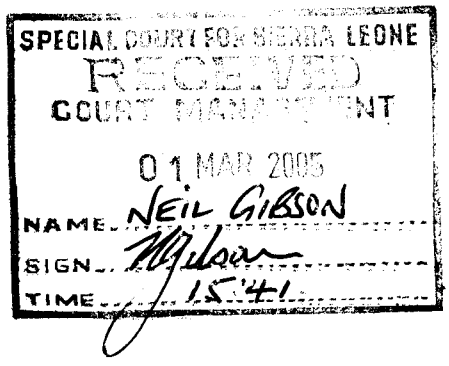
THE SPECIAL COURT FOR SIERRA LEONE Case No. SCSL-2004-16-PT

BEFORE:

Judge Teresa Doherty, Presiding
Judge Julia Sebutinde
Judge Richard Lissack

Registrar: Mr Robin Vincent

Date Filed: 1st March 2005



The Prosecutor

-v-

ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA also known as GULLIT

BRIMA BAZZY KAMARA also known as IBRAHIM BAZZY KAMARA also known as ALHAJI IBRAHIM KAMARA

And

SANTIGIE BORBOR KANU ALSO KNOWN AS 55 also known as FIVE - FIVE also known as SANTIGIE KHANU also known as SANTIGIE BOBSON KANU also known as BORBOR SANTIGIE KANU

CASE NO. SCSL-2004-16-PT

DEFENCE MOTION FOR DEFECTS IN THE FORM OF THE INDICTMENT

Office of the Prosecutor

Luc Coté
Robert Petit

Defence Counsel

Kevin Metzger
Glenna Thompson
Kojo Graham

1. The Defence submits this motion pursuant to Rule 72 (B) ii of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

2. The Defence submits that the indictment[1] as presently drafted contains wide allegations which make it extremely difficult for the Defence to know the case it has to meet. Prosecution ought to be able to particularise the allegations it makes.

3. This is made all the more difficult because the Prosecution has sought to allege an AFRC/RUF alliance, thus making it impossible to distinguish what the AFRC is supposed to have done, what the individual accused is alleged to have done and what acts the RUF are said to be responsible for. The Prosecution is invited to detail specifically the "armed attacks" it relies on and to sever the RUF connection it has hitherto relied on so as to afford the accused person a fair opportunity of defending himself against these allegations. The Defence wishes the Trial Chamber to note that the Prosecutions application for joinder of the AFRC and RUF cases was dismissed by Trial Chamber 1[2]. Notwithstanding that, the Prosecution appears to be seeking to lead evidence of crimes said to have been committed by the RUF in order to convict the AFRC accused persons. The Defence therefore asks that the Prosecution specify which crimes those they have charged committed as we respectfully submit they cannot answer for the crimes of others.

4. Furthermore the Defence would also submit that Paragraphs 33, 34, 35, 36, 37 and 38 are imprecise and non-specific in nature. Whilst the Defence case is that the accused person never involved himself in a common plan, purpose or design as alleged, or at all, the Defence is equally handicapped in not being able to decipher exactly what the case is against the Defendant. In particular it is submitted that paragraph 33 does not form the basis of an offence that falls within the mandate of this court. Furthermore paragraph 36 is particularly offensive in its all

[1] Where indictment appears, this refers to the Further Consolidated Amended Indictment dated 18th February 2005.
[2] See SCSL-03-09-PT-078

encompassing nature, rolling up the doctrines of superior, command and individual responsibility.

5. The Defence wishes it to be noted that quite apart from the generality of the allegations, the Prosecution has compounded this by asserting alternative but mutually exclusive forms of liability. The Prosecution is alleging that Tamba Brima's criminal liability is founded in command responsibility[3] and individual criminal responsibility[4] which also includes joint criminal responsibility. This uncertainty, clearly exhibited, is unfair to the Defence and hampers the Defence's preparation of its case. We therefore humbly request that the Prosecution use its best endeavours to bring clarity to the allegations against this accused.

6. The Defence submits that the indictment is vague, there is no mention of specific dates when the offences are alleged to have taken place, for example. This inhibits the accused in preparing his defence particularly in establishing alibi. The Prosecutor has instead relied on expansive time frames expressed for example in paragraph 44 of the indictment as

> *'between about 25th May 1997and about 19th February 1998.....'.*[5]
> The Defence will rely on the case of *Blaskic*[6] and *Prosecutor v Issa Hasan Sesay*[7] .The Defence complains further that none of the victims of the alleged offences are named. The victims of the unlawful killing in counts 3 -5 are not named nor are the victims of 'widespread physical violence, including mutilations' in Counts 10 to 11 or the victims of abductions and forced labour in Count 13. This demonstrates further the imprecise nature of the indictment. Whilst the Defence understands the need for reasonable precautions, accepting the existence of Witness Protection Orders, it is respectfully submitted that the Prosecution ought properly to provide sufficient information in the indictment,

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[3] Article 6(3) of the Statute
[4] Article 6 (1)
[5] See for example paragraphs 43 and 44. This is repeated throughout the indictment.
[6] Decision on the Defence motion to dismiss the indictment based upon defects in the form thereof (vagueness/lack of adequate notice of charges - dated 4th April 1997.
[7] Decision and Order on Defence Preliminary Motion for Defects in the form of the Indictment dated 13th October 2003

or in a supplementary document, to place the accused in a position of knowing the case he has to meet.

7. The Defence would submit that the indictment should be drafted in such a way as to enable a Defendant to know with as much particularity as the circumstances permit about the case he has to meet. There should be better identification of specific incidents to what the various counts relate especially as to the events are said to have taken place. The Defence will rely on the case of *Rackham [1997] 2 Cr App R 222.*

8. The Defence also requests that the Prosecution should clarify the meaning of the phrase "...or who were no longer taking an active part in the hostilities"[8]. This definition, it is submitted fails to identify the persons or group of persons the Prosecution are referring to sufficiently so as to enable the Defence to assess the import of this phrase and commence potentially necessary and relevant investigations to refute the allegation made.

9. The Defence therefore seeks an order in relation to the following as regards each count against Tamba Brima:

   a. Counts 1 and 2 are, it is submitted, insufficiently precise and are therefore defective. Further, or in the alternative they appear to incorporate Counts 3 to 14, even to the extent that Paragraph 41 of the Indictment concedes this. The Defence submits that the Prosecution should be ordered to consider the duplicity in these allegations or state clearly where alternative, substantive, allegations are made in respect of the general formulation Counts 1 and 2.

   b. Counts 6 to 9 suffer from a significant lack of particularisation and, as with all other counts, objection is taken to the use of the joint term "AFRC/RUF" on the basis that the Defence denies any joint participation

[8] Paragraph 20 of the indictment.

with the RUF in relation to any allegation on this indictment.

c. Counts 10 to 11 again lack particularity. It is submitted that the Prosecution should properly list the incidents that are relied on so that the Defence is given a fair picture of the case it has to meet. As currently drafted the indictment serves the interest of the Prosecution in that it leaves the possibility of widening the net once, or even after, evidence has been called.

d. It is submitted that there is no prima facie evidence that the Accused was ever involved in the use of child soldiers as alleged in Count 12 or forced labour as alleged in Count 13. The Prosecutor is respectfully invited to particularise which particular acts or omissions are relied on against this Accused.

Respectfully submitted

This 1st day of March 2005

Kevin Metzger

Glenna Thompson

Annexes

1. Terrance John Rackham v The Crown [1997] 2 Cr App R 223
2. Prosecutor v Blaskic – readily available
3. Prosecutor v Issa Hasan Sesay — 13th October 2003 - readily available

TERRANCE JOHN RACKHAM

COURT OF APPEAL (Lord Justice McCowan, Mr Justice Ian Kennedy and Mr Justice Stuart-White):March 4, 7, 1997

Indictment

Specimen counts

Particulars of offences - Lack of identification of incidents relied on - Whether judge should have required prosecution to particularise counts.

The appellant was charged in an indictment which included seven counts alleging rape and indecent assault, all, save for one count of rape, being specimen counts. It was the Crown's case that the appellant had carried out a sustained course of sexual misconduct against two of his stepdaughters during the period 1984 to 1993. During cross-examination of one of the victims, defence counsel applied to the judge for identification of the incidents upon which the Crown relied in the specimen counts. The judge took the view that because the defence was that the complaints were entirely contrived there was no prejudice to the appellant in the way that the counts had been opened to the jury and that the matter would be reconsidered at the end of the prosecution case. A further application was made at that stage but the judge did not order any particularisation. The appellant was convicted on all seven counts and sentenced to a total of 10 years' imprisonment. He appealed on the ground, inter alia, that the judge was wrong not to direct identification of the incidents relied on in the specimen counts.

Held, allowing the appeal in relation to the specimen counts, that an indictment had to be drafted in such a way as to enable a defendant to know with as much particularity as the circumstances would admit what case he had to meet; and that, in the event of a conviction, a judge needed to know precisely what the jury had found proved; that the reservations in Shore (»»text) (1989) 89 Cr.App.R. 32 meant no more than that if a defendant chose to meet general charges without objection he could not then easily raise want of particularity on appeal; that it was necessary to settle an indictment which steered a safe course between prejudicial uncertainty and over-loading. In the instant case, the judge was in error in failing to accede to the request for clearer identification of the facts relied upon in the specimen counts. Evans, (»»text) [1995] Crim.L.R. 245, applied; Shore (»»text) (1989) 89 Cr.App.R. 32 distinguished. [For specimen charges, see Archbold (1997) paras. 1-131, et seq.]

Appeal against conviction. On June 18, 1996, in the Crown Court at Northampton (Judge Hall) the

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[1997] 2 Cr.App.R. 223

appellant was convicted and sentenced as follows: counts 1 and 1a of rape: 10 years' imprisonment concurrent; counts 3 and 3a of indecent assault: 18 months' imprisonment concurrent; count 4 of rape: six years' imprisonment; and counts 5 and 5a of indecent assault: three years' imprisonment concurrent. All the sentences were

ordered to run concurrently, making 10 years' imprisonment in all. The facts appear in the judgment. The main ground of appeal was that the trial judge failed to direct identification of the incidents relied upon in specimen counts when requested to do so by counsel for the appellant. The appeal was argued on March 4, 1997.

R. Pardoe (assigned by the Registrar of Criminal Appeals) for the appellant. M. Joyce for the Crown.

Cur. adv. vult.

March 7. IAN KENNEDY J.: gave the judgment of the Court at the request of McCowan L.J. On June 18, 1996 in the Crown Court at Northampton this appellant was convicted and sentenced as follows: on counts 1 and 1a, which charged rape, 10 years' imprisonment; on counts 3 and 3a, which charged indecent assault, 18 months' imprisonment; on count 4, which charged rape, six years' imprisonment; and on counts 5 and 5a, which charged indecent assault, three years' imprisonment. All those sentences were concurrent, and therefore the total sentence was one of 10 years' imprisonment. A not guilty verdict was entered by direction of the judge on count 2, which charged buggery. The appellant appeals against his conviction by leave of the single judge. The Crown alleged that the appellant had carried out a sustained course of sexual misconduct on two of his stepdaughters during the period 1984 to 1993. All the counts, save for count 4, were specimen counts. The appellant had begun a relationship with the complainants' mother in the early 1980s and began cohabiting with the family in Milton Keynes. She had had four children by her first husband. They were: Nicola, Sara (who was known as "Vicky"), Jackie and David. It was shortly after the appellant set up home with the family that he began abusing two of the girls, Sara and Jackie. Sara was born on May 12, 1974 and the counts relating to her span the period from January 1, 1984 to December 31, 1990, when she was between 10 and 17 years old. Jackie, or Jacqueline, was under 16 years old for the entire period alleged in the indictment. The counts in her case span from January 1, 1987 to December 31, 1993, so a total period of seven years. Sara gave evidence. She described her relationship with her mother and the difficulties within the family. She spoke of sharing a bedroom with Jackie, her youngest sister. She (Sara) had a bunk bed and would sleep on the bottom. The appellant used to come into the bedroom and stand by the bed. He would remove her knickers and fondle her. Occasionally he would

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lick her vagina. This would happen several times a week. She could not recall whether it was every day. There was also an occasion when she saw the appellant remove Jackie's knickers and lean over her bed holding his penis. Jackie was about eight years old at the time and Sara 13. Jackie was crying, so Sara took her downstairs and told the elder sister, Nicola. The police and social services became involved, but Sara was too afraid to say anything in front of her mother. Thereafter, she said, the appellant would take advantage of any spare couple of minutes. On numerous occasions he would penetrate her with his penis and ask, "Does it hurt?" In one episode, when she was about 13 years old, he used a vibrator. When Sara was about 15 years old she went temporarily to live with her grandmother. However, the appellant continued to abuse her there. He would also give her money. She had heard that there had been a family row, following which the appellant had left home. Jackie gave evidence. She said that when she was about seven or eight years old the appellant came into her room, removed her underwear, then touched and kissed her between her legs. On numerous occasions thereafter he would come into the room and touch her. She would

pretend to be asleep. Sometimes Sara would be present. On occasions he would ask her to touch him, which she did. He would ejaculate into his hands. There was one incident when she was about 14 years old when he penetrated her. He came into her bedroom, told her to lie on the floor and, as she described it, "tried to penetrate her". That was count 4 on the indictment. She said that she then told him that it hurt and that she did not want to do it. He then stopped, ejaculated and went to wash himself. She remained in the room crying. She too spoke of the use of a vibrator. He had brought her a vibrator for her fourteenth birthday. She did not want it and she did not see it again. He would also ask her to open her mouth and then put his penis inside. She told him that it was disgusting and that she did not want to do it. He would also assault her when he was driving the car. He would make her touch him over his clothes. There was an occasion in the caravan when he was touching her and her mother was only a few feet away behind a curtain. He would also give her money after he had (her words) "done things". In November 1995 she was present at a family gathering when everyone was playing cards and an argument broke out. The appellant, who had been drinking, said to his wife, "your family have never liked me since I fucked about with the girls". He was told to leave and did so, but the mother took him back a short while later. Jackie said that she hated everything that he had done to her and that she had taken an overdose. Nicola was present at the card party. She too heard the appellant say that he had never been accepted since he had been "fucking about with Jackie". She also heard him say to the grandmother, "Your son plays around with little boys, I play around with little girls, what's the difference?" The grandmother recalled the same outburst at the party. She remembered him as saying, "why can't you forgive me for having fucked

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Jackie six years ago? When your son has arse-holes I have little girls". Afterwards she had made an entry in her diary: "Had row with Terry. Admitted abusing my grand-daughters. Josie told him to go." The appellant was arrested on December 19, 1995. In interview he denied the allegations. He described Sara as a witch. He said he had a good relationship with Jackie but felt that she had been influenced by others, including her grandmother. The defence was that nothing indecent had happened. The appellant gave evidence. He repeated that he had had a good relationship with Jackie, though not with Sara. She was, he said, a very aggressive person, a "modern day witch who casts spells on everyone". He had heard about the allegations from his wife. He had not been spoken to either by the police or by the social services. There had been no proceedings arising out of any such report. He said that at the party there had been an outburst. He was, he said, determined to upset the grandmother and decided to pick on the fact that her son was homosexual. What he had said about his own behaviour was untrue. There were various witnesses who were called in support of his case to speak of Sara and her behaviour. In giving leave to appeal the single judge gave leave "particularly on the failure of the judge to direct identification of the incidents relied upon when this was requested". Counts 1, 3 and 5 were opened to the jury as specimen counts. As is apparent from what we have recited, the indecent assaults embraced a variety of different happenings of an indecent character. During the cross-examination of Sara, Mr Pardoe for the appellant applied to the learned judge for identification of the incidents upon which the Crown relied under those counts. He asked that they should "nail their colours to an incident that they seek to prove to the required standard", adding that if they did not "one would have a conviction on count 1 or count 3 where the jury had no unanimity at all as to which

incident it was that was being talked about". The judge was disposed to think that because the defence was that the complaints were entirely contrived there was no prejudice to the appellant in the way the counts had been opened. Mr Pardoe conceded that the prejudice was not as great as it might be in other circumstances. Mr Joyce for the Crown accepted that if he was required to nail some colours he could "do so because there are specific incidents which have been referred to in evidence which enable one to take that course". He doubted whether he was required to do so. It was left that he would take a stance at the end of his case. When the prosecution case ended and the application was re-addressed the case of Clark [1996] 2 Cr.App.R.(S.) 351, had recently been reported in the Criminal Law Review. The judge raised the need to add other counts to meet the central point of the decision, namely that since it is impermissible to sentence on a single count as if it involved a conviction on the course of conduct alleged, prosecutors should indict on a sufficient number of

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counts that the sentence could better meet the case. This is a matter to which we shall have to return. Thus counts 1a, 3a and 5a became added, each in the same terms as its twin count, save that each was expressed to have occurred on an occasion other than its twin. As to the deferred application to particularise the counts, Mr Joyce claimed that he could do so on one of the counts but not the others. Before us no question of the impossibility of identification was maintained. It is clear that there were incidents which could be identified by circumstances if not by date, and in any event the broad categories of the indecencies relied upon could have been specified. More significantly still, the counts spanned with each complainant some seven years. Mr Pardoe maintained his application, but the judge did not require any particularisation or other identification. Counsel have referred us to a number of recent authorities. The first is Farrugia, The Times, January 18, 1988, a case where the allegations involved a course of indecent conduct against four children. Counsel for the prosecution having, after some pressure, identified the matters relied on in the various counts, the summing-up drew no connection between the particular allegations and the several counts. This Court observed that:

"The jury were therefore given no direction as to which incident could in their verdicts be related to which count. They were given no direction as to which evidence before them was capable of corroborating each individual child on each individual count."

The conviction was quashed in that there was thus a fundamental and irretrievable error. While corroboration is not now an issue, there was in that case a like imprecision to the present in terms of particularity. Farrugia was distinguished in Shore (»»text) (1989) 89 Cr.App.R. 32, decided some six weeks later. Shore similarly was a case of indecency with children, but there the trial had proceeded without any request for particularisation or identification. Of Farrugia Neill L.J. said at p. 38:

"It is also to be observed that the trial proceeded on the basis that there was no requirement for the prosecution to identify a particular incident as the subject matter of a count."

Both counsel before us had predictable submissions on this passage. To our minds there is nothing in the passage to suggest that identification of the events relied upon ought not to be ordered in a proper case. In Evans (»»text) [1995] Crim.L.R. 245, a case of persistent and multifarious abuse of one child, where the complaint before this Court was of want of particularity of an indictment, Rougier J. said (at p. 8 of the transcript):

"However, in these cases, when a child has allegedly been abused on many occasions, over a lengthy period, it is quite unrealistic to expect that child to be particularly specific as to precise dates or places under the sanction that if, owing to the very multiplicity of offences, coupled with the lapse of time and failing memory caused by a natural desire
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[1997] 2 Cr.App.R. 227
to put the experience behind him, he cannot do so, his abuser is immune. To hold otherwise would be a charter for those who commit this sort of offence. On the other hand, it can validly be said that although the prosecution are not obliged in every case to give detailed particulars of times and places, at least they should be obliged to specify the type of conduct which it is alleged constitutes the particular offence which is the subject of a count in the indictment. Otherwise, not to do so would leave the defendant at a disadvantage in not knowing what it was he was supposed to have done and being unable to marshal his mind on more important evidence to counter those allegations. It is as if the prosecution merely said: 'Well, let us see the evidence of the complainant, see how it turns out, and then decide afterwards.' That clearly is impermissible. The defendant is, at least, entitled to know the conduct alleged. We remain, however, somewhat doubtful, whether in this particular case, the appellant did, in fact, suffer any prejudice thereby."

In our judgment, it is not necessary to look for authority for the proposition that an indictment should be so drawn or exemplified that a defendant will know with as much particularity as the circumstances of the case will admit what is the case that he must meet, so that he can, in the words of Rougier J., "Marshal his mind on more important evidence to counter those allegations." Hardly less important is the need for the judge in the event of a conviction to know what precisely it is that the jury have found proved. So, in the case of the present counts 1 and 1a, the age of the first complainant when she was first raped and whether there was still a proved want of consent when she was 17 years old. In our judgment, the reservations in Shore reflect no more than that if a defendant chooses to meet general charges without objection he cannot easily raise want of particularity in the Court of Appeal. With the more obvious available parameters - age of complainant and place or circumstances of the incident - it should not be too difficult in most cases, and would not have been in this case, to settle an indictment which steered a safe course between prejudicial uncertainty and over-loading. It is common enough against such a background as the present to lay a count alleging, say, a rape on a day between the complainant's one birthday and the next, and so on. It was not contended by Mr Pardoe that this was impermissible. A difficulty in being precise in every respect is not a reason not to be precise when one can. Mr Joyce remarked that because with the passage of time memories became more uncertain, too much particularity could put the prosecution at hazard, but it is because of that very uncertainty that judges are enjoined to remind juries of the difficulty for a defendant in meeting old charges.

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[1997] 2 Cr.App.R. 228
The careful use of the power to allow an amendment should ensure that there is no unfairness in either direction. It is our conclusion that the learned judge was in error in not acceding to the request for the better identification of what was relied upon in these counts. The persisting uncertainty was such that, in our judgment, the convictions on counts 1 and 1a, 3 and 3a and 5 and 5a are unsafe. Accordingly we quash those convictions. In the light of this decision, it is not necessary to consider Mr Pardoe's linked submission that in his summing-up the judge did not sufficiently stress the need for the jury to be agreed upon which incident lay at the root of which conviction. It is self-evidence that the less specific the count the greater the necessity for a direction beyond that ordinarily given when there is more than one count in an indictment. On the other hand, where there is nothing to point to any identifiable incidents under a count laid as having taken place within any one period anything more than the conventional direction may be otiose. The conviction for rape under count 4 being admittedly unaffected by our earlier decision, we turn to the other grounds of appeal. The first is that the learned judge was wrong to expose the appellant to greater penalties by expanding the indictment by the addition of the "a" counts. But the indictment as laid was defective in the sense in which that term is used in applications to amend indictments. It was so in that it did not charge certain offences revealed in the statements. Moreover, in as much as Mr Pardoe was applying for identification of specific incidents, he could not fairly resist the addition of a modest number of new counts to reflect other specific incidents. In our judgment, it matters not that the initiative for the additional counts came from the learned judge. This was not an intervention outwith his proper role. The next ground is that in summing-up the judge referred again to the counts as specimen counts. In one sense any count laid between two dates may be said to be a specimen if it depends upon evidence of a continuing series of events. However, in the light of our first conclusion this ground has no materiality. Mr Pardoe next complains that the judge was in error in not permitting a defence witness to give the true reason for the first complainant's leaving, as she said voluntarily, an employment that she had had. This witness would have said that it was because she had made an unfounded allegation that she had been the subject of sexual interference. Relying upon the decision of this Court in Funderburk (»»text) (1990) 90 Cr.App.R. 466 and the passage at p. 475 endorsing the observation of the editors of Cross on Evidence (6th ed. at p. 295) that,

"where the disputed issue is a sexual one between two persons in private the difference between questions going to credit and going to the issue is reduced to vanishing point".

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[1997] 2 Cr.App.R. 229
Mr Pardoe submits that his witness should have been allowed to give that reason. In our judgment, the reasons why that complainant left her employment would have introduced what would plainly have been a collateral issue and the judge was right to exclude it. He was right to exclude it notwithstanding the restriction that placed on the witness's ability to say why he was able to give evidence that he would not believe that complainant on her oath. In any event the impact of that ruling on the validity of the conviction on count 4 would, at best, be remote. Then it is said that the learned judge wrongly exercised his discretion by not allowing the appellant to present

himself as a man effectively of good character. In 1966 he had been convicted of theft. More in point, in 1968, when aged 28, he had pleaded guilty to unlawful sexual intercourse with a girl aged 13 and had been sentenced to 12 months' imprisonment. We are told that offence was committed with the connivance of the girl's parents. In our view it is impossible to say that this decision reveals an impermissible exercise of the judge's discretion. This the more so since one of the issues before the jury was whether the appellant, albeit in drink, had been telling the truth or lying when he had admittedly said that he had a sexual attraction to young girls. The last ground of appeal argued concerned the manner of the judge's correction of the error he had made in the early part of his summing-up when he had directed the jury that a girl under 16 years old could not in law consent to sexual intercourse, so that once intercourse was proved the offence was rape. This error having been brought to his notice by counsel, the learned judge corrected himself in terms of which complaint could not be made, though it is of his introduction to the correction. He said: "I told you yesterday in effect that someone under the age of 16 cannot consent to sexual intercourse and therefore, as it were, the fact of penetration was all you would have to find proved. That's wrong. There's a little quirk in the English law, members of the jury. In these circumstances a girl under the age of 16 cannot consent in law to an indecent assault, but that is not so in the case of rape, and can I, therefore, members of the jury, redefine for you importantly what the prosecution have to prove in the counts where the charge is rape" - and he proceeded to do so in the terms which we have said are unexceptionable. The question is whether the expression "a little quirk" may have implied to the jury that the law was odd and so possibly to be disregarded as inconsistent or unreal in making that distinction. In our judgment, this argument rests altogether too much on that one phrase. We are not at all persuaded that the correction which followed was diminished in its effect by what the judge said by way of introduction. Finally, in his submissions in his reply Mr Pardoe argued that if we were to quash the counts concerning the first complainant, the cross-support which the learned judge said the one complainant's evidence might give to the other meant that the conviction on count 4 was rendered unsafe. We

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disagree. The fact that those counts were objectionably unspecific, as were counts 5 and 5a, does not touch on the quality or impact of the first complainant's evidence. In summary, we quash counts 1, 1a, 3, 3a, 5 and 5a for the reasons we have given. We find nothing to suggest that the conviction on count 4 is unsafe, whether because of that conclusion or for any other cause. Accordingly the appeal against conviction on count 4 is dismissed. In all the circumstances there can be no question of any retrial.

Appeal allowed and convictions quashed on counts 1, 1a, 3, 3a, 5 and 5a. Conviction on count 4 to stand.

Solicitors: Crown Prosecution Service.