

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

NO. 2:07 CR 20160

v.

HON. NANCY G. EDMUNDS

NAJIB SHEMAMI,

Defendant.

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**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 intelligence collection and reporting activities on behalf of the Iraqi government. These documents are sufficiently authentic to be admitted into evidence and are admissible under the hearsay rules. Concurrence in this motion was sought pursuant to Local Rule 7.1(a)(1) on October 25, 2007, and was declined.

**Background**

During the reign of Saddam Hussein, the Iraqi government established and maintained a foreign intelligence service, known as the Iraqi Intelligence Service (“IIS”). In 2002, the defendant began supplying the IIS with intelligence reports on the activities of Iraqi expatriates in the United States. Following a trip to Turkey in

late December, 2002, the defendant also supplied the IIS with an intelligence report on the location and activities of United States military forces in Turkey. The defendant continued to report to the IIS until January, 2003.

On March 20, 2003, coalition forces invaded Iraq. Thereafter, United States military forces searched government buildings and other locations in Baghdad, Iraq. As a result of these searches, United States military forces seized documents that related to the activities of the IIS, including documents that pertained to the defendant. *See Exhibit A.* (These trial exhibits have been produced to the defense and will be hand-delivered to the Court). These documents included internal correspondence among different IIS components regarding the defendant's intelligence collection activities, as well as intelligence reports handwritten by the defendant. The documents contained information that is corroborated by other evidence about the defendant's code name, travel to and from Iraq, address in the United States, telephone number, family members and business.

On June 21, 2006, agents of the Federal Bureau of Investigation interviewed a former member of the IIS who has "extensive knowledge of the Iraqi Intelligence Service (IIS) community and has a working knowledge of day to day operations" of the IIS. *See Exhibit B (FBI 302, June 26, 2006, at 1).* 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.” *Id.* The individual further stated that he personally knew several of the individuals named in the documents and that he had personal knowledge of the defendant’s intelligence reporting regarding United States military forces in Turkey. *Id.* The individual described how the information the defendant supplied about United States military forces in Turkey was evaluated by the IIS to determine if it was credible. Following the evaluation, the information “was considered important and was passed to the President’s Office.” *Id.* at 3.

On March 28, 2007, the defendant was charged in a four-count sealed indictment with conspiracy, in violation of 18 U.S.C. § 371; acting as an unregistered agent of a foreign government, in violation of 18 U.S.C. § 951; violating the economic embargo against Iraq, in violation of 50 U.S.C. 1705(b); and false statements, in violation of 18 U.S.C. § 1001. The indictment was unsealed on April 17, 2007.

During an interview with FBI agents on April 17, 2007, the defendant admitted to supplying the IIS “with information on individuals living in the Detroit area,” and to supplying the IIS with military information that he obtained while on a trip to Turkey in late 2002. *See* Exhibit C (FBI 302, April 23, 2007, at 1-2). The defendant was also shown copies of the handwritten reports he provided to the IIS. The

defendant confirmed that he wrote the reports, and that the handwriting and signatures were his. *Id.*

## 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 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 the same type of testimony regarding the authenticity of the IIS documents as was offered in *Dumeisi*. The former IIS official will testify that he has extensive knowledge of the IIS. He will testify that he personally knows individuals mentioned in the documents and recognizes their signatures, which appear on certain documents. He will 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*, the witness has independent, personal knowledge of the information in the IIS documents regarding the defendant’s December, 2002, reporting on United States military forces. The defendant himself has authenticated the documents by admitting that he supplied the IIS with intelligence reporting and confirming that the documents contain his handwriting and signature. In addition, the circumstances surrounding the discovery of the documents – the seizure by United States military forces of the documents in Baghdad – 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, although the statements cannot alone suffice to 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 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. In addition, the defendant himself created documents that contained intelligence information for the IIS. These documents are compelling evidence that the conspiracy existed and that the documents were made in furtherance thereof. Other evidence supports this conclusion. The defendant’s own



statements to the FBI – in which he admitted to providing the IIS with intelligence information and verified that the IIS documents were genuine – 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 address, telephone number, and dates of travel to the Middle East. This evidence will also corroborate information in the IIS documents about the victims of the defendant’s crimes, such as the identities and activities of individuals that the defendant disclosed to the IIS. 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 document 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 case currently before the Court, the government will present even more compelling evidence. In addition to the testimony of the former IIS official and the defendant's handwriting in the documents, the government will show that the defendant himself admitted to supplying the IIS with intelligence information and creating some 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.

The former IIS official who will testify regarding the authenticity of the documents is a qualified witness for purposes of Rule 803(6) and can lay the proper foundation for admission of the documents into evidence. The former IIS official will testify that he is familiar with the 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 the 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 should be granted.

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Dated: October 25, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2007 , 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:

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