

Syllabus

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SUPREME COURT OF THE UNITED STATES

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SALMAN v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 15–628. Argued October 5, 2016—Decided December 6, 2016

Section 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission’s Rule 10b–5 prohibit undisclosed trading on inside corporate information by persons bound by a duty of trust and confidence not to exploit that information for their personal advantage. These persons are also forbidden from tipping inside information to others for trading. A tippee who receives such information with the knowledge that its disclosure breached the tipper’s duty acquires that duty and may be liable for securities fraud for any undisclosed trading on the information. In *Dirks v. SEC*, 463 U. S. 646, this Court explained that tippee liability hinges on whether the tipper’s disclosure breaches a fiduciary duty, which occurs when the tipper discloses the information for a personal benefit. The Court also held that a personal benefit may be inferred where the tipper receives something of value in exchange for the tip or “makes a gift of confidential information to a trading relative or friend.” *Id.*, at 664.

Petitioner Salman was indicted for federal securities-fraud crimes for trading on inside information he received from a friend and relative-by-marriage, Michael Kara, who, in turn, received the information from his brother, Maher Kara, a former investment banker at Citigroup. Maher testified at Salman’s trial that he shared inside information with his brother Michael to benefit him and expected him to trade on it, and Michael testified to sharing that information with Salman, who knew that it was from Maher. Salman was convicted.

While Salman’s appeal to the Ninth Circuit was pending, the Second Circuit decided that *Dirks* does not permit a factfinder to infer a personal benefit to the tipper from a gift of confidential information to a trading relative or friend, unless there is “proof of a meaningfully close personal relationship” between tipper and tippee “that gener-

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ates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature.” *United States v. Newman*, 773 F. 3d 438, 452, cert. denied, 577 U. S. _____. The Ninth Circuit declined to follow *Newman* so far, holding that *Dirks* allowed *Salman*’s jury to infer that the tipper breached a duty because he made “ ‘a gift of confidential information to a trading relative.’ ” 792 F. 3d 1087, 1092 (quoting *Dirks*, 463 U. S., at 664).

Held: The Ninth Circuit properly applied *Dirks* to affirm *Salman*’s conviction. Under *Dirks*, the jury could infer that the tipper here personally benefited from making a gift of confidential information to a trading relative. Pp. 6–12.

(a) *Salman* contends that a gift of confidential information to a friend or family member alone is insufficient to establish the personal benefit required for tippee liability, claiming that a tipper does not personally benefit unless the tipper’s goal in disclosing information is to obtain money, property, or something of tangible value. The Government counters that a gift of confidential information to anyone, not just a “trading relative or friend,” is enough to prove securities fraud because a tipper personally benefits through any disclosure of confidential trading information for a personal (non-corporate) purpose. The Government argues that any concerns raised by permitting such an inference are significantly alleviated by other statutory elements prosecutors must satisfy. Pp. 6–8.

(b) This Court adheres to the holding in *Dirks*, which easily resolves the case at hand: “when an insider makes a gift of confidential information to a trading relative or friend . . . [t]he tip and trade resemble trading by the insider himself followed by a gift of the profits to the recipient,” 463 U. S., at 664. In these situations, the tipper personally benefits because giving a gift of trading information to a trading relative is the same thing as trading by the tipper followed by a gift of the proceeds. Here, by disclosing confidential information as a gift to his brother with the expectation that he would trade on it, *Salman* breached his duty of trust and confidence to *Citigroup* and its clients—a duty acquired and breached by *Salman* when he traded on the information with full knowledge that it had been improperly disclosed. To the extent that the Second Circuit in *Newman* held that the tipper must also receive something of a “pecuniary or similarly valuable nature” in exchange for a gift to a trading relative, that rule is inconsistent with *Dirks*. Pp. 8–10.

(c) *Salman*’s arguments to the contrary are rejected. *Salman* has cited nothing in this Court’s precedents that undermines the gift-giving principle this Court announced in *Dirks*. Nor has he demonstrated that either §10(b) itself or *Dirks*’s gift-giving standard “leav[e]

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grave uncertainty about how to estimate the risk posed by a crime” or are plagued by “hopeless indeterminacy.” *Johnson v. United States*, 576 U. S. ___, ___, ___. *Salman* also has shown “no grievous ambiguity or uncertainty that would trigger” the rule of lenity. *Barber v. Thomas*, 560 U. S. 474, 492 (internal quotation marks omitted). To the contrary, his conduct is in the heartland of *Dirks*’s rule concerning gifts of confidential information to trading relatives. Pp. 10–12.

792 F. 3d 1087, affirmed.

ALITO, J., delivered the opinion for a unanimous Court.

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SUPREME COURT OF THE UNITED STATES

No. 15–628

BASSAM YACOUB SALMAN, PETITIONER v.
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[December 6, 2016]

JUSTICE ALITO delivered the opinion of the Court.

Section 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission’s Rule 10b–5 prohibit undisclosed trading on inside corporate information by individuals who are under a duty of trust and confidence that prohibits them from secretly using such information for their personal advantage. 48 Stat. 891, as amended, 15 U. S. C. §78j(b) (prohibiting the use, “in connection with the purchase or sale of any security,” of “any manipulative or deceptive device or contrivance in contravention of such rules as the [Securities and Exchange Commission] may prescribe”); 17 CFR §240.10b–5 (2016) (forbidding the use, “in connection with the sale or purchase of any security,” of “any device, scheme or artifice to defraud,” or any “act, practice, or course of business which operates . . . as a fraud or deceit”); see *United States v. O’Hagan*, 521 U. S. 642, 650–652 (1997). Individuals under this duty may face criminal and civil liability for trading on inside information (unless they make appropriate disclosures ahead of time).

These persons also may not tip inside information to

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others for trading. The tippee acquires the tipper's duty to disclose or abstain from trading if the tippee knows the information was disclosed in breach of the tipper's duty, and the tippee may commit securities fraud by trading in disregard of that knowledge. In *Dirks v. SEC*, 463 U. S. 646 (1983), this Court explained that a tippee's liability for trading on inside information hinges on whether the tipper breached a fiduciary duty by disclosing the information. A tipper breaches such a fiduciary duty, we held, when the tipper discloses the inside information for a personal benefit. And, we went on to say, a jury can infer a personal benefit—and thus a breach of the tipper's duty—where the tipper receives something of value in exchange for the tip or “makes a gift of confidential information to a trading relative or friend.” *Id.*, at 664.

Petitioner Bassam Salman challenges his convictions for conspiracy and insider trading. Salman received lucrative trading tips from an extended family member, who had received the information from Salman's brother-in-law. Salman then traded on the information. He argues that he cannot be held liable as a tippee because the tipper (his brother-in-law) did not personally receive money or property in exchange for the tips and thus did not personally benefit from them. The Court of Appeals disagreed, holding that *Dirks* allowed the jury to infer that the tipper here breached a duty because he made a “gift of confidential information to a trading relative.” 792 F.3d 1087, 1092 (CA9 2015) (quoting *Dirks*, *supra*, at 664). Because the Court of Appeals properly applied *Dirks*, we affirm the judgment below.

I

Maher Kara was an investment banker in Citigroup's healthcare investment banking group. He dealt with highly confidential information about mergers and acquisitions involving Citigroup's clients. Maher enjoyed a

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close relationship with his older brother, Mounir Kara (known as Michael). After Maher started at Citigroup, he began discussing aspects of his job with Michael. At first he relied on Michael's chemistry background to help him grasp scientific concepts relevant to his new job. Then, while their father was battling cancer, the brothers discussed companies that dealt with innovative cancer treatment and pain management techniques. Michael began to trade on the information Maher shared with him. At first, Maher was unaware of his brother's trading activity, but eventually he began to suspect that it was taking place.

Ultimately, Maher began to assist Michael's trading by sharing inside information with his brother about pending mergers and acquisitions. Maher sometimes used code words to communicate corporate information to his brother. Other times, he shared inside information about deals he was not working on in order to avoid detection. See, e.g., App. 118, 124–125. Without his younger brother's knowledge, Michael fed the information to others—including Salman, Michael's friend and Maher's brother-in-law. By the time the authorities caught on, Salman had made over \$1.5 million in profits that he split with another relative who executed trades via a brokerage account on Salman's behalf.

Salman was indicted on one count of conspiracy to commit securities fraud, see 18 U. S. C. §371, and four counts of securities fraud, see 15 U. S. C. §§78j(b), 78ff; 18 U. S. C. §2; 17 CFR §240.10b–5. Facing charges of their own, both Maher and Michael pleaded guilty and testified at Salman's trial.

The evidence at trial established that Maher and Michael enjoyed a “very close relationship.” App. 215. Maher “love[d] [his] brother very much,” Michael was like “a second father to Maher,” and Michael was the best man at Maher's wedding to Salman's sister. *Id.*, at 158, 195, 104–

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107. Maher testified that he shared inside information with his brother to benefit him and with the expectation that his brother would trade on it. While Maher explained that he disclosed the information in large part to appease Michael (who pestered him incessantly for it), he also testified that he tipped his brother to “help him” and to “fulfil[] whatever needs he had.” *Id.*, at 118, 82. For instance, Michael once called Maher and told him that “he needed a favor.” *Id.*, at 124. Maher offered his brother money but Michael asked for information instead. Maher then disclosed an upcoming acquisition. *Ibid.* Although he instantly regretted the tip and called his brother back to implore him not to trade, Maher expected his brother to do so anyway. *Id.*, at 125.

For his part, Michael told the jury that his brother’s tips gave him “timely information that the average person does not have access to” and “access to stocks, options, and what have you, that I can capitalize on, that the average person would never have or dream of.” *Id.*, at 251. Michael testified that he became friends with Salman when Maher was courting Salman’s sister and later began sharing Maher’s tips with Salman. As he explained at trial, “any time a major deal came in, [Salman] was the first on my phone list.” *Id.*, at 258. Michael also testified that he told Salman that the information was coming from Maher. See, e.g., *id.*, at 286 (“Maher is the source of all this information”).

After a jury trial in the Northern District of California, Salman was convicted on all counts. He was sentenced to 36 months of imprisonment, three years of supervised release, and over \$730,000 in restitution. After his motion for a new trial was denied, Salman appealed to the Ninth Circuit. While his appeal was pending, the Second Circuit issued its opinion in *United States v. Newman*, 773 F.3d 438 (2014), cert. denied, 577 U.S. ___ (2015). There, the Second Circuit reversed the convictions of two portfolio

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managers who traded on inside information. The Newman defendants were “several steps removed from the corporate insiders” and the court found that “there was no evidence that either was aware of the source of the inside information.” 773 F. 3d, at 443. The court acknowledged that Dirks and Second Circuit case law allow a factfinder to infer a personal benefit to the tipper from a gift of confidential information to a trading relative or friend. 773 F. 3d, at 452. But the court concluded that, “[t]o the extent” Dirks permits “such an inference,” the inference “is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature.” 773 F. 3d, at 452.¹

Pointing to Newman, Salman argued that his conviction should be reversed. While the evidence established that Maher made a gift of trading information to Michael and that Salman knew it, there was no evidence that Maher received anything of “a pecuniary or similarly valuable nature” in exchange—or that Salman knew of any such benefit. The Ninth Circuit disagreed and affirmed Salman’s conviction. 792 F. 3d 1087. The court reasoned that the case was governed by Dirks’s holding that a tipper benefits personally by making a gift of confidential information to a trading relative or friend. Indeed, Maher’s disclosures to Michael were “precisely the gift of confidential information to a trading relative that Dirks envisioned.” 792 F. 3d, at 1092 (internal quotation marks omitted). To the extent Newman went further and required additional gain to the tipper in cases involving gifts

¹The Second Circuit also reversed the Newman defendants’ convictions because the Government introduced no evidence that the defendants knew the information they traded on came from insiders or that the insiders received a personal benefit in exchange for the tips. 773 F. 3d, at 453–454. This case does not implicate those issues.