

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Case No. 6:12-cr-63-Orl-31GJK

MARCUS DWAYNE ROBERTSON

**GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION
IN LIMINE TO DETERMINE THE ADMISSIBILITY AND RELEVANCE OF EVIDENCE**

I. INTRODUCTION

The defendant, MARCUS DWAYNE ROBERTSON, has been an extremist for many years. In the early 1990s, the defendant was a leader of the "Forty Thieves," which was a group of Muslims who conducted numerous armed robberies of Government installations and banks to generate funds that were used, among other things, to buy weapons and explosives. As part of his crimes, the defendant murdered several individuals; participated in assassination attempts; used pipe bombs, C-4, grenades, other explosives, and automatic weapons; participated in a robbery resulting in a hostage situation; and attempted the murder of police officers. Following the first Gulf War, the Forty Thieves stockpiled weapons and explosives in preparation to fight against the perceived threat of interment of Muslims by the United States. The defendant served as personal protection for the Blind Sheikh, Omar Abdel-Rahman, and personally gave over \$300,000 of the stolen funds to mosques that the defendant attended. The defendant was arrested in 1991, testified for the prosecution, and served 4 years in prison.

On August 23, 2011, the defendant was arrested for being a felon in possession of firearm. The defendant was indicted, pled guilty, and is pending sentencing in Case No. 6:11-cr-277-Orl-31GJK.

On March 14, 2012, the defendant was indicted in this case for conspiracy to submit a false claim. Doc. 1. On April 2, 2012, the United States advised the defendant, by letter, of its intent to admit in its case-in-chief evidence of the following conspiracy:

- a. ROBERTSON and CO-CONSPIRATOR #2 are involved in the operation of a travel facilitation network, with members in New York and Orlando, that sends individuals overseas, specifically to Mauritania, a country in Africa, to commit violent jihad.
- b. In November 2010, JONATHAN PAUL JIMENEZ relocated from New York to Orlando at CO-CONSPIRATOR #2's direction where JONATHAN PAUL JIMENEZ began training with ROBERTSON in the skills necessary to participate in violent jihad overseas. JONATHAN PAUL JIMENEZ's training with ROBERTSON has included martial arts, firearm and knife training, reading the Quran, and learning Arabic. During JONATHAN PAUL JIMENEZ's training, ROBERTSON has stressed that JONATHAN PAUL JIMENEZ needs to focus on the religious aspects of his training, prior to perfecting the skills needed to commit violent acts.
- c. In late May and early June of 2011, JONATHAN PAUL JIMENEZ, with the assistance of ROBERTSON and CO-CONSPIRATOR #2, began making preparations for his overseas travel. ROBERTSON assisted JONATHAN PAUL JIMENEZ in getting his photographs for his visa application and his vaccinations. The photographs and vaccination documentation were sent to CO-CONSPIRATOR #2 in New York, who undertook to get JONATHAN PAUL JIMENEZ's visa to Mauritania. On June 17, 2011, JONATHAN PAUL JIMENEZ departed Central Florida and traveled to New York by airplane.

The United States advised of its intent to introduce this evidence in its case-in-chief as proof of intent, preparation, plan, knowledge, and absence of mistake or accident:¹

In particular, the United States will argue that this evidence demonstrates that the Defendants intended to submit the false tax return claim in JIMENEZ's name as part of a common scheme and plan to use fraud to fund JIMENEZ's trip overseas to commit violent jihad, that the Defendants' motive to submit the false tax claim was to fund JIMENEZ's efforts to commit violent jihad overseas, that the Defendants submitted the false tax refund claim as part of JIMENEZ's preparation to go overseas to commit violent jihad, that the Defendants knew that they were violating the law by submitting a fraudulent tax claim, and that their participation in the conspiracy to submit the fraudulent tax claim was not done by mistake or accident but was done knowingly.

¹The United States also asserts that this evidence is inextricably intertwined and not covered by Rule 404(b). See United States v. Weeks, 716 F.2d 830, 832 (11th Cir. 1983) (per curiam).

In other words, the United States believes that the defendant is still an extremist, just as he was in the early 1990s. The only differences are that the defendant is now focused on training others to commit violent acts as opposed to committing them himself and the violent acts are to occur overseas instead of inside the United States.

On October 30, 2012, the defendant filed a Motion in Limine. Doc. 84. According to the defendant, there “is no independent evidence that Mr. Robertson agreed to train and send Mr. Jimenez overseas ‘to commit violent jihad.’” Doc. 84-8. Nothing could be further from the truth. The evidence in this case, including the statements of the defendant and his conspirators and the items obtained during execution of federal search warrants, is more than sufficient to meet the standards for the admission of co-conspirator statements.

II. STATEMENT OF FACTS

A. JIMENEZ’s Arrival in Central Florida

On November 18, 2010, JIMENEZ traveled to Central Florida and began living with ROBERTSON. Shortly after his arrival, JIMENEZ began describing the “plan” to a cooperating source (CS-1) of the FBI. As was reported by CS-1 on January 15, 2011, JIMENEZ told CS-1 that he felt he was being trained and groomed by ROBERTSON to join in violent jihad and fight for Islam overseas. JIMENEZ advised that he wanted to participate in violent jihad overseas and hoped to see action in battle. JIMENEZ described Usama Bin Laden and Anwar al-Aulaqi as good brothers and prayed that Allah kept Bin Laden safe.

On January 19, 2011, CS-1 reported that ROBERTSON confided to CS-1 that ROBERTSON was preparing JIMENEZ to travel overseas. ROBERTSON commented that JIMENEZ was going to be “taking care of business.”

On January 24, 2011, in a recorded conversation, JIMENEZ stated that ROBERTSON wanted JIMENEZ to learn about Islam first and then ROBERTSON would

teach JIMENEZ how to kill. At that time, ROBERTSON believed that JIMENEZ was still a “tadpole” who would continue to study under ROBERTSON until ROBERTSON decided that JIMENEZ was ready to travel overseas.² JIMENEZ explained how ROBERTSON was providing him paramilitary-style training to include tactical entry and room clearing as well as troop leading procedures. JIMENEZ stated that ROBERTSON was training JIMENEZ on “kill moves,” such as the “guillotine choke.” As part of JIMENEZ’s training, ROBERTSON warned JIMENEZ about the possibility of law enforcement coming to get JIMENEZ and the need to have the ability to “take them niggas out.”

On January 29, 2011, in recorded conversations, JIMENEZ discussed his desire to die as a martyr in violent jihad and noted that it is better to fight for the cause of Allah than to make hajj (pilgrimage to Mecca), but doubted his readiness to do so. JIMENEZ stated that he planned on returning to New York and traveling to Saudi Arabia to make Umrah. JIMENEZ would then return to receive “another lesson” from ROBERTSON before departing for Mauritania. JIMENEZ stated that his goal is “[t]o study and one day fight. [Arabic saying], die on the battlefield.” According to JIMENEZ, ROBERTSON was teaching JIMENEZ the basics of knife fighting. ROBERTSON told JIMENEZ that he was “gonna learn weapons,” but that ROBERTSON wanted him to become “deadly” with his hands prior to learning how to fight with weapons. JIMENEZ was “condition[ing]” his “body to be a weapon, so that he could “strik[e] deadly points.” JIMENEZ expressed a desire to learn how to be dangerous with the knife and how to “cut somebody up.”

On January 31, 2011, in a recorded conversation, JIMENEZ expressed his desire to see action in battle and to die on the battlefield where all of his sins will be forgiven. JIMENEZ explained the significance of ROBERTSON’s plan to have JIMENEZ make

²Unless otherwise indicated, any quotations of conversations are from a recorded conversation.

Umrah (a pilgrimage to Mecca performed by Muslims that can be undertaken at anytime of the year) prior to traveling to Mauritania. JIMENEZ stated that ROBERTSON wanted him to cleanse himself of his sins in the event that JIMENEZ was to “jump off” and die.

B. JIMENEZ Completes The “Tadpole” Stage of Training

On February 4, 2011, CS-1 reported that JIMENEZ stated that he had completed the “tadpole” stage of his training with ROBERTSON and was moving into the next stage of his development, to include firearms training. On February 5, 2011, in a recorded conversation, JIMENEZ stated that he planned on putting his training from ROBERTSON to use one day and that ROBERTSON was going to take him to the shooting range to continue his weapons training. JIMENEZ expressed his desire to “be better than the police” in the event of an armed confrontation with law enforcement. On February 11, 2011, CS-1 reported that JIMENEZ stated that he was receiving firearms training from ROBERTSON, but that he had not yet participated in any live shooting exercises.

On February 18, 2011, CS-1 reported that JIMENEZ stated that ROBERTSON was teaching JIMENEZ the United States military rank structure. JIMENEZ claimed that ROBERTSON instructed him to kill the officers first as they are the ones who direct the enlisted personnel and send them into battle. ROBERTSON instructed JIMENEZ that it was mandatory to kill the Marines as they are the fighters and warriors on the battlefield.

On February 26, 2011, in a recorded conversation, JIMENEZ told CS-1 how ROBERTSON told him that JIMENEZ would be sent overseas to his people “with guns”:

He said, when I send you with my people, I’m sending you with, with guns. You know what I’m saying, Uzis. He said, then when you pass them, they gonna send you on another path, the other, you know what I’m saying, up the ladder, you know? To see if I’m ready to, you know?

Also on February 26, 2011, JIMENEZ stated that ROBERTSON wanted him to “fight to kill” and that ROBERTSON taught JIMENEZ that it is “wajib” (obligatory) to kill military

officers, specifically generals, because they “can lead an army.” ROBERTSON further instructed JIMENEZ that it is mandatory to kill members of the military:

So, he said, some of them said it’s wajib, it’s obligatory, if you have, if you see them, and you can kill them and get away with it, and it’s not oppressing the Muslims, he said, you should do it. It’s obligatory on you to kill one of them cats. Now, if you know if you kill them and if they [unintelligible conversation] it’s a Muslim and mess with Muslim, don’t do it, its haram. When you know this dude is a general and he’s still an active, active within the military and teaching stuff, he said, yo, he said, yo, you take him out.

ROBERTSON warned JIMENEZ not to tell others that it was permissible to kill officers.

Also on February 26, 2011, JIMENEZ stated that ROBERTSON was training JIMENEZ on firearms, including how to handle and conceal them. JIMENEZ stated that he had to learn to “fight with the pen first, the sword is second” and that ROBERTSON was training him “to be a mujahideen, akh, with the pen.” ROBERTSON taught JIMENEZ how to obtain a firearm if necessary. JIMENEZ stated that ROBERTSON was under pressure to hurry up and send him overseas. JIMENEZ told CS-1 that he should not be talking about his plans overseas, including his training and being paid to be a “mercenary” overseas. JIMENEZ stated that he needed to “memorize the Quran” as his initiation.

C. Delay in Overseas Travel

On March 17, 2011, CS-1 reported that ROBERTSON was receiving calls about JIMENEZ’s status, in which he was told that JIMENEZ was supposed to be overseas already. ROBERTSON replied that JIMENEZ was not prepared to travel overseas.

On April 6, 2011, CS-1 reported that JIMENEZ told ROBERTSON that he felt like he was a burden on ROBERTSON. ROBERTSON replied that he was not a burden, but an investment. ROBERTSON told JIMENEZ that he does not want JIMENEZ to “freelance” or be involved in “murder for hire” when he leaves the United States, but wants him to be assigned to a group that gives him specific assignments.

On April 7, 2011, in a recorded conversation, JIMENEZ explained that ROBERTSON had instructed him on how to kill people “in a good manner” and how to “do it with kindness.” JIMENEZ believed that ROBERTSON was prepared to make him a killer when he completed the religious aspects of his training. On April 10, 2011, in a recorded conversation, JIMENEZ stated that ROBERTSON was training him on how to transition from a firearm to a knife when close to an enemy and that ROBERTSON taught him how to shoot a BB gun and explained magazine ammunition capacity and magazine release.

On April 11, 2011, in a recorded conversation, CONSPIRATOR #2 warned JIMENEZ about Mauritania by telling him that “the desert ain’t no joke,” but that JIMENEZ “can handle it.”³ CONSPIRATOR #2 continued: “If you don’t know why you’re going, you’re not going to be able to handle it.” CONSPIRATOR #2 expressed concern that others were aware of JIMENEZ’s overseas travel. CONSPIRATOR #2 gave JIMENEZ the same advice that he had given his son in Mauritania: to not “tell nobody where you’re going.”

During this meeting, JIMENEZ expressed concern that ROBERTSON was fostering an environment at a local mosque that could draw unwanted law enforcement attention. JIMENEZ said that ROBERTSON was speaking about “operations that he did in front of them dudes” and “talking about military stuff around them” and that people at the mosque were going to gun shows, shooting at gun ranges, and bringing weapons and ammunition into the mosque. CONSPIRATOR #2 told JIMENEZ that he could not understand why ROBERTSON would tolerate such behavior at the mosque and stated that ROBERTSON could get himself into trouble by permitting that behavior. CONSPIRATOR #2 cautioned JIMENEZ: “I’m telling you, man, ya’ll better be careful with shit like that, man.”

³As used herein, CO-CONSPIRATOR #2 and CONSPIRATOR #2 refer to the same person.

CONSPIRATOR #2 also cautioned JIMENEZ about speaking on the phone about his training with ROBERTSON.

Also on April 11, 2011, in a recorded conversation, JIMENEZ told CS-1 that his mission was to “go to Mauritania and study” and then stated that the step after that was to “graduate and move on,” whether that meant being a mujahid, jihadi, or mercenary.

On April 12, 2011, in a recorded conversation, JIMENEZ told CS-1 of his plan to not tell anyone where he was going and to use a cover story that he is traveling to Spain, so that while people are searching for him there, he will be in Mauritania. On that same date, in a recorded conversation, JIMENEZ stated that he used that cover story with his mother and that she would not be happy if she knew the true intent of his travel overseas.

D. Further Preparations for Overseas Travel

On April 20, 2011, in a recorded conversation, JIMENEZ told CS-1 that he would be with the “killers” and part of the “mujahideen.” JIMENEZ stated that ROBERTSON instructed JIMENEZ to never say that he wanted to die as a martyr, because martyrs never die, they are reborn to fight another day.

On April 27, 2011, in a recorded conversation, ROBERTSON told CS-1 that he did not want JIMENEZ to take a camouflage backpack with him overseas “cause that might make him look like he’s a jihadi or something like that.” ROBERTSON stated that “going into some of these countries that might cause him some problems.” ROBERTSON stated that “it would be nice if we could just do what’s natural, but the reality is you have to worry about what people think when you get in these countries.”

On May 2, 2011, in a recorded conversation, JIMENEZ discussed his desire to become cleansed prior to being martyred overseas. JIMENEZ referred to his travel overseas as his “quest” and explained that he hoped to make Umrah, so that his sins would

be forgiven. JIMENEZ acknowledged that his goal is to be martyred and to “maybe save some lives.” JIMENEZ compared the process he was going through to preparing his own grave, in that each step in the process of traveling overseas, studying the Quran, and reaching the battlefield put him deeper in the grave:

JIMENEZ: That’s why, man, at least I’m getting my grave ready. It’s a little, it’s a little, it’s not there yet, but it’s, it’s being dug.

CS-1: You just got to be prepared for that, you know?

JIMENEZ: So, when I get overseas, I’ll be up to here. You know when I go, when I get off that plane, I’m gonna be up to here, up to the knees. You know what I’m saying? When I make the umrah, I’ll be up above my navel. Then from there it’s memorization, studying, giving it back, you’ve got to give it back, you know? And, uh, hit that dirt, akh.

On May 22, 2011, in a recorded conversation, JIMENEZ stated the following:

a. JIMENEZ explained that ROBERTSON saw “probably something” in him that he did not see in himself, but that ROBERTSON also recognized his limitations. JIMENEZ overheard a conversation in which CONSPIRATOR #2 told ROBERTSON that ROBERTSON was “taking too long” with JIMENEZ in that they needed to “get him outta here.” ROBERTSON replied that he did not trust JIMENEZ and that, when he goes to New York, “he ain’t going to be talking to people, he’s right on the plane.”

b. JIMENEZ advised that he prays to be martyred and explained how a single drop of blood shed on the battlefield would result in the forgiveness of one’s sins.

c. JIMENEZ stated that he and ROBERTSON had discussed the permissibility of suicide bombings. ROBERTSON told him if one could “go to a place where there’s seven top generals,” it would be permissible to use a suicide bomb to kill them. JIMENEZ indicated that he wants to be on the battlefield, even if he would “go out like that” as a suicide bomber. JIMENEZ stated that ROBERTSON instructed him that suicide bombing “[i]s permissible, akh, on certain things.”

d. JIMENEZ explained:

Everything, everything has its place. Everything has its place. You know what I'm saying? Everything has its time and everything has its place. There's a time to put the sword away and take the pen out. That's the time right now. The time right now is to get the pen, get the knowledge. It ain't time for jihad right now cause I ain't ready. I'm not ready, akh. It got nothing to do with no physical, it's the spiritual. It's the spiritual aspect behind it. You know? Everybody go to war, but the main thing that starts the wars is the pen. It's the pen.

e. JIMENEZ said that he would rather kill using a firearm by "banging that iron" than to kill by being a suicide bomber, which he justified due to his desire to have children and die at an old age. JIMENEZ stated he wants to die either as a shaykh or in jihad.

On May 22, 2011, ROBERTSON (derived from court authorized surveillance) spoke with one of his mentors located in Saudi Arabia. ROBERTSON noted that they had been in Mauritania together. ROBERTSON explained that JIMENEZ was about to go to Mauritania in a few weeks and was waiting to get his shots. ROBERTSON stated that JIMENEZ had been with ROBERTSON for about 6 months, but that ROBERTSON had known JIMENEZ for about 11 years. ROBERTSON stated that JIMENEZ had been with CONSPIRATOR #2 and another individual in New York.

On May 25, 2011, ROBERTSON (derived from court authorized surveillance) stated that he hoped that a tornado would destroy most of Missouri and stated:

Every, every tornado that comes over there is to destroy that place. May it destroy the land of the disbelievers. And the people that are living in the land of the disbelievers, what's the ruling on them if they get destroyed with the kuffar? They shouldn't have been there if they could leave. You know?

ROBERTSON stated that he had been praying for the destruction of the land of the disbelievers (United States) since he was in Egypt, which was last documented to be in 2005. On that same day, in a recorded conversation, ROBERTSON told CS-1 that he would give up his American citizenship "[j]ust as long as they let me get another country."

On May 27, 2011 and May 28, 2011, JIMENEZ received vaccinations. On May 27, 2011, in a recorded conversation, JIMENEZ stated that his vaccination records would be sent by mail to CONSPIRATOR #2 to get his visa.

On June 4, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) updated JIMENEZ on the status of his visa. CONSPIRATOR #2 told JIMENEZ that he would be back in New York the following week, and then JIMENEZ would be "out the door." CONSPIRATOR #2 told JIMENEZ that there "ain't no turning back." JIMENEZ responded, "No turning back." CONSPIRATOR #2 told JIMENEZ that everything was in movement and for JIMENEZ not to get "cold feet" because he was "out the door." CONSPIRATOR #2 reiterated that there "ain't no turning back now."

On June 5, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) told JIMENEZ that he would call ROBERTSON and tell him to send JIMENEZ to New York. On June 7, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) told ROBERTSON that he would try to get the price and date for when JIMENEZ could leave. ROBERTSON advised CONSPIRATOR #2 to not tell JIMENEZ anything, because ROBERTSON did not "want him to be too concerned." ROBERTSON continued: "It ain't his business. It's our business to make sure he gets outta here." CONSPIRATOR #2 replied, "Right, right."

On June 7, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) told ROBERTSON that the price of JIMENEZ's ticket was \$1,060. ROBERTSON stated that he would send the money to CONSPIRATOR #2 the next day, and then told CONSPIRATOR #2 to buy the ticket as soon as CONSPIRATOR #2 received the passport. ROBERTSON stated that he would send JIMENEZ up to New York three days before JIMENEZ was supposed to leave the country. CONSPIRATOR #2 stated that he would

speak to another individual about watching JIMENEZ when he was in New York to keep JIMENEZ out of trouble. ROBERTSON offered to pay whoever watched JIMENEZ, stating that it was a “job” and that it would be “worth it.” ROBERTSON was concerned that if he sent JIMENEZ to New York too early that JIMENEZ would get in trouble and commented that JIMENEZ “ain’t too bright.”

E. JIMENEZ is “Ready to Die”

On June 10, 2011, ROBERTSON (derived from court authorized surveillance) spoke again with his mentor and told him that he could afford to send a “brother” to make Umrah, to travel to Mauritania, or both. ROBERTSON’s mentor replied, “Damn, that’s hard you know, because if he’s ready to die he should make Umrah.” ROBERTSON replied with the Arabic word for yes. ROBERTSON’s mentor reiterated that if JIMENEZ was ready to die, he should make Umrah. After stating that, ROBERTSON’s mentor asked, “You know what I’m saying?” ROBERTSON replied, “Yeah.” ROBERTSON and his mentor discussed different options to help JIMENEZ make Umrah, but a final decision was not made.

On June 12, 2011, ROBERTSON (derived from court authorized surveillance) spoke with an individual in Mauritania. That individual asked ROBERTSON whether ROBERTSON was going to send him money and, if so, how much. ROBERTSON stated that JIMENEZ was with him. ROBERTSON discussed having JIMENEZ bring the money to the individual in Mauritania when JIMENEZ traveled there. ROBERTSON stated that they were waiting for JIMENEZ’s visa before deciding on a flight date.

On June 17, 2011, ROBERTSON (derived from court authorized surveillance) told CONSPIRATOR #2 that he had purchased a ticket for JIMENEZ to travel to New York and had taken him to the airport. CONSPIRATOR #2 asked ROBERTSON if he wanted to send JIMENEZ to Mauritania. ROBERTSON replied:

I want to send him to make Umrah because, you know, if he's gonna die, I asked the sheikh the other day, I said what do we do. He said, if he's ready to die then send him to Umrah so he can make sure that he at least fulfills his obligation to his lord. You know.

CONSPIRATOR #2 asked: "So that's what you want to do, you want to send him to make Umrah or you want to send him to Mauritania?" ROBERTSON responded that he "want[ed] to send him to both."

In that same conversation, ROBERTSON explained that, to fund JIMENEZ's travel to Mauritania, ROBERTSON "made" JIMENEZ file a tax return in which JIMENEZ claimed three of ROBERTSON's children as exemptions:

ROBERTSON: My wife said that he's down almost \$1,000. Ok.

CONSP. #2: Come on, man, in one day?

ROBERTSON: No, no, not in one day. Like over, like, I haven't been looking at the account, but she keeps the money you know what I'm saying? So, what do you call it, she said since he's been here his money has gone. Because what happened is this, I helped him get some money. I made him do taxes and I put three of my children on his name, ok. But I told him, I said, I'm doing that for you so that you can use that money to go overseas. If you don't, I'm not letting you go nowhere with that money. Ok.

ROBERTSON told CONSPIRATOR #2 that "usually dudes charge you for that type of work," and ROBERTSON explained how he directed one of his girlfriends "to freeze the account, ok, so he can't get nothing out of it no more" after JIMENEZ had made him unhappy. Further investigation revealed that JIMENEZ's tax return was electronically filed from the defendant's residence, that JIMENEZ falsely claimed three of the defendant's children on his return, that the defendant was given a copy of the return to give to JIMENEZ, that the refund check was mailed to the defendant's residence, that the funds were to be sent to JIMENEZ once he was in Mauritania, and that the defendant had one of his girlfriends added as a signatory on JIMENEZ's account to control the fraud proceeds.

F. JIMENEZ Leaves Central Florida

On June 17, 2011, JIMENEZ traveled by airplane from Orlando to New York. On June 21, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) told ROBERTSON that he had not seen JIMENEZ since his arrival in New York. CONSPIRATOR #2 thought that JIMENEZ was speaking differently than usual when he talked with him on the phone. ROBERTSON instructed CONSPIRATOR #2 to “fall back” and to not send JIMENEZ “nowhere with us.”

On June 26, 2011, JIMENEZ (derived from court authorized surveillance) told CONSPIRATOR #2 to get him “out of here.” JIMENEZ stated that he had not touched any of the money and was waiting to travel. JIMENEZ told CONSPIRATOR #2 not to think that he had “cold feet” and would not be ready when the time came. When JIMENEZ asked if it was too late for him, CONSPIRATOR #2 replied that it was never too late.

On July 1, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) told ROBERTSON that he had seen JIMENEZ a few times and would return JIMENEZ’s passport to him when CONSPIRATOR #2 received it. ROBERTSON stated that he had not heard from JIMENEZ since he left Orlando. ROBERTSON and CONSPIRATOR #2 agreed to move on without JIMENEZ.

On July 13, 2011, JIMENEZ (derived from court authorized surveillance) told an unknown male that he was scheduled to go to Mauritania in a month and that he had spent a year with ROBERTSON getting conditioned for Mauritania. When asked why he was not going to Saudi Arabia, JIMENEZ replied that he was going to finish studying the Quran in Mauritania and “go on my way, akh.” JIMENEZ stated, “Getting ready for that grave, baby.”

On July 24, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) told JIMENEZ that they would go see the individual who was getting the passport.

JIMENEZ replied, "I've been waiting to hear that, akh. Been waiting to hear that." On that same date, CONSPIRATOR #2 (derived from court authorized surveillance) told JIMENEZ that if the visa was not ready, he wanted JIMENEZ to call and cancel his passport. CONSPIRATOR #2 stated that it only took two weeks to get his son a visa to Mauritania. CONSPIRATOR #2 stated that it was "real abnormal" and that he was not "feeling this." JIMENEZ asked CONSPIRATOR #2 to tell ROBERTSON that he was being patient and that he did not want to keep "bugging" him with unnecessary talk.

On July 25, 2011, ROBERTSON (derived from court authorized surveillance) told CONSPIRATOR #2 that he did not want to send JIMENEZ to Mauritania, because he would be a distraction: "[w]e can't send people over there that's going to be a distraction. If he'd been over there right now, he would have distracted your son."

On August 4, 2011, ROBERTSON (derived from court authorized surveillance) spoke with an individual located in Mauritania, who asked when JIMENEZ was coming to Mauritania. ROBERTSON responded that he did not want to send JIMENEZ over to Mauritania "without testing him first, you know, because I don't want to send you no problem out there, you know what I'm saying."

On August 20, 2011, CONSPIRATOR #2 (derived from court authorized surveillance) told ROBERTSON, "That young boy [JIMENEZ] is really bugging to get over there." CONSPIRATOR #2 speculated that JIMENEZ was using drugs. ROBERTSON responded, "Let's see what happens after Ramadan." CONSPIRATOR #2 stated that JIMENEZ was calling and asking him about going and what ROBERTSON was saying about it. ROBERTSON stated that nothing would happen until after Ramadan and told CONSPIRATOR #2 to tell that to JIMENEZ. CONSPIRATOR #2 replied that they would see what was happening then.

G. Search Warrants

On August 23, 2011, the FBI executed federal search warrants at ROBERTSON's two residences. Some of the items that were seized, by warrant or consent, were ones that had been discussed by the conspirators, including the firearm that JIMENEZ had described, the BB gun that was used to teach JIMENEZ how to shoot, and a metal lock box containing documents for the bank account where JIMENEZ deposited his refund check, an envelope of JIMENEZ's money from the fraudulent tax return that was being controlled by the defendant's girlfriend, and the United States Postal Service receipts for JIMENEZ's vaccination records and photographs that had been sent to CONSPIRATOR #2.

Computers were seized from the residences. Forensics conducted to date have revealed that the defendant possessed documents from the Combating Terrorism Center of the United States Military Academy, such as "How to think like a terrorist" and the "Militant Ideology Atlas." Other documents on the defendant's computers include, among others, ones prepared by the American military regarding interrogation, polygraphs, and psychological operations and a document about basic survival kits issued to Army aviators. A copy of a diagram was also found that shows various names connected to Global jihad.

III. ARGUMENT AND CITATION OF AUTHORITIES

No one needs to be "ready to die" to go to Mauritania to study. For seven months, the defendant had JIMENEZ live with him. The defendant did not do that as an act of charity. Rather, the defendant viewed JIMENEZ as an "investment" who could be used to advance an extremist agenda overseas through violence. As part of his investment in JIMENEZ, the defendant trained him spiritually, to get JIMENEZ mentally prepared for what he was about to do. The defendant also trained him in killing, suicide bombing, and identifying and murdering United States military personnel.

During the investigation, the United States was able to obtain almost real time information from JIMENEZ as to the training that he was receiving from the defendant and the purpose to which it was to be put. As noted above, JIMENEZ repeatedly identified the defendant as the individual who was training him and provided details on how the defendant was training him. For such statements (and those of other conspirators) to be admissible, the United States must prove by a preponderance of the evidence that “(1) a conspiracy existed; (2) the conspiracy included the declarant and the defendant against whom the statement is offered; and (3) the statement was made during the course and in furtherance of the conspiracy.”⁴ United States v. Hasner, 340 F.3d 1261, 1274 (11th Cir. 2003). “In determining the admissibility of co-conspirator statements, the trial court may consider both the co-conspirator’s statements and independent external evidence.” Id. Courts apply a “liberal standard in determining whether a statement is made in furtherance of a conspiracy.” United States v. Santiago, 837 F.2d 1545, 1549 (11th Cir. 1988).

In this case, the co-conspirator statements of JIMENEZ, CONSPIRATOR #2, and others establish the existence of a conspiracy involving the defendant to send JIMENEZ overseas to commit violent jihad. Whether the statement is from JIMENEZ (such as his pronouncement that he wants to “die on the battlefield,” that the defendant instructed him that suicide bombing “[i]s permissible, akh, on certain things,” or that the defendant told him that it was mandatory to kill Marines), or whether it is from CONSPIRATOR #2 (such as his warning that “the desert ain’t no joke,” that “[i]f you don’t know why you’re going, you’re not being to be able to handle it,” or that JIMENEZ should not “tell nobody where you’re going”)

⁴The argument portion of this Memorandum will be limited to the defendant’s claim that there is no independent proof of the defendant’s involvement in a conspiracy to send JIMENEZ overseas to commit violent jihad. The defendant’s suggestion that there is a lack of evidence regarding the tax fraud conspiracy has no foundation, especially given the defendant’s admission: “I made him do taxes and I put three of my children on his name, ok.”

the substance that is being communicated is the same: JIMENEZ is being sent overseas to commit violent jihad.

The nature of those statements is corroborated by the defendant’s own statements, his independent actions, and the other evidence in the case. One of the clearest expressions of the defendant’s participation in the conspiracy is his acknowledgment on June 17, 2011 that JIMENEZ was “gonna die” and was “ready to die.” The importance of those statements is confirmed by what the defendant says right after that, which was that he was going to send JIMENEZ to both Umrah and Mauritania. The defendant’s explanation of the plan for JIMENEZ is the same as what JIMENEZ explained back on January 31, 2011:

<u>JIMENEZ</u>	<u>ROBERTSON</u>
Yo, I’m with you. There’s a reason why he bringing me to Umrah. I’ll tell ya, one thing about Taubie-Taub (ROBERTSON), he got a plan, akh. He, he, he know, just in case you jump off, man, I did the main thing. I gave my rights to Allah one time in a lifetime.	I want to send him to make Umrah, because you know, if he’s gonna die, I asked the sheikh the other day, I said what do we do. He said, if he’s ready to die then send him to Umrah so he can make sure that he at least fulfills his obligation to his lord. You know.

According to both the defendant and JIMENEZ, the cleansing of JIMENEZ’s sins by going to Umrah had to occur before JIMENEZ could go to Mauritania to do what would then cause him to “jump off” (or, to use the defendant’s words, “gonna die”). In other words, the defendant and JIMENEZ had the same “plan.” When JIMENEZ was “ready to die,” he would go to Umrah to get cleansed, so that he could then commit the violence overseas that he had been trained to commit (such as suicide bombing and killing of military personnel) and that would likely result in his death. The similarity in the expression of the “plan” by the defendant and JIMENEZ, as shown by the defendant’s own statements, prove that the defendant was a participant in the conspiracy.

Even if the defendant had not made his own statements in furtherance of the conspiracy, there is still sufficient evidence to prove, by a preponderance of the evidence, his participation in the conspiracy. “Direct proof of a formal agreement is not necessary to establish the existence of a conspiracy, since ‘[t]he very nature of conspiracy frequently requires that the existence of an agreement be proved by inferences from the conduct of the alleged participants or from circumstantial evidence of a scheme.’” United States v. Gold, 743 F.2d 800, 823 (11th Cir. 1984) (quoting United States v. Ayala, 643 F.2d 244, 248 (5th Cir. Unit A 1981)). In this case, the inferences from the defendant’s independent actions and his other statements also prove his participation in the scheme. See generally Hasner, 340 F.3d at 1274 (noting that the contents of the co-conspirator statement “do not alone suffice to establish a conspiracy”).

For example, the defendant was instrumental in assisting JIMENEZ in attempting to get his passport and arranging his travel overseas. In the course of doing that, the defendant told CONSPIRATOR #2 to not tell anything to JIMENEZ, because “[i]t ain’t his business. It’s our business to make sure he gets outta here.” The defendant also discussed with CONSPIRATOR #2 paying someone to watch JIMENEZ to keep him out of trouble when he was in New York waiting for his flight, stating that it was a “job” and that it would be “worth it.” There is no other reasonable explanation for these statements other than the fact that they support what JIMENEZ himself stated, which was that the defendant saw him as an “investment.”⁵ Given that the defendant thought that JIMENEZ “ain’t too bright,” the defendant would not have invested this amount of time and effort in JIMENEZ unless the defendant knew that JIMENEZ was going to be committing violent jihad

⁵The nature of the defendant’s investment in JIMENEZ is confirmed by the fact that the defendant never definitively ruled out the possibility of JIMENEZ going overseas, even after JIMENEZ returned to New York and had some issues. Instead, the defendant stated that he would “test[] him first” and decide after Ramadan whether to send JIMENEZ overseas.

overseas. In other words, the defendant would not have undertaken all of this effort to help someone who was not “too bright” just to go over and study.

The defendant’s participation in JIMENEZ’s training can also be established from the items that were seized during execution of the search warrants. The defendant claims in his Motion to be involved in “help[ing] send people overseas to study Islam.” Doc. 84-3. There was only one individual who was traveling overseas, however, whose documents were securely stored in a metal lockbox at the defendant’s house, and that was JIMENEZ. In that metal lockbox, there were documents from JIMENEZ’s bank account, money from JIMENEZ’s tax refund, and receipts for packages that had been sent to CONSPIRATOR #2 to supply vaccination records and photographs for JIMENEZ’s passport. The steps that were undertaken to secure JIMENEZ’s documents confirms that JIMENEZ was no ordinary “student” looking to travel overseas to “study.”

The United States was also able to seize some of the items that were used in JIMENEZ’s training, including the firearm that he had described and the BB gun that the defendant used to teach him how to shoot. A search of the defendant’s computers resulted in the discovery of documents useful to training someone to engage in violent jihad, including ones from the United States military regarding survival, psychological operations, and interrogations. All of these items support the conclusion that the defendant was involved in a conspiracy to send JIMENEZ overseas to engage in violent jihad.

In situations such as this one, where the United States can “connect up” the evidence at trial, there is no requirement for a hearing. See United States v. Allison, 908 F.2d 1531, 1534 n.2 (11th Cir. 1990) (stating that a James hearing is not required prior to admission of a co-conspirator statement). Accordingly, the United States respectfully requests that the Court deny the defendant’s Motion without a hearing.

Respectfully submitted,

ROBERT E. O'NEILL
United States Attorney

By: s/ Roger B. Handberg
Roger B. Handberg
Assistant United States Attorney
Florida Bar No. 0241570
501 West Church Street, Suite 300
Orlando, Florida 32805
Telephone: (407) 648-7500
Facsimile: (407) 648-7643
E-mail: Roger.Handberg@usdoj.gov

U.S. v. MARCUS DWAYNE ROBERTSON

Case No. 6:12-cr-63-Orl-31GJK

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2012 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Michael Nielsen

s/ Roger B. Handberg

Roger B. Handberg

Assistant United States Attorney

Florida Bar No. 0241570

501 West Church Street, Suite 300

Orlando, Florida 32805

Telephone: (407) 648-7500

Facsimile: (407) 648-7643

E-mail: Roger.Handberg@usdoj.gov