

C9o5torH hearing

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 Cr. 1244 (BSJ)

5 HAROUNA TOURE and IDRESS
5 ABDELRAHMAN,

6 Defendants.

7 -----x

8
9 September 24, 2012
9 10:00 a.m.

10
10
11 Before:

11
12 HON. BARBARA S. JONES,

12
13 District Judge

14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
16 Southern District of New York
17 BY: CHRISTIAN EVERDELL
17 EDWARD KIM
18 Assistant United States Attorneys

18
19 HURWITZ, STAMPUR & ROTH
19 Attorneys for Defendant Toure
20 BY: MICHAEL HURWITZ
20 MIRIAM LEALA HURWITZ

21 ZACHARY MARGULIS-OHNUMA
22 Attorney for Defendant Abdelrahman

C9o5torH Hoffman - cross

1 THE COURT: All right. 15 of 211 in 122?

2 MR. MARGULIS-OHNUMA: Thank you, your Honor; yes.

3 THE COURT: And I think we are starting at 802, is
4 that right?

5 MR. MARGULIS-OHNUMA: That's correct; a time stamp
6 indicating 8 minutes and two seconds from the beginning.

7 THE COURT: Thank you.

8 MR. MARGULIS-OHNUMA: Also, for the record, it appears
9 that this is -- the language heard is French, that it is going
10 to be played in.

11 (Audio file played)

12 A. I raised my finger.

13 Q. So you heard there when you transcribed in your final --
14 I'm asking the witness, you heard that, the words las FARC sont
15 which you wrote down in the transcript, right?

16 A. Yes.

17 Q. When did you first notice that was there?

18 A. I'm not exactly sure how to answer that question.

19 Q. Did you have a discussion with Mohammed about what was said
20 there?

21 A. I never had a discussion with him about this section.

22 Q. So in your, all of your eight to 12 meetings, you never
23 talked to him about that section?

24 A. We didn't usually have discussions, per se, about this. I
25 would submit a draft transcript to him, then he would look

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1 say?

2 A. Yes.

3 Q. And then at some point you added in FARC, right?

4 A. Yes.

5 Q. And you received a writing just before adding in FARC from
6 Mohammed where he wrote in FARC, isn't that true?

7 A. I believe so.

8 Q. I'm going to -- I will mark it as Defense Exhibit Fatico 1,
9 it is from an e-mail that the government sent me. I will ask
10 the witness -- actually, I will put it up on the ELMO. I think
11 that will be easiest for everybody.

12 THE COURT: Does it have a 3500 number?

13 MR. MARGULIS-OHNUMA: No. It was e-mailed right on
14 the eve of trial, your Honor.

15 MR. KIM: It does, your Honor. 3510-4 at page 12.

16 THE COURT: All right. Let me just get there and then
17 we don't need to put it up.

18 MR. KIM: It should be 12 of 60, your Honor.

19 MR. MARGULIS-OHNUMA: Let me find a copy of this, your
20 Honor.

21 THE COURT: Page 12 of 60.

22 MR. KIM: Yes, your Honor.

23 MR. MARGULIS-OHNUMA: I'm going to --

24 THE COURT: Actually, I think you are talking about an
25 e-mail, right?

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- 1 Q. Did you have any discussion back and forth with anybody
2 after you received this document that included that term las
3 FARC?
4 A. What do you mean by discussion back and forth?
5 Q. Well, didn't the government tell you that they wanted that
6 in?
7 A. No.
8 Q. Did Mohammed emphasize to you that that was important and
9 that they wanted that in?
10 A. No. I never had a discussion with Mohammed, an oral
11 discussion with them about this. I believe this was the only
12 feedback that I got from him, this written note.
13 Q. What does the word faction mean in French?
14 A. Faction.
15 Q. Were you familiar with that word at the time you prepared
16 these transcripts?
17 A. Yes. I knew that word.
18 Q. Wouldn't you agree with me that this sounds a lot more like
19 faction than it does like las FARC sont? Isn't that true?
20 Maybe you want to listen to it again?
21 A. Well, if he were speaking Spanish here he would have said
22 las facciones and if he were speaking French he would have said
23 les factions, but he only spoke a hybrid of Spanish and French
24 using the Spanish definite article saying las and then FARC and
25 then sont.

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1 Q. Let me ask you this: If you had listened to that and never
2 been shown this and not known that the case was about FARC, do
3 you think you would have heard FARC there?

4 A. I think that I marked this as something that I was unsure
5 of because of the fact that he used las and because there is
6 also Spanish sections of this and I wanted to get his feedback
7 and possibly have the other, the Spanish translator review this
8 section.

9 Q. So, in fact if you didn't speak Spanish you could never
10 have possibly knew he was talking about FARC here, isn't that
11 right?

12 MR. KIM: Objection.

13 THE COURT: I will allow him to answer. Go ahead.

14 A. If I didn't speak Spanish it is possible that I would not
15 have understood.

16 Q. Let me ask you the contrapositive, if I may. If you didn't
17 speak Spanish, it would have been impossible to know that this
18 is FARC, isn't that true?

19 A. On the basis of this recording I think it would -- not
20 necessarily impossible. It would be difficult.

21 MR. MARGULIS-OHNUMA: No further questions, your
22 Honor.

23 THE COURT: All right.

24 CROSS EXAMINATION

25 BY MR. HURWITZ:

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- 1 A. No.
2 Q. And did you go on the internet to see if it had ever been
3 used in the press?
4 A. I looked at a few sources on the internet, yes.
5 Q. Not there, right?
6 A. Couldn't find it.
7 Q. FARC is also referred to as FARC in the French press, isn't
8 that right?
9 A. Yes.
10 Q. You told us that you saw or that you heard Mohammed invert
11 consonants on occasion, is that right?
12 A. I don't know if I said Mohammed but I heard several people
13 invert consonants.
14 Q. Mohammed -- and let's just explain, if we could for the
15 record, what do you mean by invert the consonants?
16 A. I believe that they would either put the second consonant
17 before the first or sometimes they would decompose a word.
18 Q. But Mohammed never did that, right?
19 A. I don't recall.
20 Q. In fact, Mohammed spoke French rather clearly, didn't he?
21 A. Fairly clearly.
22 Q. And you heard a little French spoken by an individual
23 referred to in the transcripts that you signed named
24 Abdelrahman, isn't that right?
25 A. Yes.

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C9o5torH Duchesne - cross

1 Q. He inverted a lot of consonants, didn't he?

2 A. I don't recall that.

3 Q. But you do recall that he didn't speak French very well,
4 did he?

5 A. He spoke less French in the recordings.

6 Q. In fact Mohammed did most of the talking, right?

7 A. Mohammed and Toure.

8 Q. Now, you submitted in March of 2012 transcripts that were
9 marked as final transcripts in March, isn't that right?

10 A. I don't recall.

11 Q. When did you submit your final transcripts in this case?

12 A. I believe it was after I took into consideration the
13 suggestions that were made by the defense translator.

14 Q. But before that in March -- withdrawn.

15 And those final transcripts included this word FRAC,
16 right?

17 A. Yes. I believe so.

18 Q. But you had submitted various versions prior to that that
19 didn't include the word FRAC. Isn't that right?

20 A. That is possible.

21 Q. In fact, one of those so-called final versions that was
22 submitted -- withdrawn.

23 One of those versions that was submitted was marked
24 final and didn't contain the word FRAC and that was just in
25 March, isn't that right, of this year?

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- 1 A. I think so.
2 Q. And you listened to the audio, right?
3 In preparation for your translation and transcription
4 you listened to the audio, didn't you?
5 A. I listened to the audio and to the video.
6 Q. And those are the file names that are indicated here at the
7 top of the third page of that exhibit, right, where I am
8 indicating?
9 A. I guess so.
10 Q. Now, that was the best possible -- those -- withdrawn.
11 It is marked final, right?
12 A. Pardon me?
13 Q. The final that you produced, the PDF file is called final,
14 right?
15 A. Yes.
16 Q. And it relied on two different recordings, right?
17 A. Yes.
18 Q. Those are recordings of the same things, right? There was
19 sound with the video, wasn't there?
20 A. Yes, but one had a much better sound than the other one.
21 Q. And this translation relies on both -- on both, the one
22 with the better sound and also the one with the worse sound,
23 right?
24 A. Yes.
25 Q. And let's just go to page 37 of that file which I printed

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- 1 out and attached with the exhibit here and look down just
2 before it says 34:13 audio 1, you see Mohammed is speaking
3 there, right?
4 A. Yes, I do.
5 Q. And that's the exact same snippet that you read for us that
6 contained FARC in the version that you signed, isn't it?
7 A. Yes.
8 Q. And in this version from March it doesn't contain FARC,
9 right, but it is relying on the very best available audio,
10 isn't it?
11 A. I don't know.
12 Q. How did you find out or what made you add in FRAC and then
13 translate it as FARC between the date of that e-mail and the
14 date of what you signed that's in front of you?
15 A. Because I vaguely recall that it was not very clear, the
16 sound, and I listened over and over and over. I was a little
17 puzzled and in the end after listening many, many times I heard
18 FRAC.
19 Q. How many times did you have to hear it before you, as a
20 trained, experienced translator, were able to determine that it
21 was FRAC?
22 A. I would say many times.
23 Q. A hundred?
24 A. Less than that.
25 Q. Now, you said that once you determined that the sound was

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C9o5torH Duchesne - cross

- 1 FRAC you further determined that the correct translation of
2 FRAC was FARC, right?
3 A. Not immediately.
4 Q. It took some time to figure that out, right?
5 A. Yes.
6 Q. You had to go back and look at the other translations,
7 right?
8 A. I also had to check on the internet to see if there was
9 anything which would be called a FRAC or anything like that.
10 Q. And there absolutely wasn't, right?
11 A. Well, I couldn't come across any.
12 Q. But you spent a good amount of time to check it out, right?
13 A. Yes.
14 Q. Very thorough, right?
15 A. Yes. I tried to.
16 Q. So, what you did was you looked back on the other page of
17 the translation that someone else had prepared, right, page 36
18 of the same translation, and you used that to determine that
19 FRAC meant FARC, is that right?
20 A. I looked at the whole conversation again and there were
21 several references to the FARC.
22 Q. Well, let's have a look at those. What language were those
23 in?
24 A. One was in Arabic --
25 Q. Let's look at that one. Is that the one on page 36?

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- 1 A. I believe so.
2 Q. And saw where the government's translation said he is from
3 an organization called the FARC. Right?
4 A. That's right.
5 Q. How do you know that was an accurate translation?
6 A. Because I corroborated with other components in the
7 conversation later on.
8 Q. Other components meaning other people, other individuals?
9 A. Other people, yes, and the context which was talking about
10 goods from Colombia and --
11 Q. I want to focus your attention, Ms. Duchesne -- I'm sorry
12 to interrupt --
13 A. Yes.
14 Q. -- on this reference. He is from an organization called
15 the FARC.
16 You took that as a given that that was accurate,
17 right?
18 A. No. I didn't rely solely on that element.
19 Q. I'm not asking whether you relied solely on that element.
20 I'm asking you whether you believed that that was an accurate
21 translation.
22 A. I didn't make a judgment on the other person's translation.
23 Q. So you didn't rely on that or you did rely on that?
24 A. I took it as a component as part of a whole series of
25 elements.

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C9o5torH Haley - cross

1 Mr. Abdelrahman as king of the desert?

2 A. I don't recall asking that as a specific question, no.

3 Q. So you don't recall ever using the phrase yourself prior to
4 Mr. Issa making the statement, is that correct?

5 A. Correct, sir.

6 Q. And when you asked Mr. Toure about the drug organization on
7 the plane when you were speaking to Mr. Toure, you asked him if
8 he was familiar with the Colombians and the FARC, correct, and
9 Mr. Toure started to nod his head I believe was your testimony,
10 correct?

11 A. Yes, sir.

12 MR. HURWITZ: Nothing further.

13 MR. MARGULIS-OHNUMA: May I, your Honor?

14 THE COURT: Yes. Go ahead, Mr. Margulis-Ohnuma.

15 CROSS EXAMINATION

16 BY MR. MARGULIS-OHNUMA:

17 Q. Good afternoon, Agent. How are you?

18 A. Fine, thank you.

19 Q. You said that you translated tapes that may or may not have
20 included the October meetings in this case, correct?

21 A. I paraphrased them. I didn't formally translate.

22 Q. But you provided translations to Agent Lupacchino, right?

23 A. Yes.

24 Q. And then Agent Lupacchino relied on those statements --
25 your translations in filing the complaint in this case,

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C9o5torH Haley - cross

1 correct?

2 A. I'm not entirely sure what Agent Lupacchino relied on
3 for -- I only just saw the portion of the complaint that
4 counsel showed me. I never read the complaint.

5 Q. And the complaint contains numerous false statements about
6 the October 5th meeting, isn't that a fact?

7 A. I have no idea.

8 Q. I have demonstrative I would like to put on the ELMO, it is
9 just excerpts of the complaint.

10 THE COURT: All right.

11 MR. MARGULIS-OHNUMA: Your Honor, can you see that?

12 THE COURT: I can.

13 BY MR. MARGULIS-OHNUMA:

14 Q. I just want to be clear. Based on your review of the
15 October tape, was there anything in there in which CD-1
16 explained that he was meeting with Toure on behalf of the FARC
17 and that he named the FARC explicitly? Did you hear that on
18 the October tape?

19 A. Sir, I don't recall the October tape. I don't know what
20 calls or what portions I listened to.

21 Q. We will show you the tape, I mean, if that's what you
22 listened to if you want to look for it, and perhaps the
23 government would like to stipulate that it is not on there.

24 THE COURT: Look. We have a witness here who needs to
25 be asked questions relevant to the witness,

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C9o5torH Haley - cross

1 Mr. Margulis-Ohnuma.

2 BY MR. MARGULIS-OHNUMA:

3 Q. Is there anything that I can give you to help you remember
4 what was on the October tape?

5 A. I could -- anything that you could give me to help me
6 remember what was on the October tape? I don't recall the
7 October tape itself. I don't -- I don't know what -- when.

8 Q. Let's put it this way.

9 A. Okay.

10 Q. I want to move this along. I understand.

11 You don't have any information to indicate that FARC
12 was named explicitly on the October tape, correct?

13 A. Correct. I don't know the October tape.

14 Q. I will call your attention to the second statement from the
15 complaint. You don't have any information yourself based on
16 your review of the tape to indicate that there are al Qaeda
17 groups that control areas of North Africa, correct?

18 A. Sir, I don't know what the October tape is. Even if I was
19 handed a call when I was sitting in Virginia, it would not have
20 been called an October tape. It wouldn't -- it would just -- a
21 conversation was played for me. While I was listening to it I
22 spoke aloud to the agent and told them what I was hearing and
23 that was the end of it. Then I went back to my work and the
24 agent --

25 Q. And there was nothing on that tape that indicated that

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C9o5torH Haley - cross

1 Q. Am I correct that that was your testimony?

2 A. I believe so.

3 Q. Essentially?

4 A. That sounds correct.

5 Q. So, is there some reason you remember better now a year
6 later that you remember it at the suppression hearing?

7 A. No, sir. There are some things that stood out then and
8 there are some things that stand out now. Some specific things
9 I do remember and some things that I'm sure I have forgotten.

10 Q. For example, that Idress Abdelrahman was crying during the
11 interview; that's one of the things that stood out, right?

12 A. I remember he cried at some point when we were discussing
13 his family; yes, sir.

14 Q. And on your direct testimony you testified that the agents
15 asked Mr. Toure about FARC and he answered in the affirmative,
16 right?

17 A. Yes, sir.

18 Q. So they brought up FARC, right?

19 A. Yes, sir.

20 Q. He didn't, independently, tell them that it was his
21 understanding -- you know -- withdrawn.

22 When they asked who he was working with his answer was
23 just, well, I was working with drug dealers, right?

24 A. No. I think with regard to the FARC question and the
25 reason that stands out in my mind is because that I know when

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C9o5torH Haley - cross

- 1 we said the word FARC was that when they wanted me to ask him
2 about the Colombians and who they worked for I was thinking in
3 my own head do I need to translate FARC, the acronym or how --
4 that's how it stands out because when it is an acronym and you
5 are thinking, all right, now I am putting that into a language
6 and English, the descriptions go one way and in French they
7 would sort of come the reverse. That's probably why that
8 particular thing stands out in my mind.
9 Q. So it is clear that he didn't offer FARC, he was asked
10 about FARC, right?
11 A. I believe so. Yes, sir.
12 Q. Was Idress Abdelrahman also asked about FARC?
13 A. I don't recall specifically.
14 Q. Certainly you do recall though that Idress never said he
15 knew he was working with FARC. He never said that on the
16 plane, right?
17 A. No, sir.
18 Q. And when you were interviewing Idress on the plane -- he
19 actually didn't say anything at all about FARC, right?
20 A. Not that I can recall, so no.
21 Q. And there is nothing in the report, is there?
22 A. Not that I believe there is. I don't have it memorized but
23 I don't think there is.
24 Q. But you reviewed it in preparation for your testimony,
25 right?

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C9o5torH Haley - cross

1 A. Yes, sir.

2 Q. Otherwise I can whip it out but I would rather not.

3 A. I don't believe it was mentioned in that report.

4 Q. And certainly Idress Abdelrahman never said anything in
5 those interviews on the plane about trying to effect the
6 conduct of a government, right?

7 A. No. I don't recall any of that, sir.

8 Q. He had no interest in hurting the United States government
9 that he expressed in any way, right?

10 A. In the interview on the plane, no, sir.

11 THE COURT: I'm sorry, Agent Haley. Can you keep your
12 voice up a little?

13 THE WITNESS: Yes. Sorry.

14 THE COURT: That's all right.

15 BY MR. MARGULIS-OHNUMA:

16 Q. And he didn't say he was interested in hurting or affecting
17 any other government besides the United States such as Ghana or
18 Mali, right?

19 A. No, sir.

20 Q. Colombia for that matter?

21 A. No, sir.

22 Q. Now, did you or did the agents that you were translating
23 for specifically ask Idress about al Qaeda or did he bring that
24 up on his own?

25 A. I believe we specifically asked him about it.

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C9o5torH Haley - cross

- 1 Q. And isn't it fair to say there was some back and forth on
2 that to try to understand what we are talking about when you
3 are talking about al Qaeda?
4 A. There wasn't back and forth about al Qaeda, there was back
5 and forth about if he did or if he knew anybody from al Qaeda,
6 if he didn't work with al Qaeda why he would have said he
7 worked for al Qaeda. There was back and forth about that in
8 which he was explaining that he was told to pose as such by
9 Mr. Toure and that he really wasn't and there was back and
10 forth that way. It wasn't back and forth specifically about
11 what al Qaeda was.
12 Q. And then he denied that he ever had any connection with
13 al Qaeda, right?
14 A. Yes, sir.
15 Q. And he denied that Toure ever had any connection to
16 al Qaeda, right?
17 A. He denied knowing if Mr. Toure had any.
18 Q. But he said that he knew Toure for a long time, right?
19 A. Yeah, I believe in the vicinity of 10 years or more.
20 Q. They were from the same town?
21 A. I believe so.
22 Q. And he was married to one of Mr. Toure's relatives, right?
23 A. I don't recall that.
24 Q. He didn't know anything about Mr. Toure having any
25 connection to al Qaeda, right?

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C9o5torH Hanna - direct

1 of the word FARC. Do I have that right?

2 A. Yes.

3 Q. I'm going to ask if we could play that snippet starting at
4 8:02 on November 17, the best quality recording that we have.

5 (Audio file played)

6 Q. As you sit here today, do you hear the word FARC said there
7 in any language?

8 A. No.

9 Q. How many times have you listened to that before trying to
10 hear for the word FARC?

11 A. More than 20 times. Several times. Several times.

12 Q. Did you come to be familiar with what FARC was in your work
13 on this case?

14 A. Yes.

15 Q. Is it the same word in French and Spanish?

16 A. The same acronym, yes.

17 Q. Is that the same as it is in English?

18 A. I would say it in Spanish and French --

19 THE COURT: I don't think that's the question. Ask
20 the question again.

21 Q. The only question is is FARC -- the sound of the word FARC
22 the same in French and Spanish?

23 A. Yes.

24 Q. And did you hear that sound on the tape we just played?

25 A. It is not clear to me.

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C9o5torH Hanna - direct

1 Q. Is it unclear to you? I mean is it possible that it is
2 there?

3 A. I cannot -- I cannot say.

4 Q. By the way, did you talk to anyone who is present at any of
5 those meetings in the course of your work on this case?

6 A. No.

7 Q. Now, were you also asked to listen for the word --
8 withdrawn.

9 I want to call your attention to page 36 of the
10 December 14th meeting.

11 A. Page 6?

12 Q. I think it is 36.

13 A. 36.

14 Q. Sorry, page 37; and that's Government Exhibit 133-T and
15 Defendant's Exhibit 133 page 37. Do you see your version of
16 that there?

17 A. Yes, I do.

18 Q. And in your version -- withdrawn.

19 Do you see where it says FRAC phonetic in the original
20 language version?

21 A. Yes.

22 Q. Just explain to us what does phonetic mean when you are a
23 translator?

24 A. What it sounds.

25 Q. So the government's transcription there is accurate in your

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C9o5torH Hanna - redirect

1 A. He is speaking French.

2 Q. And how would you characterize the quality of that
3 recording? Is it pretty clear or is it hard to hear?

4 A. I don't remember which ones we started with. Some of them
5 were clear, some yes, but this one is clear, yes.

6 MR. MARGULIS-OHNUMA: Let's just play it one more
7 time, if we could, starting, if you could at 8:02 with heu lui.

8 (Audio file played)

9 BY MR. MARGULIS-OHNUMA:

10 Q. Other than the portion that you marked as unintelligible,
11 is the language there clear or not?

12 A. More or less it is clear. It is clear.

13 Q. Every other word -- is every other word in the paragraph
14 clear other than what you marked as unintelligible?

15 A. It is like this is good to me it is but more or less, yes,
16 it is clear.

17 Q. There is no problem with the audio?

18 A. No. The audio is clear.

19 MR. MARGULIS-OHNUMA: No further questions, your
20 Honor.

21 THE COURT: Anything else?

22 MR. EVERDELL: No, your Honor.

23 THE COURT: Thank you, Ms. Hanna. You are excused.
24 (Witness excused)

25 THE COURT: Any other witnesses for the defense?

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