



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: 11 May 2018

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

**DECISION ADMITTING INTO EVIDENCE REVISED
EXHIBIT 5D171 MARKED FOR IDENTIFICATION**

Office of the Prosecutor:
Mr Norman Farrell & Mr Nigel Povoas

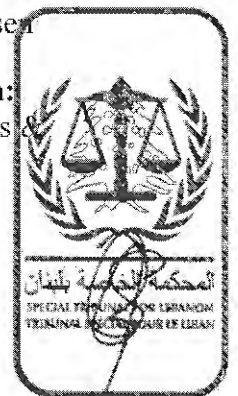
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Mr Chad Mair

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Participating Victims:**
Mr Peter Haynes, Mr Mohammad F. Mattar
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Counsel for Mr Assad Hassan Sabra:
Mr David Young, Mr Geoffrey Roberts &
Ms Sarah Bafadhel



INTRODUCTION

1. On 10 July 2015, Mr Ghassan Ben-Jeddo (Witness PRH020)—the Al Jazeera television network’s Beirut Bureau Chief in 2005—was shown exhibit 5D171 MFI by the Sabra Defence during cross-examination and commented on it.¹ The exhibit was a call sequence table that depicted call and text message records from Mr Ben-Jeddo’s mobile on 14 February 2005. His testimony was relevant because the Prosecution alleges that the Accused Mr Assad Hassan Sabra used a mobile (Purple 018) to prepare and disseminate a false claim of responsibility via the Al Jazeera television network for the attack of 14 February 2005 in Beirut that killed former Lebanese Prime Minister Mr Rafik Hariri and 21 others and injured a further 226.²

2. The Sabra Defence previously tendered exhibit 5D171 MFI for admission into evidence. However, the Trial Chamber ordered the Defence to provide a statement from its creator(s) and a revised version taking into account the Prosecution’s objections. The Prosecution was ordered to state whether, after the revised version was tendered, it continued to object to its admission. The Sabra Defence now files a revised version of exhibit 5D171 MFI³—which depicts 63 call records on 14 February 2005 involving Mr Ben-Jeddo’s mobile—and an Internal Memorandum explaining the methodology used in its production. The Prosecution continues to object in its response, to which the Sabra Defence has replied.⁴

SUBMISSIONS

Sabra motion

3. The Trial Chamber’s order was followed. Exhibit 5D171 was revised to remove duplicate rows and an explanation of the methodology used in its production—as an Internal

¹ STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*, transcript of 10 July 2015, pp. 7-10, 12-13, 21.

² F2720, Redacted Amended Consolidated Indictment, 12 July 2016, paras 3 (c), 4-5, 14-15 (e), 18, 19 (d).

³ The revised version of Exhibit 5D171 MFI was re-filed with a new ERN 1DT5-13447-1DT5-13448.

⁴ See F3548, Decision on Sabra Defence Motion to Admit into Evidence Exhibits 5D171, 5D284 and 5D286 Marked for Identification, 2 February 2018, paras 2-3, 18, 20, disposition; F3551, Provision of Revised Exhibit 5D171 Marked for Identification, 5 February 2018 (public with confidential annex A) (‘Sabra motion’); F3556, Prosecution Response to the Sabra Defence ‘Provision of Revised 5D171 Marked for Identification’, 6 February 2018 (confidential) (‘Prosecution response’); F3570, Reply to “Prosecution Response to the Sabra Defence ‘Provision of Revised 5D171 Marked for Identification’”, 13 February 2018 (confidential) (‘Sabra reply’).

Memorandum by the exhibit's creator—was disclosed. The Internal Memorandum is not a witness statement and is not being tendered into evidence.⁵

Prosecution response

4. The motion and the Internal Memorandum contradict each other. The motion implies that corrections were made on the original exhibit, but the Internal Memorandum has no description of the methodology for the creation of the original exhibit and the subsequent amendments. If the exhibit was created anew—as the Internal Memorandum implies—then no clear description is provided for the adoption of the earlier call sequence table, the review process, the removal of duplicates, or a comparison between the original and amended exhibit to assess whether all duplicates were removed. The creator's methodology is unclear and she must testify on the amended exhibit's provenance.⁶

5. Further, the Internal Memorandum is not a proper witness statement and therefore fails to comply with the Trial Chamber's order. It should be re-drafted as a statement that complies with the Rule 155 Practice Direction.⁷

6. Revised exhibit 5D171 MFI is inadmissible until its creator's qualifications and the inconsistencies and irregularities in the methodology have been tested in court. To verify reliability, a statement and testimony from the creator of an internally created document containing manipulated data is required. The creator of the revised exhibit also created 16 other call sequence tables tendered by the Sabra Defence—more than Prosecution analysts Mr Christian Carnus (Witness PRH377) and Mr Lachlan Christie (Witness PRH313) combined.⁸

Sabra reply

7. The Defence motion states that the revised version of exhibit 5D171 MFI—and not the original version—was amended to remove duplicate rows. Read in conjunction with the Internal Memorandum, it refers to the filtering process which eliminated duplicates and should not be interpreted as stating that modifications were applied directly on the originally

⁵ Sabra motion, paras 1-2; fns 2, 4.

⁶ Prosecution response, paras 3-7.

⁷ Prosecution response, para. 8. 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.

⁸ Prosecution response, paras 2, 9-14.

tendered exhibit 5D171 MFI. It also establishes that the revised exhibit was completed on 2 February 2018, further indicating that the revised version was created anew.⁹

8. The Internal Memorandum allows the Parties to verify—for reliability purposes—whether the revised exhibit accurately reflects the underlying call data records. Despite its continued objections, the Prosecution has not identified contradictions between the original or revised exhibit and the call data records. Consequently, it is unnecessary to re-submit material in support of the *prima facie* reliability of revised exhibit 5D171 MFI.¹⁰

DISCUSSION AND DECISION

9. The Trial Chamber has previously considered Prosecution objections to Defence call sequence tables when they have been tendered with internal memoranda explaining their production methodology. It has held that such memoranda are ‘sufficient to admit Defence call sequence tables, provided that they contain the information necessary for the Prosecution to verify their accuracy.’¹¹ Therefore, such memoranda need not be a ‘statement’ pursuant to the Rule 155 Practice Direction¹² as long as the relevant exhibit’s accuracy can be verified.

10. The Prosecution has not submitted that it is unable to verify the accuracy of the tendered call sequence table with the Internal Memorandum’s information. Further, the Prosecution has not identified any further duplicates or deficiencies in the revised exhibit. It does not submit that it inaccurately represents the underlying call data records. Absent any arguments in this respect, the Trial Chamber has no reason to doubt the table’s accuracy.

11. Since the revised exhibit 5D171 MFI was created anew—as submitted by the Sabra Defence¹³—it appears that the call sequence table of ‘an earlier person’ was not ‘adopted’ as submitted by the Prosecution, and the Internal Memorandum contains information on the

⁹ Sabra reply, paras 2-4. The Sabra Defence also states although the original version of exhibit 5D171 MFI was used during Mr Ben Jeddo’s testimony, replacing it with the revised version will not affect the understanding of his testimony as the calls in the original exhibit were identified to the witness by features such as the calling party, the start time and the duration: Sabra reply, para. 5.

¹⁰ Sabra reply, paras 6-8.

¹¹ F3614, Decision Partly Granting Seventh Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – The ‘Mohammed’ Story, 3 April 2018, para. 78.

¹² See F3463, Decision Admitting into Evidence Call Sequence Tables Tendered by the Ayyash and Merhi Defence – Exhibits 1D453, 3D431, 3D433, 3D436 and 3D437 Marked for Identification, 7 December 2017, para. 13.

¹³ Sabra motion, para. 13.

filtering and removal of duplicates.¹⁴ In these circumstances, the Trial Chamber sees no need for the creator of revised exhibit 5D171 MFI to be called to testify.

12. The revised exhibit 5D171 MFI is *prima facie* reliable and its relevance is not challenged. The Trial Chamber will admit it into evidence.

CONFIDENTIALITY

13. Annex A of the Sabra Defence motion is classified confidential, but no reasons for this were given. The Prosecution's response was also confidentially filed without reasons. The Sabra Defence's reply was filed confidential corresponding to the Prosecution's classification of its response, but the Defence does not object to its reclassification.¹⁵

14. Proceedings before the Special Tribunal are public in nature. Wherever possible, filings should be public, unless a different classification is justified. Accordingly, the Sabra Defence's reply should be reclassified from confidential to public. The Prosecution's response references annex A of the Sabra motion—which is confidentially classified—numerous times. The Sabra Defence, however, has not stated whether it wishes to maintain its confidential status or why. It is ordered to do so. The Prosecution is also ordered to clarify the classification of its response, in light of the Sabra Defence's submissions.

DISPOSITION

FOR THESE REASONS, the Trial Chamber:

ORDERS the admission into evidence of exhibit 5D171 marked for identification;

ORDERS the Sabra Defence to clarify the classification of annex A to its motion; and

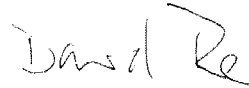
ORDERS the Prosecution to clarify the classification of its response in light of the Sabra Defence's submissions.

¹⁴ See Sabra motion, annex A, paras 17, 21, 25.

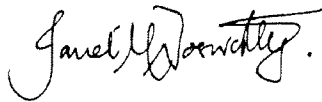
¹⁵ Sabra reply, fn. 6.

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

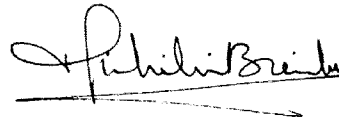
Leidschendam,
The Netherlands
11 May 2018



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

