



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

FTB:CWE/AA/JB
F. #2020R00955

*271 Cadman Plaza East
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June 12, 2024

By E-mail and ECF

The Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Anuli Okeke
Docket No. 22-CR-20 (FB)

Dear Judge Block:

The government respectfully moves to admit Government Exhibit 201-B (the “Exhibit”) as a prior consistent statement of Brahima Lengane. Because the defense repeatedly attacked Lengane’s credibility and memory—including by (a) explicitly asking him if he was lying, and (b) explicitly challenging his memory—the Court should admit the Exhibit consistent with Lengane’s testimony on direct examination.

I. Legal Standard

Pursuant to Federal Rule of Evidence 801(d)(1)(B), a statement is not hearsay under the following circumstances: (1) “[t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement”; (2) the statement “is consistent with the declarant’s testimony”; and (3) the statement is offered either “(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or (ii) to rehabilitate the declarant’s credibility as a witness when attacked on another ground.” Fed. R. Evid. 801(d)(1)(B).

Subsection ii of Rule 801(d)(1)(B) specifically allows for the “substantive use of prior consistent statements that are probative for rehabilitative purposes[.]” United States v. Purcell, 967 F.3d 159, 196 (2d Cir. 2020). Such rehabilitative purposes include the need “to rebut ‘defendants’ attacks on [the declarant’s] credibility and memory.” Id. (quoting United States v. Flores, 945 F.3d 687, 705-06 (2d Cir. 2019) (internal brackets and quotation marks in original)).

Prior consistent statements can also be admitted before a witness testifies, including when the witness' credibility is attacked in an opening statement. United States v. O'Connor, 650 F.3d 839, 862–63 (2d Cir. 2011) (upholding trial court's admission of prior consistent statements before declarant testified where the defendants "had begun their attacks on the credibility of [the declarant's] expected testimony in their opening statements" and "it was clear" the declarant would testify and "could be cross-examined by the defense about the statement"), cert. denied, 565 U.S. 1148 (2012); see also United States v. Ray, 2022 WL 558146, at *5 (S.D.N.Y. Feb. 24, 2022) ("As the language of the Rule makes clear, and as the Second Circuit has confirmed, the declarant need not actually have been cross-examined for the party to offer the prior consistent statement. It is sufficient that it is 'clear' that the declarant would be subject to cross-examination and that at least an implied charge of recent fabrication or improper influence or motive have been levelled.").

For instance, in Ray, the court permitted the government to introduce a prior consistent statement of a witness about a violent attack by the defendant. The court found that on cross examination, the witness was challenged "on the same or closely related topics." Ray, 2022 WL 813942, at *2. The witness' credibility was attacked during the opening and then "cross-examined on his prior inconsistent statements." Id. And finally, that the prior statement operated not just to rehabilitate the witness's credibility generally but also to rehabilitate the witness's credibility with respect to the testimony that has been challenged. Id.

II. Lengane's Testimony

On June 12, 2024, Lengane testified on direct examination. Among other topics, Lengane testified that Assana Zampaligre proposed Lengane apply for a PPP loan, Tr. 448-450, Zampaligre introduced Lengane to the defendant, Tr. 449, that Lengane discussed his proposal for using the PPP loan to renovate a space for his business in front of the defendant, Tr. 450, that the defendant proposed a cover story to Lengane in case inspectors came to the fraudulent business, Tr. 450-451, and that the defendant wrote the withdrawal slip used to liquidate the fraud proceeds, Tr. 465. In addition, the defendant testified that he and Zampaligre put together a list of fraudulent employees.

III. The Consistent Exhibit

The Exhibit is an Apple iPhone note drafted by Lengane from October 2020. Lengane recounts that the series of events that led up to him entering into a conspiracy to commit fraud in connection with a PPP loan. As Legnane wrote, the scheme began when his sister introduced him to Assana Zampaligre, the proprietor of a hair braiding salon in New York. Assana proposed a business venture to Lengane and persuaded Lengane to register a business ID in his name, leading to the creation of Fatims Hair Braiding Beauty and Business Space. Zampaligre proposed that they apply for a PPP loan at Fatim's, and discussed this at Popular Bank. At the bank, Assana and the manager "Anoli" (i.e., the defendant) convinced Lengane to apply for a forgivable loan using his business ID. Further, Lengane wrote "Anoli [sic] told me if some agents came to check in on me I could tell them that I worked from home and I called hair braiders to come in whenever I had some customers." When the fraudulent PPP loan was approved, Legane wrote, "Anoli wrote the checks."

IV. Application

Here, because the defense repeatedly attacked Lengane's "credibility and memory," Flores, 945 F.3d at 705, the government should be permitted to admit the Exhibit because it is consistent with key aspects of Lengane's testimony.

First, in their opening statement, defense counsel argued that the jury could not believe the government's cooperating witnesses, of which Lengane is one, arguing "you will ultimately find that you can't trust the cooperators." Tr. 41.

Second, on cross examination, the defense repeatedly attacked Lengane's credibility.

[Q.] And when those agents asked you about Fatim's and the PPP loan, you initially lied to them, right? (Tr. 474)

Q. And that wasn't truthful, right? (Tr. 475-476)

Third, the defense attacked Lengane's memory, including of who prepared scheme-related checks at the bank.

Q. Because you don't remember clearly who did which things; is that what you're saying? (Tr. 487)

Q. Is this a language issue or is this is memory issue[.] (Tr. 487)

In light of their repeated attacks on the defendant's "credibility and memory" on his testimony related to the defendant's knowledge and participation in the PPP fraud scheme, Flores, 945 F.3d at 705, the government moves to admit the Exhibit, which covers "the same or closely related topics." Ray, 2022 WL 813942, at *2.

Respectfully submitted,

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