

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 21-cr-28 (APM)
	:	
v.	:	
	:	
SANDRA PARKER,	:	
BENNIE PARKER,	:	
LAURA STEELE,	:	
CONNIE MEGGS,	:	
WILLIAM ISAACS, and	:	
MICHAEL GREENE,	:	
	:	
Defendants.	:	
	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANT ISAACS’ AMENDED MOTION IN
LIMINE TO SUPPRESS AND EXCLUDE ENTIRE PROFFERED EVIDENCE**

On March 18, 2021, Defendant Isaacs and his counsel, Charles Greene, appeared for a proffer meeting at the FBI’s Orlando office. Both signed a proffer agreement, which prohibits the government from using the *statements* made by the defendant *directly* against him in a criminal proceeding. *See* ECF No. 874, Ex. 1 at 1, ¶1. The government is expressly permitted to make derivative use of the defendant’s statements or to use the statements on cross-examination or in rebuttal. *Id.* at 2.

The government has not used any of the defendant’s statements directly against him. And it does not intend to do so.

The FBI recorded the March 18 proffer meeting, by video and audio. At the outset of the meeting, an FBI agent present in the room said, in the presence of both the defendant and Mr. Greene, “hopefully it’s recording. We’re good to go.” Later in the meeting, just before the defendant and Mr. Greene stepped out to take a break, the agent said, “And we’re going to remain live, recording, just so everybody knows.” Mr. Greene did not ask any clarification or follow-up

questions after either of the two times the FBI agent notified those present and listening remotely that the meeting was being recorded.

Three months later, on July 21, 2021, government counsel, via email, explicitly notified defense counsel of the existence of the recording: “Chuck/Gene/Natalie: As I believe you know, the FBI recorded the interview of Mr. Isaacs on March 18, 2021, when he came to the FBI’s office with Chuck pursuant to the debrief agreement. What is your position on the government disclosing the recording of that interview to counsel for the co-defendants?” Defense counsel initially objected to the government providing the recording in discovery to the co-defendants, but after defense counsel failed to file a motion to prevent the government from disclosing the recording, the government provided the recording in discovery to all defendants on March 30, 2022.¹

On January 18, 2023, Dr. Galit Askenazi issued her report regarding Defendant Isaacs; the government provided the report to the defense the following day. The report explicitly states on pages 2 and 9 that Dr. Askenazi reviewed the recording of the FBI’s interview of Defendant Isaacs.

Defendant Isaacs’ motion to exclude, filed on March 2, 2023 (ECF No. 874) and supplemented on March 5, 2023 (ECF No. 877), is untimely and without merit.

The time for motions in limine has long since passed. The defense has been aware of the existence of the recording for almost two years and has been aware that Dr. Askenazi reviewed the recording since before trial began. The defense should not now be permitted, after the *Daubert* hearing and after the government has rested, to move to preclude use of the recording in cross-examination or the government’s rebuttal case.

¹ The file was split in two because of its length. Due to a copying error, the file containing the first half was provided twice, while the file containing the second half was inadvertently not provided. On February 23, 2023, after defense counsel informed the government of this error, the government provided the file containing the second half. The government also provided the defense with transcripts of the entire meeting.

Moreover, there is no prohibition on the FBI recording a proffer session. During the course of the instant investigation, some proffer sessions with witnesses or defendants were recorded; some were not. The defense does not point to any rule, law, or case that would prevent the FBI from recording a proffer session. Indeed, in the related *Rhodes* trial, Defendant Watkins' counsel cross-examined an FBI special agent on his *failure* to record Defendant Watkins' proffer sessions. Case No. 22-cr-15, 11/17/22 AM Tr. at 9671-72.

The defense's cite to *United States v. Jimenez-Bencevi*, 788 F.3d 7, 16 (1st Cir. 2015), is unavailing. The proffer agreement there was an outlier because it did not – unlike the proffer agreement here and in most districts throughout the country – “grant the government permission to use the proffer to rebut contrary evidence elicited from other defense witnesses.” *Id.* Therefore, the government in that case could not use the statements made pursuant to the proffer agreement to “cross-examine or otherwise impugn the expert.” *Id.* The government here is under no such restriction. *See* ECF No. 874, Ex. 1 at 2, ¶3.

Once Defendant Isaacs presents, in the words of the proffer agreement, “evidence or argument,” through himself or other witnesses – including his expert, Dr. Sperry – that is inconsistent with anything he said during the proffer, the government is entitled to use his statements during the proffer meeting in cross-examination or in its rebuttal case. *See id.* This includes through Dr. Askenazi, who will be called to rebut Defendant Isaacs' case put on through his own expert and other witnesses. As such, Defendant Isaacs' arguments regarding the government's alleged wrongdoing in preparing for that rebuttal misses the mark and ignores the plain language of the proffer agreement.

In *United States v. Melvin*, 730 F.3d 29, 37 (1st Cir. 2013), the court held that the government improperly used information gleaned from the proffer – the sound of the defendant's

voice, to match up with a voice on an incriminating recording – in its case-in-chief. The court faulted the government for using the information affirmatively against the defendant, *i.e.*, in its case-in-chief. *Id.* Under the court’s reasoning, using the information on cross examination or rebuttal would not have been improper; at that point, the defense would have opened the door and the government could have used the defendant’s statements during the proffer session. The same is true here.

The government agrees that it cannot use the recording in its case in chief. And it did not. But once Defendant Isaacs presents “evidence or argument,” through himself or another witness, inconsistent with his statements on the recording, the government is entitled to use the recording on cross-examination or in rebuttal.

The defendant's motion should therefore be denied.

Respectfully submitted,

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