

Noor Salman Acquitted in Pulse Nightclub Shooting



Noor Salman

ORLANDO, Fla. — The acquittal by a federal jury of Noor Salman, the widow of the man who gunned down dozens of people at the Pulse nightclub two years ago, handed federal prosecutors on Friday the rarest of defeats: a loss in a terrorism case.

The outcome was even more striking because the not-guilty verdict came from jurors in Orlando, Fla., where Omar Mateen's rampage left 49 people dead and 53 others injured, the worst terrorist attack on American soil since Sept. 11, 2001.

Jurors unanimously rejected government charges that Ms. Salman had helped her husband plan his violent assault in the name of the Islamic State — a narrative countered by her family's claims that she was kept in the dark about her husband's secrets and was home sleeping when the attack occurred.

To blame for the government's defeat, said defense lawyers and legal experts who closely followed the trial, was a flimsy circumstantial case that ultimately was unable to persuade jurors during the eight days of trial.

Testimony from an F.B.I. agent revealed that prosecutors knew early on, but did not reveal, that one of their crucial initial pieces of evidence — that Ms. Salman

had admitted driving by the nightclub with her husband in the days before the attack — most likely did not happen.

Prosecutors also faltered when they argued that Ms. Salman had created an alibi for her husband the night of the shooting, telling Mr. Mateen's mother that he was out to dinner with a friend identified only as Nemo. But that line was Mr. Mateen's own lie to his wife, defense lawyers argued. They put Nemo on the stand, over prosecutors' objections, to testify that he knew Mr. Mateen had used him in the past as a cover story to cheat on his wife.

"The more we learned, the better Noor Salman looked," Charles D. Swift, one of her lawyers, told reporters after the verdict was announced.



Omar Mateen killed 49 people and wounded 53 others in a June 2016 attack on an Orlando, Fla., nightclub. Credit via Associated Press

The jury of seven women and five men deliberated a little more than 12 hours before acquitting Ms. Salman on charges of aiding and abetting the commission of a terrorist act and of obstructing justice. She had been accused of giving misleading statements to law enforcement officers who interviewed her after the massacre.

Late Friday, the jury foreman said in a statement to The Orlando Sentinel that the verdict did not mean jurors thought Ms. Salman was unaware of Mr. Mateen's plans.

"On the contrary, we were convinced she did know," the foreman told The Sentinel, asking to remain anonymous and saying he was speaking on his own behalf. "She may not have known what day, or what location, but she knew.

However, we were not tasked with deciding if she was aware of a potential attack. The charges were aiding and abetting and obstruction of justice.”

And on those charges, he said, the jury was presented with “no option” but to acquit.

In federal court, where terrorism defendants often accept guilty pleas before going to trial, prosecutors rarely lose cases. A report last year by the Center for National Security at Fordham University School of Law found that, while Islamic State-related cases are more likely to go to trial than federal cases in general, every case that was resolved between March 2014 and August 2017 resulted in a conviction. The national average conviction rate is 92.5 percent, according to the report.

But prosecutors generally have been cautious about filing charges against possible accomplices in terrorism cases. Though an accomplice is sometimes the only one left alive to prosecute, such cases can be difficult to prove.

“Prosecutors have got a duty not to be caught up in hysteria,” said William N. Nettles, who was the United States attorney in South Carolina when a white supremacist killed nine black churchgoers in Charleston in 2015 and successfully prosecuted a man who had withheld information about that attack.

He said prosecutors must guard against allowing public emotion to influence their decisions.

“The federal government should never lose a case,” Mr. Nettles said. “Prosecutors should never lose. They pick the fight, they pick the day the fight happens, they’ve got the best investigative capabilities in the world. It should always be an embarrassment for the government to lose.”

After the verdict, two of Ms. Salman’s defense lawyers, Charles D. Swift and Linda Moreno, said in an interview that prosecutors had offered their client a plea deal in the weeks leading up to the trial but she had refused to accept it, insisting on her innocence.

The 31-year-old defendant wiped tears from her eyes after the verdict on the first charge was read. By the time the judge’s clerk finished, Ms. Salman openly sobbed, hugging her lawyers and burying her face in their arms. They, too, wept.

She later left the courthouse with Fritz Scheller, another one of her lawyers.

A spokeswoman for the Salman family said Ms. Salman plans to return to California, where she had been living before her arrest in January 2017, to be with her 5-year-old son. She had faced a sentence of up to life in prison if convicted.

"I don't know how she's going to make up for two years," said Al Salman, one of her uncles, who sat two rows behind his niece during the trial. He said he intends to hire a therapist to help Ms. Salman rebuild her life.

Families of the Pulse victims sat in stone-faced silence as the verdict was announced. They walked out of the federal courthouse in downtown Orlando as a group, some of them wearing dark sunglasses, without saying a word.

After news of the verdict spread, a small group gathered outside Pulse, which has remained shuttered since the shooting, holding signs declaring, "We will not let hate win."

"Those of us directly affected by this tragedy must find peace in our hearts and remember that he was the one who pulled the trigger that night," Barbara Poma, the nightclub owner and founder of a foundation for the victims, said in a statement, referring to Mr. Mateen. "This verdict cannot and will not divide us."

The prosecutors, James D. Mandolfo and Sara C. Sweeney, declined to comment, other than to thank jurors for their work and say they respected their decision.

From the start, Ms. Salman had insisted she had nothing to do with her husband's rampage. The prosecution built a convincing case that Mr. Mateen methodically made arrangements for the attack, apparently inspired by the Islamic State propaganda he obsessively consumed online — including a video he watched weeks before the shooting urging bloodshed against Americans during the Muslim holy month of Ramadan.

The burden on prosecutors after that was high: They had to prove beyond a reasonable doubt that Ms. Salman knowingly and willfully helped or tried to help Mr. Mateen commit an act that would provide material support to the Islamic State. Merely being his wife or unwittingly assisting her husband was not enough, said Joshua L. Dratel, a New York lawyer experienced in defending terrorism

cases.

“You have to share the intent of the actor,” Mr. Dratel said. “You have to do something to make the crime succeed — not do something that makes the crime succeed without knowing that the crime is going to occur. You have to have both of those elements.”

Prosecutors did not have to prove a motive, though Ms. Sweeney, an assistant United States attorney, said in her closing argument on Wednesday that Ms. Salman could have aided Mr. Mateen out of love, money or spite. But while Mr. Mateen’s internet browsing and social media records showed intense radicalization, there was no similar history for Ms. Salman. In fact, twice on Facebook she criticized Islamic terrorists, at one point calling them bad Muslims.

“In today’s world, to have a case like that where you have access to all the social media, you have access to the phones, you have access to the computers — all of that, and you don’t have a specific piece of evidence pointing to her intent? You don’t have a case,” Mr. Dratel said.

In her supposed confession, Ms. Salman told F.B.I. agents that she and Mr. Mateen had scouted Pulse as a target for the June 12, 2016, attack, yet investigators apparently knew just days later that there was no evidence to corroborate that. That false statement in her confession called into question the rest of what she told law enforcement over more than 11 hours of questioning without a lawyer present. The F.B.I. made no audio or video recordings of the interview. The jury foreman told The Sentinel that he wished a recording had been available.

“Twenty years ago, not everybody who you ran into had a digital recorder in their pocket, and we didn’t have ‘CSI’ shows, and we didn’t expect to have everything on tape for us to see,” said David S. Weinstein, a former federal prosecutor in Miami who is now a defense lawyer. “But that’s what we expect now. If there isn’t a picture, it didn’t happen. So the fact that they didn’t record the confession helped to raise this reasonable doubt as to what was being said.”

The final coup for the defense came during the prosecution’s closing argument, when Ms. Sweeney for the first time suggested that the reason Ms. Salman told F.B.I. agents that she and Mr. Mateen had driven by Pulse was because she incorrectly thought the nightclub was at the Disney Springs shopping and

entertainment complex, formerly known as Downtown Disney, which the couple did visit.

Offering an especially chilling detail, Ms. Sweeney suggested that Mr. Mateen bought a baby carriage and doll at a Walmart the night before the massacre so that he could conceal his AR-15 assault rifle and draw no suspicion as he walked toward Disney Springs, which prosecutors believe was his original intended target.

Prosecutors had never before assigned any importance to the stroller, which Mr. Mateen bought alone, while Ms. Salman was miles away, shopping with his credit card. Mr. Swift said in an interview that it showed his client was not in the loop and her husband had intentionally kept his plot from her.

“Doesn’t it make more sense to got to the Walmart with his wife for a baby carriage?” he asked. “If she is aiding and abetting, then why isn’t she with him? If she was there, she might have questioned him: Why do we need a baby carriage? Their kid did not need a stroller.”

The defense asked for a mistrial this week after prosecutors disclosed that Mr. Mateen’s father, Seddique Mateen, had been an F.B.I. informer at various times from January 2005 to the time of the attack. He is now under criminal investigation for financial transfers to Turkey and Afghanistan he made shortly before the shooting. Defense lawyers argued that the elder Mateen’s relationship with the F.B.I. should have been disclosed early on in the case.

“Mistakes were made by everybody, but nobody would admit to them,” Mr. Swift said. “Mistakes were made by the interrogators, and by the original people who looked at Mateen, and the prosecution. At every level.”

“Salman was a solution to all their mistakes,” he added. “But the jury didn’t buy it.”

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Adam Goldman and Alan Blinder contributed reporting.

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