

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: CR-24-314-J
	)	
BG DALE BISCOE,	)	
RANDALL DAVID SHELTON, and	)	
SIOUX EROSION CONTROL, INC.,	)	
	)	
Defendants.	)	

UNITED STATES' TRIAL BRIEF

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The United States of America respectfully submits this trial brief to provide the Court with a general framework for legal and evidentiary issues that may arise at trial.

I. STATUS OF THE CASE

This case is set for the August 2026 trial docket. The United States expects its case-in-chief to span approximately five days.

II. SUMMARY OF THE GOVERNMENT’S CASE

Defendants BG Dale Biscoe, Randall David Shelton, and Sioux Erosion Control, Inc. (“Sioux”) are charged with one count of violating the Sherman Act, 15 U.S.C. § 1, for conspiring to fix prices and rig bids for erosion control products and services, including solid slab sodding, from at least as early as September 2017 through until as late as April 2023.¹ Indictment, ECF 1, ¶ 9.

The conspiracy involved (1) four erosion control companies that operated in Oklahoma including Defendant Sioux, C.H. Smith Construction, Inc. d/b/a Verdigris Valley Sod Farms (“Verdigris”), El Reno Sod Farm, Inc. (“El Reno”), and Ryan Sullivan, Inc. d/b/a Green Turf Sod Installation (“Green Turf”); and (2) employees of those companies, including Defendant Biscoe (part owner and vice president of Defendant Sioux), Defendant Shelton (estimator at Defendant Sioux), James Travis Feazel (former estimator and operations manager at Defendant Sioux), Stanley Mark Smith (part owner

¹ Erosion control means methods used to eliminate or reduce soil runoff and includes the installation of sod. Indictment ¶ 1. Erosion control products and services, including the use of solid slab sodding (i.e., strips or blocks of live grass sod laid side-by-side to cover exposed soil), are often incorporated into contracts with federal, state, and local governments for publicly funded projects including highway construction. *Id.*

and vice president of Verdigris), Roy Henry Heinrich (vice president of El Reno), and Ryan Ashley Sullivan (vice president of Green Turf).² *Id.* ¶ 5.

The United States anticipates calling Feazel, Smith, Heinrich, and/or Sullivan (collectively, “Pleading Co-Conspirators”) as witnesses at trial and will supplement that testimony with text messages, emails, toll records, recordings, and summary charts, as well as additional witness testimony. Overarchingly, testimony from the Pleading Co-Conspirators, corroborated by documentary evidence, will prove that the Defendants coordinated with their main competitors to raise the price of solid slab sodding for public infrastructure projects, divvy up erosion control work on projects based on geography or other preference, and submit intentionally losing bids so that the designated competitor would be more likely to win the job.

Testimony from other witnesses and corroborating documentary evidence will further show that many of the projects impacted by the conspiracy received federal funding, involved prime contractors based outside of Oklahoma who subcontracted with Defendant Sioux and other co-conspirators, and/or included the use of erosion control products procured from outside of Oklahoma that moved across state lines. During the conspiracy, the price of sod on projects administered by the Oklahoma Department of Transportation more than doubled. In total, the conspiracy affected more than \$100 million of contracts for erosion control work, which were awarded at collusive and non-competitive prices.

² Feazel, Smith, Heinrich, and Sullivan each pled guilty for their roles in the conspiracy. *See United States v. Feazel*, No. CR-23-381; *United States v. Heinrich*, No. CR-23-493; *United States v. Sullivan*, No. CR-23-451; *United States v. Smith*, No. CR-24-66.

III. ELEMENTS OF COUNT ONE

Section 1 of the Sherman Act outlaws every “conspiracy, in restraint of trade or commerce among the several States or with Foreign nations,” which includes conspiring to fix prices or rig bids. 15 U.S.C. § 1. The purpose of the Sherman Act is to preserve free and unfettered competition in the marketplace so that the public may receive better products and services at a lower cost.

To establish a price-fixing or bid-rigging conspiracy in violation of Section 1 of the Sherman Act, the United States must prove the following elements: (1) the conspiracy charged in the indictment existed at or about the time alleged; (2) the defendant knowingly joined the conspiracy; and (3) the conspiracy described in the Indictment occurred within the flow of interstate trade or commerce. *See, e.g., United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 219-20, 223 (1940); *United States v. A. Lanoy Alston, D.M.D., P.C.*, 974 F.2d 1206, 1210 (9th Cir. 1992) (affirming price-fixing jury instructions as “technically and legally correct”); *United States v. All Star Indus.*, 962 F.2d 465, 474-75 (5th Cir. 1992) (affirming bid-rigging jury instructions).

A. The *Per Se* Illegal Conspiracy to Fix Prices and Rig Bids

To establish this first element, the United States must prove only the existence of the charged conspiracy among competitors—in this case, erosion control companies and their employees agreed to fix prices and rig bids for erosion control products and services. *See* June 6, 2026 Order, ECF 193, at 1; *see also* United States’ Opposition to Motion to Dismiss, ECF 191, at 3-4 (discussing how price fixing and bid rigging are *per se* Sherman Act violations).

The price-fixing and bid-rigging conspiracy charged in the Indictment is a *per se* violation of the Sherman Act. *See* September 8, 2025, Order, ECF 127, at 2-3; June 6, 2026, Order, ECF 193, at 1-2. “Under a *per se* rule, the government prevails simply by proving that a particular contract or business arrangement exists; no further market analysis is necessary, and defendants may not present any defenses.” *United States v. Kemp & Assocs., Inc.*, 907 F.3d 1264, 1272 (10th Cir. 2018) (citation and internal marks omitted). Courts therefore prohibit defendants in *per se* cases “from offering evidence of the reasonableness and/or economic justification for the alleged activities or evidence of the defendants’ lack of intent to violate the law or to restrain trade.” *United States v. Suntar Roofing, Inc.*, 897 F.2d 469, 472 (10th Cir. 1990).

B. The Defendants Knowingly Participated in the Conspiracy

To satisfy the second element, the United States need prove only that the Defendants knowingly—that is “voluntarily and intentionally,” *United States v. Suntar Roofing, Inc.*, 709 F. Supp. 1526, 1537 (D. Kan. 1989), *aff’d*, 897 F.2d 469 (10th Cir. 1990)—joined the alleged conspiracy, *see United States v. Metro. Enters., Inc.*, 728 F.2d 444, 449-50 (10th Cir. 1984) (“While intent to restrain competition is an element of a criminal violation of the Sherman Act . . . we think the proof of the requisite intent in the instant case was satisfied by showing that the [defendants] knowingly joined and participated in a conspiracy to rig bids.”) (citations omitted).

C. The Conspiracy Occurred within the Flow of Interstate Commerce

To satisfy the third element, the United States must prove that “the conspiracy charged in the indictment either affected interstate commerce in goods or services or

occurred within the flow of interstate commerce in goods or services.” *Suntar Roofing*, 897 F.2d at 477. To establish that the charged conspiracy occurred within the flow of interstate commerce, the United States could show, for example, that projects affected by the conspiracy: (1) received federal funding; (2) involved prime contractors based outside of Oklahoma who subcontracted with Defendant Sioux or other co-conspirator erosion control companies; and/or (3) included the installation of temporary erosion control products procured from outside of Oklahoma that moved across state lines. *See, e.g., United States v. Vega-Martinez*, 949 F.3d 43, 49 (1st Cir. 2010) (indictment charging Sherman Act violation properly alleged conduct “within the flow of . . . interstate trade and commerce” where conduct was “funded or supported at least in part by federal funds”); *United States v. Brighton Bldg. & Maint. Co.*, 435 F. Supp. 222, 227 (N.D. Ill. 1977) (indictment sufficiently alleged requisite effect on interstate commerce where federal funds were used to finance in part highway construction projects and there was a flow of construction materials from suppliers outside of Illinois to jobsites in Illinois), *aff’d*, 598 F.2d 1101 (7th Cir. 1979); *United States v. Richter Concrete Corp.*, 328 F. Supp. 1061, 1066 (S.D. Ohio 1971) (indictment sufficiently alleged flow of cement in interstate commerce where substantial part of the cement used by defendants in Ohio was produced outside of Ohio).

IV. ADMISSIBILITY OF THE GOVERNMENT’S EVIDENCE

The United States will seek to introduce evidence including (A) statements of the Defendants and their co-conspirators; (B) photographs taken inside of Defendant Sioux’s offices; (C) testimony of Pleading Co-Conspirators; (D) documentary evidence such as toll

records, solicitations for bids, bid submissions, contracts, invoices, financial records, and other business records; and (E) summary exhibits.

A. Statements of the Defendants and their Co-Conspirators

The United States will seek to admit numerous statements by Defendant Biscoe, Defendant Shelton, and/or their co-conspirators. These statements will come in the form of (1) audio and video recordings; (2) text message data extracted from mobile phones; and (3) documents produced by Defendant Sioux.

The United States proffered nearly all this evidence at the *James* hearing in June 2025. *See James* Log, ECF 106-1.³ After the *James* hearing, the Court found that all the co-conspirator statements proffered by the United States were made during, and in furtherance of, the conspiracy and are therefore admissible under Rule 801(d)(2)(E). *James* Order, ECF 109. The Court further explained that “these statements are nontestimonial and their admission violates neither *Crawford v. Washington*, 541 U.S. 36 (2004) nor *Bruton v. United States*, 391 U.S. 123 (1968).” *Id.* at 4 (citation omitted). Insofar as any of these recorded statements capture statements made by individuals who are not co-conspirators, those statements are still admissible as non-hearsay for context. *See, e.g., United States v. Smalls*, 605 F.3d 765, 785 n.18 (10th Cir. 2010) (confidential informant’s statements made

³ Since the *James* hearing, the United States has identified a limited number of additional recording excerpts and text message conversations involving co-conspirators that it may seek to admit at trial under Rule 801(d)(2)(E), after laying the appropriate foundation. *Cf. United States v. Hernandez*, 829 F.2d 988, 994 n.6 (10th Cir. 1987) (Tenth Circuit preference for *James* hearings to evaluate co-conspirator statements “in no way precludes the trial judge from exercising his considerable discretion and conditionally admitting the statements subject to later being connected up”).

to defendant's accomplice during recorded conversation were admissible to provide context and effect on listener); *United States v. Murry*, 31 F.4th 1274, 1292 (10th Cir. 2022) ("We have long held that a statement offered to establish its effect on the listener is not hearsay.").

The United States' anticipated approach for authenticating the evidence containing these statements will differ depending on the source of the evidence.⁴ Authentication may be established when a proponent "produce[s] evidence sufficient to support a finding that the item is what the proponent claims it is." Fed. R. Evid. 901(a). The Tenth Circuit has "adopted a flexible approach" to authenticating audio and video recordings, *United States v. Green*, 175 F.3d 822, 829-30 (10th Cir. 1999), under which courts should "consider various nondispositive factors including whether the device [was] capable of recording the conversation, whether the speakers are identified, and whether the recording has been altered," *United States v. Pebley*, 846 F. App'x 671, 674 (10th Cir. 2021) (citing *Green*, 175 F.3d at 830 n.3). To authenticate by voice identification, the witness's knowledge of the speaker "need only rise to the level of minimal familiarity." *United States v. Bush*, 405 F.3d 909, 919 (10th Cir. 2005) (citation omitted). "Once minimal familiarity is satisfied, it is for the jury to assess any issues regarding the extent of the witness' familiarity with the voice." *Id.*

To authenticate the audio and video recordings that it plans to introduce, the United

⁴ The Court has already granted a motion *in limine* seeking to authenticate records obtained from mobile phone extractions, Additional MIL Order, ECF 200, at 1, and the United States anticipates reaching a stipulation with the Defendants regarding the authenticity of documents produced by Defendant Sioux.

States anticipates calling at least two witnesses who will testify that they recognize the voices captured on those recordings. *See* Fed. R. Evid. 901(b)(5) (lay witness may authenticate recording after “identifying a person’s voice” on it). Specifically, the United States plans to call (1) Special Agent Howard James of the U.S. Department of Transportation Office of Inspector General (“DOT-OIG”), *see United States v. Collins*, 715 F.3d 1032, 1036 (7th Cir. 2013) (permitting agent to authenticate audio recording where agent was familiar with defendant’s voice); and (2) co-conspirator Travis Feazel, whose own voice is captured on certain of the recordings, *see United States v. Reyes-Rosario*, 142 F.4th 3, 11-12 (1st Cir. 2025) (holding no abuse of discretion where witness identified himself in several portions of video recording and rejecting defendant’s argument that witness was required to capture video himself to authenticate it). The United States further anticipates that Special Agent James will testify that many of the recordings were made using DOT-OIG-supplied recording devices and that he assisted with the creation of those recordings. *See United States v. Barone*, 913 F.2d 46, 49 (2nd Cir. 1990) (government may lay “proper foundation for [a recording] . . . through the testimony of the agent who operated the recording device”).

B. Photographs Taken Inside Defendant Sioux’s Offices

The United States will seek to admit certain photographs that were taken inside Defendant Sioux’s offices during the conspiracy. The Tenth Circuit has made clear that photographs can be authenticated by a witness other than the photographer:

[A] photograph is viewed merely as a graphic portrayal of oral testimony, and becomes admissible only when a witness has testified that it is a correct and accurate representation of relevant facts personally observed by the

witness. Accordingly, under this theory, the witness who lays the foundation need not be the photographer nor need he know anything of the time, conditions, or mechanisms of the taking. Instead he need only know about the facts represented or the scene or objects photographed, and once this knowledge is shown he can say whether the photograph correctly and accurately portrays these facts. Once the photograph is thus verified it is admissible as a graphic portrayal of the verifying witness' testimony into which it is incorporated by reference.

United States v. Wilson, 719 F.2d 1491, 1495 (10th Cir. 1983) (citation omitted).

To authenticate the photographs that it plans to introduce, the United States anticipates calling at least three witnesses, including (1) DOT-OIG Special Agent James, who is anticipated to testify regarding the timing and manner in which he received the photographs from the individual who took them; (2) DOT-OIG Special Agent Rebecca Seanor, who is anticipated to testify regarding metadata showing when the photographs were taken;⁵ and (3) co-conspirator Travis Feazel, who is anticipated to testify that the photographs correctly and accurately portray Defendant Sioux's office at the time they were taken. *See Wilson*, 719 F.2d at 1495-96 (affirming authentication of photographs based on eyewitness familiar with scenes depicted therein).

C. Pleading Co-Conspirator Testimony

Under Rule 701, the Pleading Co-Conspirators can testify about their understanding of certain statements made by Defendant Biscoe, Defendant Shelton, and other co-conspirators in recorded conversations and correspondence (e.g., text messages and emails). *See Fed. R. Evid. 701* (lay witness is admissible if it is "(a) rationally based on the

⁵ On January 21, 2025, the United States noticed Special Agent Seanor as a potential expert witness who would provide testimony on this issue. ECF 58 at 5-6.

witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702"); *United States v. Urlacher*, 979 F.2d 935, 939 (2nd Cir. 1992) (permitting co-conspirator testimony interpreting statements made by defendant under Rule 701, because co-conspirator, "as a participant in the conversations, had firsthand knowledge of the conversations" and "his testimony was helpful to the jury's understanding of [discussions therein]"); *United States v. Valbrun*, 877 F.3d 440, 443-45 (1st Cir. 2017) (same). In applying Rule 701, courts have consistently held that a witness may testify to his or her understanding of statements made by another person in a conversation to which the witness was a party. *See, e.g., United States v. Sneed*, 34 F.3d 1570, 1581 (10th Cir. 1994) ("A witness may base his testimony upon his perceptions of conversations and, thus, may clarify conversations that are abbreviated, composed of unfinished sentences and punctuated with ambiguous references to events that were clear only to the conversation participants.") (citation omitted).

Because "jurors may need an 'interpreter' to make sense of private conversations, and 'a party to the conversation is the obvious choice to be that interpreter[.]'" *United States v. Alexander*, 2014 WL 64124, at *6 (N.D. Ill. Jan. 8, 2014) (quoting *United States v. Curescu*, 674 F.3d 735, 740 (7th Cir. 2012)), the Pleading Co-Conspirators' testimony regarding their own recorded conversations and correspondence will be helpful to the jury in understanding the matters discussed therein.

D. Business Records Hearsay Exception

The United States will seek to admit certain exhibits as business records. Those exhibits include toll records from telephone carriers, charts compiled by the Oklahoma Department of Transportation and Oklahoma Turnpike Authority regarding contract information, and charts compiled by the Federal Highway Administration regarding project funding. The Tenth Circuit has held that both toll records and charts of compiled data are admissible under the business records hearsay exception set forth in Rule 803(6).⁶ *See United States v. Yeley-Davis*, 632 F.3d 673, 678, 680-81 (10th Cir. 2011) (“[t]he certification and affidavit signed by the Verizon records custodian establish that the phone records are . . . admissible under the business records exception to the hearsay rule”); *United States v. Hayes*, 861 F.2d 1225, 1228 (10th Cir. 1988) (“computer data compilations may constitute business records for purposes of Rule 803(6), and may be admitted at trial if a proper foundation is established”) (footnote and citation omitted).

The United States will also offer under the business records hearsay exception the following categories of documents created and maintained in the usual course of business by Defendant Sioux, other erosion control subcontractors, or prime contractors that worked with erosion control subcontractors: (1) solicitations for bids for erosion control products and services; (2) bids for erosion control products and services; (3) subcontracts for erosion control products and services; (4) invoices for erosion control products and services; (5) financial records pertaining to the provision of erosion control products and services;

⁶ The United States anticipates reaching a stipulation with the Defendants that these documents constitute business records under Rule 803(6).

and (6) correspondence regarding such categories of documents.⁷ The United States will lay business records foundation for most of these exhibits via Rule 902(11) certifications, not live testimony.

E. Summary Exhibits

The United States intends to present summary exhibits containing excerpts from voluminous records to assist the jury and to streamline trial. Summary exhibits are admissible under Rule 1006 “to prove the content of voluminous admissible writings, recordings, or photographs that cannot be conveniently examined in court, whether or not they have been introduced into evidence,” provided that the proponent has made “the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place.” Fed. R. Evid. 1006(a)-(b).

Exhibits A-F, attached to this brief and described below, are representative examples of categories of summary exhibits the United States anticipates seeking to admit:

- **Ex. A:** Text message summary (November 7, 2017 text messages between Travis Feazel and Defendant Biscoe)⁸
- **Ex. B:** Timeline summary (Oklahoma Turnpike Authority letting for project number EOC-2465 – email address redacted)
- **Ex. C:** Toll record summary (Defendant Biscoe’s calls with Mark Smith, Ryan Sullivan, Henry Heinrich, and Jenny Weaver – phone numbers redacted)
- **Ex. D:** Map summary (Results of November 2021 ODOT letting)
- **Ex. E:** Price trend summary (Sod price over time for Defendant Sioux)
- **Ex. F:** Calendar summary (Mark Smith’s calls with competitors prior to ODOT lettings between April and November 2019)

⁷ Certain of these business records are also self-authenticating under Rule 902, and/or independently admissible as non-hearsay under Rule 801.

⁸ Text message summary exhibits are the subject of the United States’ motion in *limine* #11, ECF 195 at 4-8, on which the Court has reserved its ruling, ECF 200 at 1.

The information underlying the summary exhibits is drawn from source exhibits, including toll records, text messages, erosion control bid submissions, and erosion control subcontracts that were provided to the Defendants in discovery. All those source exhibits are admissible, with the vast majority being either non-hearsay under Rule 801(d)(2)(E) or business records under Rule 803(6).

The United States's evidence is voluminous. The summary exhibits pull information from over 50 documents, many of which—like the toll records and text message conversations—are hundreds or thousands of pages in length. The summary exhibits also source information from different kinds of records to allow the United States to illustrate its theory and aid the jury in ascertaining the truth. *See, e.g., Yeley-Davis*, 632 F.3d at 677, 685-86 (allowing summary exhibit connecting co-conspirators via photo arrays); *United States v. Nivica*, 887 F.2d 1110, 1125-26 (1st Cir. 1989) (allowing summary exhibit sourced from “various business records”); *United States v. Pinto*, 850 F.2d 927, 935-36 (2d Cir. 1988) (allowing summary exhibits reflecting calls, participants, and locations in multidefendant conspiracy case).

The United States's ability to use summary exhibits to prove a multi-year and multi-defendant conspiracy will significantly streamline trial and conserve judicial resources and time. *See United States v. Janati*, 374 F.3d 263, 274-75 (4th Cir. 2004) (recognizing utility of summary charts in conserving judicial resources and promoting jury understanding).

V. ADDITIONAL EVIDENTIARY MATTERS

A. The Defendants May Not Admit Their Entire Recorded Statements

As noted above, the United States will seek to admit numerous statements of the Defendants and their co-conspirators, including statements captured on audio and video recordings. The relevant exhibits for the recordings, however, will not reflect the complete recorded statements. Rather, the United States will seek admission of only the relevant portions of longer recordings— nearly all of which are statements the Court has already determined are admissible under Rule 801(d)(2)(E) (*see James Order*)—which serves the interest of efficiency by keeping out irrelevant and even prejudicial statements.⁹

To the extent the Defendants may seek to offer their own out-of-court statements, those statements remain inadmissible hearsay pursuant to Rule 801(d)(2), which excludes from the definition of hearsay only the statements of a party that are offered *against* that party. Fed. R. Evid. 801(d)(2); *see, e.g., United States v. Larsen*, 175 F. App’x 236, 241 (10th Cir. 2006) (“Rule 801(d)(2) . . . does not permit self-serving, exculpatory statements made by a party [to be] offered by that same party”).

Nor are such statements admissible under the rule of completeness simply because the United States introduces some other portion of a Defendant’s statement. *See United States v. Williston*, 862 F.3d 1023, 1039 (10th Cir. 2017) (defendant cannot use rule of completeness as “an end-run around the adversarial process” to admit otherwise

⁹ For context, the total duration of the longer recordings is over 10 hours, whereas the total duration of the recording excerpts the United States intends to offer into evidence and play for the jury is less than 44 minutes.

inadmissible evidence, but only to “clarify or explain” government evidence) (citation omitted). “The purpose of Rule 106 is to prevent a party from misleading the jury by allowing into the record relevant portions of a writing or recorded statement which clarify or explain the part already received.” *United States v. Lopez-Medina*, 596 F.3d 716, 735 (10th Cir. 2010) (citation omitted). As a result, the Defendants can only prevail in offering additional statements within a recording under Rule 106 if they can demonstrate that they would “clarify or explain the part already received” into evidence. *Id.* (citation omitted); *see also United States v. Stein*, 985 F.3d 1254, 1271 (10th Cir. 2021) (upholding trial court’s denial of defendant’s request to admit complete recordings of co-conspirator conversations because defendant failed to identify—with specificity and before the middle of trial—which portions of admitted statement clips needed clarification).

B. Transcripts of Audio and Video Recordings

Alongside its audio and video exhibits, the United States intends to offer transcripts of the recordings to aid the jury. It is within the Court’s discretion to permit the use of transcripts to assist the jury at trial as long as they are accurate. *See United States v. Devous*, 764 F.2d 1349, 1354-55 (10th Cir. 1985). Accuracy may be agreed to by the parties, determined by the Court absent stipulation, or disputed such that the parties present opposing versions of the transcript to the jury. *Id.* at 1355.¹⁰

¹⁰ The United States anticipates reaching a stipulation with the Defendants regarding the accuracy of the transcripts for each of the recordings that it will seek to offer.

C. Use of Law Enforcement Agents' Interview Summaries or Reports

In its discovery productions, the United States provided the Defendants with copies of law enforcement reports that summarize interviews of individuals who may testify at trial. The Defendants should be precluded from introducing the contents of these interview summaries to impeach witnesses on the basis of inconsistent statements because the interview summaries are not the statements of the witnesses themselves. *See United States v. Shannahan*, 605 F.2d 539, 542 (10th Cir. 1979) (upholding trial court's decision to disallow use of agent's interview reports during cross-examination of witness, where interview reports were not signed, or otherwise adopted or approved by witness, and did not come within rule authorizing use of prior statements).

The Defendants are, of course, free to ask a witness whether he or she made a statement that is reflected in an interview summary. If the Defendants are not satisfied with the witness's answer, however, they may not publish or introduce the contents of the interview report as a prior inconsistent statement. *See United States v. Hill*, 526 F.2d 1019, 1026 (10th Cir. 1975) (upholding trial court's decision to "not allow counsel to use the 302 statement to impeach a witness because the witness did not prepare or sign the document and probably never adopted it"). Even if the Defendants use an interview summary to refresh a witness's recollection, they may not use the recollection refreshing process to improperly publish the contents of the interview summary to the jury. *See United States v. Marks*, 816 F.2d 1207, 1210-11 (7th Cir. 1987) (district court appropriately barred defendants from reading aloud from interview reports when refreshing witnesses' recollections to avoid misleading impression that reports were "authoritative").

Respectfully submitted this 28th day of July, 2026.

s/ Marc P. Hedrich

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