

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: 4 November 2016

Original language: English

Classification: Public

THE PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

**DECISION ADMITTING DOCUMENTS AND STATEMENTS RELATING TO
SALIM JAMIL AYYASH'S BMW AND MOBILE NUMBERS – WITNESSES
PRH385, PRH304, PRH258, PRH112, PRH034 AND PRH550**

Office of the Prosecutor:

Mr Norman Farrell & Mr Alexander 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 Lettieri &
Mr Geoffrey Roberts

INTRODUCTION

1. The Prosecution seeks to admit into evidence eight statements from six witnesses, and ten documents relating to the ownership of the Accused, Mr Salim Jamil Ayyash, of a BMW, and some mobile numbers that he allegedly used.¹ The documents relate to a handset installed in the vehicle that Mr Ayyash allegedly used and mobiles that the Prosecution seeks to attribute to him, namely ‘personal mobile phone’ numbers 3523935 and (‘PMP 935’) and 3767165 (‘PMP 165’).²

2. Counsel for Mr Ayyash do not oppose the admission of the documents into evidence and do not seek to cross-examine the witnesses. They submit, however, that the Trial Chamber should also receive into evidence the statements of two other witnesses, Witnesses PRH331 and PRH682, whose evidence is relevant and probative, but were not included in the Prosecution’s motion.³ The Trial Chamber has sought additional submissions on this and will deal with it in a separate decision.⁴

THE EVIDENCE

3. The Prosecution submits that Mr Ayyash purchased a navy blue model 532i BMW in February 2002 and provided PMP 935 and another ending in 617 as the contact numbers. Mr Ayyash sold the vehicle in December 2004, and PMP 935 was provided as the contact number for the sale. The SIM card of PMP 165 was used in the BMW’s handset on 23 November 2002 and 1 and 6 September 2003, while PMP 935’s was used on 16, 28 and 29 September 2004. On 20 November 2004 the BMW was involved in an accident. The Trial Chamber has received evidence related to an insurance claim made thereafter.⁵

4. After the accident, Mr Ayyash needed his vehicle repaired. The insurance company referred Mr Ayyash’s family to a garage, where it was repaired. Two employees of the garage

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra*, F2783, Prosecution motion to admit the statements of PRH385, PRH304, PRH258, PRH112, PRH034 and PRH550, and to admit ten exhibits related to a BMW owned by Mr. Ayyash pursuant to Rules 154 And 155, confidential with confidential annexes A and B, 17 October 2016.

² As pleaded in F2720, Amended Consolidated Indictment, filed 12 July 2016, paras 14-19.

³ F2800, Ayyash Defence response to “Prosecution motion to admit the statements of PRH385, PRH304, PRH258, PRH112, PRH034 and PRH550, and to admit ten exhibits related to a BMW owned by Mr. Ayyash pursuant to Rules 154 And 155” and Request for the admission of two witness statements pursuant to Rule 155, confidential with confidential annexes A and B, 31 October 2016.

⁴ Provisional transcript of 2 November 2016, pp 1-12.

⁵ F2304, Decision on Prosecution Motion to Admit the Statements of PRH081, PRH071, PRH050, PRH086, PRH312 and PRH539, and to admit 37 documents related to the insurance policies of Salim Ayyash, 4 November 2015; See exhibits P604.1 to P604.17 and witness statements exhibits P693 to P699.

then used their own mobiles' SIMs in the BMW's handset between 1 and 11 December 2004. This evidence is in the witness statements. One witness identifies Mr Ayyash from a photograph. Another witness is a Lebanese Government official who provides evidence regarding the system of vehicle ownership in Lebanon. Additionally, Prosecution investigator, Mr Toby Smith (Witness PRH550), photographed the BMW and the IMEI⁶ of its handset. The Prosecution seeks to tender the statements under Rule 155 of the Special Tribunal's Rules of Procedure and Evidence without calling the witnesses to court for cross-examination.

5. The Prosecution also seeks to tender ten exhibits into evidence under Rule 154, without requiring witness to testify about them. There are nine documents that the Prosecution obtained from the Lebanese Director-General of Traffic, Truck and Vehicle Management Authority, via the Lebanese Prosecutor-General. These documents concern the vehicle's registration and inspection, taxes and fees paid, and identity documents and bills of sale. The other document is Mr Smith's photographs of the BMW. Confidential annexes A and B further explain the relevance and probative value of the statements and documents.

DISCUSSION

6. The statements and documents are all relevant to the case. The Trial Chamber is satisfied that the ten documents are *prima facie* reliable and have probative value. This is uncontested. The witness statements do not concern the acts and conduct of the Accused as charged in the amended consolidated indictment, but rather, provide information relevant to attributing certain mobile numbers to Mr Ayyash. The statements are admissible under Rule 155 and comply with the Rule 155 Practice Direction.⁷ The statements may be admitted under Rule 155 and the documents under Rule 154.

CONFIDENTIALITY

7. The Prosecution seeks to maintain the confidentiality of the motion until witness summaries are read onto the court record, in case the witnesses seek protective measures. The Trial Chamber therefore orders the Prosecution and counsel for Mr Ayyash to file redacted

⁶ Every mobile telephone handset has a unique International Mobile Equipment Identity (IMEI) number. See F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015, para. 9 and footnote 28.

⁷ 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.

versions of their filings, or to have them reclassified as public, after the Trial Chamber has received the evidence.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

DECLARES admissible, under Rule 155, the statements of Witnesses PRH385, PRH304, PRH258, PRH112, PRH034 and PRH550 (Mr Toby Smith) described in annex A to the motion;

DECLARES admissible, under Rule 154, the nine documents obtained from the Lebanese Director-General of Traffic, Truck and Vehicle Management Authority relating to Mr Ayyash's BMW, and the photographs of the vehicle, as listed in annex B to the motion;

DECIDES that it will, at a suitable stage in the proceedings, formally admit these documents into evidence and allocate exhibit numbers to them;

MAINTAINS the confidentiality of the filings and annexes until the Trial Chamber has received the evidence; and

DEFERS, pending further submissions, a decision on the request by counsel for Mr Ayyash in their response to the motion, to admit two statements into evidence.

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

Leidschendam,
The Netherlands
4 November 2016

David Re

Judge David Re, Presiding

Janet Nosworthy

Judge Janet Nosworthy

Micheline Braidy

Judge Micheline Braidy

