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SCSL-03-01-T
(26569-26587)

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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

Before: Justice Richard Lussick, Presiding
Justice Teresa Doherty
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate

Acting Registrar: Ms. Binta Mansaray

Date: 23 November 2009

Case No.: SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE
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THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE RESPONSE TO THE PUBLIC PROSECUTION MOTION IN RELATION TO THE APPLICABLE LEGAL STANDARDS GOVERNING THE USE AND ADMISSION OF DOCUMENTS BY THE PROSECUTION DURING CROSS-EXAMINATION

Office of the Prosecutor:
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Ms. Nina Jørgensen
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Mr. Courtenay Griffiths Q.C.
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Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. This is the Defence Response to the "Public Prosecution Motion in Relation to the Applicable Legal Standards Governing the Use and Admission of Documents by the Prosecution during Cross-Examination", filed on 17 November 2009.[1] The Defence files this response in accordance with the Trial Chamber's Order for expedited filing on 12 November 2009.[2]
2. In the Motion, the Prosecution avers that it has outlined the well-established principles relating to the use and tendering of "fresh evidence" during cross-examination of the Accused and Defence witnesses within international criminal procedure.[3] The relief sought by the Prosecution is: (1) an acceptance by the Court that it is legitimate for the Prosecution to deliberately not disclose evidence upon which it seeks to rely during the currency of its case in order to deploy it in cross-examination of an Accused, the objective of such behaviour being to "maintain the element of surprise"[4] and (2) once so deployed that such evidence can be tendered and exhibited in evidence.
3. The Defence submits that the principles relating to the use and tendering of new documents are clear, and that consequently the Prosecution's request for "guidelines" is unnecessary. In reality it is submitted that the Prosecution seek a general licence from the Court to ambush the Accused.
4. The Prosecution was ordered to file a motion justifying "the presentation of this fresh evidence at this late stage"[5]. The Prosecution have not addressed the query raised by the Learned President of the Court in argument on 11 November 2009[6] by seeking to justify the admission of any specific new document. Instead, the Prosecution seeks to postpone the inevitable and necessary argument over the admissibility of individual

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[1] *Prosecutor v. Taylor*, SCSL-03-01-T-860, "Public Prosecution Motion in Relation to the Applicable Legal Standards Governing the Use and Admission of Documents by the Prosecution during Cross-Examination", 17 November 2009 ("**Motion**").
[2] *Prosecutor v. Taylor*, Transcript, 12 November 2009, page: 31637.
[3] *Motion*, para. 1.
[4] *Motion*, paras 24 and 31.
[5] Transcript 12 November 2009 page: 31636 lines 15 – 17.
[6] Transcript 11 November 2009 page: 31619 lines 10 – 14.

documents for future oral hearings. This was precisely the outcome which the Trial Chamber's order for written motions was aimed at preventing.

5. Further, and *a fortiori* the guidelines which are suggested and requested by the Prosecution would fundamentally undermine the Accused's rights under Article 17 of the Statute of the Special Court for Sierra Leone to be informed promptly and in detail of the nature and cause of the charges against him; as well as, the fairness of the trial as a whole. This request by the Prosecution, particularly when combined with its earlier, now refused, application to deny the Accused access to his lawyers during the course of his cross-examination, discloses a sinister strategy on the part of the Prosecution to substantially derogate from the fair-trial guarantees enshrined in Article 17 of the Statute.
6. For all the foregoing reasons, the *Motion* should be dismissed.

II. BACKGROUND AND PROCEDURAL HISTORY

7. The Prosecution first signed the Indictment against the Accused on 7 March 2003 and subsequently unsealed it on 4 June 2003. The Prosecution delivered its opening statement on 4 June 2007, and thereafter took some thirteen months to present its case. Therefore, the Prosecution has had over six years between the signing of the Indictment and the opening of the defence case on 13 July 2009 to consider its case, investigate and prepare relevant and probative material. Likewise, the Prosecution has had every opportunity to admit the documents referred to by its witnesses. The Prosecution used the provisions of Rule 92*bis* extensively to place documents in front of the Trial Chamber during that time. There was, therefore, ample opportunity for the Prosecution to present, during the currency of its case, all material relevant to the Accused's guilt and his credibility.
8. The Defence filed its Pre-Trial Brief on 26 April 2007; thereafter the Defence served summaries of the anticipated evidence of the Accused and his witnesses on 29 May 2009 and, finally on 13 July 2009, the Defence made an opening statement before the Court which outlined its case.[7]

[7] *Prosecutor v. Taylor*, Transcript, 13 July 2009.

9. During the course of cross-examination on 11 November 2009, the Prosecution sought to introduce new materials, including the Lomé Peace Accord of 1999, and did so without prior warning to either the Trial Chamber or the Defence.[8] This was followed by an intervention by the Presiding Judge, subsequent to which the Court ordered that the Prosecution "justify the presentation of this fresh evidence at this late stage by filing submissions by way of formal motion."[9]

III. APPLICABLE RULES AND LEGAL SUBMISSIONS

A. The Prosecution's Presentation of Its Evidence

10. The Special Court for Sierra Leone's Rules of Procedure and Evidence, Rule 85(A)(1) obliges the Prosecution to present the evidence supporting its case before the start of the defence case.[10] All matters probative of the Defendant's guilt should be adduced as part of the Prosecution case;[11] indeed, the Prosecution should have adduced "all evidence critical to the guilt of the Accused so as to establish his guilt at the close of the case".[12] This rule ensures that there will be "a point where accusation ends and answering the allegations begins".[13]
11. This general rule is rigid for a good reason. The Accused is entitled to the fundamental right, enshrined in Article 17 of the Statute, which affords the Accused the presumption of innocence. It is the Prosecution that must prove the guilt of the Accused, and the Accused who must be granted the right to know the case against him.[14] Furthermore, the Accused has the right not to testify, as the burden of proof rests squarely and solely on the Prosecution. Thus the Prosecution cannot plan a trial strategy based on the assumption that an Accused will give evidence. Had the Accused chosen not to give evidence, what use could the Prosecution have made of

[8] *Prosecutor v. Taylor*, Transcript, 11 November 2009, pages: 31618-31619.
[9] *Prosecutor v. Taylor*, Transcript, 12 November 2009, page: 31637.
[10] The Special Court of Sierra Leone, Rules of Evidence and Procedure, ("**Rules**"), Rule 85(A)(1).
[11] *Prosecutor v. Delalić* et al., "Decision on the Prosecution's Alternative Request to Reopen the Prosecution's Case", 19 August 1998, para. 18 ("**Delalić Decision**").
[12] *Delalić Decision*, para. 20.
[13] *Delalić Decision*, para. 20.
[14] Statute of the Special Court for Sierra Leone, Art. 17(3) ("**Statute**"); *Delalić Decision*, para. 20.

this new material without either requesting the Court to hear fresh evidence or without applying to reopen its case?

12. In this regard, it is to be noted *passim* that the material sought to be introduced by the Prosecution is not "fresh evidence". That phrase is a term of art and refers to material that was not available to the Prosecution during its case-in-chief: that is material which has become available to the Prosecution after the close of its case-in-chief that would not have been found with the exercise of reasonable diligence before the close of the Prosecution's case-in-chief.[15] In contrast in the current situation, the material sought to be deployed is material which was available during the currency of the Prosecution case but which has been deliberately kept up the Prosecution's sleeve in order to deny the Accused an opportunity to give the material considered thought and seek legal advice thereon, if necessary.

13. While the Trial Chamber may permit evidence to be presented outside the sequence provided by the Rules, where it is in the interests of justice to do so, case-law has time and again held that such permission should be given only in exceptional circumstances.[16] Amending the Rules that protect the Accused's fair trial rights must be for a reason exceptional enough that justice could not be had without some limitation of the Accused's guaranteed rights.

14. The most recent and most important case to tackle this issue is the decision in *Prlić*, which lays down firm guidance as to the criteria which needs to be considered when deciding whether new documents may be used during the cross-examination of a defence witness. As cited by the Prosecution, the Appeals Chamber in *Prlić* delineated the different categories of new evidence which may be introduced during cross-examination, and the same distinction was drawn by Justice Sebutinde during the course of oral submission on 11 November 2009: that is the distinction between evidence introduced to test the credibility of the Accused (impeachment) and evidence probative to his guilt.[17] However, while in *Prlić* it was held that fresh

[15] *Prosecutor v. Delalić* et al., Case No. IT-96-21-A, Judgement, 20 February 2001("**Delalić Appeals Judgement**"), para. 283.
[16] *Prosecutor v. Prlić* et al., "Decision on the Interlocutory Appeal Against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", 26 February 2009 ("**Prlić Appeals Decision**"); *Delalić Decision*, para. 18.
[17] *Prosecutor v. Taylor*, Transcript, 11 November 2009, pages 31626-27.

evidence may be admitted after the close of the Prosecution case, it makes clear that only in exceptional circumstances should the court's discretion be exercised to allow such a significant departure from the accepted and time-honoured procedure, and further stressed that the necessary prejudice to the Accused by such a departure must be weighted heavily.[18]

15. It is trite that a witness may be impeached to test the accuracy, credibility or consistency of his/ her testimony. The normal procedure involves the use of previous inconsistent statements by the Accused to test the veracity and accuracy of his/her testimony. At common law, it has long been recognized that "if a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement."[19] This same procedure can be adopted in relation to the Accused. However an Accused does not stand in all respects in the same position as any other witness, this is because the Accused is guaranteed rights not enjoyed by other witnesses.[20] Indeed, the Accused enjoys greater protection than defence witnesses in general as he benefits from the rights enshrined in Article 17 even when appearing as a witness, such as the right not to incriminate himself.[21] The decision in *Prlić*, as quoted by the *Motion*, that "the Prosecution may present documents during the cross-examination of defence witnesses primarily for the purpose of testing the credibility of the witness or refreshing his/her memory" must be seen in this light.[22] There is no blanket right for the Prosecution to introduce documents under this head, as argued in the *Motion*.

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[18] *Prlić Appeals Decision*, at para. 24.
[19] Archbold Criminal Pleading, Evidence and Practice, 2007, paras. 8-125.
[20] *Prlić Appeals Decision*, at para 28. The Appeals Chamber specified that even if fresh evidence is admitted it must be admitted in light of Rule 89 of the Statute, which binds the Court to make a fair determination consistent "with the spirit of the Statute and the general principles of law." Statute, at 89(B).
[21] *Prlic* Appeal Decision, para 11. *Prosecutor v. Stabislav Galić*, Case No. IT-98-29-A, Judgment, 30 November 2006, paras 19-20. The *Prlic* Chamber made clear that holding the Accused up to the same rules as other witnesses is "incompatible with his rights," making these rules inapplicable to the Accused.
[22] *Motion*, para. 12, citing *Prosecutor v. Prlić* et al., IT-04-74-T, "Decision on Presentation in Cross-Examination of Defence Witnesses", 27 November 2008.

16. The other category addressed in *Prlić* and by Justice Sebutinde was that of evidence probative to the accused's guilt.[23] As the Prosecution itself admits, this can only be admitted in exceptional circumstances.[24] The Appeals Chamber in *Prlić* held that the following criteria must be satisfied: (i) that the material should only be admitted in exceptional circumstances, when it is in the interests of justice to do so; (ii) that the material does not adversely prejudice the Accused; and (iii) that in making the necessary assessment, a trial chamber should look to the purpose of the document, but not to the content.[25] Nowhere in *Prlić* does the Appeals Chamber draw a distinction between the "presentation stage" and the "admission stage", as termed in the *Motion*. Instead, the *Motion* draws this from one reading of a single passage from the transcript for 7 September 2009.[26] Indeed, it is evident from *Prlić* that the satisfaction of the above criteria forms a *sine qua non* to the introduction of evidence probative to guilt.[27]

17. Several notable consequences flow from the guidance set out in *Prlić* which are relevant to the Motion. Firstly, *Prlić* lays out the very guidelines which the *Motion* asks the court to declare. As such the relief sought by the Prosecution is unnecessary. Secondly, in order to satisfy the *Prlic* criteria, the Prosecution must lay before the Trial Chamber the document(s) it seeks to introduce. After all, the assessment the Trial Chamber must undertake requires it to have knowledge of at least the purpose of the individual documents as a prerequisite. The *Motion* self-evidently does not do this. Thirdly, *Prlić* requires that the Prosecution specifically justify any request to introduce new documents.[28] The relief sought by the *Motion* is a barely concealed attempt to circumvent this burden.

(i) Guidance

18. The Defence submits that the guidelines proposed by the Prosecution are unnecessary. The Appeals Chamber in *Prlić* made the distinction between new documents introduced to undermine the witness's credibility and new documents

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[23] *Prlić Appeals Decision*, para. 29; *Prosecution v. Taylor*, Transcript, 11 November 2009, 31626-31627.
[24] *Motion*, paras. 19, 31.
[25] *Prlić Appeals Decision*, para. 23.
[26] *Motion*, para. 23.
[27] *Prlić Appeals Decision*, para. 28.
[28] *Prlić Appeals Decision*, para. 23.

introduced to prove the accused's guilt. The Prosecution's guidelines add little to what is already in existence and, moreover, so infringe the fairness of the trial that they should be dismissed.

(ii) Disclosure

19. In order to make the assessment as to whether the Prosecution may introduce new documents, it is self-evident that the Prosecution must first put forward those documents for the Trial Chamber and Defence to examine. To do otherwise infringes the fairness of the proceedings and subverts the Prosecution's customary disclosure obligations. The Accused is guaranteed under Article 17 a right to legal advice in relation to the case against him: to have such advice, his counsel must have access to the documents which allegedly prove his guilt. To permit such documents to be introduced in court as a "surprise" plainly infringes this right. Once again, it is necessary to highlight the difference between the Accused appearing as a witness and another prosecution or defence witness. The Accused has fundamental rights other witnesses do not enjoy and, as a consequence, the Prosecution simply cannot spring a document on him during cross-examination which is purportedly probative to his guilt.

20. Indeed, the attempt to introduce documents probative of the Accused's guilt during cross-examination has the effect of subverting the Prosecution's customary disclosure obligations. If the Prosecution was able to introduce documents (but not admit them) during cross-examination as and when it chooses, there would be a significant strategic advantage to saving potent, probative material for the defence case and to spring it upon the defence without prior disclosure. This would make a mockery of the traditional rules of evidence and, as a consequence, cannot be permitted if the trial is to be a fair one.

21. On account of the inherent problems elucidated above, were the court to decide that there are exceptional circumstances justifying the introduction of new material during the cross-examination of the Accused the Defence will seek full disclosure of all the new documents in the Prosecution's possession.

(iii) Burden on the Prosecution

22. *Prlić* states that the burden is on the Prosecution to justify the introduction of documents during the cross-examination of defence witnesses. The Presiding Judge's order that the Prosecution should be the moving party reflects the fact that it is for the Prosecution to justify the introduction of any new documents. The Defence submits that the Prosecution has failed to provide the requisite justification; in fact, it is submitted that the Prosecution has made no 'application' at all to admit new documents, absent any provision of details of the documents it seeks to admit. Indeed, by arguing for a supposed two-staged process, the Prosecution is seeking to bypass the decision in *Prlić* and thus subvert its declaration that it is the Prosecution that bears the burden of justification: for, the net effect of the *Motion* will be to permit the use of documents in court unless the Defence objects. In addition, the Prosecution is seeking to circumvent the order of this Trial Chamber for written argument, for if the *Motion* is granted, the admissibility of individual documents will have to be argued in oral hearing during the course of cross-examination.
23. In short, the Defence respectfully submits that what the Prosecution seek is a blanket licence to introduce any new evidence during the defence case.

B. The Issue of Notice

24. The Prosecution claims that it could not have anticipated the central assertions of the Defence case, using three examples of "main points in his testimony" which "were not revealed in the Defence Pre-Trial Brief".[29] This is demonstrably untrue in each case.
25. Firstly, that "The NPFL forces that participated in the invasion and fighting in Sierra Leone from March 1991 to August 1991, where renegades who were part of a conspiracy to kill Mr. Taylor that originated in Libya in the 1980's".[30] On the contrary, four members of the Defence Counsel individually put the case of Black Ghaddafa to witnesses during the Prosecution case in cross-examination[31] from as

[29] *Motion*, para. 26.
[30] *Motion*, para. 26.
[31] *Prosecutor v. Taylor*, Transcript, 06 February 2008, 3294-3295, 3297; *Prosecutor v. Taylor*, Transcript, 12 May 2008, 9563-9574; *Prosecutor v. Taylor*, Transcript, 13 May 2008, 9741; *Prosecutor v. Taylor*, Transcript, 19 May 2008, 10176-10178; *Prosecutor v. Taylor*, Transcript, 16 September 2008, 16324-16327; *Prosecutor v. Taylor*, Transcript, 14 November 2008, 20276-20278, 20281; *Prosecutor v. Taylor*,

early as 6 February 2008,[32] only one month after the first witness had been called by the Prosecution.[33] Secondly, that "Mr. Taylor did assist the RUF but only from about August 1991 to May 1992".[34] Likewise, this is exactly the case put to Prosecution witnesses TF1-168[35] and TF1-371[36] in cross-examination by Defence Counsel. Finally, that "Mr. Taylor brought Sam Bockarie to Monrovia on three occasions in 1998 in order to discuss peace after informing and getting the consent of ECOWAS and the United Nations". The Defence Pre-Trial Brief contains a section entitled "Context: Role of Mr. Taylor in the Peace Process for Sierra Leone".[37] The first paragraph of this section specifically states that "In 1998, Mr. Taylor was appointed as Chair of the Committee of Five Heads of State tasked with engaging the RUF in dialogue".[38] Further references can be found in paragraphs 85 – 86 and 108, including direct mention of the Lomé Peace Accord.

26. Together with all the above, such details would have been accessible to the Prosecution through any diligent research or investigation. Thus, the Prosecution has been duly notified of the Defence case or, as a minimum, the testimony of the Accused.

27. This situation contrasts with that of *Brima*, which the Prosecution puts forward as support for its position, founding its argument on a prior decision of this Trial Chamber in the AFRC case.[39] However, this case provides little assistance to the Prosecution as the facts in *Brima* were unique: the Accused (Alex Tamba Brima)

Transcript, 25 November 2008, 21039-21040, 21045; *Prosecutor v. Taylor*, Transcript, 08 December 2008, 21989-21991.

[32] *Prosecutor v. Taylor*, Transcript, 06 February 2008, 3294.

[33] *Prosecutor v. Taylor,* Transcript, 07 January 2008, 484.

[34] *Motion*, para. 26.

[35] Lead Defence Counsel directly asks TF1-168, in cross-examination, about co-operation between the NPFL and the RUF during this period. *Prosecutor v. Taylor*, Transcript, 23 January 2009, 23404-23405, 23438-23439, 23441, 23444-23445, 23447-23449; *Prosecutor v. Taylor*, Transcript, 26 January 2009, 23566.

[36] Lead Defence Counsel directly asks TF1-371, in cross-examination, about co-operation between the NPFL and the RUF during this period. *Prosecutor v. Taylor*, Transcript, 30 January 2008, 2662-2663, 2664-2665; *Prosecutor v. Taylor*, Transcript, 31 January 2008, 2691, 2692, 2693-2694; *Prosecutor v. Taylor*, Transcript, 01 February 2008, 2887-2888.

[37] *Prosecutor v. Taylor*, Rule 73*bis* Taylor Defence Pre-Trial Brief, 26 April 2007, paras. 34-36.

[38] *Prosecutor v. Taylor*, Rule 73*bis* Taylor Defence Pre-Trial Brief, 26 April 2007, para. 34.

[39] *Prosecutor v. Brima* et al., Transcript, 29 June 2006, pages 47-48. Further, the fact that the decision was given orally, without any recourse to case-law or written motions, is evidence also that the matter at hand in *Brima* was distinct and cannot carry the same weight as, for instance, the Appeals Chamber's decision in *Prlić*.

made the claim that he was not the 'Alex Tamba Brima' known as 'Gullit', and he first made it during the course of his evidence. The nature of the Accused's defence was thus based on alibi, which makes it both factually and legally distinct from the present case. In addition, there is a clear issue of notice. In *Brima*, the Prosecution were not notified of this defence. In the present case, as argued above, the Prosecution has been duly notified.

28. Indeed, the Prosecution is correct in stating that the decision in *Brima* accords with the case-law, but it does so in a different way than that envisaged by the Motion. The case-law makes clear that the documents already in the Prosecution's possession, or which it could have reasonably anticipated would form an important part of its case, should have been presented during the Prosecution case.[40] While the Defence does not know the sum total of documents that the Prosecution has, it is on record that one of these documents is the Lomé Peace Accord, a public document, which is and has been widely available since the signing of the indictment.[41] This document, and perhaps others, should have been in the Prosecution's possession and should have been presented as part of its case.
29. The Defence avers that by the reasons given above, the Prosecution should not be permitted to use such new documents in court and/or to introduce new documents as exhibits. Any such permission would infringe the Accused's fundamental rights, guaranteed by the Article 17(4)(a) of the Statute, to challenge fully the evidence against him.

V. CONCLUSION

30. A trial procedure can never be considered fair if a party to it is kept in ignorance of the case against him.[42] It is the submission of the Defence that the Prosecution *Motion* is without merit and should be dismissed in its entirety.

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[40] *Motion*, para. 21, citing *Prosecutor v. Krstic*, IT-98-33-T, "Decision on the Defence Motions to Exclude Exhibits in Rebuttal and Motion for Continuance", 4 May 2001, paras. 25-26; *Delalić Decision*, para. 18; Rules of Evidence and Procedure of the Special Court for Sierra Leone ("**Rules**"), Rule 85(A).
[41] *Prosecutor v. Taylor*, Transcript, 11 November 2009.
[42] Art. 10 of the Universal Declaration of Human Rights; Article 6 of the European Convention; Sixth Amendment of the U.S. Constitution; Article 17 of the SCSL Statute.

31. In the event that the Trial Chamber rules in favour of the Prosecution, the Defence requests:

a) The Trial Chamber to order the Prosecution to disclose all new documents intended for use during cross-examination to the Defence;

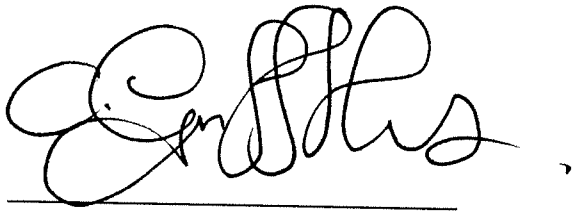
b) Access to the Accused in order to advise on the material in accordance with his Article 17 rights;[43]

c) An adjournment of 30 days to read the material and advise the Accused on the new documents; and

d) An opportunity to re-open direct examination to give the Accused a chance to answer the evidence against him.

The Defence would also seek leave to appeal the decision and hereby respectfully requests a stay of proceedings according to Rule 73(B) in the meantime.[44]

Respectfully Submitted,



Courtenay Griffiths, Q.C.

Lead Counsel for Charles G. Taylor

Dated this 23th Day of November 2009,

The Hague, The Netherlands

[43] *Statute*, Art. 17.

[44] *Rules*, at Rule 73(B).

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AUTHORITIES PROVIDED

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What's New

Links to Supplement paragraphs

First Supplement to the 2007 Edition
This supplement contains updating material for the text and tables of the main work. It is up-to-date to October 10, 2006. New material incorporated for the first time in the supplement, indicated by a star in the margin, includes:

Statutory Instruments

Criminal Procedure (Amendment No. 2) Order 2006(S.I. 2006 No. 2636) (Chaps 2, 4, 7, 8 & 10)

Criminal Defence Service (Financial Eligibility) Regulations 2006(S.I. 2006 No. 2492) (§§6-189d et seq.)

Codes of Practice

Revised Police and Criminal Evidence Act 1984 Code of Practice (stop and search) (Appendix A - 2 et seq.)

New Police and Criminal Evidence Act 1984 Code of Practice C (detention, treatment and questioning of persons) (Appendix A - 38 et seq.)

New Police and Criminal Evidence Act 1984 Code of Practice H (detention, treatment and questioning of terrorist suspects) (Appendix A - 214 et seq.)

Cases

CPS v. Picton

Abuse of process

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Immigration; defence based on Refugee Convention

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Contempt; Whether judge precluded from dealing with matter as acting in own cause

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(Att.-Gen's Reference (No. 1 of 2006)) (R. v. Baker)

Causing death by dangerous driving; sentence

(§ 32-7)

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Acts and declarations in furtherance of common design

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Guidelines

Sentencing Guidelines Council's guideline on sentencing for robbery (Appendix K - 80)

Sentencing Guidelines Council's updated compendium of guideline cases (Appendix K - 500)

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(4) Previous inconsistent statements

Sections 4 and 5 of the Criminal Procedure Act 1865 (commonly referred to as Denman's Act) (a) re-enact sections 23 and 24 of the Common Law Procedure Act 1854, and (b) apply to both civil and criminal proceedings (see s.1). For other aspects of cross-examination as to credit, see post, §§8-137 et seq.
As to the receipt of evidence, proof of which is regulated by the provisions of the 1865 Act, under section 23 of the Criminal Appeal Act 1968 (»»text), see R. v. Conway, 70 Cr.App.R. 4, ante, §7-213.

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Criminal Procedure Act 1865, s.4

4. As to proof of contradictory statements of adverse witness
If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

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