disclosed photos and the newly disclosed photos from iDS.

Conclusion

Ms. Heard's motion to exclude Mr. Neumeister should be denied.

Respectfully submitted,

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