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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. SRECKO DARNELL WALKER, *Defendant-Appellant*.	No. 25-1356

Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.
No. 1:22-cr-00162-1—Hala Y. Jarbou, District Judge.

Argued: June 4, 2026

Decided and Filed: September 25, 2026

Before: GRIFFIN, LARSEN, and READLER, Circuit Judges.

COUNSEL

ARGUED: Melissa M. Salinas, Katherine Cleary, Sophia Poe, FEDERAL APPELLATE LITIGATION CLINIC, Ann Arbor, Michigan, for Appellant. Austin J. Hakes, UNITED STATES ATTORNEY'S OFFICE, Grand Rapids, Michigan, for Appellee. **ON BRIEF:** Melissa M. Salinas, Katherine Cleary, Sophia Poe, FEDERAL APPELLATE LITIGATION CLINIC, Ann Arbor, Michigan, for Appellant. Austin J. Hakes, UNITED STATES ATTORNEY'S OFFICE, Grand Rapids, Michigan, for Appellee.

LARSEN, J., delivered the opinion of the court in which GRIFFIN and READLER, JJ., joined. READLER, J. (pp. 11–20), delivered a separate concurring opinion.

OPINION

LARSEN, Circuit Judge. A jury convicted Srecko Walker of three counts related to his involvement in a drug conspiracy. Walker appeals his convictions. For the reasons stated, we AFFIRM.

I.

Srecko Walker, Hugo Benavides, and Steven Rasic were involved in a cocaine conspiracy. Walker ordered cocaine from a supplier near the United States-Mexico border. Benavides, acting on the supplier's behalf, mailed the cocaine to Walker. Walker paid Rasic, a postal worker, to deliver the packages to stops along Rasic's mail routes. Investigators intercepted two of the packages and found kilograms of cocaine inside.

On October 4, 2022, law enforcement observed Angel Moulds purchasing cocaine from Walker. Police were surveilling Walker at the time and knew that he drove a Jeep Grand Cherokee. Electronic surveillance showed Walker driving the Jeep from a house on Wagner Ave., owned by his girlfriend, to a parking lot. From there, officers saw Moulds walk up to Walker's vehicle, reach inside, and then return to her own vehicle. Walker drove away, and law enforcement stopped Moulds; she admitted to having just bought cocaine from her dealer, whom she called "Rico." Police recovered the cocaine from Moulds's vehicle. Police continued to surveil Walker that day; they saw him leave from the Wagner Ave. house, conduct a similar suspected drug transaction, and then return to the Wagner Ave. house.

Later that day, police obtained and executed a search warrant for the Wagner Ave. house. Inside the house, police found cocaine and drug paraphernalia, and they recovered Walker's cell phone from the Jeep. Once these items were recovered, Walker admitted to selling drugs, obtaining them from an out-of-state supplier, and sending drugs through the mail. He also confirmed his phone number, which was the same number Moulds had used during the drug purchase.

A grand jury charged Walker with three cocaine offenses: conspiring to distribute and to possess with intent to distribute, distribution, and possession with intent to distribute. During a proffer interview with the government, Walker admitted to his role in the conspiracy. He then moved to suppress the evidence found during the search of his home. The district court denied the motion. Walker went to trial. The jury convicted him as charged. The district court sentenced Walker to 360 months' imprisonment. He appeals.

II.

Suppression Motion. Walker first challenges the district court's denial of his motion to suppress the evidence stemming from the search of the Wagner Ave. residence. We review the lower court's "factual findings for clear error and its legal conclusions de novo." *United States v. Santiago*, 139 F.4th 570, 573 (6th Cir. 2025) (citation omitted). When deciding whether to suppress evidence seized pursuant to a warrant, the district court owes "great deference" to "the issuing judge's probable cause determination." *United States v. Sanders*, 106 F.4th 455, 461 (6th Cir. 2024) (en banc) (citation omitted). On appeal, this court is "mindful of the deference the district court" owed to the warrant-issuing judge. *Id.*

Probable cause exists when there is a "fair probability" or "reasonable grounds to believe" that evidence of a crime or contraband will be found in a particular place. *Id.* (citations omitted). "[P]robable cause is not a high bar," so "it follows that a warrant's validity should not turn on whether it is supported by an actual showing of criminal activity at the targeted location." *Id.* at 462 (citation modified). Instead, we "ask whether officers" seeking the warrant "provided direct or circumstantial support to create more than mere suspicion that contraband will be found at the location in question." *Id.* (citation modified).

When considered as a whole, the warrant affidavit here cleared the probable-cause bar. The affidavit detailed Walker's criminal history—including that he is "currently on Federal probation for the charge of Narcotics sell/distribute" and that he had "three prior State of Michigan narcotic convictions from 2007 through 2015 and one prior Federal charge of possession with intent to distribute cocaine from 2017." R. 35-1, Warrant Aff., PageID 63. The affiant was aware that he left the Wagner Ave. house and traveled to the parking lot of a store where the affiant observed a drug transaction between Walker and Moulds. The affidavit then described the subsequent stop of Moulds, whom the affiant identified "as the female [he had] observed make a hand-to-hand transaction" with Walker. *Id.* at 63. The affiant seized cocaine from Moulds's vehicle. Moulds named her supplier as "Rico" and provided his phone number to the affiant. A records check verified that phone number as Walker's. Later that same day, police observed Walker again leave the Wagner Ave. house, get into the driver's seat of the car with a child, and drive to a store parking lot. There, he made contact with an unknown male for less than thirty seconds and returned to the Wagner Ave. house. Further, the affidavit stated that Walker was in a relationship with the owner of the Wagner Ave. house and that he was driving the vehicle registered to the owner. The affidavit concluded that based on the affiant's training and experience, a search would uncover evidence of drug dealing at the Wagner Ave. residence. Taken all together, Walker's history of narcotics trafficking and the affiant's observations of two drug sales (one confirmed and one suspected), shortly after Walker left the Wagner Ave. residence, created probable cause to believe that a search would uncover illegal contraband. *See Sanders*, 106 F.4th at 462; *see also United States v. Reed*, 993 F.3d 441, 448 (6th Cir. 2021); *United States v. Ellison*, 632 F.3d 347, 349 (6th Cir. 2011).

In response, Walker offers cases involving more robust affidavits than the one here. *See e.g.*, *United States v. Jones*, 817 F.3d 489, 490 (6th Cir. 2016); *Ellison*, 632 F.3d at 349. To be sure, many cases involve affidavits containing more detail than the one at issue in this case. But the question is not whether the officers here could have done a better job. *See United States v. Christian*, 925 F.3d 305, 310 (6th Cir. 2019) (en banc); *Sanders*, 106 F.4th at 462–63. We ask only if the affidavit meets the relatively low burden of establishing probable cause. *Sanders*, 106 F.4th at 462. The affidavit does so here.

Walker protests that the affidavit doesn't do enough to establish probable cause to search the Wagner Ave. house because the affidavit did not do enough either to connect evidence of drug dealing to the residence or to demonstrate that Walker lived at the residence. But a "practical, common sense evaluation of all of the circumstances" shows that the affidavit contained sufficient information to search the residence. *United States v. Williams*, 544 F.3d 683, 686 (6th Cir. 2008) (citation modified). Walker left the Wagner Ave. house immediately prior to the confirmed sale to Moulds. He drove "straight to" the sale point, making no stops along the way. R. 35-1, Warrant Aff., PageID 62. He returned to the house sometime afterwards. Later that day, he again left the Wagner Ave. house, got into the Jeep with a child, and was surveilled driving to the suspected drug exchange with an unknown male at the store. Afterward, he returned to the Wagner Ave. house. His girlfriend of six years owned both the house and the Jeep. This was sufficient to suggest that evidence of drug dealing would be found in the Wagner Ave. house and to establish probable cause to search it. *See Christian*, 925 F.3d at 310.

Even if the warrant affidavit didn't establish probable cause, however, the good-faith exception required denial of the suppression motion. *See United States v. Leon*, 468 U.S. 897 (1984). The exclusionary rule doesn't "bar from admission 'evidence seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective.'" *Christian*, 925 F.3d at 312 (quoting *Leon*, 468 U.S. at 905). If the warrant affidavit "here could be deemed insufficient to establish probable cause, then this is a case in the very heartland of the *Leon* exception." *Id.* The affidavit is not "bare bones." *Id.* An affidavit is "bare bones" if it is "so lacking in indicia of probable cause as to make an officer's belief in its existence objectively unreasonable." *Id.* (citation modified). Even if one could "split hairs with the affidavit in this case, it is impossible to deny that it contains factual allegations, not just suspicions or conclusions." *Id.* at 313. "Importantly, each factual allegation, regardless of any infirmities, at least purports to link [Walker] to drug trafficking at [the Wagner Ave. house]." *Id.* After all, the officers watched Walker conduct a drug transaction immediately after leaving the residence. So, in the alternative, the good-faith exception applies.

The district court didn't err by denying Walker's motion to suppress.

Proffer Statements. Walker argues that the district court erred at trial by admitting statements from a proffer session between Walker and law enforcement.

We take "a two-step approach to deciding whether the district court properly admitted a proffer." *United States v. Grogan*, 133 F.4th 553, 558 (6th Cir. 2025). First, we review the agreement de novo to see if it applies. *Id.* If it does, "we review for abuse of discretion the district court's evidentiary rulings admitting the proffer statements, and we will not reverse unless an error affects a substantial right." *Id*. (citation modified).

As a general matter, statements "made during plea discussions with an attorney for the prosecuting authority" are inadmissible at trial "if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea." Fed. R. Evid. 410(a)(4); *see also Grogan*, 133 F.4th at 558. A defendant can waive this provision, however, by "consent[ing] to the government's use of his proffer statements in court if he offers inconsistent evidence." *Grogan*, 133 F.4th at 558. Here, pursuant to the proffer agreement, the government "promise[d] not to introduce at trial or any hearing at which [Walker] is the accused[,] any statements made by [Walker] at the proffer meeting." R. 180-1, Proffer Agreement, PageID 611. But there was one pertinent exception. "In the event [Walker] testifie[d] or offer[ed] evidence or arguments materially inconsistent with the proffered information, the United States reserve[d] the right to use the proffered information both as substantive evidence and for impeachment in all proceedings." *Id.* Walker agreed that he "underst[ood] that in such case, he waives the protection of Rule 410(a)(4)." *Id.*

At the beginning of trial, the government informed the court that it believed Walker's opening argument contained material inconsistencies with Walker's proffer statements. Particularly, the government identified statements made by counsel indicating that the evidence would not show that "Walker joined a conspiracy in this case, as he's charged." R. 264, Trial Tr., PageID 1412–13. Or that Walker "possessed the cocaine with the intent to distribute it to others." *Id.* at 1413. While the government did not "object[] to the content of Defense Counsel's argument[s]," it believed that those arguments were "inconsistent with what Mr. Walker himself stated during [the] proffer interview." *Id*. Believing that Walker had opened the Rule 410 door, the government indicated that it planned (with the court's approval) to introduce Walker's proffer statements through witnesses.

Defense counsel responded: "We have known that if we were going to proceed to trial, that we were going to offer one or more theories, if you will, that would be inconsistent with what was said in the proffer." *Id*. at 1416. He "concede[d] to the [c]ourt that there are some sections of the proffer interview that are inconsistent with the opening statement." *Id.* at 1417.

But, defense counsel continued, "[t]here are plenty of sections that have nothing to do with the opening statement. And I don't know that it opens the door to use it completely. But to the extent that the [c]ourt would find that there are sections that are inconsistent, . . . the proffer agreement is what it is. It says what it says." *Id*. The court then said, "What I'm hearing is that maybe there may be portions that you don't think are inconsistent and, therefore, should not be allowed to be brought in?" *Id.* Defense counsel responded, "Yes, Your Honor." *Id.* The court then asked, "So if they are relevant to or relate to this argument that you're making that it's not a conspiracy but that it's a buyer-seller relationship, don't you agree that they would also be relevant to come in?" *Id.* Defense counsel stated, "I would have to agree to that." *Id.* The court responded, "Okay. Then I'm not hearing specifically which portions potentially. But if we get there, I assume you'll tell me, unless you can tell me now." *Id.* Defense counsel said, "I can't. I'd have to see what the witness intends to do." *Id.* The court then swore Walker in and he personally confirmed his agreement with this strategy. And defense counsel offered no objection to any proffer statement later admitted at trial.

Walker waived his Rule 410 challenge. "Waiver is the intentional relinquishment or abandonment of a known right." *United States v. Olano*, 507 U.S. 725, 733 (1993) (citation modified). Waiver "extinguish[es] an error," and the error cannot be reviewed on appeal. *Id.* (citation modified).

Defense counsel "concede[d] to the [c]ourt that there are some sections of the proffer interview that are inconsistent with the opening statement." R. 264, Trial Tr., PageID 1417. He also conceded that, among those, was the opening statement's suggestion that Walker was involved only in a buyer-seller relationship, and not a conspiracy. Finally, he conceded that the contrary statements in his proffer that were "relevant to or relate to this argument . . . that it's not a conspiracy but that it's a buyer-seller relationship" should therefore "come in." *Id.* These concessions waived any claim that the parts of the proffer statements confessing his role in the conspiracy were not admissible. *See United States v. Fowler*, 819 F.3d 298, 306 (6th Cir. 2016). But that is the only claim Walker makes on appeal. He argues that since "[t]he opening statement was neither evidence nor argument," "it was therefore improper for the proffered statements to be introduced based on alleged inconsistencies with the opening statement."

Walker Br. at 35. But his counsel conceded that the opening statement opened the door and rendered contrary statements admissible. He then disputes whether anything "Walker's counsel said during his opening statement" materially conflicted with statements in the proffer. *Id.* at 36. But he points only to statements pertaining to his involvement in the conspiracy, and his counsel conceded that such statements should "come in." Walker's arguments therefore are waived, and his Rule 410 challenge fails. *Fowler*, 819 F.3d at 306.

Confrontation Clause. Walker next argues that the district court violated his Sixth Amendment right to confront a witness at trial, co-defendant Rasic.

The Confrontation Clause "guarantees the right of an accused in a criminal prosecution 'to be confronted with the witnesses against him.'" *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986) (quoting U.S. Const. amend. VI). The right includes "a face-to-face meeting with witnesses appearing before the trier of fact," *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988), and "an adequate opportunity to cross-examine adverse witnesses," *United States* v. *Owens*, 484 U.S. 554, 557 (1988); *see also Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). Walker contends that he had no opportunity to cross-examine Rasic.

The government called Rasic as a witness. He identified Walker as a drug dealer. But Rasic was excused shortly thereafter because of an illness. Apparently still unwell, Rasic did not appear in court the following day. So the parties and the court discussed what to do about Rasic's testimony. The government said it would defer to defense counsel regarding how to handle the situation. Defense counsel and the court then discussed whether to put the trial on hold until Rasic could testify or "instruct the jury that it needs to disregard everything that Mr. Rasic said." R. 266, Trial Tr., PageID 1861–62. Ultimately, defense counsel requested that "the Court instruct the jury to disregard everything that Rasic said and that we move on from there." *Id.* at 1862. The government, for its part, indicated that it "would welcome" the "curative instruction" described by defense counsel. *Id.* at 1863. The court again swore Walker in and he also personally confirmed that he agreed with the proposed curative instruction. The court gave the instruction as crafted by the parties.

Walker waived his Confrontation Clause challenge. Despite knowing that he would lose his ability to cross-examine Rasic, Walker's "request," through counsel, was "that the Court instruct the jury to disregard everything that Rasic said and that we move on from there." R. 266, Trial Tr., PageID 1862. Walker's counsel proposed the limiting instruction and helped craft its language. In so doing, Walker intentionally relinquished any rights under the Confrontation Clause. *Olano*, 507 U.S. at 733.

Walker nonetheless argues that there was no waiver. He focuses on his personal response when the court, solicitously, asked how he would like to proceed. Walker says that he could not have waived his confrontation rights because some of his statements regarding the limiting instruction were equivocal, such as Walker saying "[a] little bit" or "I'm pretty sure." Reply Br. at 24 (citing R. 266, Trial Tr., PageID 1864, 1866).

The trial court was solicitous of Walker's views and sought his explicit buy-in.[1] And fully considering Walker's responses, it is clear he understood. The court told Walker that one option would be to delay the trial until Rasic could appear; alternatively, the court could instruct the jury to disregard Rasic's testimony. Walker said he was "comfortable with" the limiting instruction. R. 266, Trial Tr., PageID 1865. After further discussion and questions from the court, Walker said, "I think what you're telling me right now is what [Rasic] said yesterday, you're going to tell the jurors not to pay attention to it." *Id*. at 1866. The court responded, "Completely disregard it. They're not to take it into account at all in their deliberations." *Id.* at 1866–67. Walker responded, "Okay. Yeah. I understand." *Id*. at 1867. So there was no equivocation from Walker. And there certainly was no equivocation from his counsel. Walker waived any Confrontation Clause challenge.[2]

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[1]Such solicitude may have been unnecessary. Very few trial decisions require a personal waiver on the part of the defendant. *See Taylor v. Illinois*, 484 U.S. 400, 417–18 & n. 24 (1988) (noting that counsel has "full authority to manage the conduct of [a] trial"). The Supreme Court has singled out, for example, whether the defendant will "plead guilty, waive a jury, testify in his or her own behalf, or take an appeal." *Jones v. Barnes*, 463 U.S. 745, 751 (1983). But for the vast majority of decisions, a defendant is bound by the decisions of his counsel, and the Supreme Court has suggested that that includes whether to "forgo cross examination" of a particular witness. *Taylor*, 484 U.S. at 418. We need not decide that issue here, however, because the parties have not raised it and because Walker's agreement was unequivocal in any event.

[2]Walker also argues that "[e]ven if the errors regarding the proffered statements and the unconfronted testimony could be seen as individually harmless, their cumulative prejudicial effect rendered Mr. Walker's trial

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We AFFIRM.

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fundamentally unfair in violation of due process." Walker Br. at 50. There was no error so it follows that there was no cumulative error. *See United States v. Sypher*, 684 F.3d 622, 628 (6th Cir. 2012).

CONCURRENCE

READLER, Circuit Judge, concurring. During pre-trial proceedings, Srecko Walker sat for a proffer session with the government. In conjunction with his proffer, Walker signed an agreement that conditionally waived his right to object to the government's use of his proffer statements against him at all stages of trial. When Walker's proffer did not lead to a resolution of his prosecution, his case proceeded to trial, at which point the government invoked Walker's waiver agreement for purposes of admitting into evidence Walker's proffer statements. Those admissions effectively foreclosed the primary arguments Walker hoped to develop at trial. Walker was found guilty on all charges.

I join in full the Court's thoughtful opinion, including its disposition of Walker's challenge to the admission of his proffer statements. Walker plainly waived any argument against their admission when his trial counsel agreed that the defense he presented had opened the door to their use. That said, it bears noting that the waiver agreement Walker executed was far broader than the agreement approved of in *United States v. Mezzanatto*, 513 U.S. 196 (1995), which permitted the government to use a defendant's proffer statements only for impeachment purposes should he testify. If Walker's case is any indicator, the proffer process has evolved over the three decades following *Mezzanatto*, and dramatically so at times. Today, some defendants are asked to sign waivers that authorize the admission of their proffer statements at trial whenever the defendant makes an argument in tension with the government's theory of the case, impeachment being just one example. Whether these modern practices have the potential to affect the proffer process in ways that could erode that process altogether deserves further reflection.

A. To tee up that discussion, begin with some background on the role proffer statements play in our broader criminal justice system. In essence, a proffer session is a meeting in which the subject of an investigation or prosecution provides information to the government, up to and often including a confession, ordinarily in hopes of securing some manner of favorable treatment. *See* 23 Wright & Miller, Federal Practice and Procedure § 5348 (2d ed., Apr. 2026 update). What that treatment can look like depends in part on the timing of the proffer. Pre-indictment, a suspect may proffer in hopes of persuading the government not to charge him. While an indictment closes that door, it opens others. At that juncture, a defendant may turn to proffering to enhance his odds at securing immunity, a favorable plea, or an opportunity to cooperate. *See, e.g.*, U.S. Sent'g Guidelines Manual § 5K1.1 (U.S. Sent'g Comm'n 2025) (providing for a sentence below the applicable Guidelines range, upon the government's motion, for a defendant who provides "substantial assistance in the investigation or prosecution of another person"); *United States v. Lyle*, 856 F.3d 191, 197–98 (2d Cir. 2017) (defendant proffered after indictment "in hope of reaching a cooperation agreement").

No matter the point in time at which the proffer occurs, one aspect typically remains the same: The proffering individual provides the government information before knowing what, if anything, the government will offer in return. From the government's perspective, that feature is easily explained. Though its investigation may give it a rough sense of what information the proffering individual will share, the government may not have the complete picture, nor does it know whether the proffer statement will prove credible. So it would be unusual to expect the government to offer any relief before it has heard the defendant's statement. *See* Solomon L. Wisenberg, *Queen For A Day: The Dangerous Game of Proffers, Proffer Agreements and Proffer Letters*, available at https://perma.cc/XS3D-BJXP. At the same time, the proffering individual may well view the process with some trepidation. After all, it often involves him sharing self-incriminating information with the government without an assurance that he will receive anything from the government in return.

With that concern in mind, the Federal Rules of Evidence in conjunction with the Federal Rules of Criminal Procedure afford protections to the proffering party. Federal Rule of Criminal Procedure 11(f) instructs that the admissibility of any plea, plea discussion, or related statement is governed by Federal Rule of Evidence 410. And Rule 410, in turn, largely declares inadmissible as against the defendant "a statement made during plea discussions with an attorney for the prosecuting authority[, including a confession,] if the discussions did not result in a guilty plea." Fed. R. Evid. 410(a)(4). As a proffer session generally occurs in connection with efforts to negotiate a plea agreement, Rule 410 serves to protect a defendant from having admitted against him incriminating statements made in that setting. *See* David Jaffe, *Proffer Agreements*, 60 U.S. Att'ys' Bull. 58, 59 (Nov. 2012) (explaining Rule 410's application to statements made during proffer sessions); *see also* Robert I. Smith III, *Fair Play and Criminal Justice: Drafting Proffer Agreements in Light of Total Waiver of Rule 410*, 66 S.C. L. Rev. 809, 812 (2015) (noting that proffers commonly occur during plea negotiations before an agreement has been reached).

To formalize the proffer process, the government customarily asks the defendant to execute a written proffer agreement. *See* Jodi L. Avergun & Douglas Cohan, *Explaining the Inexplicable: The Perks and the Perils of Proffer Sessions and Best Practices for Explaining It All to Your Client* A-15 (2015). That contract—sometimes colorfully referred to as a "Queen for a Day" agreement—governs how, if at all, the government may use the individual's statements in criminal proceedings. *See* Michael J. Engle & Adam J. Petitt, *"Queen for a Day"—Assessing the Risks and Rewards of a Proffer Agreement*, 31 No. 8 Westlaw J. White-Collar Crime 2, 2 (Apr. 28, 2017). In particular, because Rule 410 otherwise restricts the government's use of statements made during plea negotiations, proffer agreements often specify circumstances in which the defendant waives those protections—for example, if the defendant later offers testimony inconsistent with his proffer. *See* Wright & Miller, *supra*, § 5348; *see, e.g.*, *United States v. Krilich*, 159 F.3d 1020, 1024 (7th Cir. 1998) (conditional waiver provided that, "should [defendant] subsequently testify contrary to the substance of the proffer or otherwise present a position inconsistent with the proffer, nothing shall prevent the government from using the substance of the proffer at sentencing for any purpose, at trial for impeachment or in rebuttal testimony, or in a prosecution for perjury"). That assurance benefits the government in that it bars Rule 410 from being invoked to shield inconsistencies between a defendant's proffer and his trial testimony. *See Mezzanatto*, 513 U.S. at 208 (explaining that conditional waivers serve as "reliability assurance"). It may also benefit the defendant, albeit more indirectly; executing a Rule 410 waiver arguably makes a defendant's offer of cooperation more credible and thus more valuable in the first place. *See Krilich*, 159 F.3d at 1025 (explaining that a waiver "keep[s] the defendant honest" and thereby "makes the proffer device more useful to the both sides"); Eric Rasmusen, Mezzanatto *and the Economics of Self-Incrimination*, 19 Cardozo L. Rev. 1541, 1565–69 (1998) (explaining that Rule 410 waivers can operate as commitment devices and incentives for truthful cooperation).

As the use of Rule 410 waivers began to take hold, the practice underwent review by the Supreme Court in *Mezzanatto*. *See Mezzanatto*, 513 U.S. at 196. By way of background, Mezzanatto was charged with one count of possession of methamphetamine with intent to distribute under 21 U.S.C. § 841(a)(1). *Id.* at 198–99. During the course of his prosecution, Mezzanatto offered to make a proffer to the government regarding his involvement in methamphetamine trafficking. *Id.* In conjunction with his proffer, Mezzanatto agreed to a relatively narrow Rule 410 conditional waiver: If he later testified inconsistently with his proffer, the government could use his statements to impeach him. *Id.* After executing the waiver, Mezzanatto told prosecutors that he knew the substance he possessed was methamphetamine. *Id.* at 198–99. The government ultimately terminated the proffer meeting after concluding that Mezzanatto had not been completely truthful during the session. *Id*. His case proceeded to trial, where Mezzanatto took the stand and denied knowing that the package contained methamphetamine. *Id.* The government impeached him with his earlier admission made during his proffer. *Id*. He was later convicted of the methamphetamine offense. *Id.*

On appeal, Mezzanatto challenged the enforceability of his Rule 410 waiver. And, at least initially, he found success. The Ninth Circuit reversed his conviction, holding that Rule 410's protection against the use of plea statements could not be waived. *United States v. Mezzanatto*, 998 F.2d 1452, 1454–56 (9th Cir. 1993). But Mezzanatto's success was fleeting—the Supreme Court later reversed the Ninth Circuit. Starting from the familiar presumption that a defendant is entitled to waive his own rights where that waiver is knowing and voluntary, the Supreme Court saw no reason to treat a Rule 410 waiver differently. *Mezzanatto*, 513 U.S. at 200–04. And because Mezzanatto understood the consequences of his waiver yet knowingly executed the agreement, the Supreme Court concluded, the government was entitled to hold him to his commitment. *Id.* at 210–11.

How that holding would play out in practice was the subject of some speculation. In a concurring opinion, Justice Ginsburg, joined by Justices O'Connor and Breyer, explained that she understood the Supreme Court to hold only that Rule 410 could fairly be waived for impeachment purposes. *Id.* at 211 (Ginsburg, J., concurring); *see also United States v. Burch*, 156 F.3d 1315, 1320 (D.C. Cir. 1998) (recognizing the narrowness of the *Mezzanatto* holding). A waiver permitting the government to use proffer statements in its case-in-chief, she cautioned, might "more severely undermine a defendant's incentive to negotiate." *Id.* But that opinion was not shared by all. In dissent, Justice Souter, joined by Justice Stevens, predicted that the Supreme Court's logic would reach beyond just impeachment. Once Rule 410 was deemed presumptively waivable, the dissenters saw no principled reason why the government could not demand waivers permitting broader use of a defendant's statements. *See id.* at 217–18 (Souter, J., dissenting).

B.1. Three decades later, federal practice offers some examples of the trend Justice Souter anticipated. Even six years ago, a survey of proffer agreements from 17 U.S. Attorneys' Offices, as well as what was then known as the Fraud Section of the Criminal Division of the Department of Justice, along with the Securities and Exchange Commission, found that none were limited to the impeachment use approved in *Mezzanatto*. *See* Ingrid S. Martin & Michael R. DiStefano, *A Survey of Federal Proffer Agreements: The Shortcomings and Pitfalls in the Government's Promised Protections*, Champion, Sept./Oct. 2020, at 16, 17–18. Depending upon the jurisdiction, modern proffer waivers reach well beyond a mere impeachment waiver. *See* Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 4:72 (4th ed., July 2025 update) ("[T]he breadth of waivers has tended to expand in practice, just as the separate opinions in *Mezzanatto* had anticipated (though there is much variation)."). They permit the government to use a defendant's statements to counteract contradictory evidence, inconsistent positions advanced through cross-examination, and opening statements, among other aspects of trial. *See* Richard B. Zabel & James J. Benjamin Jr., *"Queen for a Day" or "Courtesan for a Day": The Sixth Amendment Limits to Proffer Agreements*, 15 No. 9 White-Collar Crime Rep. 1, 1–3 (Oct. 2001) (describing prosecutors' increasing use of waivers extending beyond impeachment in the wake of *Mezzanatto*). Courts, in turn, have generally enforced these broad waivers, applying them to a wide range of defense conduct. *See, e.g.*, *Lyle*, 856 F.3d at 202–03 (opening statements); *United States v. Hardwick*, 544 F.3d 565, 570–71 (3d Cir. 2008) (same); *United States v. Roberts*, 660 F.3d 149, 157–58 (2d Cir. 2011) (documentary evidence); *United States v. Shannon*, 803 F.3d 778, 783–84 (6th Cir. 2015) (cross examination).

That development is not difficult to understand as a doctrinal matter. *Mezzanatto*, remember, rests on the premise that Rule 410's protections, like fundamental constitutional protections, may be waived. 513 U.S. at 200–01; *see, e.g.*, *United States v. Ellis*, 115 F.4th 497, 500 (6th Cir. 2024) (recognizing that defendants may waive constitutional rights, including the rights to a jury trial and against self-incrimination). And if Rule 410's application to impeachment is waivable, it is not obvious why a defendant may not waive Rule 410's protections more generally, including as to the use of a defendant's proffer statements for evidentiary purposes. *See United States v. Mitchell*, 633 F.3d 997, 1004 (10th Cir. 2011) (seeing "no analytical distinction" between use in the government's case-in-chief and use for impeachment); *United States v. Sylvester*, 583 F.3d 285, 290–91 (5th Cir. 2009) (concluding there is no "analytically coherent boundary" between impeachment, rebuttal, and case-in-chief waivers).

Yet even if that extension is doctrinally consistent, it may come at a price to our criminal justice system. Recall why the parties enter the proffer process in the first place. And consider the relative inequalities in risk the process brings to bear. Through a proffer, a defendant offers a candid account of what he knows in hopes of avoiding charges, securing immunity or a favorable plea, or demonstrating his value as a cooperating witness. *See* Federal Criminal Practice § 10:97.2 (describing the role of proffers in plea and cooperation negotiations); *see also* Ben Protess, Alan Feuer & Maggie Haberman, *Giuliani Sat for Voluntary Interview in Jan. 6 Investigation*, N.Y. Times (June 28, 2023) (describing the various reasons subjects of investigations may proffer). At the same time, the defendant incurs sizable risk by providing the government incriminating information before knowing whether the government will provide anything in return. For the government, by comparison, the stakes appear to be dramatically lower. As it hears the defendant's account and assesses his candor and usefulness, the government nonetheless is under no obligation to offer the defendant anything in return. *See Mezzanatto*, 513 U.S. at 207; Dennis G. Terez, *Substantial Reform for Substantial Assistance Motions*, 29 J. Legis. 89, 92–93 (2002) (describing the prosecution's "almost complete discretion" in assessing the value of a defendant's cooperation for sentencing purposes).

Broad proffer waivers further tip these uneven scales. In practice, they allow for the possibility that an unsuccessful proffer will leave a defendant not just empty-handed, but far worse off than when he began. After all, at that point, the defendant has now likely disclosed self-incriminating information that the government can use to undermine most of what the defendant may want to advance at trial. *See* Martin & DiStefano, *supra*, at 18–20; *see also* Robert I. Smith III, *supra*, at 822 (describing the "power disparity between prosecution and defendant" underlying proffer agreements). Making matters worse, the defendant may not even fully grasp all that he has lost through the proffer process, when the combination of expansive waivers coupled with broad enforcement make it difficult for a defendant to know in advance what trial strategies will trigger a waiver. *See* Martin & DiStefano, *supra*, at 18 ("[I]t is not clear from the face of the agreement precisely when these more expansive provisions will be triggered."). All of this raises the ante immensely. The price of the mere opportunity to negotiate with the hope that, as counsel for Walker put it at argument, the defendant "might be able to get a plea bargain," comes at the cost of precluding him from mounting much of a defense at trial. Oral Arg. at 14:37–43.

Take Walker's experience as an example. His proffer agreement authorized the government to introduce his statements whenever he "testifie[d] or offer[ed] evidence or arguments materially inconsistent with the proffered information." R. 180-1, PageID 611. So unlike the waiver agreement in *Mezzanatto*, Walker's waiver extended beyond serving merely as a means for impeaching him on the stand. Rather, his waiver seemingly would be triggered any time his counsel offered even an "argument[]" inconsistent with Walker's proffer. *Id*. The government (and Walker's trial attorney) understood the waiver to reach even counsel's rather benign statement during opening argument suggesting that the government lacked sufficient evidence to convict Walker under a conspiracy theory.

As the government candidly acknowledged, the breadth of Walker's waiver left him in a "tough spot" in attempting to mount a defense at trial. Oral Arg. at 23:00–05. And "tough" might be underselling things. For example, the government agreed that Walker could not counter the government's theory with a different interpretation of the facts. *Id*. at 21:02, 25:45–26:00 (the government arguing that Walker's buyer-seller theory contradicted his proffer rather than merely challenging the sufficiency of the government's evidence). The government likewise made affirmative use of Walker's proffer, asking its first witness—the government agent who participated in the proffer interview—to recount Walker's proffer statements, at times nearly line by line. *See Id*. at 24:15–39 (noting that the government "needed to know right away" whether the proffer was admissible, suggesting it anticipated relying on the proffer at trial). That left Walker largely defenseless, save for attempting, in the government's words, to "put the government on trial" by, for example, exposing a hypothetical "rogue investigator" who "plant[ed] evidence." *Id*. at 24:54–25:04. Yet even that avenue proved narrow in practice. When Walker attempted to question the reliability of the government's account of his proffer on cross-examination, pointing out that the interview had not been recorded and thus that the veracity of the telling depended on the agent's recollection, the government objected that it was unfair to make the agent "look like he's doing shoddy police work." *See* R. 264, PageID 1454–55.

Had Walker proceeded to trial after turning down a plea offer from the government, these inequities might be easier to stomach. But that was not what happened here, as the government never made Walker an offer to begin with, despite obtaining information from his proffer that it considered valuable (or at least credible) enough to use against Walker at trial. That begs the question what, if anything, did the government relinquish in exchange for Walker's self-incriminating proffer and subsequent inability to counter the government's case-in-chief? Not much, it turns out. When asked what the government had given up in return for the proffer, counsel pointed to the time spent preparing for and conducting the proffer—time the government acknowledged it would have spent preparing for trial anyway. Oral Arg. at 21:44–55. In the end, Walker left the proffer process with no plea offer and a dramatically narrower path at trial. The government, on the other hand, left with Walker's account of the case and his incriminating statements, the freedom to prosecute Walker as it saw fit, and the ability to thwart virtually every line of argument or evidence Walker might offer at trial. That dynamic may explain why some commentators have characterized the government's suggestion that it might engage in plea negotiations following the proffer as little more than "illusory" consideration, *see* Smith, *supra*, at 825–26, and why others predicted, albeit incorrectly, it appears, that after *Mezzanatto*, defendants would reject case-in-chief waivers. *See* Rasmusen, *supra*, at 1572 (predicting that, even if *Mezzanatto* permitted case-in-chief waivers, defendants would refuse to accept them).

2. If Walker's case is any indicator, the dynamics just described have the potential to shape future plea bargaining efforts in a way that diminishes their utility. With these imbalances in mind, it bears wondering why a defendant would ever make a proffer statement before pleading guilty in the face of a broad Rule 410 waiver? Again, once the defendant has disclosed what he knows, he has little remaining leverage. Yet the government, now with the proffer testimony in hand, has no obligation to offer the defendant a reduced plea or the like. Defendants who recognize the risks just described may respond by withholding information valuable to the government in the proffer or by declining to proffer altogether. In the end, proffers could all but dry up for the population of defendants who have not already pleaded guilty. In that respect, broad waivers like the one agreed to by Walker present something of a paradox. Designed to encourage candor during plea negotiations, they nonetheless risk becoming so costly to the defendant that they discourage the candid negotiations these waivers were meant to facilitate. *See Mezzanatto*, 513 U.S. at 211 (Ginsburg, J., concurring).

Whether these effects have been realized is harder to say. Walker's situation may well be an outlier. There appears to be little empirical evidence about how frequently waivers as broad as the one he executed are employed, much less whether such waivers have discouraged proffers, affected what defendants disclose, or altered the terms on which pleas are reached. *See, e.g.*, 5 Wayne R. LaFave et al., *Criminal Procedure* § 21.2(h) (4th ed., Nov. 2025 update) (explaining that allowing plea negotiation statements to be used against defendants could "discourage plea negotiations and agreements," but citing no empirical evidence about the effects of modern proffer waivers). And there are other reasons not to overstate the matter. While not beyond the realm of reasonable strategy, Walker may be the unusual defendant who decides to proffer without first pleading guilty or otherwise securing a firm commitment from the government. *See United States v. Flood*, No. 23-7032, 2026 WL 2342536, at *9 (4th Cir. Aug. 13, 2026) (recounting a plea offer conditioned on the defendant's participation in a proffer session). The government might ordinarily come forward with a post-proffer plea deal because it has reason to secure a defendant's continued cooperation, particularly if the defendant's testimony is needed in the trials of others. *See Samia v. United States*, 143 S. Ct. 2004, 2009–10 (2023) (explaining that the Confrontation Clause generally bars admission of a non-testifying codefendant's confession that directly inculpates the defendant). And, as a repeat player, the government has reputational incentives to negotiate fairly or otherwise risk discouraging the defense bar from recommending proffer arrangements to their clients. *See* Rasmusen, *supra*, at 1563.

Still, the unevenness tied to broad waivers may warrant attention. And not necessarily from the courts, at least in the ordinary course. *See Hunter v. United States*, 146 S. Ct. 1702, 1711 (2026) (reserving the rare instances in which a waiver cannot be enforced to when there is a miscarriage of justice). *Mezzanatto*, recall, does not permit courts to disregard an otherwise valid waiver based on concerns about its consequences. *See Burch*, 156 F.3d at 1321. That leaves the onus on those who negotiate these agreements. Both the defense bar and the government have reason to scrutinize how far contemporary proffer waivers have moved beyond the example from *Mezzanatto*. If experience bears out the fact that the expansion of waiver terms is common and has had a chilling effect on the proffer process, the participants might together press for solutions—whether by negotiating narrower and/or more specific waiver terms, proposing changes to the governing rules, or another remedy. *See, e.g.*, Advisory Comm. on Evidence Rules, Report to the Standing Committee 2–3 (May 17, 2026) (recommending a more defendant-protective Rule 609 standard after reviewing how courts had applied the existing rule). In other words, while *Mezzanatto* may have approved the use of Rule 410 waivers, whether the ensuing embrace of far-reaching agreements ultimately undermines the proffer process remains an unsettled question worth asking. For Walker at least, it is difficult to view his decision to proffer as anything but a decision to regret.