



U.S. Department of Justice

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Southern District of New York

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September 9, 2019

BY ECF, EMAIL and HAND DELIVERY

Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Aljermiah Mack et al.*, S11 18 Cr. 834 (PAE)

Dear Judge Engelmayer:

The Government respectfully submits this letter to address certain issues raised on September 4, 2019 at the final pretrial conference in the above captioned matter.

First, following the Court's directive at the final pretrial conference, the Government has worked to significantly scale back the amount of audio and portions of transcripts that it seeks to admit at trial. Previously, on August 29, 2019, the Government provided the Court with draft transcripts reflecting audio communications that it intended to introduce at trial, numbered GX 300-T through GX 323-T. Accompanying this letter are highlighted versions of those same transcripts (the "Transcripts")¹, which were provided to defense counsel on September 5, 2019. The highlighted portions are the sections that the Government intends to offer at trial.² Moreover, the Government no longer intends to offer the audio or accompanying transcripts for the following calls: 309-T, 318-T, and 322-T. Counsel for Mack has no objections to the accuracy of the Transcripts. As of the time of this letter, however, counsel for Mack has informed the Government that they have not been able to complete their review of the Transcripts with Mack for purposes of determining what portion of the Transcripts should be admitted into evidence at trial. Counsel for defendant Mack has advised that they will update the Court before 5:00 PM today to notify the Court which portions of the Transcripts are still in dispute as to their admissibility at trial. The

¹ To be clear, hereinafter, when the Government refers to the Transcripts, only the highlighted portions are being referenced.

² The Government would either redact or omit, noting the time lapse in the Transcripts, the portions that it does not seek to offer. The Government does not have a preference as to whether the Transcripts are redacted or certain portions are simply omitted (noting the time lapse in the Transcripts).

Government will do its best to address, in writing, the portions of any Transcripts that are disputed, as to admissibility, before the conference on Tuesday morning.³

Second, the Government is seeking to admit the Transcripts as exhibits at trial. Based on conversations with defense counsel, defense counsel objects to this request and believes that the Transcripts should only be received as an aid to the jury. The Government respectfully submits that admission of the Transcripts would greatly facilitate the efficiency of direct and cross-examinations because the party conducting the examination can direct the witness' attention to portions of the Transcript, as opposed to playing (or replaying) portions of the audio. Given that there is no dispute as to the accuracy of the Transcripts, allowing the parties to directly point the testifying witness to the relevant portion of the Transcript and ask questions, without having to replay the audio in each instance, will save a tremendous amount of time. For these reasons, the Government believes the Transcripts should be admitted into evidence as exhibits, and not simply offered as aids to the jury.

Third, the Government intends to offer a summary chart of certain Instagram direct messages from an Instagram account used by Mack (the "Summary Chart"). A copy of the Summary Chart is included with this letter. After reviewing the Summary Chart, counsel for defendant Mack has informed the Government that they do not dispute the accuracy of the Summary Chart; however, counsel for Mack does not believe the Summary Chart should be admitted at trial and that, instead, if the Court allows these direct messages into evidence, the Government should admit the PDF pages from the Instagram return. The Government submits that the Summary Chart should be admitted under Rule 1006 because (1) the parties agree that the Summary Chart accurately reflects the underlying Instagram records; (2) the underlying Instagram records are voluminous; and (3) the underlying Instagram records are not easy to read. Indeed, several metadata fields accompany each message, and there are occasions in which a direct message conversation is interrupted by other messages contained in the Instagram return.

The Government respectfully submits that each conversation in the Summary Chart reflects admissions by Mack about his own status, membership, and participation in Nine Trey, the status of other Nine Trey members, and/or the robbery of Roland Martin on April 13, 2018. Moreover, the Government intends to introduce evidence at trial that the users of the following Instagram accounts are members of Nine Trey: billyeyez93 (a member of Nine Trey with the alias "Snake Eyes"), numbba_93 (a member of Nine Trey with the alias "Flip BodyBags" or "Flip"), and riot_rell (a member of Nine Trey with the alias "Riot"). Among other evidence, CW-2 knows these three individuals and has received direct Instagram messages from these three accounts in which each individual identifies himself to CW-2 with his respective alias ("Snake Eyes," "Flip BodyBags," and "Riot," respectively). CW-1 will also testify that he knows Snake Eyes to be a high-ranking member of Nine Trey, and that Snake Eyes was considered a shooter in the gang. Accordingly, in addition to being admissions by Mack, the direct messages in the Summary Chart between these three individuals also constitute co-conspirator statements.

³ As of the time of this letter, the Government has not received any comments from counsel for Ellison regarding the Transcripts.

The direct messages between Mack and billyeyez93 begin on April 14, 2018 (the day after Mack's robbery of Roland Martin). The messages start, on the first page of the Summary Chart, with Mack telling billyeyez93 about his robbery of Martin, and then, based on the messages, it appears that Mack met with billyeyez93 later the same evening. The next seven pages, spanning between April 18, 2018 and April 21, 2018 (pages 2 through 8), of direct messages in the Summary Chart reflect the ramifications of Mack's robbery of Martin on Mack's status in Nine Trey. For example, at the top of page 2, Mack asks billyeyez93: "wat Goo said" and billyeyez93 responds "[f]uck n***** you the bloody as long as I say it" and then approximately 20 seconds later: "He going with frank white but talk to him he want to talk to you." CW-1 and CW-2 will both testify that "Goo" (or "Magoo") and "Frank White" were the respective leaders of Nine Trey in the Prison Lineup. The conversation that follows⁴ between Mack and Snake Eyes discusses Mack's status in the gang after his robbery of Martin, Mack's displeasure that Snake Eyes appears to be siding with Magoo's and Frank White's decision that Mack is no longer Nine Trey ("[t]hey talking you not with the fam"),⁵ and Mack's and Snake Eyes' detailed discussions about what they have, and have not, done for the gang in the past and who between the two of them has more status within the gang.

Most of the messages between Mack and numbba_93 on pages 9 and 10 of the Summary Chart are about CW-1. Mack sends numbba_93 a picture containing a screenshot of a case caption with CW-1's government name. Mack and numbba_93 then discuss that CW-1 might be cooperating with law enforcement, and disparage CW-1's history and status within Nine Trey. (Similarly, the messages between Mack and riot_rell on page 12 of the Summary Chart are also concerning CW-1.) The last conversation between Mack and numbba_93, on page 11 of the Summary Chart, reflects Mack's understanding of his current status in Nine Trey after the robbery of Martin: "So as of now I'm not Family according to do higher ups" and "Goo said it too." With the exception of messages between Mack and the user with the name "ms.tr3yway," the remaining direct messages between Mack and others in the Summary Chart discuss the details of his robbery of Martin, and the effect the robbery had on Mack's status in Nine Trey.⁶

For the foregoing reasons, the Government submits that the Summary Chart is accurate, which defense counsel does not dispute, and that the Summary Chart would be helpful to the jury in its consideration of the voluminous Instagram records. Moreover, all the direct messages on the Summary Chart reflect either co-conspirator statements or admissions by Mack regarding the crimes he committed.

⁴ With the exception of the message from Snake Eyes to Mack at the bottom of page 2: "U still got that food I got a spank for you." This appears to be a reference to Snake Eyes believing that Mack had heroin available for sale, and that Snake Eyes had a potential customer for Mack. CW-1 will testify that "food" or "dog food" is a common reference to heroin.

⁵ Page 2 of the Summary Chart.

⁶ With respect to the direct messages between Mack and ms.tr3yway on page 17 of the Summary Chart, Ms.tr3yway tells Mack: "They sayin shottie bigger than Melle" and Mack responds: "his bitxh ass as da 1st one to hall ass when I was at Mel" and "Dat n***** try a be me." CW-1 will testify about how Mack shot at Jamel Jones ("Mel Murda" or "Melle") in an attempt to murder Jones, which appears to be the shooting that Mack is referencing here.

Fourth, the Government intends to offer several exhibits – including iMessage chats, text messages, videos and photographs – that were extracted from Anthony Ellison’s cellular telephone. CW-2 will testify that CW-2 was a participant in a months-long, multi-participant iMessage chat, in which several Nine Trey members were participants. The iMessage chat contains more than 13,000 messages. The Government intends to introduce certain portions from that large chat message. In addition, the Government seeks to introduce: (1) an iMessage chat between Ellison and CW-2; (2) certain text message exchanges between Jamel Jones, a/k/a “Mel Murda,” and Ellison; (3) certain iMessage chats between Ellison and a family member and associate of Nine Trey, who provided information to Ellison about CW-2 and other Nine Trey members; and (4) an iMessage chats between Ellison and others surrounding the events of the July 22, 2018 kidnapping and robbery of CW-2.

In addition, the Government seeks to introduce portions of an iMessage chat between Ellison and a testifying Witness (“Witness-1”) before and after the slashing charged in Count Five, as well as an extraction from Ellison’s phone detailing all of the activity (messages, videos, locations, etc.) from Ellison’s phone in the hours prior to and after the slashing.⁷

A. iMessage Group Chats

The Government respectfully submits that the iMessage group chat, in which several members of Nine Trey were participants in the chat, should be admitted both as co-conspirator statements pursuant to Fed. R. Evid. 801(d)(2)(e) and as party opponent admissions pursuant to Fed. R. Evid. 801(d)(2)(a).

1. GX 800A

The Government expects CW-2 will testify that beginning in early 2018, Ellison and Kifano Jordan, a/k/a “Shotti,” a high-ranking member of Nine Trey, began to fight about, among other things, Nine Trey’s role as it related to CW-2. For example, CW-2 would testify that Jordan’s view was that Nine Trey should respond to any form of disrespect, no matter how slight, in a physical and public way. Ellison viewed Jordan’s approach as being akin to using Nine Trey to settle social media disputes. CW-2 would testify that Ellison preferred to respond to any perceived slights with violence, but there was no reason to publicize it – i.e., word would get out about what happened to those who disrespected Nine Trey.

2. GX 800B

Similar to GX 800A, in GX 800B, CW-2 tells the group that they have to “run down On casonova [sic] when I get back.” The Government expects CW-2 will testify that this has to do with the rap artist known as Casanova releasing a song called “Set Trippin,” which had lyrics that were derogatory of CW-2. Another member of Nine Trey, “Seqo,” questioned CW-2’s call to

⁷ Because these messages contain identifying information of witnesses and others not on trial, the Government is not filing these messages on the docket; rather, the Government will submit copies of these messages to the Court and to defense counsel.

action, as it would put members of Nine Trey at risk. As support for this, Seqo relayed that a message – or “kite” – was sent out saying that if any “apes” – a rival Bloods set – came across CW-2, they were to “fire on” CW-2. Ellison responded, in essence, that he did not worry about the “kite” because Nine Trey was a much larger gang than the “apes” and had a presence “world wide,” while the “apes” were only in New York City.

3. GX 800D

The Government expects CW-2 will testify that in March 2018, CW-2 was at the South by Southwest music festival in Texas. While there, CW-2 got into more than one dispute with rappers and promoters based in Houston, Texas. Ellison, who was not with CW-2 at the time, admonished CW-2 for allowing himself to be “violated.” This admonishment devolved into a lengthy back and forth among CW-2, Ellison, and other members of Nine Trey. This message is probative because (1) it corroborates CW-2’s anticipated testimony about the break between CW-2 and Ellison and (2) Ellison repeatedly questions CW-2’s bona fides as a Nine Trey member.

B. iMessage Chat between Ellison and CW-2

The Government respectfully submits that the iMessage chat between Ellison and CW-2 should be admitted as co-conspirator statements pursuant to Rule 801(d)(2)(e), or in the alternative, as a party opponent admission pursuant to Rule 801(d)(2)(a).

1. GX 800E

CW-2 and Ellison continued their back and forth in GX 800 D in a separate chat. Ellison accused CW-2 of stranding Ellison and others in Texas, after Ellison had flown to Texas to meet with CW-2. CW-2 referenced that Ellison had threatened CW-2’s friends, who were not Nine Trey members.

C. Text Message between Ellison and Jamel Jones, a/k/a “Mel Murda”

The Government respectfully submits that the text messages between Ellison and Jones, the Godfather of the Street Lineup, should be admitted as co-conspirator statements pursuant to Rule 801(d)(2)(e), or in the alternative, as a party opponent admissions pursuant to Rule 801(d)(2)(a).⁸

1. GX 800C

The Government expects CW-2 to testify that one of his roles in Nine Trey was to make money for the gang and to distribute that money among Nine Trey members. In the first series of messages, Jones asks Ellison whether they are going to “make some type of bread off this trip or

⁸ The Government extracted the entirety of the text messages exchanges between Ellison and Jones. The messages that are inside of the red boxes are messages the Government proposes redacting.

whit Billy?” The Government intends to argue that Jones is referencing making money from CW-2.

In a message dated February 18, Jones writes, in part, that “as far as checking in we dont do tht we got love for the west but we gangstas every where 9Trey Gangstas.” This message is highly probative for several reasons. First, it is an acknowledgement by the Godfather of Nine Trey that he and Ellison are members of Nine Trey. Second, Jones mentions the practice of “checking in” and that as Nine Trey members, they do not check in. The Government expects CW-2 will testify that the practice of “checking in” was done when a rapper from one city was performing in another city. For example, if CW-2 – a New York rap artist – was performing in Los Angeles, then CW-2 and would have to “check-in” with the requisite Bloods or Crips set in Los Angeles after CW-2’s arrival. Checking in could mean several things, including making payments to the host gang or allowing a local rap artist managed by the host gang to perform with the visiting artist.

On or about March 4, 2018, Jones and Ellison exchanged messages concerning how money should not come between them. The Government expects CW-2 will testify that around this time, a dispute arose because Ellison was not distributing money that CW-2 gave Ellison to other members of Nine Trey. This dispute was part of the reason why Ellison no longer traveled with CW-2, and was one of the reasons that led to Ellison’s robbery and kidnapping of CW-2.

Finally, on March 17, Jones and Ellison exchange several messages, in which Jones is asking why no one is answering his calls, and mentions “ro,” which the Government understands is a reference to Roland Martin, a/k/a “Ro Murda,” another high-ranking member of Nine Trey. These messages are probative because they occur around the time that CW-2 and Ellison split, and they also corroborate that Martin, Jones, Ellison, and CW-2 were members of Nine Trey.

D. iMessage Chat between Ellison and Female-1

The Government respectfully submits that the text messages between Ellison and Female-1, who CW-2 will testify is the same person with the Instagram handle ms.tr3way (discussed above), should be admitted as co-conspirator statements pursuant to Rule 801(d)(2)(e), or in the alternative, as a party opponent admissions pursuant to Rule 801(d)(2)(a).

The Government expects that CW-2 will testify that Female-1 was related to a Nine Trey member, whose family residence was a common meeting area for members of Nine Trey. The messages in these chats show that Female-1 provided information to Ellison about the whereabouts and status of other Nine Trey members, and appears to be one of the first people to whom Ellison contacted after the kidnapping and robbery of CW-2.

1. GX 800F

In this chat, Female-1 informed Ellison that “black boy” wanted Ellison to call him. The Government expects CW-2 will testify that “black boy” is a reference to Mack. Later in the message, on July 17, Ellison asked Female-1 whether “Bix came back?” This message is probative

because it is sent days before the kidnapping and robbery and appears to be Ellison seeking information on CW-2's whereabouts.

2. GX 800G

At 5:32 a.m. on July 22, 2018 – very shortly after the kidnapping and robbery – Ellison messaged Female-1 to “hit me ASAP.” The next day, Female-1 sent Ellison several pictures of articles about the kidnapping and robbery of CW-2 (marked as GX 800G1, 800G2, and 800G3). Later Female-1 messaged Ellison that “snow askin for the black boy,” which is a reference to another Nine Trey member who was asking for Mack. This message is probative because it shows that Ellison reached out to Female-1 almost immediately after the robbery and kidnapping, that Female-1 sent Ellison media reports about the kidnapping and robbery. Finally, the messages about Snow and Mack are probative of the fact that Female-1 is connected to several members of Nine Trey.

3. GX 800M

Later in the day on July 22, 2018, Female-1 and Ellison exchanged several messages that included screenshots of Instagram posts depicting Kifano Jordan, a/k/a “Shotti,” from Snow's Instagram account. In addition, Female-1 sent Ellison a series of three videos of what appear to be surveillance cameras outside Female-1's family residence showing a black Mercedes Benz that was parked outside the house and then drove away. The Government expects CW-2 will testify that after the kidnapping and robbery, Jordan and others went looking for Ellison in Jordan's black Mercedes Benz. Again, these messages confirm that Female-1 was providing Ellison with information related to the aftermath of the kidnapping and robbery.

E. iMessage Chat between Ellison and Individual-1

In its decision read at the September 4, 2019 conference, the Court ruled that this chat was admissible. (*See* September 4, 2019 Tr. at 41–42.)

1. GX 800H

The Government seeks to introduce this message, which appears to show Individual-1 and Ellison discussing a firearm prior to the kidnapping and robbery. After the robbery, Individual-1 sends Ellison a video of a firearm, in which Individual-1 can be heard saying, in sum and substance, that the gun was not working. Finally, in the days after the robbery, Individual-1 appears to be telling Ellison that Individual-1 was interested in buying some of the jewelry stolen by Ellison. For example, Individual-1 told Ellison that if Ellison was “trynna let something go,” then Individual-1 would “spend some money for something.” Additionally, Individual-1 told Ellison to sell Individual-1 “the bitch with the red face.” The Government intends to argue that this is a reference either to one of CW-2's pendants, which was the character Jigsaw from the “Saw” movie franchise, or to CW-2's watch, which had a red face.

2. GX 800N

Similar to exchange in GX 800H, approximately 10 days after the robbery, Individual-1 and Ellison continued exchanging messages in which Individual-1 expressed interest in buying what the Government believes is some of CW-2's jewelry from Ellison.

F. iMessage Chat between Ellison and Individual-2

The Government respectfully submits that the iMessage chat between Ellison and Individual-2 should be admitted as a party opponent admission pursuant to Rule 801(d)(2)(a).

1. GX 800L

In September 2018, Ellison exchanged messages with Individual-2 in what appears to be Individual-2's inquiries to Ellison about purchasing jewelry. The Government intends to argue that Ellison was still trying to sell the jewelry that he stole from CW-2.

G. iMessage Chat between Witness-1 and Ellison

The Government respectfully submits that the iMessage chat between Ellison and Witness-1 should be admitted as a party opponent admission pursuant to Rule 801(d)(2)(a).

1. GX 800I

This is a chat between Ellison and Witness-1 prior to and after the October 24, 2018 slashing charged in Count Five. The chat, which will be introduced through Witness-1's testimony, corroborates Witness-1's account of Witness-1's and Ellison's whereabouts on the evening of October 24.

H. Timeline from Phone Extraction

The Government respectfully submits that the information contained in the phone extraction set forth in GX 800J should be admitted as a party opponent admissions and as information to provide context to those admissions.

Respectfully submitted,

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cc: All counsel of record (by Email and ECF)