

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER

Case No: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis

Date: 12 July 2016

Original language: English

Classification: Public

THE PROSECUTOR
v.
SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA

**DECISION ON THE ADMISSION OF THE STATEMENT OF MR TIMOTHY
HOLFORD (WITNESS PRH400)**

Office of the Prosecutor:Mr Norman Farrell, Mr Graeme Cameron
& Mr Alexander Hugh Milne**Counsel for Mr Salim Jamil Ayyash:**Mr Emile Aoun, Mr Thomas Hannis & Mr Chad
Mair**Victims' Legal Representatives:**Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra**Counsel for Mr Hassan Habib Merhi:**Mr Mohamed Aouini, Ms Dorothee Le Fraper
du Hellen & Mr Jad Khalil**Counsel for Mr Hussein Hassan Oneissi:**Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Ms Natalie von Wistinghausen**Counsel for Mr Assad Hassan Sabra:**Mr David Young, Mr Guénaél Mettraux &
Mr Geoffrey Roberts

INTRODUCTION AND BACKGROUND

1. The Prosecution,¹ unopposed by counsel for Mr Assad Hassan Sabra,² seeks the admission into evidence, under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, a witness statement of Mr Timothy Holford (Witness PRH400) who is an investigator with the Special Tribunal's Office of the Prosecutor. The statement relates to a global positioning satellite (GPS) mission undertaken by Mr Holford to ascertain the latitude and longitude coordinates of the Ministry of Telecommunications office in Nahr, Beirut, in light of a discrepancy identified by the Prosecution in its previous motion.³

SUBMISSIONS

2. The Prosecution submits that Mr Holford's statement is relevant as it contains the coordinates of the Ministry of Telecommunications office from where the telecarte used in the false claim of responsibility for the attack of 14 February 2005 was purchased; allows this location to be plotted on the Electronic Presentation of Evidence (EPE) software; and corrects the misidentification of this location in its previous motion.⁴ The statement does not go to the acts and conduct of the Accused and, according to the Prosecution, provides background evidence to its case and explains the GPS survey undertaken by Mr Holford.⁵ The Prosecution argues that there is no overriding public interest in having the evidence presented orally and that the interests of justice and a fair and expeditious trial warrants not to have cross-examination. In particular, the Prosecution notes that Mr Holford was already made available for cross-examination on his methodology with respect to GPS survey missions but that the Defence elected not to cross-examine him on those matters.⁶ While the Prosecution concedes that this prior cross-examination did not relate to the GPS survey and location at issue here, it submits that since Mr Holford's methodology remained unchanged, it would not be efficient to make him available to testify *viva voce* on these processes again.⁷

3. The prejudicial effect, if any, of the evidence, the Prosecution argues, is outweighed by its probative value since the Ministry of Telecommunications office location was already

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, F2483, Prosecution Rule 155 Motion for the Admission of a Witness Statement of PRH400, 7 March 2016.

² F2497, Sabra Response to "Prosecution Rule 155 Motion for the Admission of a Witness Statement of PRH400", 16 March 2016. No other defence counsel have responded to the Prosecution's motion.

³ Motion, para. 2-3 (namely, filing F1986, Prosecution Motion for the Admission of Locations Related Evidence, 3 June 2015, Annex C, Row 92).

⁴ Motion, paras 4-5.

⁵ Motion, paras 6-7.

⁶ Motion, para. 8.

⁷ Motion, para. 8.

identified in its prior filing, albeit with incorrect coordinates; the error was identified well in advance of its use in the EPE; and Mr Holford's statement was disclosed to the Defence on 18 December 2015, shortly after the error was discovered.⁸ The statement contains the necessary indicia of reliability, fulfils the requirements of Rule 155 (B), is compliant with the relevant practice direction and the Prosecution therefore moves for its admission into evidence.⁹

4. While counsel for Mr Sabra do not oppose the Prosecution's motion, they reiterate their intention to cross-examine Mr Holford.¹⁰ They note that the Trial Chamber had previously granted their request to cross-examine Mr Holford and that the Prosecution had confirmed that he would be made available for potential further cross-examination on other evidence he was scheduled to present.¹¹ As a result, counsel for Mr Sabra reiterate their cross-examination intentions with respect to aspects of Mr Holford's investigation, including matters which they had previously raised with the Trial Chamber.¹²

DISCUSSION

5. The Trial Chamber has previously discussed the requirements for admitting statements into evidence under Rule 155 which go to the proof of a matter other than the acts and conduct of the accused as charged in the indictment.¹³ The statement must meet the basic requirements for admission into evidence under Rule 149; it generally requires signatures and the date, time, place and persons present during the interview; and the Trial Chamber may decide that the interests of justice and the demands of a fair and expeditious trial exceptionally warrant the admission of the statement, in whole or in part, without cross-examination under Rule 155 (C). These principles are applicable here.

6. The Trial Chamber considers that Mr Holford's statement clearly contains information that is relevant to the Prosecution's case as pleaded in the consolidated indictment, does not

⁸ Motion, para. 9.

⁹ Motion, paras 10-11.

¹⁰ Response, para. 4.

¹¹ Response, paras 2-3.

¹² Response, para. 4.

¹³ STL-11-01/PT/TC, F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013, para. 13; F1280, First Decision on the Prosecution Motion for Admission of Written Statements Under Rule 155, 20 December 2013, paras 7-14; STL-11-01/T/TC, F1785, Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony Relating to Rafik Hariri's Movements and Political Events, 11 December 2014, para. 3; F2062, Decision on 'Prosecution Motion for the Admission of Locations Related Evidence', 9 July 2015, para. 5.

go to the acts and conduct of the Accused and adheres to the applicable practice direction.¹⁴ The reliability and provenance of the statement are unchallenged by any Defence counsel. In light of the submissions made by the Prosecution, the Trial Chamber holds that it is *prima facie* reliable and, as a result, has probative value to matters at issue in this case.

7. The Trial Chamber finds that while counsel for Mr Sabra have asserted a desire to cross-examine Mr Holford, they have not done so in relation to the specific statement which the Prosecution seeks to admit into evidence in its motion. No argument has been presented as to why cross-examination in this case is necessary or warranted in light of the statement's content. The Trial Chamber therefore holds that there is no need to call Mr Holford to testify and that the statement is to be admitted under Rule 155 without cross-examination.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES Mr Holford's statement admissible under Rule 155 without cross-examination; and

DECIDES that it will formally admit it into evidence at a suitable time in the proceedings.

Done in Arabic, English, and French, the English version being authoritative.

Leidschendam,
The Netherlands
12 July 2016

David Re

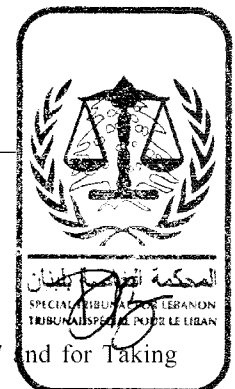
Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy



¹⁴ STL, Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155, 15 January 2010.