

## [United States v. Johnson](#)

United States District Court for the District of Maryland  
November 21, 2017, Decided; November 22, 2017, Filed  
CRIMINAL NO. JKB-16-0363

### Reporter

280 F. Supp. 3d 772 \*; 2017 U.S. Dist. LEXIS 193235 \*\*

THE UNITED STATES OF AMERICA, v. GERALD JOHNSON, et al., Defendants.

For Kenneth Faison, also known as Roscoe, Defendant: Richard B Bardos, LEAD ATTORNEY, Schulman, Hershfield and Gilden PA, Baltimore, MD.

**Prior History:** [United States v. Johnson, 272 F. Supp. 3d 728, 2017 U.S. Dist. LEXIS 156324 \(D. Md., Sept. 25, 2017\)](#)

For Joseph <sup>[\*\*2]</sup> Laurence Bonds, also known as Joe also known as Yo Gotti, Defendant: Gerald C Ruter, LEAD ATTORNEY, Law Office of Gerald C Ruter PC, Baltimore, MD.

**Counsel:** <sup>[\*\*1]</sup> For Gerald Thomas Johnson, also known as Geezy also known as Gzy Tha Prince, Defendant: Jeffrey Brian O Toole, LEAD ATTORNEY, Bonner Kiernan Trebach & Crociata, Washington, DC; William C Brennan, Jr, LEAD ATTORNEY, Brennan McKenna Manzi Shay, Chartered, Greenbelt, MD; Paul F Enzinna, Ellerman Enzinna PLLC, Washington, DC.

For Norman Tyrone Handy, also known as Lil Norm also known as Norm, Defendant: Ryan L Burke, LEAD ATTORNEY, Burke/Jaskot, Baltimore, MD.

For Marquise McCants, also known as Digga, Defendant: John R Francomano, III, LEAD ATTORNEY, Francomano and Francomano PA, Towson, MD.

For Wesley Jamal Brown, also known as Shike White also known as Wes also known as West Coast also known as Coasta, Defendant: Harry J Trainor, Jr, LEAD ATTORNEY, Trainor Billman Bennett and Milko LLP, Annapolis, MD; Christopher Michael Davis, Davis and Davis, Washington, DC.

For USA, Plaintiff: Peter J Martinez, LEAD ATTORNEY, Office of the United States Attorney, Baltimore, MD; Christina A Hoffman, U.S. Attorney's Office, District of Maryland, Baltimore, MD.

For David Albert Hunter, also known as Lil Dave also known as Dave, Defendant: Michael Edward Lawlor, LEAD ATTORNEY, Nicholas G Madiou, Lawlor and Englert LLC, Greenbelt, MD.

**Judges:** James K. Bredar, Chief United States District Judge.

For Montel Harvey, also known as Telly also known as Telephone also known as Big Head, Defendant: William Lawrence Welch, III, Baltimore, MD.

**Opinion by:** James K. Bredar

For Kenneth Jones, also known as K-Slay also known as Slay, Defendant: Alan R L Bussard, LEAD ATTORNEY, Law Office of Alan R L Bussard, Towson, MD.

## Opinion

[\*773] **MEMORANDUM AND ORDER**

The Court previously denied Defendant Gerald Johnson's Motion in Limine to Exclude Rap Videos and Lyrics (ECF No. 336). In its order denying the motion, the Court instructed the Government to edit the videos so that only those portions in which Defendant Johnson is the primary speaker/lyricist remain. The Court, however, left open the possibility that the Government could seek to admit at trial the entire video titled "Welcome Home Gzy pt. 1," if it was able to establish a sufficient foundation to show that [\*\*3] the video, as a whole, was adopted and/or authored by Defendant Johnson such that the video itself qualified as his statement. Now pending before the Court is the Government's attempt to do just that. (ECF No. 400, Government's Motion In Limine To Admit "Welcome Home Gzy" Rap Video In Its Entirety At Trial). The issues have been briefed (ECF Nos. 400 & 401), and no hearing is required, [Local Rule 105.6](#) (D. Md. 2016). For the reasons explained below, the Government's motion will be DENIED.

The Government contends that the video is admissible in its entirety under [Federal Rule of Evidence 801\(d\)\(2\)\(B\)](#), which provides that an out of court statement is admissible against an opposing party if it is "one the party manifested that it adopted or believed to be true." This rule is often invoked to show that a party adopted a statement of another through his silence. See, e.g., [United States v. Robinson, 275 F.3d 371, 383 \(4th Cir. 2001\)](#) ("When a statement is offered as an adoptive admission, the primary inquiry is whether the statement was such that, under the circumstances, an innocent defendant would normally be induced to respond, and whether there are sufficient foundational facts from which the jury could infer that the defendant heard, understood, and acquiesced in the statement."). Here, however, [\*\*4] the Government contends that Defendant Johnson "adopted all of the statements in the video as his own" when he posted the video on an Instagram account allegedly belonging to him, along with the comment, "Tha video up nicca! they welcomed me home like it was 88 [emojis]. Real luv never fails . . . ." (ECF No. 400.) The Government provides no support for its expansive interpretation of [Rule 801\(d\)\(2\)\(B\)](#).

The Government's theory is untenable. Every day millions of individuals post the statements of others—in video, audio, and written form—to their own social media accounts. One need not look far to find examples where such actions do not constitute an endorsement of the statement, let alone a full-fledged adoption of the statement sufficient to justify its admission at trial against the individual who posted it. The Government

makes no attempt to provide any principled basis on which the Court could or should distinguish this video from the countless others posted every day to social media that cannot reasonably be attributed as the statement of the poster. Nor is there any indication from the message allegedly posted by Defendant Johnson that he authored or adopted the video as a whole—including its [\*\*5] production, effects, and the statements of others. In short, the Court is not convinced that Defendant Johnson adopted the video as a whole as his statement merely because he posted it to his Instagram account.

For the foregoing reasons, the Government's motion in limine (ECF No. 400) is DENIED.

DATED this 21st day of November, 2017.

BY THE COURT:

/s/ James K. Bredar

Chief Judge

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