

**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: 25 January 2017

Original language: English

Classification: Public

DECISION CLARIFYING MR GARY PLATT'S AREA OF EXPERTISE

(Extract from Official Public Transcript of Hearing on 25 January 2017, page 36, line 3 to page 41, line 13)

[This] is a clarification on the issue of Mr. Gary Platt's area of expertise.

Counsel for the accused, Mr. Hussein Hassan Oneissi, on the 24th of January, 2017, in oral submissions, asked the Trial Chamber for clarification of its decision in relation to the extent of the qualifications of Prosecution Investigator, Mr. Gary Platt, to testify as an expert witness.

On the 13th of April, 2016, in a decision, “Decision allowing Mr. Gary Platt (Witness PRH147) to give expert opinion evidence,” filing F2549, and this clarification relates to that decision, the Trial Chamber gave written reasons for a decision delivered in court on the 6th of April, 2016, holding that Mr. Platt was qualified to give expert evidence “to matters connected with (1) the surveillance of criminal networks; and (2) the identification and organization of covert communications networks.”

Mr. Platt is currently testifying in relation to his 458 page expert report entitle, “Communications evidence concerning the assassination of Rafik Hariri: Chronology

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Report,” dated 20th of February, 2014, which is Exhibit P1783 MFI, marked for identification.

Counsel for Mr. Oneissi, supported by counsel for the other three accused, Mr. Salim Jamil Ayyash, Mr. Hassan Habib Merhi, and Mr. Assad Hassan Sabra, have submitted that the Trial Chamber's decision does not permit Mr. Platt to provide expert opinion evidence in relation to a group of so-called “Purple phones” primarily because the Prosecution has never described these mobiles as a “network” or “a closed network” operating with criminal intent. Rather, the amended consolidated indictment describes them as a “group.”

Defence counsel claim prejudice in not having notice that Mr. Platt may provide testimony on the role of the Purple Phones and that if he did it would be outside his declared area of expertise, thereby causing prejudice, and most particularly if his evidence on this point is given as an expert rather than certain as an investigator. This fact alone would prejudice the Defence because the Trial Chamber would be entitled to give his evidence more weight as an expert.

Prosecution counsel responded, most relevantly by submitting that “it must follow that he has expertise in the covert use of phones, especially those engaged in criminal activity,” therefore testifying on the role of the Purple Phones falls within Mr. Platt's area of expertise.

Prosecution counsel added, “But, of course, you can have a single phone involved in criminal activity. You can have a group of phones which aren't a closed network or a semi-closed network engaged in criminal activity. And in those phones engaging in criminal activity, it's perhaps inevitable that at least to a limited extent or a greater extent they will be - they will have covert elements in the way they use their phones.”

Paragraph 3 of the amended consolidated indictment alleges that all four accused were involved in the attack on Mr. Rafik Hariri in Beirut on the 14th of February, 2005, including in making a false claim of responsibility for it shortly afterwards. This is pleaded as an act in furtherance of the conspiracy in which all four accused are alleged to have participated. The amended consolidated indictment, specifically at paragraph 15(e), avers that the “Purple Phones were used to coordinate the false claim of responsibility.”

Mr. Platt's expertise lies in analysing the evidence that could prove the existence of a criminal network, including how those in it engage in the surveillance of targets, identifying covert telecommunications networks and their organization, and providing the Trial Chamber with his expert opinion on these matters. That is, he examines many pieces of evidence and

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explains their significance and whether a conclusion may be drawn on, for example, that surveillance is occurring, and in what manner, and how it is being organized. His expertise lies in finding a “big picture” from numerous apparently unlinked events - such as communications - which when looked at in isolation would be otherwise meaningless.

The issue for clarification is whether this expertise extends under the Trial Chamber's decision to providing expert opinion evidence on the role of mobiles that are not alleged to be part of the four closed networks pleaded in the amended consolidated indictment; namely, the Red, to the accused Mr. Merhi, Oneissi, and Sabra that were also allegedly used to have been in preparing the attack on Mr. Hariri and in making the claim of false responsibility.

This group of three mobiles, described as “personal mobile phones” or “PMPs” of the three accused are described as “Purple Phones” when engaged in the activities alleged in the amended consolidated indictment to have occurred as part of the attack against Mr. Hariri.

The Prosecution in opening its case against Mr. Merhi on 18th of June, 2014, described in some detail the role of the three Purple Phones in coordinating making the false claim of responsibility on 14th February, 2005. Prosecution counsel also described the role of what is referred to as seven “Associate Purple” phones.

The Trial Chamber is of the view that its decision, even if it does not explicitly state this, allows Mr. Platt to provide relevant expert opinion - within his declared area of expertise - in relation to mobiles that communicated with those accused of using mobiles in the closed networks in so far as they are alleged in the amended consolidated indictment to have participated in the activities alleged to have been part of the conspiracy charged against the four accused.

The difference between a “group” of mobiles alleged to have participated in criminal network activity and a “covert” communications network is more terminological than real. Both are covert in the sense that they do not want their alleged criminal activities discovered.

Participants to a criminal network must communication, that is, an alleged criminal network. More often than not that is done in had a covert manner, namely, one intended to disguise or conceal communications made in furtherance of a criminal plan. Making a false claim of responsibility, as is alleged in the amended consolidated indictment, for example, is an action intended to deflect criminal responsibility away from the true perpetrators.

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The Purple Phones, or the personal mobile phones of three of the accused, are alleged to have been used to coordinate the claim of false responsibility for the attack. This is clearly pleaded and the Trial Chamber has heard evidence relevance to this pleaded material fact.

The Defence is not prejudiced by this. Defence counsel are on notice from Mr. Platt's chronology report, which has many references to communications involving the Purple Phones that it forms part of his evidence. The role of the Purple Phones is properly pleaded, for example, the Prosecution's revised pre-trial brief filed on 23rd of August, 2013, and its pre-trial brief in relation to Mr. Merhi, filed on 13th of January, 2014, also pleads and explains the role of the Purple Phones the Prosecution case.

Further, the Prosecution also explained in a motion, filing F1836, "Prosecution motion for the admission of Purple Phones related call sequence tables," filed on the 30th of January, 2015, that Mr. Platt relied upon the call sequence tables involving the Purple Phones to establish the patterns of contact between them and that they operated as a group and how they were used in relation to the false claim of responsibility. This is reflected in the Trial Chamber's decision admitting these call sequence tables into evidence, filing F2799, "Decision on the Prosecution motions for the admission of the call sequence tables related to the five colour-coded mobile telephone groups and networks," of the 31st of October, 2016, and also in the Trial Chamber's earlier interim decision, filing F1837, on the 6th of May, 2015, "Decision on five Prosecution motions on call sequence tables and eight witness statements and on the legality of the transfer of call data records to UNIIC and STL's Prosecution."

However, in any event, the difference between accepting Mr. Platt's opinion as an expert witness or as an investigator who has not been qualified as an expert is merely a matter of weight in assessing the evidence. This of itself cannot prejudice Defence preparations for trial. And, moreover, Defence counsel will not be cross-examining Mr. Platt for at least several weeks.

The Trial Chamber therefore provides the clarification sought by Defence counsel to explicitly state that Mr. Platt may provide expert opinion evidence - within the defined area of his expertise – as relevant, in relation to the Purple Phones.

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