

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

VS.

CASE NO: 6:17-cr-18-Orl-40KRS

NOOR ZAHY SALMAN

_____ /

COURT'S INSTRUCTIONS
TO THE JURY

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions you will go to the jury room and begin your discussions — what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find Ms. Salman guilty beyond a reasonable doubt.

JURY INSTRUCTION NO. 1

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against Ms. Salman or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a defendant isn't evidence of guilt. The law presumes every defendant is innocent. Ms. Salman does not have to prove her innocence or produce any evidence at all. A defendant does not have to testify, and if Ms. Salman chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find Ms. Salman not guilty.

JURY INSTRUCTION NO. 2

The Government's burden of proof is heavy, but it doesn't have to prove a defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning Ms. Salman's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that Ms. Salman has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

JURY INSTRUCTION NO. 3

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

JURY INSTRUCTION NO. 4

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

JURY INSTRUCTION NO. 5

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

JURY INSTRUCTION NO. 6

When scientific, technical, or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

JURY INSTRUCTION NO. 7

If the Government offers evidence that Ms. Salman made a statement or admission to a law enforcement officer, you must consider that evidence with caution and great care.

You must decide for yourself (1) whether Ms. Salman made the statement, and (2) if so, how much weight to give to it. To make these decisions, you must consider all the evidence about the statement – including the circumstances under which it was made.

In determining whether any such statement is reliable and credible, consider factors bearing on the voluntariness of the statement. For example, consider the age, gender, training, education, occupation, and physical and mental condition of Ms. Salman, and any evidence concerning her treatment while being questioned if the statement was made in response to questioning by government officials, and all the other circumstances in evidence surrounding the making of the statement.

After considering all this evidence, you may give such weight to any of the statements given as you feel they deserve under all the circumstances.

JURY INSTRUCTION NO. 8

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

JURY INSTRUCTION NO. 9

The indictment charges two separate crimes, called "counts," against Ms. Salman. Each count has a number. You'll be given a copy of the indictment to refer to during your deliberations.

Count One of the indictment charges that Ms. Salman aided and abetted the attempted provision and provision of material support to a foreign terrorist organization.

Count Two of the indictment charges that Ms. Salman obstructed justice.

JURY INSTRUCTION NO. 10

COUNT I

It's a Federal crime for anyone to knowingly aid and abet in providing, or attempting to provide, material support or resources to a foreign terrorist organization, knowing that the organization is a designated terrorist organization or has engaged or engages in terrorism.

Ms. Salman can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

- (1) Omar Mateen knowingly provided, or attempted to provide, material support or resources to the Islamic State of Iraq and the Levant;
- (2) Ms. Salam knowingly aided and abetted Omar Matten in providing, or attempting to provide, material support or resources to the Islamic State of Iraq and the Levant;
- (3) Ms. Salman did so knowing that the Islamic State of Iraq and the Levant was a designated terrorist organization OR engaged or engages in terrorist activity OR engaged or engages in terrorism;
- (4) One of the jurisdictional requirements are met.
- (5) If you find Ms. Salman guilty of Count One, you must then determine whether the Government has proven beyond a

reasonable doubt that death resulted from the provision or attempted provision of material support.

I will give you additional instructions on each of these elements.

JURY INSTRUCTION NO. 10(a)

Count I – First Element

In order to find Ms. Salman guilty of Count I, you must first find that Omar Matten provided or attempted to provide “material support or resources” to the Islamic State of Iraq and the Levant.

You can find that Omar Mateen provided or attempted to provide material support or resources to the Islamic State if the government proves the following elements:

- (1) Omar Mateen knowingly intended to commit the crime of providing material support or resources to the Islamic State of Iraq and the Levant; and
- (2) Omar Mateen’s intent was strongly corroborated by his taking a substantial step toward committing the crime.

A “substantial step” is an important action leading up to committing of an offense – not just an inconsequential act. It must be more than simply preparing. It must be an act that would normally result in committing the offense.

The term “material support or resources” means any personnel (one or more persons, which may be or include one’s self) or services.

The term “personnel” means one or more persons, which can include Omar Mateen himself. The provision of personnel is unlawful if the personnel are provided to work under the terrorist organization’s direction or control. The attempted provision of personnel is unlawful if the person intended and attempted to provide personnel to work under the terrorist organization’s direction or control. The term “services” means the performance of work commanded or paid for by another or act done for the benefit or at the command of another. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives are not considered to be working under the terrorist organization’s direction and control.

If you find that Omar Mateen acted entirely independently to advance the Islamic State of Iraq and the Levant’s goals in conducting his attack on the Pulse nightclub, you must find Ms. Salman not guilty of aiding and abetting his attack.

JURY INSTRUCTION NO. 10(b)

Count I – Second Element

In order to find Ms. Salman guilty of Count I, you must also find that she knowingly aided and abetted Omar Matten in providing, or attempting to provide, material support or resources to the Islamic State of Iraq and the Levant.

It's possible to prove Ms. Salman guilty of a crime even without evidence that Ms. Salman personally performed every act charged.

Ordinarily, any act a person can do may be done by directing another person, or "agent." Or it may be done by acting with or under the direction of others. A defendant is criminally responsible for the acts of another person if the defendant aids and abets the other person.

A defendant "aids and abets" a person if the defendant intentionally joins with the person to commit a crime. A defendant can aid and abet another through words, actions, encouragement or support, even if that aid relates to only one or some of the crimes, phases, or elements.

Finding that a defendant is criminally responsible for the acts of another person requires proof that the defendant intentionally associated with or participated in the crime – not just proof that the defendant was simply present at the scene of a crime or knew about it.

In other words, you must find beyond a reasonable doubt that Ms. Salman was a willful participant and not merely a knowing spectator.

To find that Ms. Salman aided and abetted Omar Mateen, you must find that Ms. Salman intended to aid in the commission of the offense of the provision or attempted provision of material support to ISIS.

JURY INSTRUCTION NO. 10(c)

Count I – Third Element

In order to find Ms. Salman guilty of Count I, you must also find that she knew that the Islamic State of Iraq and the Levant was a designated terrorist organization OR engaged or engages in terrorist activity OR engaged or engages in terrorism.

The term “designated terrorist organization” means an organization designated by the Secretary of State as a foreign terrorist organization, as provided in 8 U.S.C. § 1189. The Islamic State of Iraq and the Levant is a designated terrorist organization.

The term “engage in terrorist activity” means, among other things, to commit terrorist activity, which includes (1) seizing and threatening to kill or injure any individual to compel a governmental organization or someone else to do or abstain from doing any act; or (2) using or threatening to use an explosive, firearm, or other weapon or dangerous device with the intent to endanger, directly or indirectly, the safety of one or more individuals. The activity must be unlawful under the laws of the place where it is committed (or if it had been committed in the United States, would be unlawful under the laws of the United States or any State).

The term “terrorism” means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.

JURY INSTRUCTION NO. 10(d)

Count I – Fourth Element

The government must prove beyond a reasonable doubt that at least one of the following jurisdictional requirements have been satisfied:

- (1) Ms. Salman is a national of the United States;
- (2) The offense occurred in whole or in part within the United States;
or
- (3) The Defendant aided and abetted any person who was a national of the United States.

The term “national of the United States” means a citizen of the United States, or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

JURY INSTRUCTION NO. 10(e)

Count I – Fifth Element

If you find the Government has proved elements one through four beyond a reasonable doubt, then you have found Ms. Salman guilty of Count One. If you so find, you must then consider whether the Government has proven beyond a reasonable doubt that death resulted from the provision or attempted provision of material support.

JURY INSTRUCTION NO. 11

Count Two

It's a federal crime for anyone to obstruct justice by engaging in misleading conduct to hinder the communication of information regarding the commission of a federal offense to federal law enforcement officers or judges.

Ms. Salman can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

- (1) Ms. Salman knowingly engaged in misleading conduct toward another person;
- (2) Ms. Salman acted with the intent to hinder, delay or prevent the communication of information to a federal law enforcement officer or judge of the United States; and
- (3) such information related to the commission or possible commission of a federal offense.

The term misleading conduct means any one of the following:

- (1) knowingly making a false statement; or
- (2) intentionally omitting information from a statement and thereby causing a portion of such a statement to be misleading, or

intentionally concealing a material fact, and thereby creating a false impression by such statement.

As to Ms. Salman's intent to hinder, delay, or prevent the communication of information to federal officials, the Government must show that the communication of the information to a federal official was reasonably likely. The Government does not need to prove Ms. Salman knew the offense was a federal offense.

JURY INSTRUCTION NO. 12

The government must prove by a preponderance of the evidence that there is venue in the Middle District of Florida for the obstruction of justice charge against Ms. Salman. To show venue, the government must prove by a preponderance of the evidence that Ms. Salman intended to affect an official proceeding in the Middle District of Florida (whether or not pending or about to be instituted).

Unlike all the other elements that I have described, this is a fact that the government only has to prove by a preponderance of the evidence. This means the government has to convince you that it is more likely than not that venue is established.

Remember that all the other elements I have described must be proved beyond a reasonable doubt.

As used here, an “official proceeding” means a proceeding before a judge or court of the United States or a Federal grand jury.

JURY INSTRUCTION NO. 13

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the offense occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

JURY INSTRUCTION NO. 14

Each count of the indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find Ms. Salman guilty or not guilty of one crime, that must not affect your verdict for any other crime.

I caution you that Ms. Salman is on trial only for the specific crimes charged in the indictment. You're here to determine from the evidence in this case whether Ms. Salman is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether Ms. Salman is guilty. If you find Ms. Salman guilty, the punishment is for the Judge alone to decide later.

JURY INSTRUCTION NO. 15

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

JURY INSTRUCTION NO. 16

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.