

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

United States v. Alcantara, 837 F.3d 102, 108 (1st Cir. 2016). *Alcantara* involved a Secret Service agent testifying that U.S. currency depicted in photographs were in fact counterfeit bills. The court there found that the agent used “straightforward experiential logic” of the type that was permitted by lay testimony. *Id.* Rule 701 is intended to allow this exact type of opinion testimony, not bar it. *See United States v. Pontz*, 132 F.4th 10 (1st Cir. 2025) (“Rule 701 does not categorically prohibit opinion testimony based on work experience. To the contrary, the rule is ‘meant to admit testimony based on the lay expertise a witness personally acquires through experience, often on the job.’ (quoting *United States v. Maher*, 454 F.3d 13, 24 (1st Cir. 2006)). [REDACTED]

[REDACTED] they can be tested through cross-examination (as evidenced by the defendant’s own challenges in subsection I (c) in their opposition).

Second, the defense argues that because the formal handwriting examination is not complete, there is no merit to that argument. The government has indicated that the analysis is ongoing and intends to provide any results to the defense once the analysis is complete. The government has every expectation of presenting the completed handwriting analysis at trial. However, the government provided several examples in its motion where even a lay person can observe the similarities in the handwriting samples. These observations indicate that the government’s belief that the handwriting analysis will confirm the authors is well-founded.

The defense then spends eight pages seemingly picking apart each document and questioning the authenticity of the documents. For Document 1, their main point seems to be that the pages are of different color and there is no heading. The government expects [REDACTED] testify that the color, the format, the handwriting and the fact that it was found with other documents are characteristics which indicate its authenticity. For Documents [REDACTED] the defense has the same refrain: [REDACTED] The government provided a very clear comparison on pages 9-10 of its original motion between [REDACTED] and a document that was provided by one of the co-conspirators (who, in addition to being the author of many of these documents, was affiliated with [REDACTED], showing the logo to be of the [REDACTED] [REDACTED] See ECF 341-2.

For Document [REDACTED] the defense plays “spot the difference” between the logo on Document [REDACTED] and another logo from a completely distinct, unrelated document provided in discovery. But distinctions like [REDACTED] only matter if one assumes that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴

[REDACTED]

[REDACTED]

[REDACTED]

² [REDACTED]

³ Produced in discovery at Sensitive-USAO-000018592.

⁴ Produced in discovery at Sensitive-USAO-000003272.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ [REDACTED]

⁶ Produced in discovery at HS-USAO-000089133.

⁷ Produced in discovery at HS-USAO-000089137.

[REDACTED]

The defense makes similar arguments about the remaining documents: [REDACTED]

[REDACTED]

But in the end, the defense’s arguments go to weight, not admissibility.

II. The Case Law Supports Admissibility

The defense cites several examples where documents were deemed to have met the threshold for authenticity, but claims those cases are distinguishable from the facts here. All three cases the defense cited (*United States v. Hassanshahi*, 195 F. Supp 3d 35 (D.D.C. 2016); *United States v. Abukhatallah*, 41 F.4th 608 (D.D.C. 2022); and *United States v. Safavian*, 435 F. Supp 2d

36 (D.D.C. 2006)) relied on Fed. R. Evid. 901(b)(4) as the only basis of authentication. While the defense describes the facts as very different from our case, in *Hassanshahi*, the circumstances of the discovery of the document, the letterhead, that fact that the signature block included the defendant's name, and the fact that the letter's content aligned with much of the other evidence in the case all combined to satisfy Rule 904(b)(4). [REDACTED]

[REDACTED] As *Abukhatallah* noted in deciding those records' admissibility, the question was not whether the government "conclusively" proved their authenticity, but whether the government's showing "permit[ted] a reasonable juror to find that the evidence is what its proponent claims." *Abukhatallah*, 41 F. 4th at 623, (citing *United States v. Blackwell*, 694 F.2d 1325, 1330 (D.C. Cir. 1982)). "[W]ith Rule 901's requirements met, Khatallah's arguments "go to the *weight* of the evidence—not to its *admissibility*.'" *Id.* (quoting *United States v. Tin Yat Chin*, 371 F.3d 31, 38 (2d Cir. 2004) (emphases in original)); see also *United States v. Mitchell*, 816 F.3d 865, 871-72 (D.C. Cir. 2016). Notably, the defense does not cite any cases where the items at issue were deemed inadmissible.

III. Duplicates are Sufficient Under the Law

Federal Rule of Evidence 1003 provides: "A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate." Fed. Rule. Evid. 1003. The defense's argument overlooks some key language in the statute; it is not enough for the defense to say they have questions about authenticity, it must be that there is a *genuine* question. *Elliott v. Cartagena*, 2020 U.S. Dist. LEXIS 137088, 9-10 (S.D.N.Y. 2020); see also *United States v. Chang An-Lo*,

851 F.2d 547, 557 (2d Cir. 1988). As discussed, the government expects that the authenticity of the documents will be easily established. [REDACTED]

[REDACTED] The defense argues that they could “potentially obtain the services of a paper expert who could test the age of the paper as well as the paper’s origin and other details that would either support or more likely denigrate the alleged authenticity of the documents.” ECF 358-2 at 18. This is pure speculation at this point. They have made no proffer about what kind of testing a “paper expert” could do or if they could look at paper that was produced in the [REDACTED] versus paper in the 2020s and draw any conclusions; same with the ink that was used.

Moreover, Rule 1003 is not the final word on the admissibility of copies. Federal Rule of Evidence 1004 provides:

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

In this case, [REDACTED]. However, because of the expected testimony about the documents, that should not bar the admission of the copies.

IV. The Documents are Admissible Under 801(d)(2), 803(16) and/or 807

The defense posits that the contents of the documents are not co-conspirator statements because (1) there is no “identified declarant” and (2) the contents do not support the conspiracy charged. The defendant seems to allege that because there is no “identified declarant” there is no way to discern who authored them. [REDACTED]

[REDACTED], the content of the documents makes clear that they were made “during and in furtherance of the conspiracy.” There is no requirement under Rule 801(d)(2)(E) that the declarant be identified when the statements themselves make clear their author was a member of the conspiracy. *See, e.g., United States v. Engler*, 521 F.3d 965, 973 (8th Cir. 2008) (“[The defendants] assert that the government failed to show that the unknown declarant who sent the text messages was a co-conspirator. However, the very content of the text messages establishes by a preponderance of the evidence that the sender was a coconspirator.” (citing *United States v. Beckman*, 222 F.3d 512, 523 (8th Cir. 2000))).

As to the second argument, the defense makes two errors. First, they misstate the conspiracy alleged in the indictment, which involved the defendant, along with Megrahi, Fhimah, and others affiliated with the ESO, agreeing to commit terrorist acts against the United States of America and its citizens, *including* by placing and causing to be placed a destructive device and explosive substance upon Pan Am Flight 103 and by maliciously damaging and destroying by means of an explosive device Pan Am Flight 103. *See* ECF 7 at 3 (Indictment). The conspiracy is

not limited to Pan Am Flight 103, but rather includes other terrorist acts. [REDACTED]

[REDACTED]

Second, even if [REDACTED] was not part of the already identified conspiracy, the statements can still be admissible under a conspiracy that is not formally charged. *United States v. Alfonso*, 738 F.2d 369, at 371 (10th Cir. 1984). *See also United States v. Durland*, 575 F.2d 1306, 1308 (10th Cir. 1978) (explaining that Rule 801(d)(2)(E) “is applicable so as to admit statements of co-conspirators, where it appears from the evidence that they were acting in concert, even though the conspiracy is not in accordance with the charge of conspiracy or even though a conspiracy has not been charged.”). Indeed, Rule 801(d)(2)(E) is not even limited to criminal conspiracies, but applies equally to statements by those engaged in the same “lawful joint enterprise.” *United States v. Gewin*, 471 F.3d 197, 202 (D.C. Cir. 2006). However the relevant “joint enterprise” is defined, the defendant was clearly part of it along with the authors of each of the documents.

Similarly, the government expects that the foundations will be laid to admit the documents under 803(16) and/or 807. The defense argues that “the government has not proffered that these documents are more probative on the points for which they are offered for—the alleged conspiracy to destroy Pan Am 103—than any other evidence obtainable through reasonable efforts.” By framing the issue at this high level of generality, the defense makes it virtually impossible to satisfy Rule 807(2) except with case-dispositive evidence. The “points” being established by the proffered documents are more specific, and include for example (1) that the defendant participated in testing of a suitcase bomb prior to the attack on Pan Am Flight 103; and (2) that Fhimah reconnoitered airports as part of planning for an operation. Neither of these important facts can be proven in any other way. The documents are being offered to show the defendant’s knowledge and willingness

to join the conspiracy, and contemporaneous documents signed by him or mentioning him are unique sources of information, which do not exist elsewhere.

V. The Government is [REDACTED]

The government intends to introduce the full set of documents⁸ in order to prove their authenticity, because (as explained in our opening brief) the indicia of authenticity on the various documents make them mutually corroborative of each others' genuineness. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rather, the point is that the contents of the documents contain facts that are consistent with other evidence in the case, which helps support a finding that the overall set of documents is authentic. For example, in [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹ This is not to concede that such evidence, if offered, would violate Rule 404(b). To the contrary, it would be admissible for multiple valid purposes. *Cf. generally* ECF 147 at 10-13 (arguing admissibility of La Belle Discotheque bombing evidence as relevant to motive, knowledge, intent, and identity).

