
UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 23-7146

UNITED STATES OF AMERICA,

Appellee,

-against-

MIRSAD KANDIC,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

PRELIMINARY STATEMENT

Defendant-Appellant Mirsad Kandic appeals from a judgment entered on September 18, 2023, in the United States District Court for the Eastern District of New York (Garaufis, J.), convicting him of four counts of providing material support to a foreign terrorist organization, the Islamic State of Iraq and al-Sham (“ISIS” or “Dawla”), in violation of 18 U.S.C. § 2339B, one count of providing material support to a foreign

terrorist organization resulting in death, in violation of 18 U.S.C. § 2339B, and one count of conspiracy to provide material support to a foreign terrorist organization resulting in death, in violation of 18 U.S.C. § 2339B. Count Five, one of two “death-results” counts, alleged the provision or attempted provision of material support to a foreign terrorist organization, resulting in the death of Jake Bilardi (“Bilardi”), an Australian teenager who joined ISIS, traveled to ISIS-controlled territory, and later died by committing a suicide bombing in Iraq. Count One, the conspiracy count, alleged that additional deaths including, but not limited to, Bilardi’s, resulted from Kandic’s participation in the charged conspiracy. Kandic was sentenced principally to concurrent life terms on Counts One and Five, and 240 months’ imprisonment on the remaining counts, to run concurrently with all counts.

On appeal, Kandic asserts that the district court erred in precluding the admission of affidavits by Bilardi’s siblings that he claims would have shown that Bilardi had independently decided to become a suicide bomber before he communicated with Kandic. He also asserts that Count One count was impermissibly duplicitous because it charged multiple deaths resulting from Kandic’s conduct and improperly placed

the burden on the defense to disprove Kandić's involvement in numerous ISIS killings.

As we show below, these arguments lack merit and Kandić's conviction should be affirmed.

STATEMENT OF FACTS

I. Background

Kandic was a dedicated, resourceful, and capable member of ISIS from late 2013 until his capture in June 2017. For years, operating from locations in Syria, Turkey, and Bosnia, Kandic contributed to ISIS's bloody, brutal campaign of global jihad by funneling money, weapons, equipment, and false identifications to *mujahideen* (holy warriors) bound for ISIS battlefields. Many *mujahideen* were also recruited or trafficked by Kandic personally, including, but not limited to, Bilardi. Kandic celebrated and lionized on Twitter and other platforms the service of ISIS members, including Bilardi, who died, directing those communications to ISIS members and recruits. In the case of those enemies of ISIS killed at ISIS's hands—all *kuffar* (infidels) in his eyes—Kandic celebrated and praised their deaths. Kandic's multifaceted service to ISIS ended when he was captured in Sarajevo, Bosnia, in June 2017.

A. Charges

On April 22, 2016, Kandic was charged by complaint with conspiracy to provide material support to ISIS in violation of 18 U.S.C.

§ 2339B. (DE:1).¹ On August 17, 2017, a grand jury sitting in the Eastern District of New York returned an indictment charging him with conspiracy to provide material support to ISIS in the form of property, services, and personnel, including himself, Bilardi, and others, in violation of 18 U.S.C. § 2339B (Count One). (DE:4; A:36-38). The indictment also charged five substantive violations of 18 U.S.C. § 2339B, in the forms of: personnel, including Kandic and others (but not Bilardi) (Count Two); services (Count Three); property and equipment (Count Four); personnel (specifically, Bilardi) (Count Five); and false documentation and identification (Count Six). (A:36-42). Count One charged that the offense resulted in the deaths of one or more persons, including Bilardi, and Count Five charged that the offense resulted in the death of Bilardi. (A:37-38, 40-41).

Kandic arrived in the United States in the custody of the Federal Bureau of Investigation (“FBI”) on October 31, 2017, and he was

¹ “Br.,” “A,” “CA,” “GA,” “T,” “GX,” and “DE” refer, respectively, to Kandic’s brief, appendix, confidential appendix, the government’s appendix, the trial transcript, the government’s exhibits introduced at trial and the docket entries in the district court. “PSR” refers to the Pre-Sentence Report, submitted separately under seal.

arraigned the following day before the Honorable Ramon E. Reyes, Jr., and ordered detained. (PSR at 1; A:6).

B. Trial

Over the course of a three-week trial, the government called 36 witnesses. Two witnesses, one from Bosnia and one from Kazakhstan, testified via pretrial depositions pursuant to Federal Rule of Criminal Procedure 15.² Multiple Bosnian law enforcement witnesses testified concerning the circumstances of Kandic's arrest in Sarajevo. Several Australian law enforcement witnesses testified about their investigation of Bilardi. An Iraqi general, General Rasheed al-Holfi, testified concerning ISIS's assault upon Ramadi, Iraq, of which Bilardi's suicide bombing played a part. Multiple American law enforcement officials testified concerning various records, documents, and recordings establishing Kandic's conduct and communications.

² The government moved and the district court ordered that identifying information of these witnesses should be kept from the public, although the parties, court, and jury would possess that information. (A:61-62; DE:76, 164). Consistent with the practice below, the government refers to these witnesses as the Bosnian Witness and Kazakhstani Witness and refers to the transcripts of those witnesses' deposition testimony, respectively, as "BDT" and "KDT."

As proven at trial, ISIS traces its history to 1999 in Afghanistan, when a predecessor organization was created by Abu Musab al-Zarqawi. (A:323). By October 2004—at the time operating under the moniker “al-Qaeda in Iraq”—ISIS was designated by the United States Secretary of State as a foreign terrorist organization (“FTO”). (*Id.*; GX:990A-990E (reflecting periodic updates to the FTO designation to track changes in ISIS’s self-nomenclature)).

By 2012 and 2013, ISIS established territorial control in large parts of Syria, and began to expand its dominions in northwestern Iraq, ultimately conquering a large portion of that country as well. (A:325). ISIS became so entrenched that, by June 29, 2014, its leader, Abu Bakr al-Baghdadi, declared ISIS to be the reinstated Caliphate for the entire global Muslim community; he made that declaration from the al-Nuri Mosque in Mosul, Iraq, shortly after ISIS conquered that city. (A:325-26; GX:4 (photograph of al-Baghdadi delivering speech), GX:2200H (video clip containing portions of speech)). At its apogee, ISIS controlled territory in Syria and Iraq roughly equivalent to the size of France, with approximately ten million inhabitants. (A:334).

ISIS disseminated propaganda beseeching Muslims to travel to ISIS territory (i.e., to make *hijra*) to join the so-called Caliphate. Over the relevant period, tens of thousands did so. (A:328; GX:2230).

English-speaking recruits—such as Kandic—were particularly valued by ISIS because they could translate ISIS media into English and then disseminate it to the English-speaking world, and also because such individuals typically had passports that facilitated their travel within Western countries. (A:336-37). By September 2014, after other countries made travel to ISIS territory more difficult, ISIS began to exhort potential *muhajireen* (i.e., travelers making *hijra* to ISIS territory) to conduct attacks in their own countries if they were unable to travel. (A:338-39). ISIS also developed satellite presences in several other countries, including Afghanistan, Bangladesh, Egypt (Sinai), Libya, the Philippines, Somalia, Yemen, and elsewhere. (A:324, 347).

During the relevant period of 2013 to 2017, ISIS was the deadliest foreign terrorist organization (“FTO”) in the world, and responsible for the most terrorist attacks in that same period. (A:346).

1. Kandic’s Material Support to ISIS

At trial, Kandic conceded that he was a member of ISIS and

provided it with material support; he disputed whether the government would be able to prove that death resulted from his conduct. (A:79-81). Because his considerable experience with and contributions to ISIS also inform the question of whether his conduct resulted in death, we discuss the evidence of his material support admitted at trial.

At all relevant times, Kandic was a citizen and national of Kosovo, and a legal permanent resident of the United States. (A:83; GX:310A, 919A, 920A; PSR ¶ 50). From approximately May 2003, he resided principally in the Bronx, New York. (A:83). In the fall of 2013, after two unsuccessful attempts to leave the United States to join ISIS (A:86-88, 242), Kandic successfully arrived in Istanbul, Turkey, on December 25, 2013 (GX:310A at 4; A:97) on his way to join ISIS in Syria. Kandic and co-conspirator Ruslan Asainov had previously coordinated their travel, arriving in Istanbul on the same day. (A:100, 103; GX:406).³

³ Kandic also coordinated with, and helped fund the travel of, other ISIS fighters. (GX:1413 (October/November 2013 Western Union wire transfers from Kandic to an ISIS fighter from Bosnia who departed for Syria and arrived in Haritan around the same time as Kandic and Asainov); BDT:33). Some of those fighters and their family members later died in combat. (BDT:84-86).

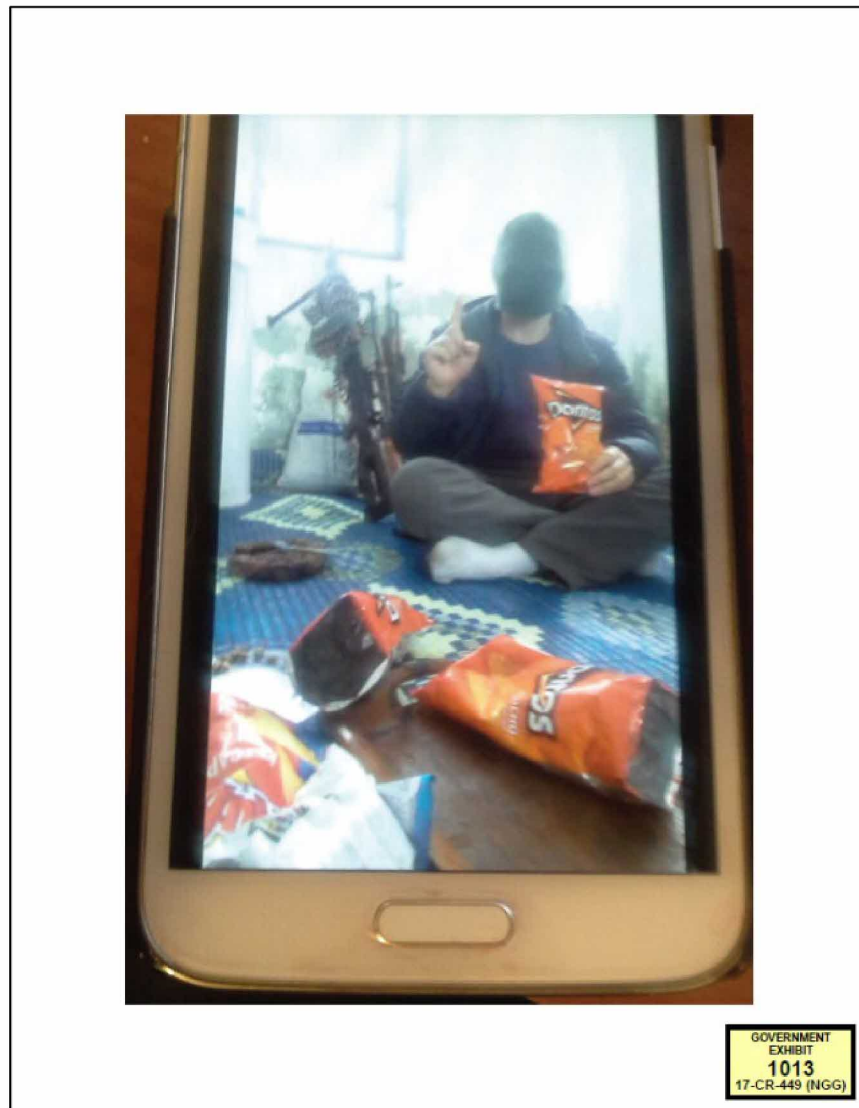
Shortly thereafter, accompanied by Asainov, Kandic entered Syria and joined ISIS in the area of Haritan, Syria.⁴ (A:149, 416; DE:357 at 8 (one witness encountered Kandic, who was carrying an automatic rifle, at a “villa” in Haritan in January 2014 while another met “Abdurrahim the Bosnian,” i.e., Kandic, “on the outskirts of Aleppo,” i.e., Haritan, in early 2014)). Kandic had coordinated his arrival in Haritan with other ISIS fighters. (DE:357 at 8).

Kandic joined the brigade *Jaysh al Muhajireen wal Ansar* (“JAMWA”), composed principally of foreign fighters and led at the time by Omar al Shishani. (*Id.*). JAMWA was later subsumed by ISIS, and Shishani later became the effective ISIS minister of defense, reporting directly to Baghdadi, the ISIS caliph. (*Id.*).

⁴ In February 2023, Asainov was convicted of three counts of conspiracy to provide and providing material support to ISIS in violation of 18 U.S.C. § 2339B, one of which resulted in death; one count of receipt of military-type training from ISIS in violation of 18 U.S.C. § 2339D; and one count of obstruction of justice in violation of 18 U.S.C. § 1512(c). United States v. Asainov, No. 19-CR-402 (NGG) (E.D.N.Y.). Asainov credited Kandic as “the brother who made a road for me for jihad . . . and with him [I] have entered Sham [i.e., Syria.]” (GX 1532 at 2; T:1527).

Kandic fought in at least one battle, in which he claimed to have given tactical suggestions that were ultimately pivotal in winning a successful outcome for ISIS. (A:150). He later acknowledged to others, via electronic messaging platforms, that he had been an ISIS fighter before taking on other roles: “I used to [fight] before,” but “now [I]m not allowd [*sic*] to go to front.” (GX:1102A). Kandic later told Bilardi, via Twitter direct messages, that he “miss[ed]” *amaliyah*, i.e., fighting on behalf of ISIS. (GA:53; T:1523-24 (defining “*amaliyah*” as “military operation”)).

Kandic also sent a government witness a photograph depicting himself seated near what appear to be a PK machine gun with multiple visible belts of ammunition and one or more AK-47 style assault rifles. (GX:1013 (reproduced below)).



Kandic later described this photograph to a government witness and admitted to her that it could prove he had been inside Syria. (A:151).

In 2014, Kandic relocated to Istanbul, Turkey, and established a base of operations to support ISIS from there. While in Turkey, Kandic continued to travel back and forth to ISIS territory in

Syria, including to Raqqa, ISIS's de-facto capital. (GX:1003A at 2 (“I’m a Mujahid of IS, I travel in and out of Dawlah”)).

2. Kandic’s Close Relationships With Senior ISIS Personnel

From Istanbul, Kandic maintained several close relationships with core ISIS personnel. For example, Bajro Ikanovic, a Bosnian national, was selected by Shishani to run the “largest training camp for recruits” in northern Syria. (A:156-57, 335-36; GX:21). Ikanovic was “one of [Kandic’s] best friends.” (A:157). Voice messages exchanged between Kandic and Ikanovic showed the trust they put in one another. For example, in one message in January 2016, Kandic alerted Ikanovic about a “spy who is in Mosul[, Iraq].” (DE:357 at 11). Kandic knew that spies caught by ISIS would be killed. (A:327 (ISIS executed “spies [and] traitors”); *see also, e.g.*, GX:2054A (photographs tweeted by Kandic of two men about to be executed, with caption “IS[IS] Beheads Two Coalition member Spies in Aleppo[, Syria].”)).

Kandic relayed battlefield intelligence to Ikanovic, including, for example, reports of successful attacks in and around Ramadi, Iraq, in February 2016. (DE:357 at 11). Ikanovic, in turn, trusted Kandic with

knowledge of his own whereabouts and battle readiness: “I arrived yesterday, you know, from Mosul[, Iraq], brought army with me and came to get some rest . . . I hear that we’ve moved from all sides . . . I’m waiting for more information[,] or for the brother to get here so that I can go down to the front right away.” (*Id.*). Ikanovic also acknowledged that Kandic’s “information is the best[.]” (*Id.*). Ikanovic was subsequently killed in Syria. (A:157, 353).

Kandic also maintained relationships with other significant ISIS personnel, including, but not limited to, Abu Luqman, who, by 2013, was the governor of Raqqa province for ISIS (A:170, 334 (“[Abu Luqman] was a very prominent ISIS leader and controlled pretty much various aspects of ISIS activities in the Raqqa area from oil to hostages[.]”)), and a man named Abdullah, who was ISIS’s emir for all safehouses in the Istanbul area (A:158).

In addition, Kandic claimed, in Twitter messages, to be closely associated with Raphael Hostey (a/k/a Abu Qaqa al Britani) and Neil Prakash (a/k/a Abu Khalid Kambodi). (GX:2056B (Oct. 2015 tweet from “JoinISNation82”)). Hostey was a “fairly prominent media propaganda operative” for ISIS (A:336); similarly, Prakash engaged in online

recruitment and radicalization on behalf of ISIS (*id.*). Kadic challenged those who questioned his ISIS bona fides to go to Raqqa, the ISIS headquarters, where he indicated either or both of Prakash and Hostey would vouch for him. (GX:2056B).

3. Kadic Disseminated ISIS Propaganda and Executed ISIS's Media Objectives

Kadic operated more than 100 Twitter accounts for disseminating ISIS propaganda and for recruitment, under evocative names like “Dawla_NewsMedia,” “GreatISNation,” “Greatest_Nation,” “JoinISNation,” and the like. (*See generally* GX:2000, 2000S, 2001-2123 series). Kadic recruited individuals around the world to answer the ISIS call to jihad: “Jihad is the only way forward for #Muslims to free themselves from tyrant rulers and US Hegemony. #Islamic State[.]” (GX:2002BN (Aug. 24, 2014 tweet from Dawla_NewMedia account)); *see also* (GX:2050D (Sept. 2, 2015 tweet from GreatISNation75 account) (“If Shaam [i.e., Syria] is closed[,] than [*sic*] join the Army of Khalifah Ibrahim HA [i.e., Baghdadi] in Libya, Yemen, Sinai, Khurasan [i.e., Afghanistan], & Libya you can join with your family[.]”)).

One government witness testified that Kandic was an “emir,” or leader, for media, and that he was in direct contact with other ISIS media personnel including, but not limited to, a Bosnian man named “Salahuddin” who was living in Raqqa. (DE:357 at 13). Kandic also told others via Twitter or other platforms that he “work[ed] for dawla [i.e., Islamic State] media.” (GX:2002D). Another government witness noted concerning Kandic’s Twitter presence: “[H]e was kind of at the middle of everything . . . [W]henver Twitter would do their suspensions, for example, after particularly violent videos were posted . . . when the users reconstituted, they all reconstituted around [him. H]e was right in the middle of all of it.” (A:195). In fact, among Kandic’s earliest online monikers in support of ISIS was the plainly named “ISIS News Media.” (GX:451 (subscriber information for Kandic’s Gmail account created on April 10, 2014, with address isisnewsmedia@gmail.com under subscriber name “Dawla Media”)).

One of the propaganda items Kandic distributed, the ISIS video “Flames of War,” was a “very well-known ISIS video that was produced in late 2014; arguably, ISIS’s most famous video[.]” (A:342; GX:2200A-2200K (clips of the full Flames of War video admitted into

evidence)). The complete video—largely in English—depicted numerous executions of ISIS enemies. (GX:2200I, 2200J; A:345). Kandic distributed “Flames of War” via Twitter, calling it the “BEST thing ever seen on screen[.]” (GX:2035E (June 20, 2015 tweet from JoinISNation62)).

Kandic also enforced ISIS messaging discipline—to protect jihadists in the field. For example, he told another Twitter user, “[N]ever post the numbers of how many people migrated to IS[IS], it’s forbidden to post this information Akhy [i.e., brother].” (GX:2013B (Feb. 27, 2015 direct message from “GreatIS_Nation”), GX:2007K (similar Dec. 17, 2014 message from another account), GX:2038D (June 26, 2015 tweet from “GreatISNation65” publicizing the ISIS “Rules of Media Concealment.”)).

4. Kandic Recruited *Mujahideen* to ISIS’s Cause

a. Kandic Was a Prolific Recruiter

Kandic used numerous social media applications and messaging platforms to find ISIS recruits (“students”) and then advise them on how best to make their *hijra* to the various ISIS territories (“schools”) to which he trafficked aspiring members. (A:152). He sent recruits to Syria, Afghanistan, Libya, Sudan, Somalia, and Sinai (Egypt).

(*Id.*). To his traveling recruits, he gave advice such as “You should not have a beard at all . . . So [you] don’t look religious.” (GX:2069D (Jan. 3, 2016 direct messages from “JoinISNation94”)). He also advised recruits when it was not safe to travel to Syria: “URGENT[:] Please refrain from making any Hijrah plans for Shaam [i.e., Syria], As the borders are closed!! However other Wilayat [i.e., ISIS-controlled territories] are still open.” (GX:2055E (Sept. 20, 2015 tweets from “JoinISNation81”)).

Kandic was proud of his work as an ISIS recruiter, so much so that he was comfortable castigating those who, in his view, failed to meet his high standards. He criticized another ISIS recruiter and *hijra* planner via a series of voice messages transmitted via Telegram: “Who do you think you are? Sit down and shut up and listen You have to follow the advice of your brothers who have experience in this work. Who know what they’re doing. You see, we build *dawla* [i.e., the Islamic State], *akhy* [brother].” (GX:1333E, 1333TR (transcript)). Kandic bragged that he had trafficked in “20,000” brothers for Syria and made clear what he hoped they would do: “Let them fight.” (GX:1333E).

Kandic sent some recruits to his friend Asainov, so they could train with Asainov as a sniper. The two were “very close friend[s]” and

Kandic “was proud of [Asainov]” and his achievements for ISIS. (A:156; GX:1338BD (Kandic described Asainov to an aspiring ISIS sniper: “[H]e [i.e., Asainov] is one of the best. He is emir of *muascar* [i.e., training camp] for a long time, of snipers, for a few years now. He is a good brother.”)).

b. Kandic Ran Safehouses in Istanbul for ISIS Recruits

Kandic operated one or more safehouses in Istanbul for the purpose of temporarily housing ISIS recruits pending clearance to proceed to Syria to ISIS territory. (*E.g.*, A:135-36). Several ISIS recruits stayed at safe houses operated by him, including one family who was a “priority” to him and to ISIS because the patriarch of the family had experience as a military aircraft pilot. (A:153, 155).

c. Kandic Provided ISIS Members with False Documents

Once in Turkey, aspiring ISIS fighters needed documentation in the event they encountered Turkish law enforcement while traveling to Syria. Kandic manufactured hundreds of false Turkish identity cards—*kimliks*—with the assistance of Azra Delija, who testified as a cooperating witness at trial. (A:157-58). Kandic was paid for the service,

and delivered the false *kimliks* to Abdullah, who was then responsible for routing them to the users—men, women, and children. (A:158-60; *see also* GX:2305-06). Among other individuals for whom Kandic and Delija forged a *kimlik* was an ISIS fighter from Bangladesh who appeared to be fleeing a July 2016 attack committed by ISIS in its capital, Dhaka. Kandic helped this “Bengali brother” make the journey into ISIS-controlled territory, specifically Idlib, Syria. (A:160). ISIS later praised the Dhaka attack and eulogized other ISIS attackers killed in its execution in its online magazine, *Rumiyah*. (GX:2258A; A:341 (testimony that the article “give[s] a profile of the five individuals that carried out the attacks. It glorifies them. Talks about how brave they were.”), 337 (testimony about the Dhaka attack, in which 27 people including an American citizen were killed)).

Kandic also had access to numerous false Syrian national identity cards, used at least two false Ukrainian passports, and acquired passports for others and resold them at a profit. (DE:357 at 16). For example, in one voice recording later recovered from his cellular telephone, Kandic explained to another apparent ISIS member that he knew a passport forger in Europe, who had previously been known to

Abdullah (the ISIS emir for safehouses in Istanbul). Of this passport forger, Kandic vouched for his skill set: “I know about this . . . they did a bang-up job with this[.]” (GX:1354TR (transcript of principally Russian-language Telegram voice memo exchange with unidentified individual); *see also* 1351TR (similar exchange of voice memos in which Kandic refers to false Ukrainian, Romanian, American, Canadian, British, Latvian, and Slovenian passports)). Kandic also appeared to have access to false visas for use by ISIS members. (GX:484-85 (images of “entry permits” for the Republic of the Sudan for various individuals), A:459-60).

d. Kandic Recruited Jake Bilardi,
a/k/a Abu Abdullah al Australi

Jake Bilardi was an Australian teenager living in the outskirts of Melbourne. On June 1, 2014, Bilardi conducted a Google search for the phrase “turkey-syria border smugglers.” (GX:1238). At the time, Bilardi was about two weeks away from turning 18 years old. (GX:1202). By June 3—barely 48 hours later—Bilardi was in contact via Twitter with Kandic, who was a prolific border smuggler for ISIS. (GA:1-

5).⁵ Over the course of the next several weeks, Kandic guided Bilardi on his path to ISIS territory, giving him instructions on what to do, what not to do, what to bring, and what not to bring. (GA:1-5; A:277-78). Kandic also told him that an AK-47 would be free when he got to ISIS territory. (A:277). After Bilardi booked travel from Melbourne to Istanbul, Kandic arranged for Bilardi to be picked up from the airport and instructed Bilardi on how to meet his ride. (GA:5; A:377-78).

Bilardi followed Kandic's instructions and succeeded in joining ISIS in Syria, by late August or early September 2014. In a later online posting, Bilardi credited Kandic with his success in making *hijra*. (GA:26 (noting Bilardi's "confiden[ce] that the brother [i.e., Kandic] was genuine")). Government witnesses who had examined Bilardi's accounts did not see communications, other than with Kandic, in which someone was helping Bilardi organize the logistics of his travel to Syria. (A:281-83, 285).

⁵ At or around the time that Bilardi was in contact with Kandic via Twitter, Kandic's Twitter account had approximately 14,000 "followers," i.e., accounts subscribing to his Twitter feed. (A:256).

Over the next several months, Kandic and Bilardi remained in contact after Bilardi entered Syria, as Bilardi fought in several ISIS battles and prepared to conduct a suicide bombing mission. (GA:26 (Bilardi blog post dated Jan. 13, 2015) (“I turned to fighting in the city before once again registering for a martyrdom operation[.]”); A:378-81, 374 (Bilardi explaining to another person that he chose a suicide bombing mission over fighting because he could kill more people)). Indeed, Kandic encouraged Bilardi to engage in a suicide bombing after Bilardi told him that he had decided to fight rather than be a suicide bomber. (GA:8 (Bilardi explaining that he decided to fight), 13 (Kandic: “I love you for the sake of Allah”), 18 (Kandic: “May Allah strengthen you”), 20 (Kandic: “for [u]ltimate sacrifice there is only an [u]ltimate reward, as big as Allah has given us the chance to utilize in our case”), 21 (“a shock wave if the bullets and shrapnells [sic] can’t reach them” “So there [sic] lungs and heart’s [sic] implode”)). By early March, with Bilardi’s suicide attack only a week away, Kandic prayed for Allah to “reward [Bilardi] immensely” for his and ISIS’s attack upon Ramadi, asking Allah to “level them with the ground” and to “make the[ir] inner organs implode[.]” (A:380-81; GA:52, 55).

Bilardi's suicide attack on March 11, 2015, was one of "between eight and ten major attacks" that day in al-Anbar province, of which Ramadi is the capital. (A:316). The "highly coordinated" attacks involved at least eleven suicide bombers, including Bilardi, and the March 11 attacks "paved the road to the fall of Al-Anbar Province" by May 2015 to ISIS. (*Id.*). As to Bilardi specifically, communications intercepted by the Iraqi military reflected that Bilardi was "congratulate[d]" by other ISIS fighters for the "success" of his attack, after which ISIS began issuing "condolences" for Bilardi's death, using his *kunya* (nom de guerre), Abu Abdullah al-Australi. (*Id.*, A:318-19).

Kandic later praised Bilardi's suicide attack to a government witness:

I remember [Kandic] mentioning it, a name of a person and it was Jake, and either [Kandic] met [Jake] there or [Kandic] communicated with him. I know [Kandic] communicated with [Jake] while [Jake] was – [Jake] went into Syria, he joined ISIS, but [Kandic] helped [Jake] somehow...when [Jake] came to Istanbul[,] did [Kandic] meet [Jake] there, or [did Kandic] just helped [Jake] go towards . . . to Syria, and that [Kandic has] spoken with [Jake] and that [Jake] was a good brother, you know, righteous, good brother.

And Jake died, I learned how and all that, how it happened . . . He committed, like, a suicide bomb attack, Jake did.

(A:162). More than 30 people were killed in the coordinated attacks of March 11, 2015, in which Bilardi played a key, deadly role. Twenty-five people were missing, “whose bodies were never found”; and 61 people were injured, some of whom later died. (A:316). Of this attack, Kandic tweeted that Bilardi’s “martyrdom operation” as a “Lion *Istish’hadī* (Fidai) [i.e., suicide bomber]” had “killed 57 Shia kufar [i.e., infidels] and wounded many more In . . . Ramadi.” (A:381-82; GX:2016G (March 11, 2015 tweet from GreatISNation45), 2067B, 2095A (Dec. 1, 2015 tweets from JoinISNation92 and GreatISNation96)). Of other suicide bombing attacks committed by ISIS members, Kandic later said: “*Alhamdulillah* [i.e., “thank God”] today seventy-something got killed with two *istishadis* [i.e., suicide bombers], *Alhamdulillah* and yesterday also twenty-something, twenty-three, I think. *Alhamdulillah* it is good.” (GX:1346H).

5. Kandic Procured Warfighting Equipment for ISIS

While working for ISIS from Istanbul, Kandic formed a relationship with a weapons supplier in South Africa, who provided

Kandic with night vision scopes that he then routed to Syria for Asainov to use. (A:141-43, 157).

Kandic also operated an online ISIS-focused chat group for weapons and other warfighting equipment under the name “Khilafah Market.” (See generally GX:1380A-1380J (chat group extracts recovered from Kandic’s cellular telephone), GX:1381A-1381O (listing of chat group members)). Members could purchase or sell what appeared to be suicide vests (GX:1380I, 1390), mortars (GX:1380D-1380G), and rifles such as M16s (GX:1380H). Kandic was the administrator of the Khilafah Market, controlled access to the group and enforced group rules. (GX:1340TR (transcript of voice notes in which Kandic criticizes another member of the Khilafah Market for not following his rules: “[Y]ou know you cannot say I have Kalashnikov how much money do you give me? [Y]ou have to give the price . . . [I]n Dawla [i.e., the Islamic State] you have to have the price on everything that you sell.”)). Kandic enforced those rules because he understood the value of his market to ISIS: “Every person has to be in Dawla. I cannot add anyone outside of Dawla,” i.e., outside ISIS territory, “[b]ecause if the police take their phone or anything, then they will check the Khilafah Market. You know?”

We don't, we cannot compromise that, *akhy* [i.e., brother]." (GX:1337TR; A:170). Among more than 100 other members, the Khilafah Market counted in its ranks Abu Luqman (A:170; GX:1381A), and a man who went by the pseudonym Abu Muhammad al-Almani, who helped facilitate money transfers from Kandic to Asainov (GX:1381E, 1344TR).

Kandic also attempted to facilitate a transfer of funds for the benefit of Asainov via a government witness ("the CI"). In March 2015, Asainov discussed with the CI via Surespot needing military gear and donations, noted that they had people who would buy weapons and gear for them in Turkey and send it to them, and discussing the amount of money the CI planned to send. (GX:1528 at 2-3). Asainov ultimately referred the CI to Kandic, via his Surespot handle at the time: "DontAsk," and Kandic contacted the CI via that account. (GX:1533, 1535; T:1526-27, 1530). In the same period, Kandic and Asainov were in frequent contact via Surespot. (*See generally* GX:1508 (Surespot message logs), 1505 (Asainov's identification of his Surespot handle, *sabrforever*); A:138 (testimony that Kandic has a Telegram account with name "Don't Ask Stuff")).

6. Kandic's Continued Assistance to ISIS from Europe

On January 18, 2017, shortly after the New Year's Eve ISIS attack upon an Istanbul nightclub, Kandic flew to Sarajevo using a false Ukrainian passport in the false name of "Ivan Popovich." (A:166, 168-69, 236-37, 242-43; GX:312, 1412). From Sarajevo, he continued his support for ISIS.

a. Kandic Continued to Transfer Money to ISIS Members

As he had been doing in Turkey, Kandic continued to access funds belonging to ISIS fighters in Syria or elsewhere so that he could transfer those funds to them via the *hawala* (i.e., unregulated money transfer) system. (A:154 (testimony describing Kandic's use of hawalas), 335 (Dr. Vidino's testimony describing *hawala* system)). Based on account records obtained from Finland, Germany, and South Africa, over the course of several years, Kandic withdrew or otherwise spent more than 40,000 euros he drew from accounts belonging to other individuals using cards provided to him by ISIS fighters or by the South African. (*See generally* GX:510-18). He maintained a ledger of funds and payments for ISIS fighters on his cellular telephone. (GX:1370-71). ISIS fighters, including, but not limited to, Asainov, maintained contact with Kandic

so they could access their funds inside ISIS territory. (See, e.g., GX:1344TR (Asainov asking Kandic in June 2017 to send the money to Raqqa via another man, Abu Muhammad al-Almani, and directing al-Almani to give the money “to the brothers from my *Katiba* [i.e., fighting unit]”), 1338TR (a January 2017 voice memo exchange between Kandic and another man about, among other topics, what funds to withdraw from one bank account, and how to distribute them between the other man, the other man’s wife, and Kandic)).

b. Kandic Maintained His Communications With Numerous ISIS Members, Offering Advice and Support to the ISIS Cause

As the evidence later recovered from Kandic’s cellular telephone showed—and in addition to the dialogues Kandic maintained with Asainov summarized above—Kandic was still actively engaged in numerous other forms of support to ISIS after fleeing Istanbul. (See, e.g., GX:1360TR (Kandic’s March 2017 voice messages warning “brothers” in Istanbul “not to leave the city” because “these cops . . . blocked everything” and were “searching for people”), 1337TR, 1340TR (Kandic’s April 2017 voice messages assisting another Khilafah Market member in regaining access to the Telegram group, and then criticizing another

Khilafah Market member for breaking the market's rules), 1350TR (Kandic's April 2017 voice messages seeking assistance for routing "brothers in Africa" via Sinai, Egypt, with the assistance of "the Immigration Office in Raqqa"); 1351TR (Kandic's May 2017 voice messages in which, among other topics, he seeks assistance to transfer more than \$8,000 from Istanbul to Mosul, Iraq (partially under ISIS control at the time)), 1333TR (Kandic's June 2017 voice messages criticizing another "*hijra* department" and claiming "I have the safest way to send the *muhajireen*, the single brothers," via Sinai, Egypt)).

On June 14, 2017—approximately two weeks before his capture—Kandic exchanged voice messages with Asainov. (GX:1343A-1343L). Asainov indicated that he was contacting Kandic from Raqqa, to where he needed Kandic to send money. In two of the recordings, large explosions are audible in the background, explosions that Asainov describes as "they bombing, boom . . . Heard that? That's *kuffar*, *akhy*." (GX:1343F-1343G).

On the evening of June 29, 2017, Kandic was apprehended by Bosnian immigration authorities near his apartment building in Sarajevo. (A:213). Asked for identification, he presented a false

Montenegrin identity card and a false Montenegrin driver's license, both bearing the name "Edin Radoncic." (A:213, 215-16; GX:303A-303C). Kandic maintained that false identity with Bosnian authorities for several days before ultimately admitting that his true name was Mirsad Kandic. (A:214). Upon his apprehension, Kandic was carrying more than 1,000 units of Bosnian currency, 300 euros, and three bank cards issued to other people by financial institutions in Finland, Germany, and South Africa. (A:217-18; GX:2308, 2308A, 511, 514, 517). Authorities also seized his cellular telephone. (GX:1300, 1300S).

Following extradition proceedings, Kandic was transferred from Bosnian custody in Sarajevo to FBI personnel and transported to the Eastern District of New York. (A:466).

C. Motion to Dismiss, Jury Instruction, Verdict and Sentencing

On the eve of trial, the defense moved to dismiss Count One on the ground of duplicity. (DE:272). The district court denied that motion in a written opinion on May 4, 2022. (GA:85-93).⁶ The court concluded that Count One was duplicitous because it charged multiple

⁶ The court's initial opinion was contained in DE:277 (A:64), and then amended by DE:280 (GA:85-93). (A:28).

deaths resulting from a single offense, but not *impermissibly* duplicitous because there was no prejudice to Kandic. (GA:89 (citing *United States v. Sturdivant*, 244 F.3d 71, 75 (2d Cir. 2001)). The court held that any concern that the jury's verdict would be non-unanimous as to which death was proven could be cured by a proper jury instruction; that Count One was sufficiently broad to avoid any potential double jeopardy problem; and that Kandic could not have been prejudiced by any late notice given the nearly five years the indictment had been pending and the government's voluminous discovery productions, among other reasons. (GA:89-93).

Consistent with this ruling as to unanimity, the government focused the jury on specific deaths during its closing argument and provided a letter prior to closing arguments specifying which deaths the government would argue had resulted from the offense charged in Count One. (See generally A:476-83, 486 (government's letter specifying deaths that resulted from the conspiracy charged in Count One), 512-13 (court's overruling of Kandic's renewed objection to the verdict sheet)).

In the jury charge, the jury was instructed in relevant part regarding the "death-results" element:

In order to prove that at least one person's death resulted from the commission of an offense, the Government must prove beyond a reasonable doubt that a person's death was a but-for consequence of the offense being committed. That means that the Government must prove beyond a reasonable doubt that but for the commission of the offense, the person would not have died.

To elaborate further, the commission of the offense must be a but-for cause of the person's death but it need not be the sole cause. It is sufficient if the Government proves that the commission of the offense combined with other factors to cause the person's death, so long as these other factors would not have resulted in the person's death even if the offense did not happen. In other words, the commission of the offense, when combined with other factors, is an actual cause of death, only if the person's death would not have occurred but for the effect of the commission of the offense. However, it is not enough that the commission of the offense merely played a nonessential contributing role in the death. If the death would have occurred regardless of whether the offense happened, then the person's death did not result from the commission of the offense.

The Government is not required to prove that the Defendant, or anyone else, intended to cause the person's death or that the person's death was foreseeable to the Defendant or others. The Government does not have to prove that any act personally done by the Defendant caused the person's death. What the Government needs to prove beyond a reasonable doubt is that the Defendant is guilty of committing the offense . . .

and that, but for the commission of the offense, the person would not have died.

(GA:147-48; A:537-38).

The jury was instructed more than once that it had to be unanimous on whether the government had proven that the commission of the offense resulted in death and on which death resulted:

If the particular count alleges the death of one or more persons, it is sufficient that the Government prove beyond a reasonable doubt that the offense resulted in the death of one such person. However, in order to find that the Government has proven that the commission of the offense resulted in death, you must be *unanimous* as to the person's death you are considering. It is not enough for some of you to find that the Government has proven one person's death and others of you to find that the Government has proven a different person's death. *In other words, if you find that a death resulted, you all must agree as to that specific death.*

With respect to Count One, you must find that a death resulted from the conspiracy charged in the Indictment if you find beyond a reasonable doubt that the death was a consequence of that conspiracy. With respect to Count Five, you must find that a death results from the offense charged in the Indictment if you find beyond a reasonable doubt that Jake Bilardi's death was a consequence of commission of the offense....

Under Count One, the verdict form asks you two questions. First, whether you unanimously

found that the offense resulted in the death of Jake Bilardi; and second, whether you unanimously found that the offense resulted in the death of any other person or persons.

(GA:148-49; A:538 (emphases added)).

After approximately two hours of deliberation, the jury returned a verdict of guilty on each of the six counts charged. As to Count One, the jury found that Bilardi's death, as well as one or more deaths of other persons, resulted from the offense. As to Count Five, the jury found that Bilardi's death resulted from the offense. (A:543-44; DE:321).

At sentencing, the district court sentenced Kandic to 20 years' imprisonment on Counts Two, Three, Four, and Six, to run concurrently to each other. The court imposed a sentence of life on Counts One and Five, to run concurrently to the other counts. (DE:360 at 3).

SUMMARY OF ARGUMENT

Kandic argues that he was prejudiced by the district court's preclusion of affidavits by Bilardi's siblings that, he asserts, would have shown that Bilardi dedicated himself to suicide bombing before he met Kandic and thus Kandic was not the "but-for" causation for Bilardi's death by suicide bombing. Kandic is wrong. The court properly found that such evidence was not sufficiently reliable and was not the best evidence for the argument Kandic wanted to raise. As the court explained, the government had already admitted Bilardi's own words, through, among other things, Bilardi's blog posts, recorded calls with his siblings, direct messages with one sibling, and tweets. This direct evidence was the most probative evidence of Bilardi's intent as defense counsel claimed in his summation. There was no prejudice to Kandic in not also being able to admit the affidavits that largely lacked direct knowledge, and contained hearsay upon hearsay or irrelevant details, among other failings, and could have easily been discredited.

Second, Kandic claims that Count One was impermissibly duplicitous because it charged that multiple deaths resulted from Kandic's conspiracy to provide material support to ISIS and that he, as a

result, effectively had the burden to prove that the deaths alleged did not result from his conduct. This contention also lacks merit. Count One was not impermissibly duplicitous as charged and prosecuted in this case: Kandic was given plenty of notice which deaths were at issue. Further, the government and the court's jury charge stressed that the government bore the burden of proving that the deaths resulted beyond a reasonable doubt and that the jurors needed to unanimously find that Kandic's conduct resulted in a specific death that they all agreed upon.

ARGUMENTPOINT ONETHE DISTRICT COURT DID NOT ABUSE ITS DISCRETION
IN PRECLUDING THE AFFIDAVITS OF BILARDI'S SIBLINGSI. Background

During the first day of trial, Kandic sought admission of affidavits by three of Bilardi's siblings (Bree-Anna, Chris, and Jesse) made to Australian Federal Police based on Fed. R. Evid. 804(b)(1), 804(b)(4), and 807. (CA:139-40). The government opposed (*id.*) and the parties argued the issue in court (CA:140). Following argument, Kandic submitted a reply limiting his request to the admission of the affidavits from Bree-Anna and Jesse with redactions addressing the government's concern about their lack of personal knowledge and the relation of double-hearsay. (*Id.*). The district court denied the request on the record (A:330-31), and subsequently in a written opinion (CA:139-51).

Specifically, the district court found that although Kandic had met his burden of showing that the Bilardi siblings were unavailable, he had failed to show that their statements were covered by the hearsay exceptions for former testimony and family history. (CA:140-42).

As to the former testimony exception, the district court held that the sibling affidavits failed to satisfy the exception since they were not from a trial, hearing, or lawful deposition and because the government had no opportunity to develop the proposed testimony by cross-examination. (CA:142). As to the family history exception, the court held that the proffered statements “describe information different in kind from the sort of one-off and linear events covered within the exception, *e.g.*, birth, death, or marriage.” (CA:144). Rather, “it is not the kind of family history that gets passed down generationally, such that it would establish a family lore, custom, or tradition that offers presumptive reliability.” (*Id.*). Further, the court explained that “given the intensely personal narrative detailed in these statements—made by declarants whose motivations, the government argues, raise credibility questions—it cannot be said that these statements are free enough from the risk of inaccuracy and untrustworthiness such that the test of cross-examination would be of marginal utility.” (*Id.*).

Finally, the district court found that the proffered statements did not qualify under the residual hearsay exception since they “are not so trustworthy that cross-examination would be of marginal utility,”

explaining that the unwillingness of the siblings to even be interviewed undermined the trustworthiness of their narrative and there was “sufficient reason to question whether the siblings harbored any motive to provide half-truths during their interviews.” (CA:145-46). Further, the court also found these “unexamined hearsay statements are not the most probative evidence addressing Jake Bilardi’s path to radicalization before meeting the defendant,” citing “significant direct and circumstantial evidence that tells that story, including:” (1) Twitter messages between Bilardi and a different sister that discussed his difficult childhood, (2) evidence from the same conversation that Bilardi studied Islam in Australia at the Hume Islamic Youth Centre (which Kandic had circumstantially linked to violent extremism) and that his study motivated his travel to Syria, (3) photographs from Bilardi’s room showing bookshelves replete with Islamic texts and a cardboard box in his closet containing jars of Barium Nitrate, which Kandic elicited from an Australian police agent is used almost exclusively to build explosives, (4) Bilardi’s cellphone, which contained ISIS-related photographs, (5) authenticated contents extracted from Bilardi’s computer, which Kandic could use, including a “vast trove of ISIS propaganda and

‘mujahideen’ material,” including videos about jihad, and a search Bilardi ran for “turkey-syria border smugglers” on June 1, 2014, (7) a Twitter conversation between Kandic and Bilardi on June 3, 2014 where Bilardi told Kandic that he is a “revert [meaning a convert to Islam] of just over 1 year,” (8) a Kik conversation between Bilardi and “Abu Maryam,” in which Bilardi discusses a long list of Islamic books he has read and in which Bilardi tells him that he “reverted about 1.5 years ago,” (9) an 18-minute telephone call between Bilardi and his brother Chris in October 2014, hours before what he believed would be his martyrdom operation, in which Bilardi told Chris that he had “been thinking about [joining ISIS] for . . . ages,” that he got in touch with someone and then went, and (10) a 27-page blog post written by Bilardi in January 2015 in which he discusses his journey to Ramadi (GA:23-49), which the court explained “provides direct evidence from Bilardi about his path—first to Islam, then to extremism, and finally to ISIS.” (CA:148-49). In addition, the court highlighted blog entries that explained how and when Bilardi radicalized, which was demonstrated on cross-examination of one of the Australian law enforcement agents. (CA:150, citing T:1001-15, 1019-28 (A:303-07, 308-10)). In sum, the court found that “it seems that the

longer trial goes on, and the more evidence that comes in, the clearer it becomes that the sibling affidavits are neither necessary nor the most probative evidence about Jake Bilardi's radicalization." (CA:151). Ultimately, the court explained that the residual hearsay exception "does not override the court's discretion in determining what evidence is, and is not, acceptable for the jury" and the affidavits were properly precluded. (*Id.*) The court also precluded testimony by Armando Cordoba, a journalist, who reported on Bilardi and would have offered double- and triple-hearsay of the siblings' and others' accounts. (*Id.*)

On appeal, Kandic challenges only the district court's Rule 807 finding as to the siblings' affidavits. (Br. 29).

II. Legal Standards

A. Standard of Review

This Court reviews "a district court's evidentiary rulings under a deferential abuse of discretion standard, and . . . will disturb an evidentiary ruling only where the decision to admit or exclude evidence was manifestly erroneous." *United States v. Delva*, 858 F.3d 135, 156 (2d Cir. 2017). Even if the district court errs in precluding evidence,

“harmless error analysis applies in determining whether reversal is required.” *United States v. Yousef*, 327 F.3d 56, 156 (2d Cir. 2003).

B. Hearsay

A party seeking to admit evidence bears the burden to show its admission is proper. *See, e.g., United States v. Paulino*, 445 F.3d 211, 220 (2d Cir. 2006).

While a defendant has a right to present a meaningful defense at trial, that right does not exempt him from following the rules of evidence. Federal Rule of Evidence 802 sets forth the widely known rule against hearsay, Rules 803 and 804 set forth certain defined exceptions, and Rule 807 sets forth a limited exception to the hearsay rule where no other exception applies. Rule 807 provides that a hearsay statement may be admissible if “(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and (2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.” This exception is “used very rarely, and only in exceptional circumstances,” *Parsons v. Honeywell, Inc.*, 929 F.2d 901, 907 (2d Cir. 1991), and district

courts retain wide discretion to reject the application of this exception, *see Adamson v. Miller*, 808 F. App'x 14, 17 n.2 (2d Cir. 2020) (holding that the court did not err in rejecting the application of the residual exception to two affidavits from defendant's relatives); *accord Idaho v. Wright*, 497 U.S. 805, 819-20 (1990) (citing 5 J. Wigmore, *Evidence* § 420, p. 251 (J. Chadbourn rev. 1974) ("The theory of the hearsay rule . . . is that the many possible sources of inaccuracy and untrustworthiness which may lie underneath the bare untested assertion of a witness can best be brought to light and exposed, if they exist, by the test of cross-examination.")).

Courts generally assess the propriety of applying the Rule 807 residual exception by reference to five factors: whether "(i) it is particularly trustworthy; (ii) it bears on a material fact; (iii) it is the most probative evidence addressing that fact; (iv) its admission is consistent with the rules of evidence and advances the interests of justice; and (v) its proffer follows adequate notice to the adverse party." *United States v. Dawkins*, 999 F.3d 767, 791 (2d Cir. 2021).

III. The District Court Did Not Abuse its Discretion in Precluding the Challenged Evidence

As an initial matter, Kandic's argument regarding the relevance of the statements is founded on a misapprehension of the law and the facts proven at trial. Put simply, he focuses on speculation: that, without Kandic's assistance, Bilardi would have somehow made his way to the battlefield despite his repeated frustrations in finding anyone (other than Kandic) to assist him in traveling to the Syrian border; or that he would have committed a suicide bombing in Australia. (Br. 3, 18, 25). As to the former, the law requires a focus on what actually occurred: did Kandic's conduct lead to Bilardi's death (i.e., but for Kandic's conduct, would Bilardi have died), not the speculation of other ways Bilardi's death might have resulted. *See Burrage v. United States*, 571 U.S. 204, 211 (2014) ("The same conclusion follows if the predicate act combines with other factors to produce the result, so long as the other factors alone would not have done so—if, so to speak, it was the straw that broke the camel's back. Thus, if poison is administered to a man debilitated by multiple diseases, it is a but-for cause of his death even if those diseases played a part in his demise, so long as, without the incremental effect of

the poison, he would have lived.”); *United States v. Felder*, 993 F.3d 57, 68, 70 (2d Cir. 2021) (approving death-results jury instruction similar to the one given here). The jury charge tracked this caselaw and Kandic has not raised any appellate challenge to the instructions given.

As to the latter, as a factual matter, Bilardi abandoned his “Plan B” (GA:26)—and there was no evidence that anyone other than Kandic assisted Bilardi’s successful efforts to travel and join ISIS. Defense counsel argued to the jury that Kandic was not the cause of Bilardi’s radicalization or determination to become a suicide bomber (*e.g.*, A:515 (“First, and perhaps most importantly, you have it from Mr. Bilardi’s own mouth, from beginning to end. Look at his blog posts. They’re all in evidence.”)), relying heavily on Bilardi’s blog, admitted evidence of communications with his siblings, and the photos of Bilardi’s room.⁷ The government did not dispute that Bilardi was radicalized prior

⁷ Indeed, Bilardi’s acquisition of explosive materials to deploy in Australia, rather than to travel to Syria and commit a suicide attack, further supports the government’s case that Kandic’s participation in the conspiracy and in the provision of material support to ISIS was critical to Bilardi’s traveling to Syria and then to Iraq, where he engaged in a suicide bombing.

to meeting Kandic; it simply argued that Kandic was critical in converting Bilardi's radicalization into mobilization—beliefs into action—by helping him get to Syria and to execute a suicide attack. (A:520). The jury clearly and permissibly accepted this argument by its verdict.

Kandic moved to admit the siblings' affidavits under Federal Rules of Evidence 804(b)(1), 804(b)(4), and 807; he pursues only the Rule 807 challenge on appeal. As to those affidavits to which Kandic limited himself in his reply brief below, the district court did not abuse its discretion precluding the proffered statements admission under Rule 807, because, as the court found, they were neither reliable enough nor the best evidence of what Kandic sought to establish.⁸ Even without that

⁸ Recognizing the government's objection to statements that constituted hearsay-within-hearsay, were made without personal knowledge, or were otherwise irrelevant to the factual disputes at trial, Kandic proposed to admit only the affidavits from Bree-Anna and Jesse with redactions addressing those concerns. (CA:140). For example, the pre-redacted affidavits referenced individuals with whom Bilardi socialized in Australia at the local mosque and the belief of those individuals, but this information derives from the siblings' search of Bilardi's cellphone. None of the Bilardi siblings ever attended the mosque or met the individuals. (CA:101).

limitation, none of the sibling affidavits satisfied Rule 807 under the same reasoning the court applied.⁹

While Kandic claims that the government did not dispute the truthfulness of any statement contained in the affidavits (Br. 35-36), he ignores that the government explained in detail why the family members statements were not “particularly trustworthy” (CA:97-100). As the government explained, the Bilardi siblings’ statements are rife with allegations that are not based on personal knowledge, relay speculation and hearsay-within-hearsay, opine without adequate qualifications or bases, are inconsistent with other evidence in the case, and demonstrate

⁹ Kandic impliedly claims that the government disclosed the siblings’ affidavits late. (Br. 35). As prior statements of non-witnesses, the siblings’ affidavits were not discoverable under Federal Rule of Criminal Procedure 16, 18 U.S.C. § 3500, *Brady v. Maryland*, 373 U.S. 83 (1963), or *Giglio v. United States*, 405 U.S. 150 (1972). Moreover, materials disclosed in the first discovery production included much of the investigative file from Australian law enforcement authorities, which made apparent that Bilardi’s siblings and father were witnesses to some aspects of his radicalization. (DE:16). For this reason, Kandic sought and received approval from the district court to travel to Australia to interview Bilardi’s family and friends. (CA:141-42). The district court rejected Kandic’s complaint “of unfairness or wrongdoing related to when they learned about these affidavits and their subsequent ability to contact the Bilardi siblings.” (CA:141).

that the family members are withholding material facts. (*Id.*). For example, due to disagreements and internal feuds, various Bilardi siblings did not communicate with other siblings and did not know what was going on in their lives. (CA:97-98). Specifically, Bree-Anna and Chris admitted that they had little contact with Bilardi, and Jesse admitted that Bilardi was “a reserved person” who “did not share his feelings.” (CA:97-99). The government also highlighted how the statements lacked independent corroborating evidence or were inconsistent with each other or other evidence. (CA:99-100). A further indicium of unreliability was that the proffered statements were created after Bilardi’s disappearance to explain what occurred and likely assuage feelings of guilt and self-blame. (CA:100).¹⁰ As the district court found as to all of the statements, “these statements are simply the ramblings of these people who did not pay attention to [Bilardi] So there was no communication of a significant nature, but now, in retrospect, these

¹⁰ While Kandic states several times that the affidavits were drafted after Bilardi had died, that is incorrect. Bilardi died during his suicide bombing on March 11, 2015, and the sibling affidavits were signed on January 28, 2015. (CA:21, 31, 45).

people are making statements to the police that are uncorroborated, . . . they are trying to justify their behavior before he went to Syria.” (A:288, 332 (finding, “These statements offer a retelling of a somewhat complex narrative during a traumatic period in the dynamics of a dysfunctional family. As a result, these statements would benefit from cross-examination.”)). Kandic fails to address the court’s findings, let alone explain why those findings were clearly erroneous.

As the government argued below, the statements, when compared to each other, when compared to internal family discussions as captured in online chats, and when compared to later FBI interview reports, show that the family members were not fully forthcoming regarding their knowledge, and lack of knowledge, related to Bilardi. Indeed, because of the Australian government’s division of responsibilities among its law enforcement and intelligence agencies, the Bilardi siblings were specifically instructed not to be forthcoming with police and law enforcement officers. (CA:100).

To show the statements were reliable, Kandic argues that the affidavits were made under oath in response to questioning by law enforcement authorities. (Br. 32). “But just because a statement is made

under oath does not mean that it is trustworthy. The context in which the oath was taken and the extent to which the statements under oath were tested by cross-examination are relevant.” *Gem Financial Service, Inc. v. City of New York*, No. 13-CV-1686 (RPK) (RER), 2022 WL 409618, at *6 (E.D.N.Y. Feb. 10, 2022). Here, the Bilardi family members did not take an oath in open court before a jury and during a public proceeding. *Cf. In re Sept. 11 Litig.*, 621 F. Supp. 2d 131, 163 (S.D.N.Y. 2009) (admitting testimony of witnesses under residual exception, noting that they had “testified in court, before a jury, under oath and penalty of perjury, in a highly-scrutinized, public proceeding”). Nor were the Bilardi family members subject to cross-examination on the contents of the affidavits after they prepared them. *See O’Brien v. City of Yonkers*, No. 07-CV-3974 (KMK) (LMS), 2013 WL 1234966, at *8 n.8 (S.D.N.Y. Mar. 22, 2013) (finding testimony under oath insufficiently reliable in part because there had been no cross-examination on certain issues).

Second, the proffered statements are not the most probative evidence addressing Bilardi’s behavior; rather his blog, his statements on Facebook and Twitter, recorded calls with his siblings, the contents of his cellphone, laptop computer, and photographs of the items recovered from

his room, were all stronger pieces of evidence and all had been produced in discovery and had been in Kandic's possession since 2017. (A:287; CA:2). Notably, the statements Kandic cited were captured in primary source evidence that the defense possessed—such as the October 2014 recorded audio calls between Bilardi and Jesse, Bilardi's laptop computer, photographs of the materials stored in Bilardi's bedroom, Bilardi's internet browsing history and audio files, the contents of Bilardi's cellphone, and Bilardi's online accounts and messages. (CA:2-3, 101; Br. 25-26). To the extent that the statements recount the contents of these phone calls and online messages, the statements are not the best evidence—the calls and messages are—and indeed the statements are erroneous in multiple respects when compared with the original calls and messages. (CA:99-100).

Third, while the district court's rejection of the admissibility of the siblings' affidavits under the former testimony exception was premised on the government's lack of opportunity to cross-examine the siblings (CA:142), it found that the admission of the proffered statements under the residual exception was also ill-advised under the facts of this case because the government lacked the opportunity to cross-examine the

siblings. As shown above, the siblings' statements were unreliable, were motivated by bias, were contradicted by other more direct evidence, and, for the large part, lacked personal knowledge or the proper basis to opine. *Cf. Crawford v. Washington*, 541 U.S. 36, 43, 61-62 (2004) ("The common-law tradition is one of live testimony in court subject to adversarial testing. . . . Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of 'reliability.' . . . The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined.").¹¹ In sum, the district court properly precluded the admission of the siblings' affidavits.

IV. Any Error Was Harmless

In light of the significant, more direct, reliable evidence of Bilardi's mental state and commitment to ISIS from Bilardi's

¹¹ While we recognize that the Sixth Amendment protections discussed are targeted to the defendant, the Court's discussion of the value to the jury's truth-seeking function of cross-examination is pertinent here.

conversations, blogs, and tweets that were admitted at trial, any error in precluding the challenged evidence is harmless.

Kandic complains that the district court precluded evidence that the defense sought to present to the jury, including statements by Bilardi's siblings describing how he became radicalized in Australia and committed to martyrdom before he met Kandic. (Br. 22). As to the former, the government admitted, as summarized above, extensive direct evidence that Bilardi became radicalized in Australia before he met Kandic. As to the latter, there was direct evidence admitted at trial that showed Bilardi aimed to commit an act of terrorism both in Australia, which he ultimately abandoned, and in the Middle East, a goal which Kandic made possible.

Defense counsel made considerable use of Bilardi's own words—his calls with his siblings, his direct messages over social media (“DM”s) with another sibling, his blog posts—to argue that Bilardi was radicalized long before he met Kandic and, had he been unable to travel to the Middle East, had a “Plan B” to conduct a suicide bombing in Australia. (A:515-19). Notably, counsel emphasized the strength of the direct evidence of Bilardi's own words: “First, and perhaps most importantly, you have it from Mr. Bilardi's own mouth from beginning to end. Look at the blog posts. They're all in evidence.” (A:515; *see also* A:516-17 (discussion of blog posts, including Bilardi's Plan B), 518 (discussion of call with Chris Bilardi (GX:1206) and DMs with his sister Sarah), 519 (DMs with Sarah showing Bilardi was a true believer)). There was thus extensive evidence for defense counsel to advance his argument. For example, in one of Bilardi's Kik message conversations discovered on Bilardi's devices that he left in Australia, he explains that he “reverted about 1.5 years ago” and was planning to come “as soon as possible.” (A:253; GX:1222G). Bilardi's phone also contained instructions on how to make a bomb. (A:257). Bilardi's blog post, “From Melbourne to Ramadi: My Journey,” was also in evidence and provided

proof of his preexisting radicalization and willingness to be a jihadist before he ever spoke to Kandic. (A:284, 515-16; GA:23-26 (GX:1235)).¹² In summation, defense counsel relied heavily on Bilardi's own words from his blog and calls and direct messages with his brother Chris and sister Sarah, among other evidence, to argue that it was Bilardi's decision, independent of Kandic's actions, that resulted in his suicide bombing, which he was committed to undertaking even before he left Australia and even though his siblings offered to take him home from the Middle East. (A:515-18). The jury was entitled to and did reject this alternative theory of the but-for cause of Bilardi's death. The admission of the biased siblings' affidavits, largely premised on speculation, hearsay, and lack of personal knowledge, would not have altered the jury's assessment.

Second, the proof at trial that Kandic's conduct was a but-for cause of Bilardi's death was overwhelming. The trial evidence showed that although Bilardi desired and tried to travel to ISIS territory, he was

¹² The government also indicated it did not object to the authenticity of anything that came from Bilardi's computer (A:287), providing the defense with leeway to introduce whatever evidence it wanted from Bilardi's computer.

unable to find a way until he connected with Kandic, who provided extensive guidance to facilitate Bilardi's successful travel to ISIS territory. There was also no evidence on Bilardi's devices that anyone, other than Kandic, facilitated his travel to ISIS territory. The evidence also showed that Kandic encouraged Bilardi to engage in a suicide bombing. (A:520-22, 524-26).

Further, as to Count One, any error in precluding these affidavits was also harmless for a different reason: Kandic was found guilty of deaths resulting other than Bilardi's (A:545), and the sentence on that count was life imprisonment, run concurrently with the other counts (DE:360). The government argued and the jury reasonably could have concluded from the evidence beyond a reasonable doubt that Kandic's conduct resulted in (i) the death of Ikanovic, who he assisted substantially during Ikanovic's time fighting for ISIS, including by updating Ikanovic about battles within ISIS territory; (ii) the death of the Bosnian Witness's siblings, after Kandic provided financial assistance to the Bosnian Witness's impoverished family that enabled them to travel to ISIS territory, where one of his brothers then later fought for ISIS and died in Syria and his younger brother also died in ISIS territory (BDT:84-

85; GX:1413); and (iii) the death of the alleged spy that Kandic's recruit, called Jason Borne, and accomplices killed during an interrogation while communicating with Kandic. (A:155). These facts were contained in discovery and the 18 U.S.C. § 3500 material the government disclosed years before trial; the government also provided before summation a letter in which it specified the deaths it would seek to prove. (A:480, 483, 486; GA:79-80). Therefore, even assuming the district court erred in precluding admission of the Bilardi siblings' affidavits, that error was harmless as to his conviction of Count One and Kandic's ultimate prison term. And, given the extensive evidence admitted and argued from of Bilardi's radicalization and desire to become a jihadi prior to his online discussion with Kandic, that defense counsel emphasized in summation and that the jury clearly and permissibly rejected, any error in precluding this less direct evidence was harmless as to his conviction of Count Five.

POINT TWO

THE CONSPIRACY COUNT WAS
NOT IMPERMISSIBLY DUPLICITOUS

Kandic argues that Count One, which contained an enhancement for the offense resulting in the death of Bilardi and others, was impermissibly duplicitous because “it flipped the burden to the defense to disprove Mr. Kandic’s involvement in innumerable ISIS killings” “described and shown on videotape throughout the trial.” (Br. 3-4). He is wrong. Here, among other things, the government provided discovery and § 3500 material well in advance of trial that discussed the deaths at issue, indicated before summation which deaths it would argue proved this element, and at all times told the jury that it had the burden of proof. The district court likewise instructed the jurors that they needed to unanimously find that a specific death resulted and unanimously agree on which specific death. Simply put, there was no prejudice from any duplicity in Count One.

I. Relevant Law

A. Duplicity

Duplicity exists when a charge “combines two or more distinct crimes into one count.” *United States v. Sturdivant*, 244 F.3d 71, 75 (2d

Cir. 2001); *United States v. Margiotta*, 646 F.2d 729, 733 (2d Cir. 1981) (“a single count of an indictment should not be found impermissibly duplicitous whenever it contains several allegations that could have been stated as separate offenses . . . but only when the failure to do so risks unfairness to the defendant”; such a rule “achieves the obvious benefit of limiting the maximum penalties the defendant may face if convicted of [the crimes charged] and also avoids the unfairness of portraying the defendant to the jury as a perpetrator of [several] crimes”).

“An indictment is impermissibly duplicitous where: 1) it combines two or more distinct crimes into one count in contravention of Fed. R. Crim. P. 8(a)’s requirement that there be a separate count for each offense, and 2) the defendant is prejudiced thereby.” *Sturdivant*, 244 F.3d at 75. This Court has identified several relevant factors for determining whether a defendant was actually prejudiced by a duplicitous indictment, including avoiding the uncertainty of whether a general verdict conceals a finding of guilty as to one crime but of not guilty of another, avoiding the risk that the jurors may not have been unanimous as to one of the charged crimes, assuring that the defendant has adequate notice, providing protection against double jeopardy in

subsequent prosecutions, and providing the basis for appropriate sentencing. *Id.*

B. Standard of Review

Because a claim of whether a count is impermissibly duplicitous is a question of law, this Court reviews it de novo. *See United States v. Mauskar*, 557 F.3d 219, 225 (5th Cir. 2009); *cf. United States v. Malachowski*, 415 F. App'x 307, 309 (2d Cir. 2011) (de novo review of preserved claim of multiplicity).

II. Count One Was Not Impermissibly Duplicitous

Kandic complains that he lacked notice of the deaths that resulted from his conduct as charged in Count One, that this lack of knowledge forced him effectively to bear the burden of disproving that he caused the myriad deaths that ISIS caused when he was materially assisting it, and that the special verdict form did not cure the risk that the jurors did not unanimously find another death, beyond Bilardi's, that resulted from Kandic's conduct. (Br. 45-46). His claims lack merit.

First, the charging documents specified some of the deaths that were the primary focus of the government's case. The indictment expressly named Bilardi among those killed. (A:38). The complaint

explained how the conspiracy resulted in Bilardi's commission of a suicide bombing attack that killed him and numerous Iraqis. (GA:75). As noted in the complaint, Kandic "announc[ed] that Bilardi had carried out a suicide attack" killing "57 Shia kufar [infidels]." (GA:75).

In addition, the government provided discovery and § 3500 material well in advance of trial that discussed the deaths at issue, and it indicated before summation which deaths it would argue proved this element, which was a subset of those disclosed in discovery. Notably, the government had disclosed the § 3500 material of its cooperating witnesses two years in advance of trial, which provided considerable notice of the deaths at issue. (A:483 ("I have never before turned over §3500 [of] cooperators two years in advance of trial. All of this was in the §3500 of our cooperators, but they have seen and been on notice that the defendant is connected to numerous individuals, battlefield commanders who have died."); GA:79-80). Some of those deaths were described by cooperating witnesses and in co-conspirator statements, and others were depicted in images, videos, and other evidence. (GA:83 (citing deposition testimony from the Bosnian Witness describing deaths of family members, ISIS fighters, and spies; deposition testimony from the

Kazakhstani Witness describing deaths on the battlefield; and cooperating witness interview reports describing deaths of ISIS fighters, suicide bombers, and others who died in ISIS attacks)). In addition, the parties engaged in Rule 15 depositions of two witnesses, the Bosnian Witness and the Kazakhstani Witness, prior to trial (A:17-22), and the Bosnian Witness provided evidence that Kandic sent money to his impoverished family (evidence that was corroborated by financial records) that was used to send him, his mother, and siblings to join his father, who was fighting for ISIS, to ISIS-controlled territory. Once there, his older brother joined ISIS and died in Syria, which the government proved at trial (BDT:59, 60, 65, 85; GX:1413). In litigating the admissibility of some of this material, Kandic was further put on notice that it was relevant to proving that the deaths resulted from the conspiracy in which he participated. (DE:261 at 8 (holding that evidence of the Bosnian Witness's family member's death—whose travel to Syria Kandic helped to fund—was relevant and “important evidence to prove that the death of one or more persons resulted from the charged conspiracy”).

Moreover, in its opposition to the motion to dismiss, the government cited several deaths of which the defense had knowledge, including those Kandic described himself, such as the deaths of those acting with Bilardi on the day of Bilardi's coordinated suicide attack and the people killed in that attack. (GA:83). Indeed, the district court found that the government's disclosures provided Kandic with adequate notice of the scope of Count One. (A:71). Further, the government disclosed that it would argue that the trial evidence proved the following deaths resulted from Kandic's conduct: Bilardi; Iraqi military and police killed on March 11, 2015 in Anbar Province (i.e., those killed by Bilardi's suicide bombing); other persons that Bilardi and his co-conspirators killed; family members of the Bosnian Witness; the suspected spy at a safehouse in Idlib (Kandic spoke on the phone with his recruit called "Jason Borne" who, along with others, was interrogating this suspected spy who died from their beating of him); Bajro Ikanovic and those he and his co-conspirators killed; and Abu Qaqa Al-Britani.¹³ (A:486).

¹³ Al-Britani was a British university student named Raphael Hostey who joined ISIS early, became a "fairly prominent media

Defense counsel argued forcefully in summation that Kandic was not the cause of any of their deaths; that those people died because they or others were profoundly overcome by religious extremism, that those people would have killed themselves or others regardless of any contact with Kandic, and that there was no evidence that Kandic directed their actions. (A:513-19). As to the spy killed by Borne, counsel noted that although Kandic had been on the phone with Borne at the time, there was no evidence that he counseled Borne to do anything, or that Kandic did anything more than just listen. (A:514). As to the Bosnian Witness's family, counsel blamed the Bosnian Witness's parents for bringing their family to ISIS-controlled territory, which they could do legally at the time before the border closed, and noted that the witness's father and brother chose on their own to join ISIS. (A:514-15). Finally, counsel argued that anyone whose death related to Bilardi's suicide bombing was unconnected to Kandic because Bilardi had resolved to become a suicide bomber before meeting Kandic. (A:515-19). Thus,

propaganda operative" for ISIS, and died in 2016. Kandic bragged that he knew Al-Britani on social media. (A:336; GX:2056B).

contrary to Kandic's claim that the court "overlooked" the "staggering volume of discovery" and that his counsel was left to "search in vain" through the discovery "to figure out which . . . deaths the government sought to blame on" Kandic (Br. 39), Kandic and his counsel had adequate notice. Indeed, counsel considered moving for a bill of particulars (GA:78) but determined that such a motion was unnecessary.

During the trial, Kandic focused entirely on the death-resulting element of the charges, conceding to the jury that Kandic was "guilty of materially supporting ISIS" but that he was "not guilty of taking actions that resulted in the death of anyone," arguing that he "did not kill anybody or commit atrocities himself." (A:79, 81). This strategy was sound: Kandic's defense theory was that none of the deaths that had occurred were by his own hand, so he could not be held responsible for any of them. (A:80 ("[Y]ou're going to learn that the way that people wind up dying for ISIS involves many steps and many things and many personal life decisions that Mr. Kandic had absolutely nothing to do with. Absolutely no control over, and no legal criminal responsibility for.")). If accepted, this theory would have been a complete defense to all deaths that occurred during the conspiracy. Thus, listing the name of every

deceased individual (either in a bill of particulars or in separate counts) was immaterial to Kandic's defense, and the government's decision to group all the individual deaths into one count worked no prejudice. In fact, Kandic may have benefitted from the reduction in the number of counts against him and the available penalties he would otherwise face. *See, e.g., United States v. Sugar*, 606 F. Supp. 1134, 1146 (S.D.N.Y. 1985); *Margiotta*, 646 F.2d at 733.

Kandic argues that the number of deaths referenced in discovery, "which included hundreds of videos depicting ISIS atrocities," was too numerous to provide sufficient notice. (Br. 45). This argument ignores the limiting principles inherent to the death-resulting element. Kandic could only be held responsible for deaths that resulted from his offense, not all deaths ever caused by ISIS. In addition, Kandic could only be held responsible for those deaths that the government had proved beyond a reasonable doubt. Defense counsel was aware of these principles and focused on the deaths that may have satisfied both of them. (*E.g.*, A:355 (defense counsel cross-examining on whether Kandic had "anything to do with" the deaths of Omar Shishani and Bajro Ikanovic)).

In support of his claim of inadequate notice, Kandic argues that the district court directed the government to submit a letter outlining the deaths it was alleging that resulted from Kandic's conduct because the court supposedly "could not itself identify which deaths the government sought to blame on Mr. Kandic." (Br. 39). This assertion is not faithful to the record. The district court did not suggest—explicitly or implicitly—that its pretrial decision on duplicity was a mistake, and it did not state that it could not identify which deaths had a nexus to Kandic. (A:476-85). Rather, the court explained that "we already have a full record in the trial" and that its concern was about focusing the jury on resolving the question of whether the government proved that deaths, other than Bilardi's, had resulted. (A:479, 480 ("I'm trying to make sure that the jury is properly—is afforded the opportunity to focus its attention to the facts or lack of facts about specific incidents."), 483 (the government: "anyone sitting in this courtroom has seen that we've connected Mr. Kandic conspiring with multiple different individuals in . . . ISIS and that those conspiracies resulted in death. I think the defense's cross-examination demonstrate[s] they are aware of that and they have cross-examined on them. For example, Mr. Stern specifically

cross-examined on the deaths in the Bangladesh bakery attack. . . . Mr. Stern cross-examined with respect to [Bajro] Ikanovich's death and specifically asked Mr. V[i]dino whether Kandic had anything to do with Mr. Ikanovich's death."), 485 (the court: "This isn't an infinite number of incidents. There are some particularly well-documented incidents that the Government has provided evidence of. They didn't provide . . . the testimony of one witness, they provided it over time from various witnesses. But they did provide it, so it won't be a surprise.")). The government volunteered to provide the defense with a letter previewing the deaths it intended to argue in its summation to assist defense counsel in preparing its summation (A:479-80) and did so. Kandic, therefore, had sufficient notice of which deaths were at issue.

Kandic also argues that the special verdict sheet "still left substantial room for a non-unanimous verdict by which some jurors held Mr. Kandic responsible for one death and other jurors for another." (Br. 46). But this argument ignores the district court's detailed instruction advising the jurors multiple times that they needed to be unanimous as to which death they were considering. (GA:148-49; A:538 ("However, in order to find that the Government has proven that the

commission of the offense resulted in death, you must be *unanimous* as to the person's death you are considering. It is not enough for some of you to find that the Government has proven one person's death and others of you to find that the Government has proven a different person's death. *In other words, if you find that a death resulted, you all must agree as to that specific death.* . . . Under Count One, the verdict form asks you two questions. First, whether you unanimously found that the offense resulted in the death of Jake Bilardi; and second, whether you unanimously found that the offense resulted in the death of any other person or persons.”)). Jurors are presumed to follow the court's instructions, *see, e.g., United States v. Rainford*, 110 F.4th 455, 474 (2d Cir. 2024), and there is no evidence that they did not do so here. The jury's affirmative finding that the government had proven Bilardi's death was sufficient for Kandic to be held liable for the enhancement on Count One, rendering the remaining generic option immaterial to Kandic's conviction on that count, a point that both defense counsel and the district court recognized. (A:477, 480).

Kandic also argues that because he did not know the precise deaths alleged to have resulted, he effectively bore the burden of

disproving his responsibility for each death. (Br. 41). But that is not the case. First, as shown above, he did know the deaths at issue. Second, the government and the court repeatedly advised the jury that the burden was on the government to prove beyond a reasonable doubt that certain deaths resulted from Kandic's conduct (and that the jury needed to be unanimous as to which death or deaths it found), as well as to prove the other charged crimes, and that Kandic had no burden of proof. (*See, e.g.*, A:494, 504-06, 520, 524, 527, 531, 533, 535, 537-39). This was more than sufficient to cure any duplicity concern. *See United States v. Helmsley*, 941 F.2d 71, 91 (2d Cir. 1991) (“any possibility of a duplicitous verdict was removed by [the judge’s] careful charge”); *see also United States v. Dupre*, 462 F.3d 131, 143 (2d Cir. 2006) (noting that even a standard unanimity instruction is sufficient and collecting cases).

Finally, as the district court correctly found, there was no “danger of prejudice in connection with double jeopardy rights” because Count One provides a broad double jeopardy bar, as it covers the entire time Kandic conspired to provide material support to ISIS, all the forms of material support he provided, and all the deaths that resulted from it. (A:70).

Accordingly, any theoretical duplicity prejudice to Kandic as to Count One was cured.

CONCLUSION

For the reasons stated above, Kandic's conviction should be affirmed.

Dated: Brooklyn, New York
November 18, 2024

Respectfully submitted,

BREON PEACE,
United States Attorney,
Eastern District of New York.

By: /s/ SARITHA KOMATIREDDY
SARITHA KOMATIREDDY
Assistant U.S. Attorney

AMY BUSA,
SARITHA KOMATIREDDY,
Assistant United States Attorneys,
(Of Counsel).

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Dated: Brooklyn, New York
November 18, 2024

/s/ AMY BUSA
AMY BUSA
Assistant U.S. Attorney