UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	Crim. No. 18-CR-195 (JAM)
v.	)	
	)	August 9, 2019
FAREED AHMED KHAN,	)	
	)	
Defendant.	)	

GOVERNMENT'S OMNIBUS OPPOSITION TO DEFENSE MOTIONS *IN LIMINE* AND SUPPLEMENTAL BRIEFING AS TO GOVERNMENT'S MOTIONS *IN LIMINE*

On July 29, 2019, the United States of America submitted an omnibus motion *in limine*, arguing, *inter alia*, that the government intends to introduce evidence in its case-in-chief concerning the defendant's use and facilitation of Hussain Chippa as a "hawaladar," or money remitter. Additionally, the government anticipated connecting that arrangement to terrorism through the admission of evidence that the defendant used Chippa as a hawala to provide money to the defendant's brother, who publicly solicited funds for Falah-i-Insaniat Foundation ("FIF"). The government additionally intended to call an expert to testify that FIF is a designated foreign terrorist organization ("FTO"), and alias for the FTO Lashkar-e-Tayyiba ("LeT"), and to explain how such organizations finance terrorism through the use of charitable organizations and hawalas. (Docket No. 109).

On the same day, the defendant similarly filed motions *in limine*, moving to preclude this and other evidence. (Docket Nos.113, 114 & 115). Specifically, the defendant moved to preclude any mention of the term hawala, any evidence of financial transactions between Chippa and the defendant, and any Facebook posts made by the defendant's brother soliciting funds or supporting FIF.

Since the filing of these motions, the government has elected to strike the terrorism

language from the indictment with the consent of the defense. Thus, the government strikes from the Indictment the references to "in the course of a terrorism investigation", "in a terrorism investigation," and "in a matter involving international terrorism as defined in Title 18, United States Code, Section 2331," as well as the reference to subsection (2) of the statute.

In light of this change and in an effort to streamline the evidence, the government and the defense agree that neither side will call experts to testify at trial. Instead, should the Court grant the government's and deny the defendant's pending motions, the parties will stipulate to the definition of hawalas and the fact that FIF and LeT were designated terrorist organizations at the time of the events germane to this case. (*See* Exhibits 1 and 2 hereto, attaching the draft stipulations).

The remaining issues for the Court are the government and defense motions to introduce or preclude, respectively, evidence concerning (a) the financial transactions and flow of money into and through the defendant's multiple bank and PayPal accounts, (b) hawalas, generally, and the defendant's admission that this flow of money was connected to a hawala that the defendant used to give money to his brother, and (c) the defendant's brother's Facebook posts supporting FIF.

The government addresses each of these issues in turn below. Each of these pieces of evidence is inextricably intertwined with the charged offense. Not only do the financial transactions and the defendant's hawala demonstrate that the defendant intentionally made false statements to federal law enforcement, but they also shed light on why his false statements were material to the then on-going Joint Terrorism Task Force ("JTTF") investigation into the defendant. Alternatively, this evidence is admissible under Rule 404(b) to show *why* the defendant made the charged false statements, illustrating his motive and absence of mistake. And this

evidence is not unfairly prejudicial, given these appropriate channels of admission directly related to the charged conduct. Nor are the brother's Facebook posts inadmissible hearsay, as they are, *inter alia*, non-declarative statements that the government intends to admit for their effect on the listener, not their truth.

For these reasons, the defendant's motions should be denied and the government's motion should be granted.

BACKGROUND[1]

This case stems from a JTTF investigation into Fareed Ahmed Khan and others for providing material support to a foreign terrorist organization.

During the course of the investigation, the JTTF determined that the defendant repeatedly received multiple cash deposits into his bank account, amounting to over $200,000 over the course of about eight years. The JTTF also discovered that the defendant was transacting with a man named Hussain Chippa from Pakistan. Chippa would arrange for third parties to make deposits into one of the defendant's bank accounts. The defendant would then transfer the money to another bank account, where it would be used to fund medical equipment purchases Chippa made from Pakistan using the defendant's PayPal and eBay accounts. The medical equipment included various monitors, endoscopy scopes, and other equipment typically used to treat gastrointestinal maladies. The defendant then collected the purchased medical equipment, repackaged it, and sent it to two different names that were not Chippa, all to the same address in Pakistan.

The defendant eventually admitted to the JTTF that his shipping arrangement with Chippa

[1] The government hereby incorporates its "Background" section from its motions *in limine*, filed on July 29, 2019. The Government's Motions *In Limine* at 1-4 (Docket 109). Included here are facts relevant to the motions at issue.

was a "hawala," or an alternative remittance system to transfer money overseas. According to the United States Department of the Treasury, a "hawala" is an alternative or parallel remittance system that originated in South Asia. Dependent on family and regional relationships, a "hawala" works by transferring money without actually moving it. For example, individuals in the United States who wish to give money to family in Pakistan can place requests and payments with a "hawaladar" in the United States, who communicates the requests to a counterpart-hawaladar in Pakistan, who makes the requested payments to the family in Pakistan.

Unlicensed hawalas may be in violation of federal regulations and law if the organization knowingly remits money while not complying with American regulations concerning the licensing and operation of such money remitters. *See* 18 U.S.C. 1960 ("Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both"). Many South Asian nations (such as India and Pakistan) also have laws that prohibit speculation in the local currency, prohibit foreign exchange transactions at anything other than the official rate of exchange, and impose strict licensing requirements on money remitters and foreign exchange dealers. In addition, there are regulations governing inbound and outbound remittances. Like any other remittance system, hawalas can play – and historically have played – a role in money laundering and terrorism financing. This is because hawalas can operate without complying with anti-money laundering and "know-your-customer" regulations applicable to traditional banking institutions. (*See* Exhibit 3, attaching "Hawala Alternative Remittance System and Its Role in Money Laundering", United States Department of the Treasury, Financial Crimes Enforcement Network (FinCEN), 2003).

Evidence obtained from the defendant's phone further corroborated the fact that Chippa

was a hawaladar who the defendant used to give money to his brother, an FIF supporter. Specifically, Chippa wrote to the defendant on February 2, 2015: "Asmk any one wants to send money please do let me know". Similarly, on June 5, 2015, the defendant directly communicated with Chippa, asking him to pay Naveed on the defendant's behalf. The defendant messaged, "Naveed need $1000 is possible you give him." Chippa replied, "oh yes I will." Later, on June 17, 2015, Chippa confirmed that he had made the defendant's requested payment to Naveed, writing to the defendant that he had given "Naveed Bhai … Rs 100,000." Likewise, on July 28, 2015, the defendant and Chippa had the following WhatsApp exchange:

> HC: Asmk Bhai I need to pay an item of 1230$ do I have enough money to pay it
> KF: No right now $1000 in bank
> HC: Farid bhai it ispossible you add remainng amount I can hand over it Naveed bhai because it is very difficult to tranasfer small amount .
> FK: Ok i did but Naveed no need now try transfer money need for shipping

And Naveed's Facebook posts demonstrated that, at the time the defendant was using Chippa to provide money to his brother, Naveed supported FIF. Specifically, on August 12, 2013, in response to post by the defendant about Helping Hands, an American charitable organization, Naveed posted the following message on the defendant's Facebook account: "Flah e Insaniyat best work in flood". Similarly, on July 25, 2014, Naveed posted the following message on the defendant's Facebook account:

> Light the lamp of hope. Be it an earthquake or a flood; participate in this movement for Islamic dominance by giving zakat, sadaqat, donation [and/or] fitrana to Falah-e-Insaniyat Foundation, [which is] actively involved in helping oppressed Muslims and in serving suffering humanity.

Naveed's post also listed "Dr. Naveed" as the contact along with a phone number known to belong to Naveed. Moreover, the defendant knew of his brother's affiliations when he sent him money. Within hours of receiving this message, the defendant wrote the following to his brother via

WhatsApp: "$50 fitra & $100 for fidya. Please pay. Zakat I paid already".

On June 26, 2015, JTTF members interviewed the defendant with an attorney present. During the course of that interview, law enforcement notified the defendant that they were conducting a terrorism investigation, and asked multiple questions about packages to Pakistan. The defendant responded that, with the exception of shipping items such as clothing to his brother and sister in Pakistan, he had never shipped any items to anyone in Pakistan.

DISCUSSION

I. The contested evidence should be admitted.

Under Rules 401, 403 and 404(b), the evidence of the defendant's financial transactions and his facilitation and use of a hawala to pay his brother, who publicly supported FIF, is relevant to the intent and materiality elements of the charged offense. Alternatively, this evidence is free of propensity, instead showing the defendant's motive and absence of mistake under Rule 404(b). In any event, none of the evidence is unduly prejudicial. For these reasons, the government motion should be granted.

Pursuant to Rule 401, the evidence at issue is relevant to the defendant's intent and the materiality of his misrepresentations to the on-going JTTF investigation of the defendant. As detailed in the Indictment, the defendant is charged with making materially false statements to the FBI, in violation of 18 U.S.C. § 1001. Specifically, as amended the Indictment states:

> On or about June 26, 2015, in the District of Connecticut, within the jurisdiction of the executive branch of the Government of the United States, that is, the Federal Bureau of Investigation (FBI), the defendant, FAREED AHMED KHAN, did knowingly and willfully make materially false, fraudulent, and fictitious statements and representations, to wit:
>
> …
>
> (6) The only packages he has ever sent to Pakistan were to his sister and brother and contained clothing.
>
> All in violation of Title 18, United States Code, Section 1001(a).

Section 1001 requires the government to prove the following elements: that (1) the defendant made the statement charged in the Indictment; (2) the statement was material to the FBI's investigation; (3) the statement was false, fictitious, or fraudulent; (4) the defendant acted knowingly and willfully; and (5) the defendant made the statement in a matter within the jurisdiction of the government of the United States. *See generally* Leonard B. Sand et al., *Modern Federal Jury Instructions: Criminal*, Instruction 36 (2012).

The defendant told the FBI that he only shipped packages of clothing to his brother and sister in Pakistan. That was a lie. The defendant, in fact, sent numerous packages of medical equipment to Hussain Chippa in Pakistan for years. Specifically, he allowed unknown people to deposit tens of thousands of dollars a year into his personal bank account, which he then transferred to another bank account, used to fund his PayPal account. He then used that money to pay for medical equipment purchased on eBay, which the defendant then received, repackaged and sent to Chippa in Pakistan. The defendant did this not once or twice, but consistently every month for a period of years. In exchange, Chippa paid money at the defendant's instruction to his brother in Pakistan, who was an FIF supporter.

This is exactly what the FBI was investigating. They asked him about packages to Pakistan because they believed that he was engaging in trade-based money laundering and/or using a hawala to get money to his brother who openly supported a terrorist organization. This was not simply a financial fraud investigation; it was a JTTF terrorism-financing investigation. Understanding what the JTTF was investigating is crucial to understanding why the defendant's false statements were material to that investigation – an element of the charged offense. The jury will reasonably question why the JTTF was looking into the finances of a Pep Boy mechanic from Manchester. It is the government's burden to answer that question.

Moreover, the extensiveness of the defendant's shipping arraignment with Chippa evidences that the defendant intended to lie about packages to Pakistan. The government anticipates that the defendant will deny lying at all and claim that he was confused by the interviewing agents' questions. In other words, he will contest that he intended to lie. And so evidence of that intention will be all the more relevant to the charged offense. *See United States v. Gabriel*, 125 F. 3d 89, 95 (2d Cir. 1997) (affirming the admission that the defendant's misrepresentations to FAA negatively affected air safety where the defendant argued that the government could not prove materiality).

For similar reasons, the government respectfully submits that the evidence at issue also is admissible at trial pursuant to Rule 404(b). That the defendant engaged in an eight-year, medical-equipment shipment scheme with Chippa in Pakistan demonstrates his knowledge, intent, and absence of mistake or accident in his false answer to the FBI's question. *See United States v. Pitre*, 960 F.2d 1112, 1119 (2d Cir. 1992); *United States v. Caputo*, 808 F.2d 963, 968 (2d Cir. 1987) (where a defendant's intent or knowledge is clearly at issue, evidence of prior acts may be admissible to prove intent or knowledge). Not only did the defendant in fact send packages to individuals other than his siblings, but he did so in such an orchestrated manner and for so long that it belies any notion that he simply forgot. And the fact that the defendant used Chippa to pay his brother who supported FIF via unlicensed money remitting, thereby evading traditional stringent anti-money laundering regulations, further evidences the importance of the defendant's arrangement with Chippa and his intention to lie to the FBI.

Notably, the probative evidence at issue is not unduly prejudicial. When relevant evidence is coextensive with the requirements of proof – that is, where the evidence directly relates to the elements of the offense charged in the indictment – it cannot, by definition, be unfairly prejudicial

under Rule 403. *See United States v. Cruz Kuilan*, 75 F.3d 59, 61 (1st Cir. 1996) ("[H]ere, as in *Rivera Gomez*, [67 F.3d 993, 996-98 (1st Cir. 1995)] the 'evidence at issue [was] so tightly linked to guilt as defined by the elements of the offense, [that] it would be surpassingly difficult to justify a finding of unfair prejudice stemming from its introduction.'"). Moreover, the government does not intend to argue that the defendant is a terrorist or that he intentionally financed terrorism. Rather, the government intends to introduce the evidence to show that the defendant knew about his brother's allegiances, knew he had given money to his brother via Chippa, and did not want the JTTF agents to know. Thus, to protect his brother and money, he lied. The evidence at issue provides context that shows his intention and motive to lie, completing the story for the jury. *See Gabriel*, 125 F. 3d at 95 (rejecting the defendant's argument of unfair prejudice where relevant to contested issue).[2]

For these reasons, the government should be permitted to introduce evidence of (a) the defendant's financial transactions with Chippa, (b) Chippa's role as a hawala, to include defining the term, and (c) the defendant's knowledge of his brother's support of FIF and use of Chippa to pay his brother.

II. Naveed's Facebook messages are non-hearsay statement offered for the effect on the defendant

In his motion *in limine*, the defendant moved to preclude the introduction of certain of Naveed's posts related to FIF, arguing that the posts were hearsay. (*See* Docket No. 113). Because these posts are not being admitted for their truth, but for their effect on the defendant, they are not hearsay. Moreover, one of the posts contains nothing more than imperative statements which are

[2] In any event, a limiting instruction can mitigate any concern about the potential for undue prejudice.

ipso facto non-hearsay. For these reasons, the defendant's motion should be denied.

"An out-of-court statement is hearsay only if it is offered 'to prove the truth of the matter asserted in the statement.'" *United States v. Rowland*, 826 F.3d 100, 114 (2d Cir. 2016) (quoting Fed. R. Evid. 801(c)). "[S]tatements not offered for their truth, but instead, for their effect on the listener or for context, may be introduced as non-hearsay statements." *United States v. Bouterse*, 765 Fed App'x 463, 468 (2d Cir. 2019) (unpublished) (citing *United States v. Paulino*, 445 F.3d 211, 217-18 (2d Cir. 2006); *United States v. Barone*, 913 F.2d 46, 49 (2d Cir. 1990)); *see also United States v. Gotti*, 457 F. Supp. 2d 395, 397 (S.D.N.Y. 2006) (citing *United States v. Garcia*, 900 F.2d 571, 576 (2d Cir. 1990)) ("It is well-established … that statements offered for their effect on the listener are non-hearsay."). Indeed, "[o]ut-of-court statements are not hearsay if offered to show the context within which parties were acting, or to show a party's motive or intent for behavior." *Leser v. United States Bank Nat. Ass'n*, 2012 WL 6738402, at *5 (E.D.N.Y. Dec. 29, 2012) (unpublished) (citing *Arista Records LLC v. Lime Group LLC*, 784 F. Supp. 2d 398, 420-21 (S.D.N.Y. 2011)).

Likewise, imperative statements – like Naveed's solicitation for FIF – similarly are non-hearsay.[3] Commands are not hearsay unless they are used to prove the truth of an implicit assertion. *See United States v. Dupree*, 706 F.3d 131, 136-37 (2d Cir. 2013) (holding that orders are not hearsay because they are "primarily of imperative statements" and hence "verbal act[s]"); 801 Weinstein's Federal Evidence § 801.11 (noting that questions, imperatives, and verbal acts are generally not considered statements). Furthermore, statements are not hearsay just because, as

3 Once determined not to be hearsay, a statement is admissible if it is relevant and not unfairly prejudicial under rules 401 and 403 of the Federal Rules of Evidence. *Paulino*, 445 F.3d at 217 (citing *Ryan v. Miller*, 303 F.3d 231, 252-53 (2d Cir. 2002); *United States v. Reyes*, 18 F.3d 65, 70 (2d Cir. 1994)). For the reasons stated in Section I of this Discussion section, the posts are relevant and not unfairly prejudicial.

here, they relate to the underlying issues of the case. *See United States v. Garcia*, 900 F.2d 571, 576 (2d Cir. 1990) (co-defendant's statement that the defendant sold "good crack" was not hearsay because it "was offered not to prove the truth of the matter asserted, but to help the jury understand the context of the transaction" at issue); *see also Leser*, 2012 WL 6738402, at *5 (citing *Spicer v. Pier Sixty LLC*, 269 F.R.D. 321, 332 n.6 (S.D.N.Y. 2010) ("admitting emails drafted by defendant's employees and sent to non-parties for their "effect on the listener," where emails contained statements regarding defendant's pricing and tipping policies, in an FLSA wage-and-hour dispute); *Slue v. New York Univ. Med. Ctr.*, 409 F. Supp. 2d 349, 366 n.10 (S.D.N.Y. 2006) (admitting statements with defamatory content in defamation action, not for the truth of the matter asserted but "for the fact that they were made and conveyed a defamatory implication to the listeners")). What matters is the purpose of the statement. And admitting a statement requesting money to contextualize the defendant's offer to pay his brother is a legitimate, non-hearsay purpose.

Here, the government will not admit Naveed's Facebook messages for their truth, but for the effect on the defendant. Naveed sought money from the defendant on behalf of FIF, and the defendant continued to provide him with money via Chippa. The truth behind Naveed's posts are irrelevant: It is of no consequence whether Naveed was, in fact, seeking money for FIF; or whether FIF was, in fact, helping oppressed Muslims or serving suffering humanity; or whether donating money would, in fact, enable the defendant to participate in the movement for Islamic dominance; or whether they were "the best" at addressing floods. What matters is that the defendant knew that his brother supported FIF and in one instance, responded to Naveed's solicitation, a response whose admissibility is not contested. In any event, the defendant's brother's statements at issue are non-declarative. Far from declaring anything, they command or solicit money from the

defendant. So it is unclear what truth a jury can inappropriately glean from them – the very aim of the hearsay rules. Naveed's messages, therefore, would not constitute hearsay, and admitting it would not violate the defendant's Sixth Amendment rights. *Paulino*, 445 F.3d at 217-18.

In short, because Naveed's Facebook postings are not being introduced for their truth, they are not hearsay. The defendant's motion to exclude this evidence should be denied.

CONCLUSION

For the reasons articulated herein and in Docket No. 109, the government respectfully requests the Court deny the defendant's motions *in limine*, and grant the government's omnibus motion *in limine*.

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2019, a copy of the above submission was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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