

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:19-cr-20693-UU

UNITED STATES OF AMERICA

Plaintiff,

v.

PETER SOTIS and
EMILIE VOISSEM,

Defendants.

/

**DEFENDANTS' JOINT REPLY TO UNITED STATES' RESPONSE
IN OPPOSITION TO MOTION FOR A NEW TRIAL**

COMES NOW, Defendants PETER SOTIS and EMILIE VOISSEM, by and through their respective attorneys, and submit their Reply to the United States' Response in Opposition to the Joint Motion for New Trial (DE 118), and state as follows:

With respect to that portion of the Government's Response in which it contends that the Court properly admitted printed copies of Robotka's google calendars as prior consistent statements, the government argues that, in addition to such statements being admissible to rebut a charge of recent fabrication, Rule 801(d)(1)(B) allows those statements to be admitted "to rehabilitate the declarant's credibility as a witness when attacked *on another ground*." FED. R. EVID. 801(d)(1)(B)(ii) (emphasis added). The government further explains, in a footnote, that the Advisory Committee notes reveal that this portion of the rule "was amended in 2014 for, among other reasons, precisely these circumstances." Gov't's Resp. at 12, n. 1. However, to be more precise, the notes emphasize that the amendment "does not make any consistent statement admissible that was not admissible previously -- the only difference is that prior consistent statements otherwise admissible for rehabilitation are now admissible substantively as well." FED.

R. EVID. 801(d)(1)(B) Advisory Committee's Notes to 2014 amendment. The notes explain the reason behind the limited change:

The intent of the amendment is to extend substantive effect to consistent statements that rebut other attacks on a witness -- *such as the charges of inconsistency or faulty memory*.

The amendment does not change the traditional and well-accepted limits on bringing prior consistent statements before the factfinder for credibility purposes. *It does not allow impermissible bolstering of a witness.*

Id. (emphasis added).

In this case, the testimony of Robotka was never significantly challenged for inconsistency or faulty memory. Robotka conceded some short term memory loss as a result of his military service, but the transactions to which he testified were over five years ago, and his long-term memory was never seriously challenged. The principal inquiry on cross had to do with his biases against the defendants, the financial motivations behind his testimony and his personal animus as to at least one of the defendants. Under these circumstances, the calendars admitted under either subsection of Rules 801(d)(1)(B)(i) or (ii) were "impermissible bolstering." The fact that they were allowed to come into evidence without the support of metadata to ensure the reliability of these copies only compounded the error their admission.

With respect to the other arguments contained in the government's Response, the undersigned relies upon the arguments made in its original motion and those made in Court in support of the defendants' respective motions for acquittal under FED.R.CRIM.P. 29.

WHEREFORE, for the reasons set forth above and in their Joint Motion for A New Trial (DE 115), the Defendants respectfully request that the Court set this matter for hearing, and for all other and further relief deemed just and appropriate under the circumstances.

Dated: November 24, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system on this 24th day of November, 2021 and was served electronically to all counsel of record.

By: Bruce Udolf