

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, 15-CR-268 (BMC)

4 Plaintiff, United States Courthouse

5 -against- Brooklyn, New York

6 September 29, 2017

7 9:30 a.m.

8 MUHANAD MAHMOUD AL FAREKH,

9 Defendant.

10 -----x

11 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
12 BEFORE THE HONORABLE BRIAN M. COGAN
13 UNITED STATES DISTRICT JUDGE
14 BEFORE A JURY

15 APPEARANCES

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20 Proceedings recorded by mechanical stenography. Transcript
21 produced by computer-aided transcription.

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1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 (Court Exhibit 2, was received in evidence.)

4 THE COURT: Good morning. Be seated, please.

5 Okay, we have marked as Court Exhibit 2, a note that
6 says: "Can we have the testimony from Sufwan Murad when
7 al-Hazeez died and then al-Shami became head of external
8 operations."

9 I've asked the parties to confer and see if they can
10 agree on what testimony that calls for.

11 Have they been able to agree?

12 MR. TUCKER: Your Honor, we have not been able to
13 agree, but I think the parties do agree that the amount of
14 testimony that we would propose to send back is quite small.

15 The Government would like to send back a slightly
16 larger portion than the defense. I can read it, or probably
17 faster, I can note for the record the portion the Government
18 proposes and hand it up, but it's whatever Your Honor wants.

19 THE COURT: The later.

20 MR. TUCKER: Okay. So just for the record, Your
21 Honor, we propose to read back to the jury, or send back,
22 whatever the Court prefers, page 45 from the deposition,
23 line 21 through page 48, line 4.

24 And then there's a period where there's an exchange
25 of objections, which we would not propose to read back or send

1 back, and then 48, line 20 through line 22.

2 And then on page 74 from line 4 to line 6.

3 May I hand this up to Your Honor?

4 THE COURT: Please.

5 MR. TUCKER: And, Your Honor, just to make it
6 easier, I've highlighted what the Government proposes to read
7 back and I've noted starts and stops.

8 THE COURT: This is the disputed part or the whole
9 thing?

10 MR. TUCKER: This is the Government's proposal.
11 I'll let defense counsel speak for himself. I believe he
12 wants a subset of that portion.

13 MR. MAHER: We are fine with transcript page 48,
14 line 18 through 22. I think you left out the question.

15 THE COURT: Is that right, Mr. Tucker?

16 MR. TUCKER: Line 18 -- well, actually so the
17 question -- I asked the question at line 3 and line 4. Then
18 we have a kind of a colloquy, and then the question is read
19 back.

20 Obviously, whichever one of those questions the
21 Court wants to read is fine with the Government, we should
22 only read the question once.

23 MR. MAHER: The defense objects to the preceding
24 segments the Government wants, transcripts page 45, line 26
25 through 48, line 4. I don't believe that that is responsive

1 at all.

2 THE COURT: You're objecting to 45, line?

3 MR. MAHER: Twenty-six I think the Government said
4 at the beginning.

5 THE COURT: No, they're starting at 21.

6 MR. MAHER: Then 21.

7 THE COURT: Through 48, line 4, you're objecting to
8 all of that?

9 MR. MAHER: Every -- everything up -- we believe it
10 should start on page 48, line 18 and end on page 48, line 22.

11 THE COURT: Am I correct that the Government is
12 asking for more than the defense wants to have them read?

13 MR. MAHER: Yes.

14 THE COURT: Tell me what portions the Government
15 wants to read that you are objecting to, not the parts you
16 want.

17 MR. MAHER: Page 44, line 21 through page 48, I
18 think --

19 THE COURT: Okay, the Government's not starting 'til
20 page 45, line 21, so you can't be objecting to 44.

21 MR. MAHER: Then 45. I'm sorry, I got that wrong.
22 Everything -- anything the Government is asking for before
23 transcript page 48, line 18 we object to.

24 THE COURT: Okay. Got it.

25 MR. TUCKER: Your Honor, I'll wait for a read back

1 and then I'll save the Government's basis for the request.

2 THE COURT: All right, I'm just still a little
3 confused because the Government picks up on 48 at line -- oh,
4 I see, that's the repetition of the question.

5 MR. TUCKER: Yes, Your Honor.

6 THE COURT: I got it.

7 Okay, let me look at that, please.

8 (Pause.)

9 THE COURT: Okay, I think I'd like to know from
10 defendant first why that is not responsive to the note.

11 MR. MAHER: It doesn't go to the question of when
12 al-Hafiz died or to the next part of that question of when
13 al-Shami became head of external operation. It is a
14 description of things that al Hafeez was doing, perhaps, it
15 doesn't go to the question the jury's asking. There's all
16 kinds of background in the transcript.

17 THE COURT: It just depends how you interpret the
18 word "when" in the note, right?

19 If "when" means the date of, then I think you'd be
20 right. But if "when" is merely a directive to the subject of
21 the testimony, that is, when the witness was testifying about
22 this, then you focused on the subject and it is responsive.

23 This clearly refers to the time at which the
24 circumstances and event of him dying, and that's that portion
25 of the deposition.

1 I think the Government's reading is better on that.
2 I think they're asking for how this came about and what the
3 witness' knowledge of it is and the "when" is just when in the
4 deposition that was discussed.

5 So I'm going to grant the Government's request and
6 allow the expanded portion to be read. I think, because it's
7 so short, the Government's portion, I'm going to bring the
8 jury in and ask the court reporter to read that back.

9 And just so the court reporter has exactly what I
10 want read back, we're starting on page 45, line 21 continuing
11 through page 47 -- sorry, 48, line 4, and then picking up
12 again on page 74 starting on line 4, ending on line 6.

13 MR. TUCKER: Your Honor, I think the only thing
14 we're missing there is on page 48 the answer to the question
15 that ends at line 4, so we also should read 48 line 20 through
16 22. That's the response.

17 THE COURT: Correct. Correct. I left that out.

18 MR. TUCKER: Your Honor, to make this very easy
19 maybe -- I have another copy of the transcript, why don't I
20 strike everything that the court reporter isn't going to read
21 and highlight the portions that the Court has ordered that she
22 should read.

23 THE COURT: Fine.

24 MR. TUCKER: I'll do that right now.

25 THE COURT: Okay.

1 MR. TUCKER: And I'll show it to defense counsel.

2 THE COURT: Okay.

3 While you're doing that, I'm going to stay here for
4 that, we have a request from Juror Number 11?

5 THE COURTROOM DEPUTY: Nine.

6 THE COURT: Nine.

7 Number 9 has a child care issue that I don't want to
8 discuss on the record. She simply needs to make a one-minute
9 phone call to check on her child at about 12:30 and again at
10 about 3:30. I think that's fine. I think the way it should
11 work is that Ms. Clarke will go in there at 12:30, ask the
12 jury to stop deliberating while she takes this juror out to
13 her office, which is right next door to the jury room, has the
14 juror make the phone call for one minute, and then takes her
15 back into the jury room.

16 How does that sound to everybody?

17 MR. MAHER: We don't have an objection to that.

18 THE COURT: Melonie, I think you can start lining
19 them up.

20 THE COURTROOM DEPUTY: Okay.

21 (Pause.)

22 THE COURT: Yes, Mr. Maher.

23 MR. MAHER: The jury did refer to "al-Hazeez."

24 There is no al-Hazeez in the record, there is an Abdul
25 Hafeez, and I don't know whether the Court should just say

1 there is no Hazeez but we're assuming it's "Hafeez" and that's
2 the portion we're reading to you.

3 THE COURT: Okay, I'll say that. I assume that
4 that's fine.

5 (Jury enters the courtroom at 11:05 a.m.)

6 THE COURT: Everybody be seated.

7 Good morning, ladies and gentlemen.

8 THE JURY: Good morning, Your Honor.

9 THE COURT: We have your note that says the
10 following: "Can we have the testimony from Sufwan Murad when
11 al-Hazeez died and then al-Shami became head of external
12 operations."

13 We're assuming that although you wrote "al-Hazeez"
14 you meant al Hafeez, which is the right spelling of the
15 name, but with that in mind, we think we found the portion
16 that you were looking for, and I'm going to ask the court
17 reporter to read that to you.

18 (Whereupon, the record was read.)

19 THE COURT: All right, just to clarify the
20 pronunciation, ladies and gentlemen, when the court reporter
21 read back an individual named Abdullah al-Shami took over
22 Abdul Hafeez's position after his death.

23 I think that completes what you had asked for, we'll
24 ask you to continue your deliberations. Thank you.

25 (Jury exits the courtroom at 11:08 a.m.)

VERDICT

1716

1 THE COURT: Okay, we're in recess.

2 (Whereupon, a recess was taken at 11:08 a.m.)

3 THE COURTROOM DEPUTY: All rise.

4 (Court Exhibit 3, was received in evidence.)

5 THE COURT: All right. Be seated, please.

6 All right, the defendant has entered the courtroom.

7 We have received a note from the jury that we've
8 marked as Court Exhibit 3 bearing today's date. It says, "The
9 jury has come to a unanimous decision on all counts."

10 Is there any reason why I should not bring the jury
11 in and receive the verdict?

12 MR. TUCKER: No, sir.

13 MR. MAHER: No, sir.

14 THE COURT: All right, let's have the jury, please.

15 (Jury enters the courtroom at 4:05 p.m.)

16 THE COURT: All right, everyone be seated, please.

17 Ladies and gentlemen, we have your note that says
18 you have come to a unanimous decision on all counts.

19 Let me ask the foreperson, Jury Number 1:

20 Is it correct that you have indeed come to a
21 unanimous decision on each of the counts?

22 THE FORE PERSON: Yes.

23 THE COURT: All right, please hand the verdict form
24 to Ms. Clarke.

25 All right, ladies and gentlemen, what I'm going to

VERDICT

1717

1 do now is referred to as "publishing the verdict." That
2 simply means that I'm going to read it out loud.

3 It's very important that you listen carefully,
4 because after I've read it, either side has the right to have
5 me ask each of you individually whether it is, in fact,
6 represents your true and accurate verdict. So please listen
7 it carefully.

8 On Count One: Use of explosives, how do you find
9 the defendant? The jury checked "guilty."

10 As to the questions under Count One:

11 Do you find that the defendant's actions directly or
12 proximately caused personal injury? The jury checked, "yes."

13 As to the next question:

14 Do you find that the defendant's actions created a
15 substantial risk of injury to any person? The jury checked,
16 "yes."

17 As to Count Two: Conspiracy to commit murder of
18 United States nationals, how do you find the defendant? The
19 jury checked "guilty."

20 On Count Three: Conspiracy to use a weapon of mass
21 destruction, how do you find the defendant? The jury checked
22 "guilty."

23 On Count Four: Conspiracy to use a weapon of mass
24 destruction by United States national, how do you find the
25 defendant? The jury checked "guilty."

VERDICT

1718

1 On Count Five: Conspiracy to bomb the Government
2 facility, how do you find the defendant? The jury checked
3 "guilty."

4 On Count Six: Conspiracy to provide material
5 support to terrorists, how do you find the defendant? The
6 jury checked "guilty."

7 On Count Seven: Provision or attempted provision of
8 material support to terrorists, how do you find the defendant?
9 The jury checked "guilty."

10 On Count Eight: Conspiracy to provide material
11 support to a foreign terrorist organization, how do you find
12 the defendant? The jury checked "guilty."

13 On Count Nine: Provision or attempted provision of
14 material support to a foreign terrorist organization, how do
15 you find the defendant? The jury checked "guilty."

16 Would either side like to have me poll the jury?

17 MR. RUHNKE: Yes, sir.

18 THE COURT: All right.

19 Juror Number 1, as I've read the verdict, does it
20 represent your true and accurate verdict?

21 THE JUROR: Yes.

22 THE COURT: Juror Number 2?

23 THE JUROR: Yes.

24 THE COURT: Juror Number 3?

25 THE JUROR: Yes.

VERDICT

1719

1 THE COURT: Juror Number 4?

2 THE JUROR: Yes.

3 THE COURT: Juror Number 5?

4 THE JUROR: Yes.

5 THE COURT: Jury number 6?

6 THE JUROR: Yes.

7 THE COURT: Jury Number 7?

8 THE JUROR: Yes.

9 THE COURT: Jury Number 8?

10 THE JUROR: Yes.

11 THE COURT: Jury Number 9?

12 THE JUROR: Yes.

13 THE COURT: Juror Number 10?

14 THE JUROR: Yes.

15 THE COURT: Jury Number 11?

16 THE JUROR: Yes.

17 THE COURT: All right. Do the lawyers need to see
18 me at sidebar before I discharge the jury?

19 MR. TUCKER: No, Your Honor.

20 MR. RUHNKE: No, Your Honor.

21 THE COURT: All right, ladies and gentlemen, you
22 worked very hard at this case, as I told you throughout. It
23 was not an easy case. I did not see one of you whose
24 attention ever lagged during the presentation of the evidence.

25 I cannot comment to you on whether I think the

VERDICT

1720

1 verdict was correct or not, as I said, that's entirely your
2 decision, I have no view on it. But what I can tell you is
3 that you went through this process the right way: Paying
4 close attention, focusing on the evidence, listening to
5 everything, doing the hard work that this job requires.

6 I'm going to let you go by just reading you one
7 quote from a very famous Irish American lawyer who practiced
8 in New York City around the turn of the last century in the
9 1880s. He had this to say about the jury system:

10 He said the system of trial by jury is a cherished
11 right. It is protected from legislative overthrow by the
12 national and by all of our state constitutions. It is a
13 historical, an essential part of the free institutions of
14 England, it equally belongs to our own free institution. It
15 springs out of them, intends to support and perpetuate them.
16 In criminal cases, there is no substitute for the jury that
17 would be acceptable to the profession or endured by the
18 people. In the solemn act of passing upon the guilt of those
19 charged with offenses against the public, the jury represents
20 the majesty of the people as a whole. And when acting under
21 the guidance of capable judge, their verdicts are almost
22 always right.

23 I hope that gives you some comfort for the hard job
24 that you had to do in this case.

25 Again, I thank you for your diligent service, you

VERDICT

1721

1 are excused. Thank you again.

2 (Jury exits the courtroom.)

3 THE COURT: All right, be seated, please.

4 The order of detention will continue.

5 Set a tentative date for sentencing, say 90 days,
6 we'll see if we can be ready for that; if not, we'll move it.

7 THE COURTROOM DEPUTY: January 11th.

8 THE COURT: Does that sound all right?

9 MR. TUCKER: Yes, Your Honor.

10 THE COURTROOM DEPUTY: At 10 a.m.

11 THE COURT: Anything else we need to discuss?

12 MR. RUHNKE: Your Honor, we ask you to extend the
13 time for filing pretrial motions by 46 days. There's a reason
14 for that. That we would make the new trial motions due in 60
15 days from today. It's normally 14 days, I'm asking you to
16 extend it by 46.

17 THE COURT: I don't have a problem doing it that
18 way. What I usually do is just deem your motion to have been
19 made now subject to filing papers in support of it, but
20 whichever way you want do it is fine with me.

21 MR. RUHNKE: I think we'll file it in 60 days.

22 THE COURT: Any objection from the Government?

23 MR. TUCKER: No, Your Honor.

24 THE COURT: All right, that's so ordered.

25 Anything else we need to cover?

1 MR. RUHNKE: No. Thank you, Your Honor.

2 MR. TUCKER: No, Your Honor. Thank you.

3 THE COURT: Thank you all for you your hard work.

4 We are adjourned.

5

6 (Whereupon, the matter was concluded.)

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8 * * * * *

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11 I certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13 /s/ Linda D. Danelczyk

September 29, 2017

14 LINDA D. DANELCZYK

DATE

15

16 EXHIBITS

17

COURT	PAGE
2	1709
3	1716

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