

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA            )  
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  )           CR-08-50-B-W  
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DANIEL POULIN                            )

**ORDER ON MOTION *IN LIMINE* SEEKING EXCLUSION OF RECORDING OF  
OCTOBER 27, 2006 POULIN INTERVIEW**

The Court denies the Defendant’s motion *in limine* to exclude under Rule 901(a) the audible portions of a tape recording of a conversation between the Defendant and a law enforcement officer.

**I. STATEMENT OF FACTS**

On March 10, 2009, Daniel Poulin moved to exclude a recording of a telephone conversation that he had with Detective Stephen McFarland of the Hancock County Sheriff’s Office on October 27, 2006.<sup>1</sup> *Mot. in Limine Seeking Exclusion of Recording of October 27, 2006 Poulin Interview* (Docket # 75) (*Def.’s Mot.*). Mr. Poulin contends that the recording is “not complete,” not “fully accurate,” “edited,” and “partial,” that it contains “transients and gaps,” and is “not otherwise authenticatable.” *Id.* at 1. He asks that the recording be excluded under Rule 901(a). *Id.* at 2-3 (citing Fed. R. Evid. 901(a)). The Government objected to the Defendant’s motion. *Gov’t’s Mem. in Opp’n to Def.’s Mot. to Exclude Tape Recording* (Docket # 92) (*Gov’t’s Opp’n*). The Court held an evidentiary hearing on April 17, 2009, and the parties requested additional time to sort out which of Defendant’s several pre-trial motions still needed judicial resolution. On June 25, 2009, the Defendant notified the Court that the motion *in limine* regarding the recording of the October 27, 2006 interview was one of the motions to be

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<sup>1</sup> Mr. Poulin has also filed a separate motion to suppress evidence in which he requests for distinct reasons that the telephone recording be suppressed. *Def.’s Mot. to Suppress* (Docket # 26). The Court will separately address that motion, including its request that the telephone recordings be suppressed.

submitted to the Court. *Def.'s Statement of Issues Pending for Court Adjudication* (Docket # 146) (*Def.'s Statement*).

At the April 17, 2009 hearing, Mr. Poulin called Arlo West, an expert in the forensic analysis of audiotapes, and the Government called Detective McFarland. Mr. West examined a copy of the tape recording of the October 27, 2006 interview. He found three areas of difficulty: (1) the presence on the tape of environmental sounds in the background similar to clicking that should not have been present; (2) the presence of four gaps or interruptions within the tape; and, (3) intermittent failures of the tape to capture entire words or sentences. He did not find evidence, however, that anyone had intentionally tampered with the tape. He concluded that the tape of the Poulin-McFarland conversation was incomplete and not fully accurate. Detective McFarland testified that he was a party to the October 27, 2006 conversation with Mr. Poulin, that he asked the Hancock County Sheriff's Office to record the conversation, that the recording accurately captures the conversation, and that no substantive portion of the conversation is missing from the recording. In addition to Mr. West's and Detective McFarland's testimony, a recording and transcription of the conversation were received as exhibits.

## **II. DISCUSSION**

Mr. Poulin objects to the admissibility of the taped conversation under Rule 901(a) primarily because he says it is incomplete, not fully accurate, contains transients and gaps, and is not "authenticatable." *Def.'s Mot.* at 1; *Def.'s Statement* at 3-4. Rule 901(a) provides:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Fed. R. Evid. 901(a). The First Circuit addressed precisely this type of objection in *United States v. Doyon*, 194 F.3d 207, 212-13 (1st Cir. 1999). Preliminarily, the proponent of a tape recording

must demonstrate “that the tape recording accurately reflects the conversation in question.” *Id.* at 212. This the Government has done. There is no contention that the tape recording does not accurately capture the conversation that can be heard on the tape. The *Doyon* Court also addressed the next issue: whether gaps in a tape necessarily require its exclusion. *Doyon* noted that “[a]n accurate tape recording of part of a conversation is not inherently less admissible than the testimony of a witness who heard only part of a conversation and recounts the part that he heard.” *Id.* at 213; *United States v. Brassard*, 212 F.3d 54, 57 (1st Cir. 2000) (stating that “[w]hile the initial moments of one of the tapes were destroyed, that did not make the tape inadmissible”). The First Circuit has long asked whether “the inaudible parts are so substantial as to make the rest more misleading than helpful.” *United States v. Carbone*, 798 F.2d 21, 24 (1st Cir. 1986) (quoting *Gorin v. United States*, 313 F.2d 641, 652 (1st Cir. 1963)).

Applying First Circuit law, the Court is well satisfied that the Government has met its Rule 901(a) burden, that the audible portions of the tape are what they purport to be, and that the inaudible portions are not sufficiently substantial to make the tape misleading as a whole.

### **III. CONCLUSION**

The Court DENIES the Defendant’s Motion *in Limine* Seeking Exclusion of Recording of October 27, 2006 Poulin Interview (Docket # 75).

SO ORDERED.

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 12th day of August, 2009

**Defendant (1)**

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