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June 13, 2024

BY ECF

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
22 Cr. 20 (FB)

Dear Judge Block:

We write in response to the government's June 12, 2024 letter (Dkt. 256, "Gov. Let.") and in opposition to the government's request to admit Government's Exhibit 201-B. For the reasons that follow, the exhibit is not a prior consistent statement made by the witness, Brahim Lengané, and is inadmissible hearsay, lacks relevance, and is unduly prejudicial.

Initially, the government's letter appears to have shifted both its request and the underlying legal rationale from that stated by the government several hours earlier in Court during trial. The initial request, as stated at sidebar, was for the introduction of a limited portion of the exhibit relating to which bank employees prepared certain cashier's checks in relation to Lengané's August 21, 2020 withdrawal as a prior consistent statement. Tr. 492. The government appears to have abandoned this position. The government's revised request is for introduction of the entire exhibit as a prior consistent statement to purportedly rehabilitate Lengané from "attacks on [his] credibility and memory."¹ Gov. Let. at 3. While, the initial request was unfounded as a matter of law and rested on a misreading of the transcript, it was limited in scope. The current/revised request is highly problematic in that it seeks to introduce the entirety of document which, as explained below, is essentially a script Lengané wrote after being contacted by law

¹ The government has thus shifted from reliance on Federal Rule of Evidence 801(d)(1)(B)(i) to prong (ii) of that subsection, which excludes from the hearsay rule statements when "[t]he declarant testifies and is subject to cross examination about a prior statement, and the statement is consistent with the declarant's testimony and is offered to rehabilitate the declarant's credibility as a witness when attacked on another ground."

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enforcement to try to exculpate himself and inculpate others

The threshold problem with the government's argument is that the document is *not a prior statement* at all; it post-dates many of the statements at issue. The government's letter is notably vague regarding the date of both the exhibit it seeks to admit and the prior statements at issue on cross examination of Lengane. Lengane acknowledged that he first met with law enforcement on **October 5, 2020**. Lengane was asked whether he at first told federal agents that his business, Fatim's, had twenty employees and later that it had six employees—as the agent's interview memo clearly stated. Tr. 474-476. Lengane denied having made that statement and further stated that his memory was not refreshed when shown the interview memos.² Though, the government's letter rests largely on this colloquy, it does not disclose the date on which the alleged statements would have been made.³ See Gov. Let. at 3.

Lengane was next cross-examined regarding statements he made in a phone call with law enforcement a few days later on **October 7, 2020**. Tr. 479. Lengane denied having made the statement about which he was examined—that there was a guy who set the whole thing up—and again testified that his memory was not refreshed after reviewing an interview memo. Tr. 480

Having already been interviewed by law enforcement twice in early October 2020, Lengane apparently set about crafting a narrative he wished to convey to law enforcement in the form of a script. Indeed, even Lengane's self-serving testimony explaining the nature of the exhibit conceded that it was prepared “after meeting . . . the federal agents” and understanding that his problems were “serious” in order to “tell them” “what happened . . . because I [] knew that they would come ask questions again.” Tr. at 491.

The metadata from Government's Exhibit 201-B states that it is a Note created in Lengane's phone on **October 14, 2020** and modified on **October 21, 2020**. The Note, in its original and revised forms, extends over 5 pages and 3,000 words and is clearly written to deflect blame from Lengane to others. It concludes by stating “I have been used”; asserting that “I did not understand the system, let alone business matters”; noting that “[t]hey did not mind a second that I had a wife who is jobless and two children as well as a sister to take care of”; and stating that “those who convinced me into this knew I was not aware of the consequences.” Notably, the government describes the exhibit as a “note drafted by Lengane from October 2020,” Gov. Let. at 2, without stating the precise date, omitting the fact that it post-dated many of the statement about which Lengane was cross-examined, and failing to discuss that the purpose of the document was to serve as a script for future interviews with law enforcement.

² The memorandum was not introduced into evidence due to the government's argument in its motion *in limine* that law enforcement agent memoranda cannot be attributed as statements of the witness who neither authored nor adopted them.

³ Nor does the government's letter acknowledge that the interview memo was not introduced into evidence. Permitting the government to admit this exhibit while not permitting the introduction of the interview memos would be inherently unfair and create a distorted evidentiary record.

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The nature of the document, a self-serving piece of advocacy to law enforcement created after the witness had blatantly lied to agents, renders the document obviously unreliable and paints a clear distinction to the authority cited by the government in support. In *United States v. Flores*, 945 F.3d 687 (2d Cir. 2019) the Second Circuit held that the district court did not abuse its discretion in admitting contemporaneous notes of an agent regarding post-arrest statements made by two defendants on a flight. In *United States v. Purcell*, 967 F.3d 159, 196 (2d Cir. 2020), the Second Circuit upheld the admission of the entirety of a witness's statements to the police in response to cross-examination that suggested that the witness had only told half-truths and had edited her answers to the police. In *United States v. Ray*, No. 20 Cr. 110 (LJL), 2022 U.S. Dist. LEXIS 47245, at *7, 2022 WL 813492 (S.D.N.Y. Mar. 16, 2022), the district court permitted a contemporaneous oral statement by the witness to his sister about a violent act committed by the defendant to refute the implication on cross-examination that the witness had changed his assessment of the defendant as a product "of government influence and mental fragility." The defense is not aware of any court, and the government's cites no authority, permitting the introduction of a post-hoc script to advocate for leniency from law enforcement as a prior inconsistent statement.

On its face, Exhibit 201-B is Lengane's apparent attempt to script his entire statement to law enforcement, including, as discussed below, various facts that even if true are irrelevant and prejudicial. As such, the document, in addition to lacking indicia of reliability, includes pages of information that bear no relation to the areas in dispute. The government baldly states that the Exhibit "covers the same or closely related topics" but never explains what those topics are. And, more specifically, the government fails to articulate any theory of the manner in which any part of the document, let alone the whole thing, would serve to rehabilitate Lengane.

In addition to Exhibit 201-B's obvious hearsay problems, the document also contains substantial portions (which the government no longer offers to remove) that, in addition to being inherently unreliable, have no probative value and are substantially prejudicial. These include, but are not limited to, Lengane's assertions that:

- Assan Zampaligre took money from him that she knew "I would need back in 2020 for son's tuition for college."
- Zampaligre was "highly indebted, which she had hidden from me from the beginning. She was many months behind for the rent, had electricity bills piled up and owed money to some people."
- Zampaligre "convinced me to apply for a business ID in my name so that there would be two separate businesses on the same location."
- He "begged [Zampaligre] for 10,000 for my son's college tuition she refused [sic] And definitely gave me 6000."
- "I now realize that my sister and I have both been used."
- "I did not understand the system, let alone business matters."
- "Benefiting from the situation was what they only cared about. They did not mind a second that I had a wife who is jobless and two children as well as my sister to take care of. What will be their fate if something happens to me?"
- "Those who convinced me into this perfectly knew I was not aware of the consequences."

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Each of these self-serving assertions is irrelevant and prejudicial. The document should thus also be excluded under FRE 403.

CONCLUSION

For the reasons stated above, the Court should the government's request and exclude GX 201-B.

Very truly yours,

Noam Greenspan

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Noam Greenspan