

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 3:18CR162
	)	
Plaintiff,	)	HON. JUDGE JAMES G. CARR
	)	
v.	)	GOVERNMENT’S
	)	NOTICE OF OBJECTIONS TO
KELLAND WRIGHT	)	DEFENDANT’S EXHIBITS
	)	
Defendant.	)	
	)	

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NOW COMES the United States of America, by its counsel, Justin E. Herdman, United States Attorney, and Noah P. Hood and Jody L. King, Assistant U.S. Attorneys, and objects to several categories of exhibits identified by Defendant Kelland Wright (“Wright”) as specified below.

**PROCEDURAL BACKGROUND**

The deadline for exchange of witness lists in this matter, September 21, 2018, postdated the deadline for the parties’ motions in limine, September 10, 2018. As a result, initial motions in limine filed by both parties on September 10 and 13, 2018 (Dkt. No. 41, 42, 43, and 45), seeking admission or preclusion of various exhibits, testimony, and arguments at trial, had already been filed when the parties filed their exhibit lists on September 18 and 21, 2018 (Dkt. No. 58 and 61). In addition, Wright submitted an updated exhibit list on September 25, 2018 (Dkt. No. 66). Accordingly, the government now submits this Notice of Objections and respectfully requests the Court preclude from presentation at trial several categories of exhibits because they do not constitute relevant or admissible evidence.

## ARGUMENT

### Exhibits 108-115 Should Be Precluded

Wright's Amended Exhibit List (Dkt. No. 66) includes eight exhibits relating to YouTube videos that should be precluded from presentation at trial. Specifically, exhibits 108, 110, 112, and 114 consist of screenshots of four YouTube webpages and exhibits 109, 111, 113, and 115 consist of the YouTube videos accessible from those four YouTube pages. The videos contain out of court statements by someone presenting themselves as an attorney commenting upon various "myths" regarding guns. The title of each of these YouTube videos includes the words "The Legal Brief" and each video is apparently produced by an entity known as "The Gun Collective" starring "Adam Kraut, Esq." The contents of each video offers opinion statements by Kraut regarding short-barreled rifles and AR pistols, Kraut's legal interpretations of the National Firearms Act and Gun Control Act, and commentary on various classification letters issued by the Bureau of Alcohol, Tobacco, Firearms Division (FATD). These video statements are intermixed with short snippets or stills from popular films and internet memes. None of the videos make any comment about Wright's firearm at issue in this case.

These videos and related webpage screenshots are irrelevant to the critical questions at issue in this case, namely, did Wright possess an unregistered short-barreled rifle. The Government is required to prove that Wright knew the characteristics of a firearm: that it had a barrel length of less than 16 inches and – in dispute in this case – that it was a rifle, which is to say that it is designed to be fired from the shoulder. (See Dkt. no. 49, Joint Proposed Jury Instructions, PageID # 187, defining elements of the offense.) Statements by a third-party uploaded onto an internet video platform cannot make any material fact relating to the characteristics of Wright's firearm more or less likely to be true. Accordingly, these videos and the related website exhibits

should be excluded as irrelevant.

Furthermore, to the extent the content of these videos contain opinions relating to AR-style weapons, short-barreled rifles, and FATD policies, these videos constitute unnoticed expert opinions. Adam Kraut, Esq. is not included on Wright's witness list (Doc. # 57) and presentation of this video evidence would not permit any opportunity to cross-examine the source of this purported expert's expertise, the bases of his unsworn opinions, issues of bias, or other matters necessary for the jury to determine the strength or credibility of such opinion testimony. Therefore, these videos should also be precluded under Rule 701 and 702.

In addition, to the extent that Wright is offering such videos and the statements contained therein based on a defense theory of reliance, whether upon advice of counsel or otherwise, use of these videos to support such a defense is inappropriate. Kraut is not Wright's attorney and watching videos publicly available via YouTube does not establish an attorney-client relationship or otherwise justify any reliance on the opinions contained therein.

**Exhibits 130-140 Should Be Precluded**

Wright's Amended Exhibit List lists ten exhibits that consist of what appear to be screenshots from several online retailers for a variety of arm braces (Doc. # 66, Exhibits 130, 131, 133-140). These exhibits should be precluded under Rule 402 and 403 of the Rules of Federal Evidence. Screenshots of retail webpages for arm braces, which are intended to secure an AR-style weapon to the forearm, are unrelated to the particular characteristics of Wright's firearm and do not make any material facts relating to those characteristics or Wright's knowledge of them more or less true. Wright's own expert report describes the extension piece attached to Wright's firearm as a cheek rest, not an arm brace. (Dkt. 31-1 PageID #111). Accordingly, screenshots of various styles of arm braces available for purchase have no bearing on the question of whether

Wright's weapon is an unregistered short-barreled rifle.

In addition, Exhibit 132 should not be used at trial because it is a composite exhibit consisting of a screenshot of an online retailer offering a cheek rest kit, and an FATD letter relating to the particular cheek rest being offered for sale. This letter and the screenshot of the webpage it is posted on should be excluded for the reasons set forth in the government's motion in limine addressing the FATD letters.

**Exhibits 118, 141-156, and 122-124 Should Be Precluded**

Wright's Amended Exhibit List includes 17 classification letters from the FATD. (118, 141-156). For the reasons set forth in Government's Motion in Limine No. 3 (Doc. #45) and Reply in Support thereof (Doc. #69), the Government objects to the presentation of these letters at trial.

In addition, the Government objects to Exhibits 122-124, which are screenshots of various online message boards or chat rooms containing scanned copies of what appear to be redacted FATD classification letters, which were uploaded to the website and commented upon by website visitors. In addition to the previously stated reasons to preclude these FATD classification letters generally, exhibits 122-124 should be precluded from use at trial because in this form they are unreliable and untrustworthy. It is unclear how, by whom, or whether these letters have been modified prior to being uploaded to this third-party website.

For example, Exhibit 124 contains a photo of a gun and a statement made by unknown persons about a particular AR-weapon modification above a copy of a redacted FATD letter relating to a "cheek saddle." It is unclear whether the FATD classification letter relates to the particular type of "cheek saddle" shown in the photograph or some other type of firearm modification. (Exhibit 124, AR15.com September 14, 2011 Post). Without knowing the identity

of the person who posted these letters or who provided the surrounding commentary, there is no indicia of trustworthiness to support the admission of these exhibits. The opinions of unsworn third-parties about the meaning of classification letters issued by FATD regarding other types of modifications to AR-style weapons is simply too attenuated to have any probative value.

### CONCLUSION

For the reasons set forth above, the United States respectfully requests the Court sustain its objections to the Exhibits discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2018 a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

*/s/ Noah P. Hood*

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