

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

**ABU AGILA MOHAMMAD
MAS'UD KHEIR AL-MARIMI,**

Defendant.

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Case No. 22-cr-392 (DLF)

**REPLY IN SUPPORT OF NOTICE OF ADDITIONAL AUTHORITY IN SUPPORT OF
GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE
PORTIONS OF HIS STATEMENT UNDER THE FEDERAL RULES OF EVIDENCE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits reply to the defendant's responsive pleading regarding Fed. R. Evid. 801(d)(2)(B). The defense pleading misses the import of the plain language of the rule, as well as the facts of *Beckham* and *Safavian*.

The rule requires only that the party-opponent "manifested that it adopted or believed [the statement to] be true," and it is silent on how that adoption or belief must be shown. *See* Rule 801(d)(2)(B). D.C. Circuit case law states that the defendant must have "understood and unambiguously assented to [the challenged] statement." *United States v. Beckham*, 968 F.2d 47, 52 (D.C. Cir. 1992). The statements at issue¹ can generally be divided into three groups: (1) statements made prior to the attacks at issue (Statements 1-4, 7-11, and 18²); (2) statements made

¹ The government calls these "statements" for convenience and assumes that there is an associated utterance for purposes of this pleading. It maintains its position that many are not statements as defined by Rule 801, and some do not even have associated utterances.

² Although Statement 18 – Megrahi directing the defendant to prepare to travel Benghazi, ultimately to meet with Qaddafi – was uttered after the bombing of Pan Am Flight 103, because it is a directive, it should be analyzed similarly to the others in this group.

after the attacks at issue about the attacks themselves (Statements 5, 6, 12, and 14-16³); and (3) statements made after Pan Am Flight 103 expressing gratitude or taking steps to ensure the defendant would not be captured (Statements 17, 19-22).

The first group of statements are all directives of some nature, and thus most closely analogized to *Beckham*. The government maintains its position that these statements are non-hearsay, in large part because they are non-assertive. *See generally* ECF 491. However, should the Court disagree with that, *Beckham* is an apt comparator – there the declarant made a statement referencing what the defendant could do, and the defendant did it. Here, the declarants made statements about what the defendant *should* do, and he did those things. The defense pushes a distinction without a difference. By carrying out the directives of Abdulkarim, Senussi, Rashid, Kashlaf, Megrahi, and Fhimah, the defendant unambiguously assented to them, thus rendering them admissible under Rule 801(d)(2)(B).

The defendant's claims that the government cannot prove that the defendant carried out the orders falls short. *See* ECF 501 at 4. The defendant's statement to Jamal regarding his own actions is competent evidence of those facts: It is admissible under Rule 801(d)(2)(A), those portions of the statements are unchallenged under the Rules of Evidence, and it is corroborated. As explained in detail in, *inter alia*, the government's filing regarding co-conspirator statements, ECF 505 at 4-11, extrinsic evidence corroborates the actions the defendant took to comply with the orders.⁴ The

³ Statement 16 – conveying defendant's knowledge of Megrahi's and Fhimah's professional positions – is most like the others in this group, even though it is not specifically about the attacks.

⁴ The defendant's reference to the Court's June 15, 2026, Minute Order is curious. *See* ECF 501 at 4. That Minute Order expressed a concern with making a finding that the challenged statements were commands, but it expressed no opinion one way or the other regarding the reliability of the defendant's statement generally.

defense is of course free to argue to the jury that it should discredit the defendant's statement, but his position in that regard does not render the statement incompetent evidence.

The second group of challenged statements contain information that the defendant related to Jamal in explaining his role in two major terrorist attacks. The defendant was in an interview with law enforcement, during which he revealed his role in the attacks on Pan Am Flight 103 and the La Belle Discotheque, among others. At the time he related them to Jamal, he had already admitted that he committed those operations and was in the process of supplying details. By explaining to Jamal that he relied on those statements in coming to determinations about the results of his work (*e.g.*, Statement 14, "I got to know that after the explosion – that the plane was from Malta to Frankfurt to America"), he unambiguously manifested a belief that those statements were true. If he did not hold such a belief, he would not have mentioned them in the course of his admissions to Jamal.

This group of statements is more closely analogized to the email messages in *Safavian*, 435 F. Supp. 2d 36, 43-44 (D.D.C. 2006) than to the statement at issue in *Beckham*. The government agrees that the context of the emails is not entirely clear from the *Safavian* decision and that the decision provides little specific guidance, but it nonetheless demonstrates that statements that a party-opponent relates to provide context or explanation for his own statements can qualify as adoptive admissions under Rule 801(d)(2)(B). Although this defendant relating statements to a law enforcement officer many years later is indeed a different context than forwarding emails as a criminal scheme is ongoing, the government is unaware of a case (and the defense has not cited any) standing for the proposition that the circumstances here cannot support a finding that the

defendant adopted a belief in statements by relaying them as part of an admission to a crime.⁵ The defendant having done so, in the context of providing Jamal details about his activities, supports an inference that the defendant believed the details involved, and the defendant does not meaningfully contest that basic premise.⁶

Take as an example Statement 12 – “and one day after that I learned that an American airliner had exploded.” In the very next sentence, which the defendant does not challenge, the defendant stated, “I knew for sure that that was the plane in which the suitcase had been used that I had earlier prepared and delivered in Malta.” ECF 232-2 at 7. That second statement manifests an adoption of the prior one. In statement 16, the defendant was asked directly what Megrahi’s and Fhimah’s roles were in the organization, and he answered directly. Whatever the source of that information, the defendant adopted a belief in its truth by relaying it to Jamal.

The third group of statements is a bit of a hybrid of the first two. Like the directions and orders that took place before the attack, the government maintains that the expressions of gratitude and travel bans contain no assertive intent, and therefore there was nothing for the defendant to manifest a belief in. *See generally* ECF 491. But to the extent that there is assertive content in expressions of thanks, the defense appears to contend that the import of that assertion is that the

⁵ The lack of case law in this area is not surprising: it is not often that a defendant challenges portions of his own statement as containing hearsay. That this defendant did so where others may not have does not alter this Court’s analysis: the defendant’s actions manifested a belief in or assent to the challenged statements, and they are thus admissible.

⁶ The defense offers as an example Statement 5, which involves Kashlaf nodding as the news played reports of the La Belle attack. The statement which the defendant adopted a belief in there is Kashlaf’s. The only thing the defendant relates in that statement about the news broadcasts is the fact that they were on at the time that Kashlaf nodded. It is unclear what the source of the defendant’s assertion that “The explosion was in a night-club frequented by individuals and officers of the American army.” He certainly does not explicitly say that the source was the TV reports. Even if it did come from the reports, the defendant reported it to Jamal as fact, thus manifesting a belief in it. This is another example of Rule 602 not barring speculation within a party-opponent’s statement.

attacks were carried out.⁷ The defendant manifested an unambiguous belief in the fact that the attacks were carried out by admitting to them in detail to Jamal. *Cf. United States v. McKinney*, 345 Fed. Appx. 206, 207 (8th Cir. 2009) (unpub.) (victim of defendant’s sexual assault discussed that assaults with others, who then confronted the defendant, and the defendant admitted those assaults; the defendant’s admission adopted the allegation contained within the prior conversation between the victim and others). The same logic applies to the statements about travel bans and passports. The defense contends that the “truth” being expressed in those statements is the defendant’s guilt. *See* ECF 494 at 22, Statement 22. The defendant manifested an unambiguous belief in his guilt by admitting his involvement to Jamal.

⁷ The defense has previously contended that the government intended to use Qaddafi’s offer of thanks to prove that he ordered the Pan Am Flight 103 attack. *See* June 1, 2026, Hr’g Tr. at 110. In its most recent filing, on the topic, the defense seems to assert that the government wants to use Qaddafi’s statement to prove a *government* assertion. *See* ECF 494 at 20, Statement 19. Whatever Qaddafi may have been asserting by thanking the defendant, he was not asserting a fact that would not be written for another 37 years, so if the government does indeed use the statement for that purpose, it would not be using it for the truth of the matter asserted in the statement.

CONCLUSION

For the above reasons, in addition to those already stated, the Court should admit each of the statements that the defendant has challenged as hearsay in the La Belle and Pan Am Flight 103 portions of his statement.

Respectfully submitted,

JEANINE FERRIS PIRRO
UNITED STATES ATTORNEY

By: /s/ Erik Kenerson
ERIK M. KENERSON (OH Bar No. 82960)
CONOR MULROE (NY Bar No. 5289640)
BRITTANY KEIL (D.C. Bar No. 500054)
Assistant United States Attorneys
JEROME J. TERESINSKI (PA Bar No. 66235)
Special Assistant United States Attorney
601 D Street NW, Washington, D.C. 20530
(202) 252-7201 // Erik.Kenerson@usdoj.gov

KATHLEEN CAMPBELL (MD Bar No. 9812170031)
JENNIFER BURKE (MD Bar No. 9706250061)
Trial Attorneys, Counter Terrorism Section
National Security Division
950 Pennsylvania Avenue NW, Washington, D.C. 20530