

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

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 PROSECUTION MOTION FOR THE ADMISSION UNDER
RULE 155 OF THE STATEMENT OF WITNESS PRH696**

Office of the Prosecutor:

Mr Norman Farrell, Mr Graeme Cameron &
Mr Alexander Hugh Milne

Legal Representatives of**Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis & Mr Chad
Mair

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

1. The Prosecution seeks the admission into evidence, under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence, of one statement by Witness PRH696.¹ The statement is relevant to attributing a mobile telephone to the Accused, Mr Salim Jamil Ayyash and the analysis of the 'red network' mobile telephones.²

SUBMISSIONS

2. The Prosecution submits that the statement is relevant, probative and reliable, and does not go to the acts and conduct of the Accused as charged in the consolidated indictment. The statement was disclosed to the Defence on 11 September 2015.³

3. The statement relates to the witness's single, inadvertent telephone contact with 'Red 3123741' and explains the witness' family relationships, including a relative who is married into Mr Ayyash's family. The Prosecution alleges that 'Red 3123741' was used by Mr Ayyash on 11 days between 14 January and 14 February 2005. The evidence is also relevant to defining the 'red network' mobile telephone as a highly secure, closed user group that operated over the same timeframe.⁴

4. The Prosecution submits that Witness 696's statement is intended as a substitute for the witness's audio interview and transcript made in 2008, which is already on the Prosecution's exhibit list filed under Rule 91. As the original interview contained extraneous material, the new statement has been limited to the substantive and relevant evidence upon which the Prosecution relies.⁵ According to the Prosecution, two other witnesses rely on the statement of this witness. Witness Andrew Donaldson (Witness PRH230) relies on the

¹ *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, STL-11-01/T/TC, F2380, Prosecution Motion for the Admission of PRH696's Witness Statement in Lieu of Oral Testimony pursuant to Rule 155, 16 December 2015.

² Prosecution motion, para. 2. In the consolidated indictment and the pre-trial brief, the Prosecution refers to eight mobile telephones as the 'red network'. These eight mobile telephones were allegedly used in the surveillance of the former Lebanese Prime Minister, Rafik Hariri, between 14 January 2005 and 12 February 2005. According to the Prosecution, six of the eight 'red network' mobile telephones were used by the team—allegedly consisting of the Accused, Mr Salim Jamil Ayyash, and five other unidentified individuals—that carried out the attack against Mr Hariri on 14 February 2005 (F1444, Prosecution Submission of Consolidated Indictment, Witness and Exhibit Lists, Annex A: Consolidated Indictment, 7 March 2014, para. 15 (a); F1077, Prosecution's Submission of Updated Pre-Trial Brief pursuant to Rule 91(G)(i) and the Pre-Trial Judge's Order of 7 August 2013 and Decision of 16 August 2013, Annex A: Prosecution's Updated Pre-Trial Brief, dated 23 August 2013, 23 August 2013, para. 6).

³ Prosecution motion, paras 1, 3-5.

⁴ Prosecution motion, para. 2.

⁵ Prosecution motion, para. 2.

evidence of Witness 696 as part of his attribution analysis of the telephone numbers in contact with ‘Red 3123741’. Witness Gary Platt (Witness PRH147) also relies on the evidence of this witness as part of his analysis of the ‘red network’ and in particular, his assessment of whether any ‘red network’ mobile telephones were involved in purposeful calls outside the network.⁶

5. Counsel for Mr Ayyash responded to the motion, but took no position on the admission into evidence of Witness 696’s statement.⁷

DISCUSSION

6. In earlier decisions, the Trial Chamber determined the procedural safeguards for admitting statements into evidence under Rule 155.⁸ These allow it to receive written testimony in lieu of live oral testimony in the courtroom. In particular, a statement must meet the basic requirements for admission into evidence under Rule 149 and, if going to proof of the acts or conduct of the Accused, may not be admitted without cross-examination. In addition, Rule 155 (C) states that the Trial Chamber may decide, providing reasons, that the interests of justice and the demands of a fair and expeditious trial exceptionally warrant the admission of a statement or transcript, in whole or in part, without cross-examination. These principles are applicable here.

7. The Trial Chamber, having reviewed the statement of Witness 696, finds it relevant to and probative of attributing a specific mobile telephone number to the Accused, Mr Ayyash. The statement also provides evidence about the alleged nature of the ‘red network’ mobile telephones—used by the Accused, Mr Ayyash, and others, of the ‘red network’ mobile telephones to carry out the attack against Mr Hariri—as covert and highly secure. Accordingly, the statement is admissible under Rule 149 (C). The proposed statements have sufficient indicia of reliability under both Rule 155 and the relevant Practice Direction⁹ and

⁶ Prosecution motion, para. 6.

⁷ F2393, Ayyash Defence Response to Prosecution Motion to Admit the Statement of PRH696 Pursuant to Rule 155, 29 December 2015.

⁸ 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, Corrected Version of 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, 13 January 2015, para. 3; F2062, Decision on ‘Prosecution Motion for the Admission of Locations Related Evidence’, 9 July 2015, para. 5.

⁹ STL-PD-2010-02, 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.

are therefore admissible into evidence without requiring the witnesses to attend court for cross-examination. Moreover, no Defence counsel have sought to have the witnesses called for cross-examination.

CONFIDENTIALITY

8. Because it contains confidential witness information, the Prosecution seeks to maintain the confidential status of the annex to its motion.¹⁰ The Prosecution must either file a public redacted version of the annex or have it reclassified as public; this may await the formal admission into evidence of Witness 696's statement.

DISPOSITION

FOR THESE REASONS, the Trial Chamber,

DECLARES admissible, under Rule 155, the statement of Witnesses PRH696 as listed in Annex A to the motion.

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



¹⁰ Prosecution motion, para. 12.