

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

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

NOOR ZAHI SALMAN

**UNITED STATES' SUPPLEMENTAL RESPONSE TO  
DEFENDANT'S MOTION IN LIMINE  
REGARDING THE CONFRONTATION CLAUSE**

The Confrontation Clause does not bar the admission of Omar Mateen's statements in his calls with a police crisis negotiator on June 12, 2016. Thus, the defendant's motion in limine regarding those calls, Doc. 150 at 23–25, should be denied.

**I. STATEMENT OF FACTS**

On June 12, 2016, Mateen commenced his attack at the Pulse Night Club around 2:00 a.m., and the emergency, including the rescue of injured hostages from inside the club, was not resolved until after approximately 5:15 a.m., when Mateen was killed following a shootout with police.

Between approximately 2:48 a.m. and 3:25 a.m., a crisis negotiator with the Orlando Police Department, Andy Brennan, engaged in three

conversations with Mateen.<sup>1</sup> As the crisis negotiator testified at the suppression hearing, Doc. 163 at 1, his conversations with Mateen were motivated by two primary purposes: (1) to determine if he was in fact speaking to the person who was committing the violent attack; and (2) to resolve the situation without further violence. For his part, Mateen's motives in participating in the calls were to deliver his pledge of allegiance to the Islamic State, to inflict further terror, and to repeat his demands for the U.S. government to stop certain actions, such as bombings in Syria and Iraq.<sup>2</sup>

As to the crisis negotiator's first motivation—to determine if he was speaking to the perpetrator of the attack—he started the 2:48 a.m. call by asking, “Who am I speaking with please?” Mateen answered, “You’re speaking with the person who pledged his allegiance to the Islamic State, Abu Bakr Al-Baghdadi.” Ex. 1 at 1. The crisis negotiator then asked repeated questions to determine who was on the line and whether that person was involved in the attack (and thus might be able to end the attack):

- Um can you tell me where you are right now? *Id.*

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<sup>1</sup> Transcripts of the three calls are attached as Exhibit 1 (first call); Exhibit 2 (second call); Exhibit 3 (third call).

<sup>2</sup> Mateen's purpose is demonstrated by his posts to Facebook at and after 2 a.m. (attached as Exhibit 4), his call to a 911 operator before his calls with the crisis negotiator (transcript attached as Exhibit 5), and his call to a local news tip line. In all of these communications, Mateen indicated that he was conducting the attack on behalf of the Islamic State.

- Can you tell me about what you know about what's going on tonight? *Id.* at 2.
- Are you, are you an American citizen? Are you a local citizen? Are you a resident of Orlando? *Id.* at 4.
- Tell me what's going on right now Omar. Ex. 2 at 2.
- Tell me what's going on right now Omar. Ex. 3 at 1.

As to his second motivation, to end the attack without further violence, the crisis negotiator explained that his goal was to “get you [Mateen] some help,” “to get this resolved peacefully,” and to “start helping you [Mateen].” As reflected in the three attached transcripts, the crisis negotiator told Mateen at least eight times that his goal was to get Mateen help and resolve the situation without any further injuries:

- What I'm trying to do is prevent anybody else from getting—. Ex. 1 at 1.
- Well I'm trying to figure out how to keep you safe and how to get this resolved peacefully, because I'm not a politician, I'm not in government. All I can do is help individuals and I'm going to start with helping you. *Id.* at 2.
- What I'm trying to do is make sure that you and no one else suffers any further injuries. *Id.* at 3.
- Please stay on the phone with me so that I can help pass along your concerns. *Id.*
- We need to talk. We need to try to resolve this peacefully. I don't want to see you or anybody else get injured. *Id.* at 4.
- I'm trying to help you. I don't want to see this go further. Please let us peacefully resolve it with your assistance. Ex. 2 at 1.
- So can you tell me how we can peacefully resolve this tonight? *Id.* at 3.

- I have no agenda other than to help you and pass along this message. *Id.* at 4.

At least 10 times, the crisis negotiator asked Mateen questions directly related to resolving the situation and ending the attack. Those questions regarded whether there were any injured victims, whether Mateen was injured, and whether there were any perpetrators in the club besides Mateen. The questions focused almost entirely on what was happening as the call was occurring, what Mateen would be doing in the future, and whether he was willing to resolve the situation:

- Um can you tell me where you are right now? Ex. 1 at 1.
- Tell me in the club, do you have any injured people with you, that you brought with you? *Id.* at 2.
- I don't want to see anybody get injured including you. So let's start. Are you injured? Ex. 2 at 1.
- What I need to find out is, are you injured? Omar. *Id.* at 2.
- Ok, do you have somebody with you? *Id.*
- Do you have somebody that you brought with you that we need to check on and make sure they're not injured? *Id.* at 3.
- You don't want people to get injured. I presume that means, if you brought somebody with you, you don't want them hurt. Is that correct? *Id.*
- Can you put down your weapon and come down outside and talk to them please. *Id.*
- You tell me you don't want people getting hurt, I presume that includes you. *Id.* at 4.
- I've heard that and I want you to come outside and tell us that yourself [about the airstrikes needing to stop], so the message

rings true from you, not me passing along your message. Ex. 3 at 2.

Further, in response to Mateen's unsolicited claims that he had explosives in a van and was wearing a bomb vest (which turned out to be lies), the crisis negotiator began asking Mateen questions about where the explosives were located. As to the explosives in a vehicle, the conversation proceeded as follows:

Brennan: Well I'm trying to figure out how to keep you safe and how to get this resolved peacefully, because I'm not a politician, I'm not in government. All I can do is help individuals and I'm going to start with helping you.

Mateen: By the way, there is, there is some vehicle outside that has some bombs, just to let you know. You people are gonna get it, and I'm gonna ignite it if they try to do anything stupid.

Ex. 1 at 2. As to the bomb vest, the parties to the call stated:

Brennan: I, I understand that, ok. What I'm trying to do is make sure that you and no one else suffers any further injuries. Ok? I can help.

Mateen: I have a vest.

*Id.* at 3. These false statements by Mateen led the crisis negotiator to ask

Mateen about the supposed explosives:

- Can you tell me what vehicle [has the bomb in it], cus (PH) I don't want to see anybody get hurt. Ex. 1 at 2.
- I understand that. Ok, and so what kind of vest are you talking about? Is it, is it a bullet resistant vest? Is it a bomb vest? *Id.* at 3.
- Well, tell me, tell me, you're wearing what, I presume from what you're saying, you're wearing a bomb vest? *Id.*

- I'm trying to be serious and get this peacefully resolved. Ok, so are you wearing a bomb vest? *Id.* at 4.
- Ok, you say there is a vehicle outside with a bomb. Is there more than one vehicle? Are there, are there other shooters? *Id.*

The crisis negotiator asked Mateen only twice what Mateen had done in the past. In both of those instances, the purpose was to enable the crisis negotiator to assess whether the person he was talking with was actually involved in the attack, to get Mateen to address what was then happening as opposed to complaining about the policies of the United States government, or to keep Mateen on the telephone:

Mateen: They need to stop the U.S. airstrikes. You have to tell the U.S. government to stop bombing. Are killing too many children, they're killing too many women, ok.

Brennan: I understand but here, here, here is why I'm here right now. I'm with the Orlando Police. Can you tell me about what you know about what's going on tonight?

Mateen: What's going on, is that I feel the pain of the people getting killed in Syria, and Iraq, and others of the Muslim community [Arabic].

Brennan: Ok. So, so have you done something about that?

Mateen: Yes I have.

Brennan: Tell me what you did, please.

Mateen: No, you already know what I did.

Brennan: Well I'm trying to figure out how to keep you safe and how to get his resolved peacefully, because I'm not a politician. I'm not in government. All I can do is help individuals and I'm going to start with helping you.

Ex. 1 at 1–2.

Mateen: And, and, let it be know, let it be known, in the next few days, you're going to see more of this type of action going on, ok.

Brennan: Ok, I understand that. I can pass that along. Where is that gonna (PH) happen?

Mateen: None of your business. Just let it be known, it's going to be done in the name of the Islamic State. Even though it's not fucking airstrikes, it's fucking strikes here, ok.

Brennan: I understand that. I understand that. So tell me what happened tonight. How did this go down for you?

Mateen: This went down, a lot of innocent women and children are getting killed in Syria, in Iraq, in Afghanistan, ok.

Ex. 2 at 2–3.

Matten's motivation in engaging in the calls was demonstrated by the fact that, rather than respond to the crisis negotiator's offers of assistance or provide information to resolve the situation, Mateen used the calls to proclaim his allegiance to ISIS and to explain his motivation for the attack:

Brennan: What I'm trying to do is prevent anybody else from getting—

Mateen: They need to stop the U.S. airstrikes. They need to stop the U.S. airstrikes.

Ex. 1 at 1.

Brennan: Well I'm trying to offer you help.

Mateen: Well, you need to know that they need to stop bombing Syria and Iraq.

Brennan: I—

Mateen: U.S. is collaborating with Russia and they're killing innocent women and children ok.

Brennan: I hear what you're saying.

Mateen: My homeboy Tamerlan Tsarnaev did his thing on the Boston marathon. My homeboy Moner Abusalha did his thing, ok. So now it's my turn, ok.

*Id.* at 2.

Brennan: Tell me what's going on right now Omar.  
Mateen: (UI) the air strike that killed Abu Wahid (PH), a few weeks ago  
Brennan: Yes sir.  
Mateen: That's what triggered it, ok.

Ex. 2 at 2.

Mateen: Tell, tell the fucking the airstrikes need to stop.  
Brennan: I'm doing that. I'm passing that message along. Immediately.  
Mateen: You see, now you feel. Now you feel how it is. Now you feel how it is.

*Id.* at 3. Mateen also used the calls to threaten further violence through the use of explosives and as a result of supposed additional attacks, as described above.

Because Mateen claimed that his attack was motivated by the policies of the United States government, the crisis negotiator repeatedly told Mateen that he would pass along Mateen's demands:

- Please stay on the phone with me so that I can help pass along your concerns. Ex. 1 at 3.
- I can pass that along [that the United States should stop bombing Syria]. Ex. 2 at 2.
- I can pass that along [that more attacks are planned]. *Id.*
- Tell me what else you'd like me to pass along please. *Id.* at 3.
- I'm passing that message along [that the airstrikes need to stop]. *Id.*
- I have no agenda other than to help you and pass along this message. *Id.* at 4.



- I'm your communication lifeline to everyone that's outside. I'm trying to pass along your message and I don't want to screw that message up. *Id.*

## **II. ARGUMENT**

Mateen's statements in the calls with the crisis negotiator are not testimonial for three reasons. First, the objective circumstances of the calls demonstrate that Mateen made those statements not for the primary purpose of creating an out-of-court substitute for trial testimony. Second, Mateen made those statements in furtherance of his conspiracy with Salman to provide material support to the Islamic State. Third, most of Mateen's statements are not offered for the truth of the matters asserted.

### **A. The Confrontation Clause and *Crawford* Generally**

In *Crawford v. Washington*, 541 U.S. 36, 68 (2004), the Supreme Court held that the Confrontation Clause largely prohibits "testimonial" hearsay. "[T]he Confrontation Clause applies to 'witnesses' who bear testimony, which the [Supreme] Court indicated is typically a solemn declaration or affirmation made for the purpose of establishing or proving some fact." *U.S. v. Underwood*, 446 F.3d 1340, 1346 (11th Cir. 2006) (citing *Crawford*, 541 U.S. at 51). The Supreme Court described testimonial statements that must be excluded under the Confrontation Clause as including "ex parte in-court testimony or . . . similar pretrial statements that declarants would reasonably expect to be used

prosecutorially; . . . [and] statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” 541 U.S. at 51.

While *Crawford* “changed the legal landscape” with respect to testimonial hearsay, it “did not alter the law with respect to non-testimonial hearsay.” *Underwood*, 446 F.3d at 1346. Non-testimonial hearsay includes “statements in furtherance of a conspiracy.” *Id.* at 1347 (quoting *Crawford*, 541 U.S. at 55 (holding that statements in furtherance of a conspiracy are “by their nature . . . not testimonial”)). Further, the Confrontation Clause does not “bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.” *Crawford*, 541 U.S. at 59 n.9; *see also U.S. v. Jiminez*, 564 F.3d 1280, 1287 (11th Cir. 2009) (finding a statement did not violate the Confrontation Clause when it was admitted “for a purpose other than for the truth of the matter asserted”).

Later cases further refined the *Crawford* analysis, particularly as it applies to out-of-court statements made to law enforcement. In *Davis v. Washington*, 547 U.S. 813, 822 (2006), the Supreme Court established that statements from a caller to a 911 operator<sup>3</sup> during the course of an emergency

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<sup>3</sup> The caller in *Davis* initially terminated the 911 call without saying anything. 547 U.S. at 817. The 911 operator reversed the call and then was able to speak to the victim. *Id.*

do not constitute testimonial statements subject to the requirements of the Confrontation Clause. *Davis* explained that statements are non-testimonial when they are made “under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency,” such as statements made during a 911 call to a call operator. 547 U.S. at 828. Consequently, a caller’s statements to a 911 operator ordinarily are not testimonial and thus do not implicate the Confrontation Clause. *Id.* If, however, the “primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution,” the resulting statements are testimonial, and their admission is barred by the Confrontation Clause. *Id.* at 823.

In *Michigan v. Bryant*, 562 U.S. 344, 359 (2011), the Court held that, in assessing an interrogation’s “primary purpose,” the court must “objectively evaluate the circumstances in which the encounter occurs and the statements and actions of the parties.” “[T]he statements and actions of both the declarant and interrogators provide objective evidence of the primary purpose of the interrogation.” *Id.* at 367; *see also id.* (“*Davis* requires a combined inquiry that accounts for both the declarant and the interrogator.”). Thus, the Court held that statements by a gunshot victim (who later died) were not testimonial because “the statements and actions of [the victim] and the police objectively

indicate[d] that ‘the primary purpose of the interrogation’ was ‘to enable police assistance to meet an ongoing emergency.’” *Id.* at 377–78 (quoting *Davis*, 547 U.S. at 822).

**B. Mateen’s Statements Were Not Testimonial.**

Here, neither the police nor Mateen had the primary purpose of using their conversations to “establish or prove past events potentially relevant to later criminal prosecution.” *Davis*, 547 U.S. at 823. Instead, and given the catastrophic scene that was still underway, the crisis negotiator had the primary motivation “to enable police assistance to meet an ongoing emergency,” the very same nontestimonial purpose authorized in *Davis*, 547 U.S. at 822. Similarly, Mateen, in reporting and discussing the emergency situation that he had created, had the goal of demonstrating that he was committing his attack on behalf of the Islamic State and continuing his act of terrorism; there is no evidence that he was motivated by a desire to provide a substitute for testimony to be used in a prosecution—and common sense tells us just the opposite.

“Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.” *Davis*, 547 U.S. at 822. In addition to emergency situations, other

situations in which “a statement is not procured with a primary purpose of creating an out-of-court substitute for trial testimony” would also result in a non-testimonial statement. *Bryant*, 562 U.S. at 358. To determine “the primary purpose” of an interrogation, this Court must “objectively evaluate the circumstances in which the encounter occurs and the statements and actions of the parties.” *Bryant*, 562 U.S. at 359. The evaluation is a “combined inquiry that accounts for both the declarant and the interrogator.” *Id.* at 367.<sup>4</sup> Despite defense counsel’s assertions to the contrary at oral argument, *Bryant* directly rejected the argument that only the purpose of the declarant mattered to this analysis. *Id.* at 367 n.11 (rejecting Bryant’s argument that “the primary purpose inquiry must be conducted solely from the perspective of the declarant”).

In determining whether a statement is testimonial because it is related to an ongoing emergency, the Court should consider four things: (1) whether there actually was an ongoing emergency;<sup>5</sup> (2) whether the declarant was “speaking about events *as they were actually happening*, rather than ‘describ[ing]

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<sup>4</sup> Nor would it matter if the crisis negotiator had other, secondary motives in speaking to Mateen; law enforcement officers’ “dual responsibilities [as both first responders and criminal investigators] may mean that they act with different motives simultaneously or in quick succession.” *Bryant*, 562 U.S. at 368.

<sup>5</sup> Or at least whether the police reasonably believed there was an ongoing emergency. *See Bryant*, 562 U.S. at 1157 n.8. But in this case, of course, the police faced an actual, ongoing emergency, not merely a reasonable belief in one.

past events””; (3) whether “the nature of what was asked and answered,” viewed objectively, “was such that the elicited statements were necessary to be able to resolve the present emergency, rather than simply to learn . . . what had happened in the past;” and (4) whether the statements were or were not formal. *Davis*, 547 U.S. at 827 (emphasis in original; citations omitted); *see also Bryant*, 562 U.S. at 357 (setting forth the same test); *U.S. v. Hughes*, 840 F.3d 1368, 1383–84 (11th Cir. 2016) (same test).

As to the motivations of the crisis negotiator, it is clear that he was speaking to Mateen almost exclusively about events as they were actually happening. *See infra* at 2–7. Mateen’s attack was not resolved until almost 2 hours *after* the conclusion of the crisis negotiator’s calls with him. Their conversations were thus about what was happening at the moment of the conversation, not about past events. Further, the crisis negotiator clearly was responding to an ongoing emergency and was attempting to elicit from Mateen information that would help to resolve a present emergency, that is, Mateen’s ongoing violent attack and the presence of many wounded and dying hostages. Thus, as to the crisis negotiator, it is clear that his primary purpose was to respond to an ongoing emergency, not to establish or prove past events potentially relevant to later criminal prosecution.

As to Mateen, while his motive was not to obtain police assistance in response to the emergency he had created, his motive just as surely was not to create a substitute for court testimony. Mateen was speaking to continue and further his terrorist act for the Islamic State. Thus, his statements were the product of his own desire to publicize that he was committing a terrorist attack at the direction and control of the Islamic State. *U.S. v. Liera-Morales*, 759 F.3d 1105, 1110 (9th Cir. 2014) (upholding the admission of statements of a co-conspirator because the statements were made “in spite of, not because of, the possibility of a later criminal trial”).<sup>6</sup>

Simply put, “[n]o ‘witness’ goes into court” to pledge allegiance to the Islamic State *during* a terror attack and to claim responsibility for an *ongoing* terror attack. *See Davis*, 547 U.S. at 828; *see also U.S. v. Polidore*, 690 F.3d 705, 718 (5th Cir. 2012) (reaching the same conclusion with respect to a report of drug dealing that was happening at the same time as the call). But even if Mateen did “contemplate[] that his call could lead to a later criminal prosecution,” that was not his purpose: “he was not making his statements ‘to

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<sup>6</sup> At argument, the defendant attempted to dismiss *Liera-Morales* on the grounds that the participant in the call was the victim’s mother, not law enforcement. But the victim’s mother was acting at the behest of law enforcement, and the Ninth Circuit interpreted the issue just as it would have if law enforcement itself had made the call. 759 F.3d at 1109 (evaluating the case as “an encounter between an individual and the police”); *id.* at 1110 (looking to the “agents’ conduct” to determine the primary purpose of the call).

establish or prove past events potentially relevant to later criminal prosecution.’” *Polidore*, 690 F.3d at 712 (quoting *Davis*, 547 U.S. at 822).

Mateen “simply was not acting as a *witness*; []he was not *testifying*.” *Davis*, 547 U.S. at 828 (emphasis the Court’s). Nor were his statements “a weaker substitute for live testimony at trial.” *Id.* Indeed, Mateen’s statements were nothing like testimony at trial at all. He refused to answer questions, repeatedly interjected his own thoughts into the conversation, and generally did not behave at all as someone testifying to past events. *See id.* at 830 (noting that testimonial “statements under official interrogation are an obvious substitute for live testimony because they do precisely *what a witness does* on direct examination”) (emphasis the Court’s).

Finally, the calls did not take place in any sort of formal environment “that would have alerted [the declarant] or focused him on the possible future prosecutorial use of his statements.” *Bryant*, 562 U.S. at 377. Further, as here, when statements “occur in an informal high-stress ‘environment that was not tranquil, or even . . . safe,’” this factor weighs in favor of finding the statements non-testimonial. *Liera-Morales*, 759 F.3d at 1110 (quoting *Davis*, 547 U.S. at 827).

Here, the statements being challenged are those of a perpetrator, not of a victim as in *Davis*, but the same purpose animated all of law enforcement’s



conversations with Mateen: to address an emergency situation and to prevent further loss of life. Mateen's motivations during the calls similarly had nothing to do with providing evidence; he was speaking for his own purposes, to continue and further his terrorist act for the Islamic State. Thus, the statements in the calls with the crisis negotiator are not testimonial, do not implicate the Confrontation Clause, and should be admitted against the defendant.

**C. Mateen's Statements Are Admissible as Statements in Furtherance of a Conspiracy.**

Mateen's statements are also admissible as "statements in furtherance of a conspiracy," which by definition are not testimonial. *See Underwood*, 446 F.3d at 1346-48 (quoting *Crawford*, 541 U.S. at 55 (holding that statements in furtherance of a conspiracy are "by their nature . . . not testimonial")). While a conspiracy is in progress, the statements of conspirators are not even remotely "solemn declaration[s] or affirmation[s] made for the purpose of establishing or proving some fact" at a subsequent prosecution. *Crawford*, 541 U.S. at 51 (quoting 2 N. Webster, *An American Dictionary of the English Language* (1828)). To the contrary, such statements are aimed at making a conspiracy succeed.

Before the government may introduce coconspirator statements, it must establish by a preponderance of the evidence: "(1) a conspiracy existed, (2) the conspiracy included the declarant and the defendant against whom the

statement is offered, and (3) the statement was made during the course of and in furtherance of the conspiracy.” *Underwood*, 446 F.3d at 1346. “There is no requirement that the defendant against whom the coconspirator’s statements are being offered be charged in a conspiracy count.” *U.S. v. Holder*, 652 F.2d 449, 450 (5th Cir. Unit B Aug. 1981).

Here, Mateen made his claims of responsibility for the attack in furtherance of a conspiracy to provide material support to the Islamic State. In fact, the statements served to accomplish the goals of the conspiracy. And Salman’s acts in furtherance of Mateen’s attack demonstrate that she willfully joined in to an agreement with Mateen to provide material support. *See, e.g., U.S. v. Harris*, 20 F.3d 445, 452 (11th Cir. 1994) (“The jury is free to infer participation in the conspiracy from the defendant's action or from circumstantial evidence of the scheme.”); *see also U.S. v. Rosemond*, 134 S.Ct. 1240, 1249 (2014) (“[A] person who actively participates in a criminal scheme knowing its extent and character intends that scheme’s commission.”). Therefore, Mateen’s statements in furtherance of his conspiracy with Salman may be admitted against her without running afoul of the Confrontation Clause.

**D. Some of Mateen’s Statements Are Admissible Also Because They Are Not Offered to Prove the Truth of the Matter Asserted.**

Finally, although many of Mateen’s statements—particularly those about his motivations—were true, many others were false—such as his statements that he was wearing a bomb vest, that he had placed other explosives elsewhere, and that he had coconspirators inside the club with him. These false statements, which will not be offered to prove the truth of the matters asserted, would not be barred by the Confrontation Clause even if they were testimonial. *See Crawford*, 541 U.S. at 60 n.9 (“The Clause ... does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.”); *see also U.S. v. McKinney*, No. 17-10300, 2017 WL 5256764, at \*4 (11th Cir. Nov. 13, 2017) (“the Confrontation Clause applies only to testimonial statements used to establish the truth of the matter asserted”).

And Mateen’s demands in his statements—such as that the United States end air strikes in Syria—likewise will not be offered for the truth of those statements; rather, those demands are verbal acts, and ones that explain Mateen’s motivation. *See, e.g., Ruhl v. Hardy*, 743 F.3d 1083, 1099 (7th Cir. 2014) (“direct command [was] not a statement offered to prove the truth of the matter asserted”). So the admission of those statements also would not be

barred by the Confrontation Clause. Thus, this Court should admit these statements as they are not offered to prove the truth of the matters asserted, even if the Court otherwise finds that some portions of Mateen's statements are testimonial.

### III. CONCLUSION

For these reasons, the United States respectfully requests that this Court deny the defendant's motion in limine regarding Mateen's calls with the crisis negotiator, Doc. 150 at 23–25.

Respectfully submitted,

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**U.S. v. NOOR ZAHI SALMAN**

**Case No. 6:17-cr-18-Orl-40KRS**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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1 **PARTICIPANTS:**

2 OM: OMAR MATEEN

3 OP: ORLANDO POLICE NEGOTIATOR

4 **TRANSLATION KEY:**

5 UI: UNINTELLIGIBLE

6 IA: INAUDIBLE

7 PH: PHONETIC

8 SC: SIMULTANEOUS CONVERSATION

9 OV: OVERLAPPING VOICES

10 []: NOISE NOTATIONS OR TRANSLATOR'S NOTES

11 RC: RECORDED MESSAGE

12

13 =====

14 [Recording: Sunday, June 12, 2016. The time 2:48am]

15 [Phone ringing]

16 OM: Hello.

17 OP: Hello there.

18 OM: Hello.

19 OP: Hi there. This is Orlando Police. Who am I speaking with please?

20 OM: You're speaking with the person who pledged his allegiance to the  
21 Islamic State, Abu Bakr Al-Baghdadi, may God protect him [Arabic].

22 OP: Ok. Um can you tell me where you are right now? So I can get you some  
23 help.

24 OM. No, because you have to tell America to stop bombing Syria and Iraq.  
25 They are killing a lot of innocent people. So what-what am I to do  
26 here when my people are getting killed over there. You get what I'm  
27 saying?

28 OP: I, I do, I completely get what you're saying. What I'm trying to do  
29 is prevent anybody else from getting

30 OM: They need to stop the U.S airstrikes. They need to stop the U.S  
31 airstrikes. Ok?

32 OP: I understand that.

33 OM: They need to stop the U.S airstrikes. You have to tell the U.S  
34 government to stop bombing. Are killing too many children, they're  
35 killing too many women, ok.

36 OP: I understand that but here, here, here is why I'm here right now. I'm  
37 with the Orlando Police. Can you tell me about what you know about  
38 what's going on tonight?

39 OM: What's going on, is that I feel the pain of the people getting killed  
40 in Syria, and Iraq, and others of the Muslim community [Arabic].

41 OP: Ok. So, so have you done something about that?

42 OM: Yes I have.

43 OP: Tell me what you did, please.

44 OM: No, you already know what I did.

45 OP: Well I'm trying to figure out how to keep you safe and how to get  
46 this resolved peacefully, because I'm not a politician, I'm not in  
47 government. All I can do is help individuals and I'm going to start  
48 with helping you.

49 OM: By the way, there is, there is some vehicle outside that has some  
50 bombs, just to let you know. You people are gonna(PH) get it, and I'm  
51 gonna(PH) ignite it if they try to do anything stupid.

52 OP: Ok. I under, I understand that and I'll pass that along. Can you tell  
53 me what vehicle, cus(PH) I don't want to see anybody get hurt.

54 OM: No... but I'll tell you this, it can take out a whole city block  
55 almost.

56 OP: I, I understand that. Tell me in the club, do you have any injured  
57 people with you, that you brought with you?

58 OM: I'm not, I'm not letting you know nothing.

59 OP: Well I'm trying to offer you help.

60 OM: Well, you need to know that they need to stop bombing Syria and Iraq.

61 OP: I

62 OM: U.S is collaborating with Russia and they're killing innocent women  
63 and children ok.

64 OP: I hear what you're saying.

65 OM: My homeboy Tamerlan Tsarnaev did his thing on the Boston marathon. My  
66 homeboy Moner Abusalha did his thing, ok. So now it's my turn, ok.

67 OP: Ok, let's start, my name is Andy. What's yours?

68 OM: My name is Islamic soldier, ok.

69 OP: Ok, is, what can I call you?

70 OM: Call me Mujahidin; call me the soldier of god.

71 OP: Ok, ok. So that's a lot for me to say. So can I just call you  
72 something else? Do you have a name, a nickname?

73 OM: Just to let you know

74 OP: Yea, I'm here, I'm listening... I'm here, I'm listening.

75 OM: Blessed, it's the blessed month of Ramadan, if you ever know about  
76 that.

77 OP: Yes I do. I understand.

78 OM: I fasted the whole day today. I fasted the whole day and I prayed.

79 OP: I, I understand that, ok. What I'm trying to do is make sure that you  
80 and no one else suffers any further injuries. Ok? I can help

81 OM: I have a vest.

82 OP: Ok, you have a vest.

83 OM: (UI).

84 OP: I understand that. Ok, and so what kind of vest are you talking  
85 about? Is it, is it a bullet resistant vest? Is it a bomb vest?

86 OM: It's what they used in France.

87 OP: It's what they used in France, Ok.

88 OM: I got to go.

89 OP: Well, well I'd like you to stay on the phone with me please. Ok?  
90 Are you there? Please stay on the phone with me so I can help pass  
91 along your concerns.

92 In Background: [UI] GOAA has a bomb dog, GOAA has a bomb dog.

93 OM: You, you could, you could bring the bomb dogs, they're not gonna(PH)  
94 smell shit.

95 OP: I understand that.

96 OM: (UI) you can't smell it. Bring, bring your little American bomb dogs,  
97 they're fucking outdated, anyways.

98 OP: Well, tell me, tell me, you're wearing what, I presume from what  
99 you're saying, you're wearing a bomb vest?

100 OM: No.

101 OP: Well you said you're wearing a vest.



102 OM: No I'm not.

103 OP: So what you're wearing?

104 OM: Yea like you know, to go out to a wedding.

105 OP: Ok. I'm not trying to joke with you. I'm trying to be serious and get  
106 this peacefully resolved. Ok, so are you wearing a bomb vest?

107 [Background noise]

108 OP: Ok, what can I call you? Start, let's go back to that. Let's start  
109 with that. Ok, I understand you're a soldier, I understand you're  
110 ISIS, I understand you're Mujahidin and you pledge your allegiance to  
111 someone whose name I can't pronounce, I apologize for that. Ok, can  
112 you, can you start with that? Are you, are you an American citizen?  
113 Are you a local citizen? Are you a resident of Orlando?... Hello are  
114 you there?... I'm right here... You need to talk to me... You have to  
115 talk to me... I'm still here, are you there? Talk to me please... Are you  
116 there? (UI). Sir, are you there? We need to talk. We need to try to  
117 resolve this peacefully. I don't want to see you or anybody else get  
118 injured. Please help us... Ok, you say there is a vehicle outside with  
119 a bomb. Is there more than one vehicle? Are there, are there other  
120 shooters? Tell me what's going on please. Tell me what's going on,  
121 I'm here, I'm listening. I'm here, I'm listening.

122 [Recording: Sunday, June 12, 2016. The time 2:56am]

123 OP: I'm still here; I'm trying to help you... Ok, I need some help from  
124 you. We need to get this resolved peacefully, and we need your help  
125 to do that. I know you want to get this resolved peacefully.

126 [Background conversations]

127 OP: Is this still connected?

128 [Unknown person responds "yeah".]

129 OP: Ok, I'm listening but you need to talk to me... I need you to talk to  
130 me. This is a serious matter and I want to take it seriously and I  
131 want to listen to what you have to say, but I can't do that if it's a  
132 one-sided conversation.

133 [Background conversations]

134 OP: Are you there?

135 [OP, conversation with someone else stating that they are  
136 disconnecting]

137

138

139 [End of recording - 00:09:21]

1 **PARTICIPANTS:**

2 OM: OMAR MATEEN

3 OP: ORLANDO POLICE NEGOTIATOR

4 **TRANSLATION KEY:**

5 UI: UNINTELLIGIBLE

6 IA: INAUDIBLE

7 PH: PHONETIC

8 SC: SIMULTANEOUS CONVERSATION

9 OV: OVERLAPPING VOICES

10 []: NOISE NOTATIONS OR TRANSLATOR'S NOTES

11 RC: RECORDED MESSAGE

12

13 =====

14 [Background conversation]

15 [Phone ringing]

16

17 OP: Hello.

18 OM: Hello.

19 OP: Hi there. This is Orlando Police calling you back.

20 OM: (UI).

21 OP: Ok, I'm sorry again, my name is Andy. What's yours?

22 OM: Andy.

23 OP: Ok, tell me what's going there right now cus(PH) I'm not there. I'm  
 24 trying to help you... Ok, I'm trying to help you, tell me what's going  
 25 on right now. I don't want to see anybody get injured including you.  
 26 So let's start. Are you injured? Sir, are you injured? I'm trying to  
 27 help you. I don't want to see this go further. Please let us  
 28 peacefully resolve it with your assistance. Can you hear me? Can you  
 29 hear me? Hello. Can you hear me? This is Andy from Orlando Police...  
 30 Are you there?

31 [Phone ringing. There are multiple attempts to reach Mateen. OP keeps  
 32 calling but Mateen does not answer the phone and voicemail comes on.  
 33 OP has conversations with others while phone rings]

34 [Phone ringing]

35 OM: Hello.

36 OP: Hello, Omar. This is Andy from Orlando Police.

37 OM: Mhm.

38 OP: Tell me what's going on right now Omar.

39 OM: (UI) the air strike that killed Abu Wahid (PH) a few weeks ago

40 OP: Yes sir.

41 OM: that's what triggered it, ok.

42 OP: Ok.

43 OM: Ok. They shouldn't have bombed and killed Abu Wahid (PH), ok.

44 OP: I understand.

45 OM: Figure, do your fucking homework and figure out who Abu Wahid (PH)  
46 is, ok.

47 OP: I understand that. What I need to find out is, are you injured? Omar.

48 OM: (UI).

49 OP: Well I understand that but if you're injured I want to get you some  
50 help.

51 OM: No.

52 OP: Ok, do you have somebody with you?

53 OM: None of your business.

54 OP: Ok, tell me what you want me to pass along, 'cause I can't sit here  
55 and do research, I want to pass along

56 OM: (UI).

57 OP: Tell them to stop bombing in Syria.

58 OM: Yes, the airstrikes need to stop. Stop collaborating with Russia, ok.

59 OP: I can pass that along.

60 OM: And, and, let it be known, let it be known, in the next few days,  
61 you're going to see more of this type of action going on, ok.

62 OP: Ok, I understand that. I can pass that along. Where is that gonna  
63 (PH) happen?

64 OM: None of your business. Just let it be known, it's going to be done in  
65 the name of the Islamic State. Even though it's not fucking  
66 airstrikes, it's fucking strikes here, ok.

67 OP: I understand that. I understand that. So tell me what happened  
68 tonight. How did this go down for you?

69 OM: This went down, a lot of innocent women and children are getting  
70 killed in Syria, in Iraq, in Afghanistan, ok.

71 OP: I understand that. You're upset about the bombing in Syria and  
72 Afghanistan and you want the bombing and the killing to stop. I  
73 understand your concern. I share that concern with you. I want to  
74 pass your message along. Tell me what else you'd like me to pass  
75 along please.

76 OM: Just stop. Tell them to stop.

77 OP: I will do that. I will do that. So can you tell me how we can  
78 peacefully resolve this tonight? I'd like to see you come out. I'd  
79 like to talk to you some more.

80 OM: Tell, tell the fucking, the airstrikes need to stop.

81 OP: I'm doing that. I'm passing that message along. Immediately.

82 OM: You see, now you feel. Now you feel how it is. Now you feel how it  
83 is.

84 OP: I understand your concern Omar. Do you have somebody that you brought  
85 with you that we need to check on and make sure they're not injured?

86 OM: No. Not. None, no-no-no-no-no, no mister (UI) negotiator, no. Don't  
87 play no bullshit with

88 OP: Well, I'm trying to help you. You don't want people to get injured. I  
89 presume that means, if you brought somebody with you, you don't want  
90 them hurt. Is that correct?

91 OM: None of your business homeboy.

92 OP: Ok. Omar, can I get you to come outside and talk to my people there  
93 at the scene, so we can peacefully resolve this?

94 OM: No.

95 OP: Ok, 'cause I'm not there but I have people there that would love to  
96 talk to you. Can you put down your weapon and come down outside and  
97 talk to them please.

98 OM: You want to know what type of weapon I have too?

99 OP: If you want to tell me.

100 OM: Or you want to know how many weapons I have?

101 OP: I can take that too. I'm, I'm all ears Omar. I have no agenda other  
102 than to help you and pass along this message.

103 OM: What year, what year did you graduate from the police academy?

104 OP: I'm sorry?

105 OM: What year did you graduate from the police academy?

106 OP: This is about you, ok. I'm here to help you. I'm here to pass along  
107 your information. Ok, you don't want to know ancient history about  
108 me. Tell me how I can help you. You asked me, do I want to know about  
109 weapons. Sure tell me about your weapons. Omar, I'm trying to help  
110 you. I can't do that if you won't give me something to pass along to  
111 the people that are in power, which is I presume what you want to  
112 happen out of all this. I don't want to see you or any of your  
113 associates get hurt and I don't want to see anybody else get hurt, in  
114 the United States or anywhere else around the world... So tell me how  
115 you and I can work together to get this peacefully resolved now...  
116 Omar... Omar you got to talk to me. Omar, listen to me, I don't want to  
117 see you get injured... Omar can you hear me? Are you there? Omar... You  
118 and I have to talk, we have to work together. Omar I need to pass  
119 along what your concerns are. Omar.

120 [Call disconnected. Background conversations are going on]

121 [Multiple attempts are made to reach Mateen]

122 [Phone ringing]

123 OM: Hello.

124 OP: Omar, listen, this is Andy from the police again. I don't want to  
125 mess up your message. You can come out and you can tell it yourself.  
126 I'll arrange media or whatever you want. Got to be a first step.

127 OM: You're annoying me with (UI) these phone calls, I call you (UI).

128 OP: I understand that but obviously you know it's my job, I need to be in  
129 contact with you. I'm your communication lifeline to everyone that's  
130 outside. I'm trying to pass along your message and I don't want to  
131 screw that message up. You tell me you don't want people getting  
132 hurt, I presume that includes you. Tell me your message and I will  
133 pass that along. You don't want the bombing; tell me about it, I'll  
134 write it down... Omar, Omar please talk to me. I want to get your  
135 message out. I want to pass along what you have to say. I can't do  
136 that if you won't talk to me.

137 [Call disconnected. Negotiator trying to call, voicemail comes up.  
138 Multiple attempts made. ]

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140

**[End of recording - 00:16:05]**

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13 =====

14 [Negotiator speaking with others while phone is ringing. Voicemail  
15 comes on.]

16 [Phone ringing]

17 OM: Hello.

18 OP: Omar

19 OM: Yea.

20 OP: What's going on? I couldn't get a hold of you for a while.

21 OM: You're annoying me with these phone calls and I don't really  
22 appreciate it.

23 OP: Well I understand that but the fact that you appreciate it or not  
24 doesn't matter at this point. We need to talk and we need to stay

25 OM: Hey, hey, hey don't talk to me like that. No-no-no-no-no

26 OP: No-no-no, I'm treating you like an adult. We need to stay in constant  
27 contact.

28 OM: No-no-no-no-no-no-no.

29 OP: Tell me what's going on right now Omar.

30 OM: What's going on is that the airstrikes need to stop,

31 OP: Yes.

32 OM: need to stop

33 OP: The airstrikes need to stop.

34 OM: (UI).

35 OP: I've heard that and I want you to come outside and tell us that  
36 yourself, so the message rings true from you, not me passing along  
37 your message. I'm doing that but I need you to come outside with no  
38 weapons... Omar.

39 [Negotiator states that Mateen hung up, 3:25. Attempts made to  
40 connect are unsuccessful.]

41  
42  
43 [End of recording - 00:03:01]  
44  
45  
46



**Type**

Comments

**Summary** Omar Mateen commented on this. `The real muslims will never accept the filthy ways of the west`

**Object Id** S:\_I100002382620792:1056447487777995:3

**Time** 2016-06-12 06:33:31 UTC

**Type** Search

**Summary** You searched for ""

**Object Id** S:\_I100002382620792:1054095141346563:43

**Time** 2016-06-12 06:31:17 UTC

**Type** Comments

**Summary** Omar Mateen commented on this. `In the next few days you will see attacks from the Islamic state in the usa`

**Object Id** S:\_I100002382620792:1056447487777995:2

**Time** 2016-06-12 06:30:24 UTC

**Type** Comments

**Summary** Omar Mateen commented on this. `You kill innocent women and children by doing us airstrikes..now taste the Islamic state vengeance`

**Object Id** S:\_I100002382620792:1056447487777995:1

**Time** 2016-06-12 06:29:32 UTC

**Type** Comments

**Summary** Omar Mateen commented on this. `allegiance`

**Object Id** S:\_I100002382620792:1056447487777995:0

**Time** 2016-06-12 06:28:06 UTC

**Type** Search

**Summary** You searched for Omar Mateen

**Object Id** S:\_I100002382620792:1054095141346563:42

**Time** 2016-06-12 06:01:03 UTC

**Type** Search

**Summary** You searched for Omar Mateen

**Object Id** S:\_I100002382620792:1054095141346563:41

**Time** 2016-06-12 06:00:51 UTC

**Type** Status Update

**Summary** America and Russia stop bombing the Islamic state..I pledge my alliance to abu bakr al baghdadi..may Allah accept me

**Object Id** S:\_I100002382620792:1056438967778847

**Time** 2016-06-12 05:22:55 UTC

**Type** Search

**Summary** You searched for ""

**Object Id** S:\_I100002382620792:1054095141346563:40

**Time** 2016-06-12 02:53:19 UTC

**Type** Search

**Summary** You searched for ""

**Object Id** S:\_I100002382620792:1054095141346563:39

**Time** 2016-06-11 16:38:57 UTC

**Type** Search

**Summary** You searched for Seddique Mateen

**Object Id** S:\_I100002382620792:1054095141346563:38

1 **PARTICIPANTS:**

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13 =====

14 OP: Emergency 911, this is being recorded.

15 OM: In the name of God the Merciful, the beneficent [Arabic]

16 OP: What?

17 OM: Praise be to God, and prayers as well as peace be upon the prophet of  
18 God [Arabic]. I wanna let you know, I'm in Orlando and I did the  
19 shootings.

20 OP: What's your name?

21 OM: My name is I pledge of allegiance to Abu Bakr Al-Baghdadi, of the  
22 Islamic State.

23 OP: Ok, What's your name?

24 OM: I pledge my allegiance to Abu Bakr Al-Baghdadi, may God protect him  
25 [Arabic], on behalf of the Islamic State.

26 OP: Alright. Where are you at?

27 OM: In Orlando.

28 OP: Where in Orlando?

29 Call disconnects.