

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' TRIAL BRIEF
ON ADDITIONAL ISSUES**

The government submits this trial brief on two additional issues relevant to the trial of Noor Salman.

I. The government's summary evidence should be admitted pursuant to Fed. R. Evid. 1006.

The government intends to offer into evidence a number of summary exhibits pursuant to Fed. R. Evid. 1006. That rule provides that the proponent of evidence "may use a summary, chart, or calculation to prove the content of voluminous writings . . . that cannot be conveniently examined in court."

The government intends to introduce three categories of voluminous records during the trial in this matter: (1) bank and other financial records; (2) records of digital content, including records from electronic devices, such as computers and cell phones, and records from online account providers, such as Google and Facebook; and (3) location records obtained from cellular service providers. The underlying records are voluminous, and if the jury was

forced to review them on their own, the process would be difficult and inconvenient for the jury. Thus, the government has prepared summary exhibits to assist the jury in reviewing these voluminous records.¹

As to the banking and financial records, an analyst has prepared spreadsheets that will enable the jury to evaluate the defendant's finances as well as to compare her and her husband's spending in June 2016 with prior months and years. Further, the spreadsheets will demonstrate that the defendant was correct, in both an absolute and a comparative sense, when she indicated to the FBI that her husband had "spent a lot of money" in the days before the attack.

As to the records of digital content, multiple witnesses have prepared spreadsheets and other documents that contain relevant portions of the documents. For example, the defendant indicated to the FBI that her husband had been looking at "jihad websites" almost every day for the last two years. The government has prepared summary exhibits that demonstrate that the defendant's statement to the FBI was accurate. These summary exhibits show Mateen's web browsing and searching related to the Islamic State and other

¹ The records underlying the proposed summary exhibits have been produced to the defense in discovery. As to the financial and location records, the government has previously disclosed drafts of the related summary exhibits to the defense and will disclose new versions by February 26, 2018. As to the digital records, the government will disclose the related summary exhibits by February 26, 2018.

extremist topics over the course of the years prior to the attack. To require the jury to wade through voluminous records on their own to confirm this statement would be inefficient and difficult.

As to the location records, a government witness has prepared a summary that plots the location records onto a map. Without this summary, the jury would be unable to understand or evaluate the location records, which themselves are, in part, lists of latitudes and longitudes and not readily comprehensible without the summary exhibit.

Each of the summary exhibits the government will seek to admit are based on otherwise admissible evidence that has been available to the defendant in discovery. The purpose of the summary exhibits is to ease the jury's review of voluminous and otherwise unwieldy records. The Court should admit the summary exhibits into evidence to assist the jury.

II. The government has complied with the Crime Victims' Rights Act.

A "victim" under the Crime Victims' Rights Act (CVRA) is an individual who is directly and proximately harmed by a defendant's criminal behavior. 18 U.S.C. § 3771(e); *In re Stewart*, 552 F.3d 1285, 1288 (11th Cir. 2008). To determine whether an individual is such a "victim," the District Court must first identify the behavior constituting "commission of a Federal offense." *Id.* Then the District Court must "identify the direct and proximate

effects of that behavior on parties other than the United States” and whether those effects were reasonably foreseeable to the defendant and not too attenuated. *Id.*; *United States v. Rogers*, No. 1:09-cr-441-TWT/AJB, 2010 WL 1872855 at *7 (N.D.Ga. Apr. 12, 2010). The individuals included in the VNS in this case are “victims” who were directly and proximately harmed by the defendant’s charged criminal conduct.

The CVRA established ten “rights” for federal crime victims. They include, but are not limited to, the right to notice of any public court proceeding; not to be excluded from any public court proceeding; be reasonably heard; and be treated with fairness and respect for their dignity and privacy. *See generally* 18 U.S.C. § 3771.

Victims and the designated representative for deceased victims in this case were identified by law enforcement and entered in the Victim Notification System (VNS). This automated system, which links to the electronic court filing system, generates “notifications” of public court events via letter and/or email. The United States sent its first VNS notification on January 27, 2017, advising victims that charges were filed and informing them of their CVRA rights. Notifications have been set periodically, including about the upcoming trial.

“The CVRA requires the Government to ‘make [its] best efforts to see’ that the court (in which the prosecution is pending) permits the victim to appear and to be heard.” *Stewart*, 552 F.3d at 1286. To that end, the United States has taken substantial steps to determine the number of victims that may attend the trial (in addition to VNS notification), including contacting a number of victims by telephone and mailing questionnaires to all the victims. Approximately 75 victims have expressed an interest in attending all or a portion of the trial. Publicity during jury selection may cause more victims—many of whom live in the Orlando area—to decide to come to the courthouse. It is impossible to predict, at this time, the exact number of victims who will attend trial proceedings each day. Nevertheless, additional victim witness staff will be available to assist with the orderly management of the victims in this case. The United States also is making arrangements for interpreters to be located in the overflow courtroom to translate court proceedings for a number of Spanish-only speaking victims who advised they plan to attend the trial.

The United States recognizes and appreciates that this Court has been and continues to be sensitive to the victims, including issuing an order establishing an overflow courtroom for the media and implementing guidelines governing media contact with victims and their family members.

Doc. 178. The United States will continue to keep the Court apprised of relevant victim-related issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 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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