

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

NO. 08-20314

v.

HON. NANCY B. EDMUNDS

ISSAM HAMAMA,

Defendant.

_____ /

GOVERNMENT'S MOTION TO ADMIT DOCUMENTS

The United States of America respectfully moves to admit at trial documents of the Iraqi Intelligence Service that pertain to the defendant's activities on behalf of the Iraqi government. These documents are sufficiently authentic to be admitted into evidence and are admissible under the hearsay rules.

BACKGROUND

On June 3, 2008, a grand jury returned a sealed indictment charging the defendant with one count of conspiracy to act as an agent of a foreign government, in violation of 18 U.S.C. § 371 and 951, two counts of making false statements on security clearance application forms, in violation of 18 U.S.C. § 1001, and one count of making false statements during an interview with FBI agents, in violation

of 18 U.S.C. § 1001. The indictment was unsealed on November 24, 2008. On December 16, 2009, a grand jury returned a superseding indictment that contained a fifth count charging false statements. Trial is scheduled for April 13, 2010. This motion seeks to admit the documents contained in Exhibit 1 prior to trial because they are authentic and are not hearsay.

During the reign of Saddam Hussein, the Iraqi government established and maintained a foreign intelligence service, known as the Iraqi Intelligence Service (“IIS”). In the 1990s, the defendant operated in the United States as an agent of the IIS. The defendant’s activities included collecting information about groups in the United States that were opposed to the regime of Saddam Hussein and reporting that information to IIS officers located in Washington, D.C. and at the Iraqi Mission to the United Nations (“IMUN”) in New York, New York. In exchange for his reporting, the defendant received monetary payments from the IIS.

Following the invasion of Iraq in 2003, the United States acquired documents in Iraq that belonged to the IIS. *See* Exhibit 1.¹ Some of these

¹ Exhibit 1 is a multi-page document that consists of exhibit number 1.1 through 1.55. Each exhibit number refers to a page of an IIS document and a corresponding page of translation. In a few instances, an exhibit number refers to multiple pages of IIS documents and translations.

documents were found by United States military forces operating in Iraq; others were obtained from an Iraqi opposition group operating in Iraq. Some of the IIS documents detailed the activities of the defendant, including ledgers and receipts showing payments made to the defendant by the IIS. At trial, the government intends to call as a witness a former Iraqi government official who is familiar with the payments made by the Iraqi government to the defendant. The witness will testify to having personal knowledge of some of the receipts and ledgers mentioned above, as well as the signatures that appear on some documents.

The government intends to introduce financial records that corroborate the payments to the defendant, as recorded in the IIS documents. For example, one of the IIS documents found in Iraq is a “disbursement receipt” issued by the IIS on January 23, 2001, for \$250.75 that was paid to “Source 6129.” Exhibit 1.47. The payment is described on the receipt as “Assistance to Code 6129.”² Accompanying the IIS disbursement receipt was a receipt from a U.S. Post Office in Alexandria, Virginia. Exhibit 1.47, page 5. The receipt shows that on January 23, 2001, a postal money order, number 02440416510, was purchased in the amount of \$250. A fee of 75 cents was charged to the purchaser. The government has obtained records from Comerica Bank. These records include a copy of

² In other IIS documents, Issam Hamama is explicitly referred to as “Source 6129.”

money order number 02440416510 issued by a U.S. Post Office in Alexandria, Virginia, on January 23, 2001, in the amount of \$250 to Issam Hamama at his address in Sterling Heights, Michigan. *See Exhibit 2.* The back of the money order contains the defendant's handwritten endorsement and a date stamp by Comerica Bank on February 14, 2001. A deposit ticket belonging to Issam Hamama dated February 14, 2001, shows that the \$250 money order was deposited into the defendant's Comerica bank account. *See Exhibit 3.*

The IIS documents found in Iraq also included an internal IIS memorandum dated November 27, 1996. Exhibit 1.1. The memorandum stated: "Attached please find the letter issued by our source Isam Hamama," and a letter from "the New York Station Manager." The memorandum further stated that "Hamama's letter contains a message to Mr. Minister of Exterior from the so-called Nu'il Hirmiz, the secretary general for Bet-Nahrain Democratic Party."³ Other IIS documents found in Iraq are internal memoranda that discusses these letters and the efforts taken by the IIS to infiltrate the Bet-Nahrain Party and obtain information about the party's activities and membership.

Attached to the November 27, 1996, IIS memorandum was a handwritten

³ The Bet-Nahrain Democratic Party was an Iraqi opposition group operating in the United States.

letter dated November 11, 1996, from the IIS New York station manager, Jabbar Hamza. Exhibit 1.2. In the letter, Hamza stated “[e]nclosed you will find a letter addressed to the honorable Foreign Minister from ‘Nu’il Hermiz,’ General Secretary of Bet-Nahrain Party. He had sent it through the friend Isam Hamama.” At trial, the government intends to call as a witness a former Iraqi government official who observed the defendant meet with Jabbar Hamza at the IMUN on several occasions in the mid-1990s.⁴ This witness was also shown Hamza’s handwritten letter dated November 11, 1996. The witness identified the handwriting as belonging to Hamza.

Also attached to the memorandum was a handwritten letter by the defendant to the Iraqi Foreign Minister in which the defendant stated that he was “a core nationalist and true Iraqi,” who has been “fatefully united with the journey of the mighty Ba’ath revolution in the past and the future without any hesitation or wavering.” Exhibit 1.3. The defendant stated that he would “defend Iraq with care and high enthusiasm,” and that he would “fight at the informational and political front.” The defendant’s letter also offered to help opposition parties

⁴ On November 21, 2008, the defendant was interviewed by agents from the Federal Bureau of Investigation following his arrest on the pending charges. During the interview, the defendant admitted knowing Hamza as a person who worked at the United Nations. The defendant referred to Hamza as a “friend.”

reconcile with the Iraqi government. The defendant claimed that this reconciliation would “reinforce the structure of the revolutionary regime in Iraq,” and “weaken the size and influence and activity of the betraying and dissenting Iraqi forces.”

On June 27, 2006, the defendant was interviewed by agents from the Federal Bureau of Investigation (FBI). During the interview, the defendant claimed that “sometime around 1997,” a member of an opposition group approached him and asked him to deliver a letter to the Iraqi government. The defendant acknowledged receiving the letter, but claimed that he never delivered it to anyone. A few days later, the defendant was interviewed again by an FBI agent. During this interview, the defendant admitted to providing the IIS with names of opposition group leaders. The defendant was also shown a copy of his letter to the Iraqi Foreign Minister – which, as discussed above, the U.S. government had obtained in Iraq. The defendant acknowledged drafting the letter. The defendant further admitted that he delivered the letter to an Iraqi government official.

On June 21, 2006, FBI agents interviewed a former member of the IIS who has extensive knowledge of the IIS and its day-to-day operations. The individual was shown the IIS documents pertaining to the defendant. The individual “recognized personal signatures” in the documents and stated that the “logo

attached, to some pages, and the frame work of [the] documents is consistent with IIS paperwork.”

The government also showed the IIS documents pertaining to the defendant to an individual who is an expert in IIS documents. From 1998 to 2003, this expert served in the U.S. Army, where he received two years of training in the Arabic language and is now a fluent Arabic speaker. From 2003 to the present, this expert has served as a contract employee for the U.S. Department of Defense as a document analyst. As a Defense Department contractor, from 2003 through 2009, the expert analyzed documents that had been recovered by the U.S. government in Iraq following the invasion of Iraq in March 2003, many of which were IIS documents. Through his work as an Iraqi document analyst, the expert developed a method for recognizing counterfeit Iraqi government documents, and trained others in his methods. In the course of his many years of experience, the expert has reviewed more than one million pages of Iraqi government documents, the majority of which have been IIS documents. The expert has examined the IIS documents pertaining to the defendant and has concluded that they are authentic.

ARGUMENT

I. The IIS Documents Meet the Authenticity Requirement

A document can be admitted into evidence only after it has been authenticated, a requirement that “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 authenticity inquiry “turns on whether the document is what it purports to be, not its veracity.” *United States v. Mandycz*, 447 F.3d 951, 966 (6th Cir. 2006). “Once a prima facie case is made, the evidence goes to the jury and it is the jury who will ultimately determine the authenticity of the evidence, not the court. The only requirement is that there has been substantial evidence from which they could infer that the document is authentic.” *United States v. Thomas*, 1990 WL 212541, *4 (6th Cir. 1990) (quoting *United States v. Jardina*, 747 F.2d 945, 951 (5th Cir.1984), *cert. denied*, 470 U.S. 1058 (1985)).

The Sixth Circuit has explained that evidence can be authenticated “in two ways: a chain of custody or alternatively, other testimony could be used to establish the accuracy and trustworthiness of the evidence.” *United States v. DeJohn*, 368 F.3d 533, 542 (6th Cir.), *cert. denied*, 543 U.S. 988 (2004). Federal Rule of Evidence 901(b)(4) specifically provides that a document’s authenticity can be established by “testimony of [a] witness with knowledge,” of the

document's "[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances."

In *United States v. Dumeisi*, 424 F.3d 566 (7th Cir. 2005), *cert. denied*, 547 U.S. 1023 (2006), the defendant was an intelligence source for the IIS who, like Defendant Hamama, was charged with acting as a foreign agent in violation of 18 U.S.C. § 951 and 18 U.S.C. § 371, among other crimes. The government sought to introduce at trial IIS documents recovered by United States military forces in Iraq. *Id.* at 574. The defendant moved to exclude the IIS documents arguing, among other things, that the documents were not authentic. *Id.* The district court admitted the documents. On appeal, the Seventh Circuit held that the district court properly admitted the documents based on the evidence of a former IIS official who testified that he worked for the IIS for many years and had knowledge of the IIS, its mission, and its structure. *Id.* at 575. The witness also testified that "he identified distinctive characteristics including the style and form of the documents ('in line with the way that the Iraqi Intelligence service will prefer to produce a document'), symbols, codes, abbreviations, and signatures of some fellow IIS officers." *Id.* In addition to the documents' physical characteristics, the court of appeals found that the "circumstances surrounding discovery" of the documents supported the district court's decision that the documents were properly

authenticated. *Id.*

In the present case, the government will offer even more persuasive testimony regarding the authenticity of the IIS documents than was offered in *Dumeisi*. The government can call not one, but three former Iraqi government officials to testify that they recognize the signatures and handwriting in the documents as belonging to IIS officials. One of these witnesses will also testify that the logos, markings, and framework of the documents are consistent with documents prepared by the IIS. In fact, the testimony offered in this case is even more persuasive than the testimony offered in *Dumeisi* because, unlike *Dumeisi*, at least one witness has independent, personal knowledge of the information in the IIS documents regarding the monetary payments made by the Iraqi government to the defendant.

In addition to these witnesses, the government can authenticate the IIS documents through the testimony of an expert witnesses who is intimately familiar with Iraqi Intelligence Service documents.

The defendant himself has authenticated the documents by admitting that he wrote the handwritten letter that was found in the IIS documents. Lastly, the circumstances surrounding the discovery of the documents – the seizure of the documents by United States military and opposition forces in Iraq – strongly

supports their authenticity. The IIS documents are sufficiently authentic to be presented to the jury.

II. The IIS Documents are Not Hearsay

A statement is not hearsay if it is “a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.” Fed. R. Evid. 801(d)(2)(E). “The government must show by a preponderance of evidence that a conspiracy existed, that the defendant was a member of the conspiracy, and that the statement was made in the course and furtherance of the conspiracy.” *United States v. Lopez-Medina*, 461 F.3d 724, 746 (6th Cir. 2006). The district court may consider the hearsay statements themselves in determining whether a conspiracy existed, but the statements alone cannot satisfy the government’s evidentiary burden. *Id.*

Documents belonging to a foreign country’s intelligence service have been admitted as co-conspirator’s statements under Rule 801(d)(2)(E) in the Fourth Circuit. In *United States v. Squillacote*, 221 F.3d 542, 564 (4th Cir. 2000), *cert. denied*, 532 U.S. 971 (2001), the defendants were charged with various offenses related to their espionage activities on behalf of East Germany (“GDR”) and other countries. At trial, the government introduced documents “that the government purchased . . . from unidentified sources.” *Id.* at 564. The documents were

created by East Germany's intelligence service and they contained information about the defendants' addresses, their code names, and the operations to which the defendants were assigned. *Id.* at 552. The district court admitted the documents under Rule 801(d)(2)(E) as co-conspirator statements. *Id.* at 563. On appeal, the Fourth Circuit affirmed the admission of the documents. The court of appeals found that the documents were created during the course of the conspiracy and that "there can be no real dispute that, by compiling the information contained in the disputed documents – the Appellants' real and code names, their addresses, the object of their assignments, how they could be contacted – the GDR was acting in furtherance of the conspiracy." *Id.* The court of appeals also considered it significant that, like the IIS documents at issue in the present case, the contents of the East German documents were corroborated by the defendants' own statements to an FBI agent. *Id.*

The members of the conspiracy in this case included the defendant and other individuals who worked for the IIS. The object of the conspiracy was for the defendant to act as an agent of the Iraqi government. To further this conspiracy, the IIS created documents detailing the activities of the defendant and the relationship between the defendant and the IIS. These documents are compelling evidence that the conspiracy existed and that the documents contained in Exhibit 1

were made in furtherance of the conspiracy. Other evidence supports this conclusion. The defendant's own statements to the FBI – in which he admitted to writing and delivering the handwritten letter that was found among IIS documents in Iraq – are further evidence of the conspiracy. The government will offer additional evidence corroborating many of the facts found in the IIS documents, such as the defendant's connection to Jabbar Hamza and the payments he received as recorded in the IIS documents. In short, there is a preponderance of evidence to show that the conspiracy existed, that the defendant was a member of the conspiracy, and that the IIS documents were made in the course and furtherance of the conspiracy. The IIS documents are therefore admissible as non-hearsay co-conspirator statements.

III. The IIS Documents Fall Under Hearsay Exceptions

Even if the IIS documents were considered hearsay statements, the documents qualify for admission under two exceptions to the hearsay rule: the residual hearsay exception and the business record exception. In *Dumeisi*, the Seventh Circuit affirmed the district court's admission of IIS documents under Rule 807, the residual exception. 424 F.3d at 576. The court of appeals stated that the testimony of the former IIS official authenticating the documents, as well as testimony that handwriting in the documents belonged to the defendant, was

sufficient indicia of reliability to meet the requirements of Rule 807. *Id.* In the present case, the government will present even more compelling evidence: three former Iraqi government officials who will authenticate the documents, an expert witness who will authenticate the documents, and the defendant's admission that he supplied the IIS with information and created one of the documents found in the IIS file.

The IIS documents also fall within Rule 802(6), the business record exception to the hearsay rule. To qualify for the business record exception, the government must lay a foundation "through the testimony of the custodian or other qualified witness." *United States v. Baker*, 458 F.3d 513, 518 (6th Cir. 2006). The Sixth Circuit has explained that "[t]he phrase 'other qualified witness' is given a very broad interpretation. To be an 'other qualified witness,' it is not necessary that the person laying the foundation for the introduction of the business record have personal knowledge of their preparation. All that is required of the witness is that he or she be familiar with the record-keeping procedures of the organization." *Id.* at 519.

One of the former Iraqi government officials and the expert witness are qualified witnesses for purposes of Rule 803(6), and can lay the proper foundation for admission of the documents. These witnesses will testify that they are familiar

with IIS record keeping procedures and that it was the regular practice of the IIS to create documents like those at issue here and keep them in the course of its regularly conducted activity. Moreover, the documents themselves demonstrate that other requirements of Rule 803(6) are met. The dates of the documents show that they were created at or near the times in question; the contents of the documents show that the documents were created by the defendant or another person with knowledge of the information contained in the documents. In short, the documents were the business records of the IIS and qualify for admission as an exception to the hearsay rule.

CONCLUSION

For all of the foregoing reasons, the government's motion to admit the IIS documents, as contained in Exhibit 1, should be granted.

Respectfully submitted,

BARBARA L. MCQUADE
United States Attorney

s/Michael C. Martin
Assistant United States Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
Phone: (313) 226-9670
E-mail: Michael.C.Martin@usdoj.gov

Dated: March 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2010, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Mr. Haytham Faraj
5626 Cambourne Road
Dearborn Heights, MI 48127

s/Michael C. Martin
Assistant United States Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
Phone: (313) 226-9670
E-mail: Michael.C.Martin@usdoj.gov