**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF STETSON**

UNITED STATES OF AMERICA,

v. CASE NO.: 15:16-CR-02342-CHR-ESW

CHARLIE WYATT,

Defendant.

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DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS AND RESPONSE TO GOVERNMENT'S MOTION IN LIMINE

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## QUESTIONS PRESENTED

I. Whether the Government violated Defendant Representative Wyatt's Fourth Amendment right to be free from unreasonable searches and seizures in obtaining the content of his SkyHigh Cloud storage account without consent or a warrant supported by probable cause.

II. Whether Counselor Mona Ralphio may be permitted to testify as an expert witness pursuant to Federal Rule of Evidence 702.

## STATEMENT OF JURISDICTION

The United States District Court for the Southern District of Stetson has original jurisdiction over this action pursuant to 18 USCS § 3231 based on alleged violations of 18 USCS § 371 and 18 USCS § 1028(a)(7) when the Government has charged that Defendants conspired to commit identity theft by filing fraudulent tax returns with the Internal Revenue Service.

## STATEMENT OF FACTS

In July 2015, Representative Charlie Wyatt (Rep. Wyatt) hired two constituents, Sebastian Swanson (Swanson), a convicted felon, and Leslie Winters (Winters), a senior citizen, to serve as his administrative assistants for his "Up and At 'Em" program, which helped senior citizens and felons find employment. (Factual Stipulations ¶ 6.) Rep. Wyatt played an active role in "Up and At 'Em" by helping a group of twenty-five senior citizens develop the necessary skills to find employment, despite the fact it was not required by the legislation and received no compensation. (Factual Stipulations ¶ 7.)

Rep. Wyatt met with each of the seniors to collect personal information and schedule their skills classes. (Factual Stipulations ¶ 8-9.) The information was saved on a personal laptop by Rep. Wyatt in a spreadsheet titled "GetToWork" and was used by the Office of Personnel Management to complete background searches. (Factual Stipulations ¶ 10.)

In November 2015, Rep. Wyatt purchased a new personal laptop, and received a one-year subscription to SkyHigh Computing's (SkyHigh) cloud-computing storage (SkyCloud). (Factual Stipulations ¶ 3.) Rep. Wyatt stored personal and work files on the account, including the "Up and At 'Em" files. (Factual Stipulations ¶¶ 11-13, 17.) Upon activating the account, Rep. Wyatt agreed to SkyHigh's terms and services, which included protection from private

and governmental intrusion and ensured users that SkyHigh would protect their data from any government agency without proper legal authority. (Factual Stipulations ¶ 14.) As the last step of his SkyCloud activation, Rep. Wyatt created an individual username and sixteen-digit password that he was prompted to reenter when he remained logged in for more than thirty minutes. (Factual Stipulations ¶ 16.)

In January 2016, fraudulent tax returns were filed with the Internal Revenue Service (IRS) under the names of the twenty-five seniors enrolled in Rep. Wyatt's program. (Factual Stipulations ¶ 19.) The IRS investigation identified the MorningStar Gang of Stetson as the primary suspect. (Factual Stipulations ¶ 20.) Swanson, a sergeant of the MorningStar Gang, informed the IRS that a Stetson politician was providing personal information in exchange for a portion of the profits from fraudulent filings. (Factual Stipulations ¶ 21.) In April 2016, the IRS sent a letter to SkyHigh requesting a copy of Rep. Wyatt's SkyCloud data without a warrant, subpoena, reasonable suspicion, or probable cause. (Factual Stipulations ¶¶ 24-26.) Approximately three days later, SkyHigh delivered an external hard drive to the IRS that contained the content of Rep. Wyatt's personal 50 GB SkyCloud. (Factual Stipulations ¶ 26.)

On July 1, 2016, Rep. Wyatt and eleven other Defendants, including Swanson and Winters, were indicted by a Grand Jury in the Southern District of

Stetson on ten counts of Identity Theft and one count of conspiracy. (Factual Stipulations ¶ 28.) Swanson entered into a plea agreement to testify against all other defendants in exchange for a guilty plea on the theft of public money counts and immunity for the other counts. (Factual Stipulations ¶ 29.) Rep. Wyatt responded with a notice of intent to enter testimony of Counselor Mona Ralphio (Ralphio) as an expert witness who would testify about Swanson's susceptibility to suggestion. (Factual Stipulations ¶ 31.) The prosecution filed a Motion in Limine to exclude her testimony. (Motion in Limine ¶¶ 4, 5.)

On July 15, 2016, Rep. Wyatt filed a Motion to Suppress evidence because it was illegally obtained from SkyHigh in violation of Rep. Wyatt's Fourth Amendment protection from unreasonable search and seizures.

## SUMMARY OF THE ARGUMENT

Representative Charlie Wyatt's motion to suppress should be granted because the Government violated his Fourth Amendment right to be free from unreasonable searches and seizures. Rep. Wyatt had a subjective and objective reasonable expectation of privacy regarding his SkyHigh SkyCloud account because SkyHigh specifically ensured that user data would not be released to a government agency without proper legal authority, he secured his account with an individual username and a sixteen-digit password, and he did not intend to share access to the SkyCloud with anyone.

The Government thus needed a search warrant or valid consent to obtain the information that Rep. Wyatt stored on his SkyCloud. Valid consent could not be obtained because SkyHigh Computing did not have the actual or apparent authority necessary to consent to the search.

This Court should permit Counselor Mona Ralphio to testify as an expert witness because her testimony is based on specialized knowledge that will help the jury determine the credibility of the government's witness Sebastian Swanson.

Expert testimony is to be admitted where the court finds that it is reliable and relevant to a fact in question. Expert opinions are reliable where they are based upon sufficient facts or data; the testimony is the result of reliable methods or principles; and the expert has applied the methods or principles to the facts of the

case. Ralphio's opinion and diagnosis of Swanson are based on an interview and review of his disciplinary history and school records and her interpretation of those facts as a social worker.

Expert opinions are relevant when they assist the trier of fact, but do not prejudice the jury. Ralphio's testimony will educate the jury about her diagnosis of Swanson to assist the jury to understand his susceptibility to suggestion and how that could potentially lead to him being an untruthful witness. The expert testimony will not prejudice the jury because it can accept or deny Ralphio's testimony and find Swanson to be truthful.

## ARGUMENT AND CITATIONS OF AUTHORITY

### I. THIS COURT SHOULD FIND THAT THE GOVERNMENT VIOLATED REPRESENTATIVE CHARLIE WYATT'S FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES BY RECEIVING THE CONTENTS OF HIS SKYHIGH COMPUTING ACCOUNT WITHOUT A VALID SEARCH WARRANT OR APPLICABLE WARRANT EXCEPTION.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. U.S Const. amend. IV. If a search is conducted without a warrant issued upon probable cause, it is per se unreasonable unless one of the few specifically established exceptions apply. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973).

This Court should grant Rep. Wyatt's motion to suppress for three reasons: (1) Rep. Wyatt had both a subjective and objective reasonable expectation of

privacy regarding his SkyHigh SkyCloud account; (2) because of this reasonable expectation of privacy, the Government needed a search warrant or a valid warrant exception to access information kept on the SkyCloud; and (3) SkyHigh lacked actual and apparent authority and could not rightfully consent to the Government's request on behalf of Rep. Wyatt.

A. Representative Wyatt had an objectively reasonable expectation of privacy when he stored his documents with SkyHigh.

An individual's Fourth Amendment right to be free from unreasonable searches is implicated when he or she has manifested a subjective expectation of privacy in the place searched and society accepts that expectation as objectively reasonable. United States v. Cardona-Sandoval, 6 F.3d 15, 20 (1st Cir. 1993). What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. Katz v. United States, 389 U.S. 347, 351 (1967). In Katz, FBI agents attached an electronic listening and recording device to the outside of a public telephone booth used by the petitioner. Id. at 348. Based on information obtained through this listening and recording device, the petitioner was charged with violations of a federal statute. Id. The Government argued that petitioner did not have a reasonable expectation of privacy because the phone booth from which he was making calls was constructed partly of glass and that, because the petitioner was visible to the public eye while inside this phone booth, he could not have had an expectation of privacy. Id. at 352. The Court rejected this

argument and explained that the petitioner was not seeking to exclude the intruding eye, but the intruding ear. Id. He did not give up his right to do so simply because he made his calls from a place where he might be seen. Id.

Similar to the petitioner in Katz, Rep. Wyatt had a reasonable expectation of privacy regarding his SkyCloud. Id. Rep. Wyatt secured his SkyCloud with an individual username and a sixteen-digit password that he was required to enter anytime the SkyCloud was updated or upon being logged in for longer than thirty minutes. (Factual Stipulations ¶¶ 15-16.) Rep. Wyatt also agreed to the Terms and Services Agreement which specifically mentions SkyHigh's HackerFree Guarantee and the guarantee of privacy from unwanted government intrusion. (Factual Stipulations ¶ 14.) As in Katz, Rep. Wyatt was not trying to exclude a lawful intrusion upon his privacy, but rather an unlawful one. Katz, 389 U.S. at 351. Exactly how that petitioner's voice was only hidden behind glass, Rep. Wyatt's documents were hidden behind a user agreement that specifically protected from unlawful government intrusion. Katz, 389 U.S. at 351; (Factual Stipulations ¶ 14.)

An expectation of privacy gives rise to Fourth Amendment protection when society is prepared to accept that expectation as objectively reasonable. United States v. Yudong Zhu, 23 F. Supp. 3d 234, 235 (S.D.N.Y. 2014). In Yudong Zhu, the defendant was employed by New York University (NYU) and received a grant from the National Institutes of Health. Id. at 236. All grant funds were the property

of NYU, and NYU became the owner of all equipment purchased with the funds. Id. Defendant purchased a laptop with the funds, and despite the fact that it was owned by NYU, the Court found that defendant's expectation of privacy in the laptop's contents is one that society would accept as reasonable. Id. at 238. This expectation of privacy was recognized because the defendant took steps to restrict third-party use and access to the computer including passwords and encryption codes, not sharing it with any co-workers, and taking the laptop home every evening. Id. Although defendant signed a form acknowledging that NYU had the right to "inspect the computers it owns" and to ensure that the software is being used according to policy, the Court found that the language used by NYU was not sufficient enough to vitiate defendant's expectation of privacy vis-à-vis law enforcement. Id. at 240.

Like the defendant in Yudong Zhu, the expectation of privacy that Rep. Wyatt had regarding his SkyCloud is objectively reasonable because he did not share access to the account with anyone else, he stored personal and sensitive data on the account, and he took steps to protect his data from third parties by using a personalized sixteen-digit password. Id.; (Factual Stipulations ¶¶ 15, 17.) Rep. Wyatt purchased the new laptop to use only at home and for matters outside the scope of his job as a United States Representative. (Factual Stipulations ¶ 11.) He transferred all data that was stored on his former laptop into his new account,

including personal tax returns, family photos, and several work-related documents. (Factual Stipulations ¶ 17.) SkyHigh's Terms and Services Agreement specifically guaranteed that users' personal and sensitive data would be protected from other individuals, including government intrusion. (Factual Stipulations ¶ 14.) Rep. Wyatt meets all of the criteria set out by the court in Yudong Zhu, and his expectation of privacy regarding his SkyCloud account is therefore objectively reasonable.

B. The Government needed a search warrant to access the information Rep. Wyatt stored on his SkyCloud account because he had an objectively reasonable expectation of privacy in its contents.

Police need a search warrant to access data stored on a cellphone, regardless of whether that data is saved in a "cloud" or on the phone's internal hard-drive. Riley v. California, 134 S. Ct. 2473, 2477 (2014). In Riley, an officer accessed information on a phone recovered during the arrest of petitioner. Id. The officer and a detective examined all the digital contents of the phone, finding evidence connecting petitioner to a shooting from several weeks earlier. Id. The Government contended that the warrantless search of the cellphone was appropriate because it was conducted incident to a lawful arrest. Id. The Court rejected this reasoning because modern cellphones gives its users access to cloud computing: data stored on remote servers instead of on the device itself. Id. at 2491. The Court reasoned that the information is not any less worthy of constitutional protection just because

an individual can now carry the privacies of his life around in his pocket. Id. at 2494.

By requiring a search warrant for any data stored on a cellphone, the Court in Riley highlighted exactly why the Internal Revenue Service (IRS) needed a warrant to search Rep. Wyatt's SkyCloud. Id. Rep. Wyatt kept documents on his account that he would typically keep inside his home. (Factual Stipulations ¶ 17.) Therefore, accessing his electronically-stored SkyCloud files without proper legal authority is the equivalent of conducting a search for documents in Rep. Wyatt's home. The Court in Riley established a reasoning that also applies to Rep. Wyatt by stating that information stored on a cellphone is worthy of constitutional protection because the cellphone can be used to access data stored remotely, like information on the SkyCloud. 134 S. Ct. at 2477. Because the search of Rep. Wyatt's SkyCloud was not conducted incident to arrest, the Government had less reason to conduct the search. (Factual Stipulations ¶ 24.) This Court should find that police violated Rep. Wyatt's Fourth Amendment right to be free from unreasonable searches and seizures by failing to secure a warrant.

C. SkyHigh could not consent to a search by the Internal Revenue Service because it lacked both actual and apparent authority.

Searches conducted without prior approval by a judge or magistrate are per se unreasonable under the Fourth Amendment, subject only to a few specifically established exceptions. California v. Acevedo, 500 U.S. 565, 580 (1991). The only

exception relevant to this case is consent. Consent can be obtained from a third party who possesses authority over the premises. Illinois v. Rodriguez, 497 U.S. 177, 181 (1990). If an officer is presented with ambiguous facts related to authority, he or she has a duty to investigate further before relying on the consent. United States v. Andrus, 483 F.3d 711, 717 (10th Cir. 2007).

Third parties can be granted actual authority through assent to a terms and services agreement. United States v. Smith, 353 Fed. Appx. 229, 230 (11th Cir. 2009). In Smith, the defendant argued that a deputy conducted a warrantless search of his storage unit because he was under the erroneous impression that the storage facility manager had authority to consent to the search. Id. The Court found that defendant's rental agreement gave the storage facility manager actual authority over his storage unit in certain circumstances, such as ensuring the safety of the unit. Id. at 231. When the facility manager opened the unit to make a repair and noticed AK-47 firearms inside, he had actual authority to consent to a search by police in order to ensure its safety. Id. The Court upheld the search of the unit by reasoning that a defendant can knowingly and voluntarily contractually agree to grant actual authority. Id.

Unlike the defendant in Smith, Rep. Wyatt was ensured by SkyHigh that the company would protect his data from unwanted government intrusion. 353 Fed. Appx. at 230; (Factual Stipulations ¶ 14.). The Terms and Services Agreement

specifically mentions that a government agency or law enforcement official would not have access to Rep. Wyatt's data without proper legal authority. (Factual Stipulations ¶ 14.) Rather than presenting proper legal authority, IRS Agents Avery and Smith merely sent a letter to SkyHigh requesting the content stored in Rep. Wyatt's SkyCloud. (Factual Stipulations ¶ 24.) SkyHigh's Terms and Agreement document details their lack of authority to comply with unlawful government requests and therefore, Rep. Wyatt did not give SkyHigh actual authority when he activated his account and agreed to the terms and services.

If the circumstances make it unclear whether the property about to be searched is subject to mutual use by the person giving consent, then warrantless entry is unlawful without further inquiry. United States v. Griswold, 09-CR-6174, 2011 WL 7473466, at *1 (W.D.N.Y. June 2, 2011). In Griswold, the Court rejected the officers' notion that defendant's mother had apparent authority to consent to a search of defendant's laptop. Id. Defendant lived with his mother and kept his personal laptop in his bedroom with password protection. Id. Defendant's mother told the officers that the laptop did not belong to her, and although she did not refuse or object to sign the search consent form, the Court stated that "acquiescence is surely not the litmus test for third party consent." Id. at *5. The Court held that the facts available to officers at the time could not have led a

reasonable officer to believe that apparent authority was present, and the officers therefore needed to inquire further before relying on the consent. Id. at *2.

SkyHigh is a cloud-computing storage company that allows users to remotely store and retrieve their data from a server. (Factual Stipulations ¶ 13.) IRS agents Avery and Smith did not have reason to believe that SkyHigh had authority to consent on behalf of Rep. Wyatt. Quite the contrary, SkyHigh users are guaranteed protection from any intrusion by private and governmental entities, as well as unauthorized access by other individuals. (Factual Stipulations ¶ 14.) Even if IRS Agents Avery and Smith were unfamiliar with SkyHigh's terms and services agreement regarding protection, the ambiguity of SkyHigh's relationship with its users means that they had a duty to further investigate rather than using the data they illegally received to indict Rep. Wyatt.

## II. THIS COURT SHOULD QUALIFY MS. RALPHIO AS AN EXPERT WITNESS BECAUSE SHE OFFERS TESTIMONY BASED ON SPECIALIZED KNOWLEDGE THAT WILL ASSIST THE TRIER OF FACT.

Counselor Mona Ralphio (Ralphio) should be admitted as an expert witness because her testimony is based on specialized knowledge from years of experience working with high risk youth and because her testimony will assist the jury in determining the credibility of Sebastian Swanson's (Swanson) testimony. Federal Rule of Evidence 702 (Rule 702) provides that:

> *a witness may be qualified as an expert by experience, skill, knowledge, training, or education and testify in the form of an opinion if: the specialized knowledge will assist the trier of fact understand evidence or to determine a fact in question; the testimony is based on sufficient data; the testimony is based on reliable principles; and the expert has reliably applied these principles to the facts of the case.*

Fed. R. Evid. 702.

In Kumho Tire Co. v. Carmichael, the Supreme Court interpreted its Daubert v. Merrell Dow Pharm., 509 U.S. 579 (1993), opinion and held that the question of admitting the testimony of any proposed evidence falls to the court itself, pursuant to Federal Rule of Evidence 104(a), and the court must determine if the expert is to present evidence based on specialized knowledge and if that evidence will assist the trier of fact in understanding evidence or determining a fact question. 526 U.S. 137, 147 (1999). An expert's specialized knowledge is admissible where is it based on reliable methodology and it will assist the trier of fact when it is relevant to a fact in question. Id. at 149.

A. Ralphio's expert opinion is admissible because her specialized knowledge is based on a reliable foundation.

Mona Ralphio's testimony qualifies as specialized knowledge because it is based on training and education as a Social Worker; her years of experience working with high-risk youth in Gordon County schools; and her findings in her article *Why You Always Lying: The Invisible Tie between Education, Low*

*Socioeconomic Status and Lying*, which was published in the *University of Stetson Journal of Community Science*. (Factual Stipulations ¶¶ 33, 37-38.) Rule 702 provides that specialized knowledge based on experience, training, or education is reliable if the testimony presented is based on upon sufficient facts or data; the testimony is the result of reliable methods or principles; and the expert has applied the methods or principles to the facts of the case. Blevins v. New Holland N. Am., 128 F. Supp. 2d 952, 956 (W.D. Va. 2001).

An expert witness' opinion has sufficient basis where it is based on direct examination of the object of the testimony. Id. at 957. The expert in Blevins offered testimony about the need for safety features on a New Holland hay baler. Id. at 955. In preparation for the testimony and prior to forming his opinion, the expert examined the hay baler that was involved in the accident. Id. The court found that the expert's opinion was sufficiently based on the facts of the case because he had "carefully studied the issue" when he personally examined the baler. Id. at 957.

Here, Ralphio's testimony is sufficiently based on the facts of this case because her findings are based on a direct examination of the object of her testimony. (Factual Stipulations ¶¶ 33, 35.) Ralphio interviewed and diagnosed Swanson while he was still in high school, intends to interview him again prior to testifying, and reviewed Swanson's disciplinary history and school records in

preparation for her testimony. Id. Therefore, like the expert in Blevins, Ralphio has carefully studied the issue and her opinions are sufficiently based on the facts. Blevins, 128 F. Supp. at 956.

The expert's methodology is sound where the expert applied the methodology to the litigation in the same manner as it would have been applied in a professional setting. Benedi v. McNeil-P.P.C., Inc., 66 F.3d 1378, 1384 (4th Cir. 1995). In Benedi, the plaintiff suffered severe injuries resulting from toxicity from a combination of alcohol and acetaminophen. Id. at 1381. The plaintiff's treating physicians presented evidence that showed the presence of acetaminophen in the plaintiff's liver, which was damaged by the combination of acetaminophen and alcohol. Id. at 1384. The physicians diagnosed the plaintiff by examining liver tissue under microscope, testing blood samples, the plaintiff's reports of consuming both substances, liver enzyme levels, and lack of evidence of any other cause of liver failure. Id. The court found that these are the same types of methodologies that the medical community uses daily when diagnosing patients, and therefore ruled that they were reliable. Id.

Ralphio's methodology is sound because it is based on the same standards that social workers use when diagnosing and reviewing individuals. Like the physicians in Benedi, Ralphio based her opinion on her own diagnosis of Swanson after an in-person interview. Id.; (Factual Stipulations ¶ 33.) Ralphio's opinion is

also based on her review of Swanson's disciplinary history and school records and a second interview with Swanson. (Factual Stipulations ¶ 35.) This Court should find Ralphio's methodology to be reliable because she used standard methods employed other social workers when diagnosing or identifying issues in a patient. Bendi, 66 F.3d at 1384.

The expert's opinion is accurately applied to the facts where the expert can explain how the methodology was used to interpret the facts of the case. United States v. Hammoud, 381 F.3d 316, 337 (4th Cir. 2004). In Hammoud, an expert testified to the practices of a terrorist organization to help the jury better understand the defendant's alleged contacts and interactions with the organization. Id. at 337-38. The expert explained that in social sciences, the standard is to use "[b]asic academic intellectual research combined with [specialized] techniques…" to gather and interpret as much information as possible and then balance each new piece of information against the whole. Id. at 337. The expert identified his process as one that is generally accepted in the social sciences and, therefore, the court found no error in qualifying him as an expert. Id.

Ralphio's methodology has been properly applied because she can explain how she used the facts of Swanson's history to come to her diagnosis. Ralphio can explain to the jury how the facts of Swanson's past behavior and her interviews with him lead her to the diagnosis she has reached. (Factual Stipulations ¶¶ 33, 35.)

Therefore, this Court should find that Ralphio's process is one that is generally accepted in the social sciences and she should be qualified as an expert.

B. Ralphio's testimony is relevant because it will help the jury determine a fact in question.

Mona Ralphio will testify how Swanson's diagnosed mental health issues, socioeconomic history, and education contribute to Swanson being susceptible to suggestion. This testimony will help the trier of fact in determining the credibility of Swanson as a witness. Rule 702's helpfulness requirement holds that the expert evidence proffered can only be admitted when it has a valid connection to the pertinent inquiry. Daubert, 509 U.S. at 591-92.

Expert testimony can be used to educate the jury about particular characteristics of mental disorder. United States v. Finley, 301 F.3d 1000, 1010 (9th Cir. 2002). In Finley, the expert testified about a mental disorder that prevented the defendant from seeing the criminal nature of his actions. Id. The expert based his observations not only on the defendant's statements, but also on his own psychological examination. Id. at 1009-10. The court found that the expert's education and experience made him more qualified than a lay person to assess the significance of the facts, such as the defendant's outright refusal to accept a plea offer. Id. at 1010. The court allowed testimony about the defendant's mental disorder because it reasoned that the jury could accept the expert's

diagnosis that the defendant has the mental disorder, but still find that the defendant knew that his actions were criminal. Id.

Ralphio's testimony will educate the jury about Swanson's mental disorders and the characteristics of those mental disorders. Ralphio's testimony will educate the jury about how Swanson's mental disorder, specifically how the disorder makes him susceptible to suggestion. (Def.'s Notice of Expert Witness.) Further, Ralphio's opinion is based on Swanson's statements and her own examination, as well as an interview in preparation of trial if permitted to testify. (Factual Stipulations ¶¶ 33, 35.) Ralphio's Master's Degree in Social Work and years of experience make her more qualified than a lay person to assess the significance of the facts, like the expert in Finley. 301 F.3d at 1010; (Factual Stipulations ¶ 37.) Because the court reasoned that the jury could accept the expert's diagnosis in Finley and still make up its mind about the *mens rea* of the defendant, this Court should allow the jury to hear Ralphio's diagnosis and determine for itself the credibility of Swanson's testimony. Finley, 301 F.3d at 1010.

Evidence can be permitted in the form of opinion about the credibility of a witness under Federal Rule of Evidence 608(a) where it does not prejudice the jury in the balancing test of Federal Rule of Evidence 403. United States v. Bedonie, 913 F.2d 782, 802 (10th Cir. 1990). In Bedonie, the principal of a local high school was permitted to give testimony about the defendants' reputation for truthfulness

after the defendants testified. Id. The principal's testimony was permitted because he was involved in the community and had known the defendants personally. Id. Based on these contacts, the court found proper foundation for the principal's testimony about the defendants' character for truth and veracity, which was in question following the defendants' testimony. Id. Finley also addresses the balance of Rule 403 by holding that the jury can accept that the defendant has a mental disorder and still determine that he understood the criminal nature of his actions. 301 F.3d at 1010.

Ralphio's testimony is admissible because it is an opinion about the credibility of Swanson as a witness and it will not prejudice the jury. Like the principal in Bedonie, Ralphio has known Swanson since he was in high school and has knowledge of his disciplinary and school records. 913 F.2d at 802; (Factual Stipulations ¶¶ 33, 35.) The court in Bedonie found proper foundation for the principal's testimony because of his knowledge of the witnesses' character for truth and veracity; therefore, this court should find that Ralphio's should be able testify about the affect Swanson's mental disorder has on his credibility as a witness. Id. Like in Finley, Ralphio's testimony will not prejudice the jury, because the jury is able to determine whether Swanson is a truthful witness despite his mental disorder.

## CONCLUSION

This Court should grant the Rep. Wyatt's Motion to Suppress the evidence gathered from Rep. Wyatt's cloud-storage, because it was obtained in violation of the Rep. Wyatt's Constitutional protections from illegal search and seizures.

This Court should deny the Government's Motion In Limine because Ralphio's specialized knowledge is based on her years of experience as a social worker, her opinions are based on reliable methodologies, and her testimony is relevant to assisting the trier of fact in determining a fact in question.

Respectfully Submitted,

/s/ Team 1631D

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF STETSON**

UNITED STATES OF AMERICA,

v. CASE NO.: 15:16-CR-02342-CHR-ESW

CHARLIE WYATT,

Defendant.

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DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS AND RESPONSE TO GOVERNMENT'S MOTION IN LIMINE