IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	
v.	Criminal Action
TELDRIN FOSTER AND CARLA JACKSON	No. 1:20-cr-296-JPB

United States' Memorandum Addressing Rule of Completeness

The United States of America, by Ryan K. Buchanan, United States Attorney for the Northern District of Georgia, and Tal C. Chaiken and Samir Kaushal, Assistant United States Attorneys, and by Glenn S. Leon, Chief of the Fraud Section, and Siji Moore, Trial Attorney, respectfully files this Memorandum addressing the rule of completeness.

The United States seeks to admit portions of a December 10, 2020 recorded interview of Defendant Teldrin Foster. Foster's counsel have objected to the admission of three clips under the rule of completeness – exhibits 2250H, 2250J, and 2250M[1] – and indicated that they will seek to admit approximately 40 additional pages of the recording. Because Foster has not identified any portion of those three clips that is misleading or distorted in isolation – let alone any portion that would justify admitting roughly an additional 20% of the interview –

[1] Foster objected to the admission of exhibit 2250D on relevance grounds and to the admission of exhibit 2250I based on an alleged prejudicial reference to violence in that clip.

he cannot use Rule 106 to circumvent the hearsay rules and introduce otherwise inadmissible evidence.

Where a defendant seeks to introduce his or her own prior statements, those statements are not "offered against an opposing party" and therefore do not qualify as non-hearsay under Rule 801(d)(2). Fed. R. Evid. 801(d)(2); *United States v. Willis*, 759 F.2d 1486, 1501 (11th Cir. 1985) (affirming the district court's ruling that the defendant could not elicit, through cross-examination of a government witness, his own exculpatory statements because placing a defendant's remarks before the jury without subjecting the defendant to cross-examination is "precisely what is forbidden by the hearsay rule"); *United States v. Santos*, 947 F.3d 711, 729 (11th Cir. 2020) (affirming district court's admission of inculpatory portions of the defendant's statements and exclusion of exculpatory portions of the defendant's statements).

When a portion of a recorded statement is admitted, the rule of completeness[2] "'does not automatically make the entire document admissible.'" *Santos*, 947 F.3d at 730 (citation omitted); *see United States v. Umbach*, 708 F. App'x 533, 548–49 (11th Cir. 2017) (rejecting the defendant's "all-or-nothing proposition" because an entire recording does not automatically become admissible when a portion is admitted). Instead, additional material is admissible only if it is (1)

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[2] While Rule 106 applies only to *written* statements, the Eleventh Circuit has held that the rule of completeness applies to *oral* statements through Rule 611(a). *See United States v. Range*, 94 F.3d 614, 620–21 (11th Cir. 1996). When evaluating the rule of completeness as to oral conversations under Rule 611(a), courts apply the same fairness standard that applies under Rule 106. *See id*.

relevant to the issue for which the portion was introduced, and (2) "'necessary to qualify, explain, or place into context the portion already introduced.'" *Santos*, 947 F.3d at 730 (citation omitted); *United States v. Woodard*, 662 F. App'x 854, 859–60 (11th Cir. 2016) (district court properly held that rule of completeness did not require admission of additional material that was not relevant to the purpose for which the government introduced the evidence).

Foster bears the burden of identifying additional portions of a recording that satisfy this standard. *See Umbach*, 708 F. App'x at 549 (11th Cir. 2017) (district court properly rejected the defendant's request to play entire interview, where the defendant did not specifically identify portions of the interview that were admissible under the rule of completeness). That is, to admit additional portions of the material under the rule of completeness, Foster must identify portions of the material that are "misleading or distorted in isolation." *United States v. Johnson*, 579 F. App'x 867, 870 (11th Cir. 2014) (district court properly rejected the defendant's argument that additional portions would have "clarified" the defendant's statements because admitted statements were not misleading).

In *Santos*, for example, the defendant was charged with procuring naturalization unlawfully because he had lied about his criminal history in his citizenship application. *Santos*, 947 F.3d at 716–17. In a post-arrest statement, he admitted that he had previously been arrested and convicted of manslaughter in another country, but explained that he did not provide that information on his application because he thought the question related only to domestic arrests and convictions. *Id*. at 717–18. At trial, the court allowed the United States to introduce the defendant's admissions about his criminal history while prohibiting the defendant from introducing his explanation for his answers. *See id*. at 718–19. The Eleventh Circuit affirmed that application of the rule of completeness, concluding that "the later exculpatory part of Santos's statement does not explain or clarify the earlier inculpatory part" and that the defendant's admission as to the fact of his prior conviction was a "different topic" from the reasons why he did not disclose that conviction. *Id*. at 729–30.

Here, Foster "does not point . . . to any portion of the [interview] that [i]s misleading or distorted in isolation." *Johnson*, 579 F. App'x at 870. Simply put, Foster seeks to use the rule of completeness to put before the jury evidence that he could not otherwise introduce without subjecting himself to cross-examination. For example, the interview includes various statements by Foster that Darrell Thomas "hustled" him several years earlier. (*See, e.g.,* pages 6–7). Foster does not identify any clip the United States has sought to admit that is misleading or distorted without these statements from Foster. In fact, exhibits 2250H, 2250J, and 2250M address entirely different topics. Further, Foster selectively omits portions of statements that he does not want the jury to hear, but that the United States could cross examine him on if he testified. For example, on page 34, Foster omits his statement that he thought fake documents were being prepared for auto loans, but includes self-serving statements surrounding that statement.

Foster's self-serving hearsay statements early in the interview do not "explain or clarify" the later inculpatory parts. *Santos*, 947 F.3d at 729–30. Indeed, of the last half of the interview (pages 85-173) – where Foster admitted his involvement after initially downplaying his involvement – Foster seeks to play only approximately two additional pages. This underscores that nearly all the statements Foster seeks to admit are self-serving hearsay.

Dated: February 7, 2024.

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