

961)

SCSL-03-01-T
(28862-28871)

28862



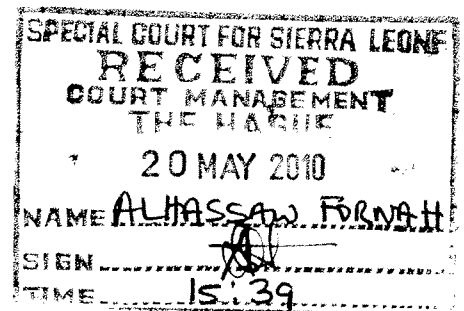
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 20 May 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION MOTION FOR THE ISSUANCE OF A SUBPOENA TO NAOMI CAMPBELL

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Sigall Horovitz

Counsel for the Accused:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The Prosecution hereby requests the Trial Chamber, under Rule 54 of the Rules of Procedure and Evidence (“**Rules**”), to issue a subpoena to Naomi Campbell requiring her appearance before this Chamber and to order the Registrar to take all necessary measures to have the subpoena served and executed, in accordance with Rule 8(C). Ms. Campbell’s testimony is necessary as there is evidence that Ms. Campbell was given rough diamonds by the Accused in September 1997 in South Africa while the Accused was on a trip to various countries.
2. Ms. Campbell’s anticipated evidence concerns “a central issue”¹ in the case: the Accused’s possession of rough diamonds. When considered in the context of the totality of the Prosecution evidence, her anticipated evidence supports the Prosecution allegations that the Accused used rough diamonds for personal enrichment and arms purchases for Sierra Leone, particularly during the AFRC/RUF period. Further, her anticipated evidence rebuts the Accused’s testimony that he never possessed rough diamonds. In a separate motion filed today, the Prosecution seeks leave to present her testimony, and that of Carole White and Mia Farrow by reopening its case or, alternatively, in rebuttal.²
3. Ms. Campbell, as the actual recipient of the Accused’ gift of diamonds, is clearly in a position to provide material evidence about this event. The Prosecution’s repeated efforts to interview Ms. Campbell about this event have been unsuccessful and Ms. Campbell has given public statements that she does not want to be involved in this case. Thus, judicial intervention in the form of a subpoena is necessary.

II. APPLICABLE LAW

4. Rule 54 of the Rules provides that: “[a]t the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas,

¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33348.

² *Prosecutor v Taylor*, SCSL-03-01-T, “Public Prosecution Motion to Call Three Additional Witnesses”, 20 May 2010.

warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.”

5. According to the jurisprudence of the Special Court, the party applying under Rule 54 for a subpoena compelling the appearance of a person as a witness must “show that the requested measure is necessary (the “necessity” requirement) and that it is for the purposes of an investigation or for the preparation or conduct of the trial (the “purpose” requirement).”³
6. To meet the purpose requirement, also referred to as the “legitimate forensic purpose” requirement,⁴ the party applying for a subpoena must show “a reasonable basis for the belief that the information to be provided by the prospective witness is likely to be of material assistance to the applicant’s case, or that there is at least a good chance that it would be of material assistance to the applicant’s case, in relation to clearly identified issues relevant to the forthcoming trial.”⁵
7. In this regard, the Appeals Chamber confirmed:

“Whether the information will be of assistance to the applicant’s case will depend largely upon the position held by the prospective witness in relation to the events in question, any relationship he may have or have had with the accused which is relevant to the charges, the opportunity which he may reasonably be thought to have had to observe those events or to learn of those events and any statements made by him to the applicant or to others in relation to those events”.⁶
8. The necessity requirement “is designed to limit the use of coercive measures to a minimum”.⁷ The Appeals Chamber has held that in order to satisfy this requirement, the applicant must show “that the subpoena is likely to elicit evidence material to an

³ *Prosecutor v. Norman et al.*, SCSL-04-14-T-617, “Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone”, 13 June 2006 (“**Norman Subpoena Trial Decision**”), para. 28. See also *Prosecutor v. Norman et al.*, SCSL-04-14-T-617, “Decision on Interlocutory Appeals Against Trial Chamber Decision refusing to Subpoena The President of Sierra Leone”, 11 September 2006 (“**Norman Subpoena Appeal Decision**”), para. 10.

⁴ *Prosecutor v. Sesay et al.*, SCSL-2004-15-T-357, “Written Reasoned Decision on Motion for Issuance of a Subpoena to H.E. Dr. Ahmad Tejan Kabbah, Former President of the Republic of Sierra Leone”, 30 June 2008 (“**Sesay Subpoena Decision**”), para. 18.

⁵ *Sesay Subpoena Decision*, para. 19.

⁶ *Norman Subpoena Appeal Decision*, para. 21 (quoting *Norman Subpoena Trial Decision*, para. 29).

⁷ *Norman Subpoena Trial Decision*, para. 30.

issue in the case which cannot be obtained without judicial intervention.”⁸ The Prosecution must also demonstrate that the information sought from the witness is not obtainable through other means.⁹

9. Further, according to the ICTY Appeals Chamber, when considering whether or not to issue a subpoena, the Chamber must take into account “the interest of justice in having all relevant evidence put before the Trial Chamber for a proper assessment of the culpability of the individual on trial”.¹⁰
10. Rule 8(C) provides that: “The Special Court may invite third party States not party to the Agreement¹¹ to provide assistance on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.” One such “other appropriate basis” is the United Nations Security Council Resolution 1688 adopted by the UN Security Council on 16 June 2006.¹²

III. BACKGROUND

11. In June 2009, the Prosecution received information that the Accused gave Naomi Campbell a diamond during a visit to South Africa. This information was provided to the Prosecution on a confidential basis for the purposes of generating new evidence, in accordance with Rule 70 (B). Following the Prosecution’s investigation into the matter, evidence about this event was obtained from Mia Farrow and Carole White, who have indicated that they are willing if needed to testify about what they recall. Ms. White heard Mr. Taylor say he was going to give Ms. Campbell diamonds and was present when the diamonds were delivered. Ms. Farrow was present at the

⁸ *Norman* Subpoena Appeal Decision, para. 9.

⁹ *Norman* Subpoena Trial Decision, para. 30. Also see *Norman* Subpoena Appeal Decision, para. 28 (“the availability of the evidence from other sources is a relevant inquiry in the exercise of the Trial Chamber’s discretion, where the other sources may be available without resort to the coercive powers of the Court”).

¹⁰ *Prosecutor v. Brđanin and Talić*, IT99-36-AR73.9, “Decision on Interlocutory Appeal”, 11 December 2002, para. 46.

¹¹ The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone signed in Freetown on 16 January 2002.

¹² See United Nations Security Council Resolution 1688 (16 June 2006), p. 2 (“The Security Council ... Acting under Chapter VII of the Charter of the United Nations ... Requests all States to cooperate to this end, in particular to ensure the appearance of former President Taylor in the Netherlands for the purposes of his trial by the Special Court, and encourages all States as well to ensure that any evidence or witnesses are, upon the request of the Special Court, promptly made available to the Special Court for this purpose...”).

reception where the Accused met Ms. Campbell and was told by Ms. Campbell the next morning about the gift.¹³

IV. THE PURPOSE REQUIREMENT

12. This Trial Chamber has recognized that evidence of the Accused's gift of a rough diamond to Naomi Campbell in September 1997 is highly relevant to the charges. When the Trial Chamber prohibited the Prosecution from using a written declaration of Mia Farrow on this issue during the cross-examination of the Accused on 14 July 2010, it held that the declaration "purports to deal *with a central issue* in the Prosecution's case" (emphasis added).¹⁴ The Prosecution's oral submissions on the use of Farrow's declaration also underscore the significance of Ms. Campbell's anticipated evidence.¹⁵ It is recalled that, in the declaration, Ms. Farrow explained:

"The next morning when the other guests, my children and I met for breakfast, Naomi Campbell was there and had an unforgettable story. She told us the [*sic*] she had been awakened in the night by knocking at her door. She opened the door to find two or three men – I do not recall how many- who presented her with a large diamond which they said was from Charles Taylor."¹⁶

13. Accordingly, the anticipated evidence of Naomi Campbell is highly probative and material to the Indictment. It is direct evidence of the Accused's possession of rough diamonds from a witness unrelated to the Liberian or Sierra Leone conflicts and

¹³ As explained above, in a separate motion filed today, the Prosecution seeks leave to present the testimony of Mia Farrow, Carole White, and Naomi Campbell, by reopening its case or, alternatively, in rebuttal (see footnote 2 above and the attached text). The written declaration of Mia Farrow and the statement of Carole White are attached to that motion as Confidential Annexes A and B, respectively.

¹⁴ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33348. It is recalled that the Prosecution intended to use the declaration both for impeachment purposes and for establishing the guilt of the Accused.

¹⁵ It was argued by the Prosecution: "This document [the declaration] impeaches that categorical denial by this witness that he ever had any diamonds during the time he was in the NPFL or President of Liberia Secondly it is also relevant to guilt ... in particular because of the timing of giving this diamond to Naomi Campbell. This trip occurs in September, the locations visited include South Africa, Libya, and Burkina Faso. He comes back and makes a statement to his Senate about the trip on 3 October and the evidence before this Court, what else happens in October, the Magburaka shipment to the junta happens in October, and the evidence before your Honours is that this shipment was procured at least in part by diamonds the junta provided to Charles Taylor and by money they provided to him to pay for the plane. So the timing of this occurrence is indeed relevant to an ultimate determination of guilt in this case." See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, pp. 33344-5.

¹⁶ Declaration of Mia Farrow dated 9 November 2009, annexed to Strictly Confidential Letter from Brenda Hollis to Courtenay Griffiths entitled "Fresh Evidence to be used in Cross Examination of the Accused", 4 December 2009. Also annexed to the letter was a list of the disclosed materials, which indicated that the Declaration of Mia Farrow will be used by the Prosecution not only for impeachment purposes but also for proof of guilt.

corroborates Prosecution evidence that the Accused received diamonds from the AFRC/RUF Junta during the Indictment period. Further, the Accused testified that on this trip in September 1997 he went from South Africa to several other countries, including Libya and Burkina Faso. The evidence that the Accused was traveling with rough diamonds supports Prosecution evidence that the Accused arranged the shipment of arms from Burkina Faso that was delivered to the Sierra Leone Junta at the Magburaka airfield in October 1997. Further, the Accused's possession of rough diamonds goes to the heart of the joint criminal enterprise allegation. Finally, in his testimony the Accused denied ever having possessed rough diamonds and the evidence directly contradicts his testimony on this central issue. In relation to these *clearly identified issues*, there is *at least a good chance* that Ms. Campbell's anticipated evidence will be *of material assistance* to the Prosecution case. Thus, in accordance with the above jurisprudence, the purpose requirement has been met.

V. THE NECESSITY REQUIREMENT

14. In June 2009, upon receiving the Rule 70 information that the Accused gave Naomi Campbell a diamond during a visit to South Africa, the Prosecution tried to contact Naomi Campbell, by contacting various agencies publicly identified as her representatives. After persistent efforts to speak to Ms. Campbell, in July 2009, a representative of Ms. Campbell directed the Prosecution to speak to Ms. Campbell's solicitor. The Prosecution then held several conversations with the solicitor who repeatedly indicated that his client would consent to neither an in-person nor a telephone interview. The solicitor also told the Prosecution that Ms. Campbell was concerned for her safety and did not want to involve herself in the case.
15. In January 2010, after reading a public statement by a representative of Ms. Campbell that she was cooperating with the Prosecution,¹⁷ further attempts were made to contact Ms. Campbell through her solicitor. Phone messages were left with his office

¹⁷ The New York Times, "Star Turns at Liberian's War Crimes Trial", by Marlise Simons, 18 January 2010, available at <http://www.nytimes.com/2010/01/18/world/africa/18taylor.html> ("Debora Cunha, a spokeswoman for Ms. Campbell, said she could not comment on the story or the fate of the diamond. "It's with the lawyers," she said. "Naomi has been assisting the special prosecutor where possible, but beyond that has nothing to add."").

and e-mails sent to an address with which there had been previous correspondence. However, Ms. Campbell's solicitor did not respond to any of the phone messages or emails. On 20 January, Acting Prosecutor Joseph Kamara sent a letter copied by email to the solicitor which also remains unanswered.¹⁸

16. In an interview Naomi Campbell gave to television hostess Oprah Winfrey, which was broadcasted on 3 May 2010 on the US television program "The Oprah Winfrey Show", Naomi Campbell was confronted with the allegation that she received a diamond from the Accused. While not denying the allegation, Ms. Campbell responded that: "I don't want to be involved in this man's case—he has done some terrible things and I don't want to put my family in danger."¹⁹
17. This statement strongly suggests that Ms. Campbell is aware that she has information relevant to the charges in this case. She would have no reason to be afraid for her family if she had no information which implicates the Accused.
18. Ms. Campbell's consistent refusals to speak to the Prosecution voluntarily and her statements that she does not want to be involved in the case justify the Trial Chamber's issuance of a subpoena. Even though other witnesses are available and willing to testify about the Accused's gift of diamonds, Ms. Campbell can give evidence about this event from a unique perspective as she was the actual recipient of the gift. The Trial Chamber should have the opportunity to hear the testimony of Ms. Campbell regarding this incident as it will contribute to serving and fostering the overall interest of justice in the current proceedings.

VI. CONCLUSION

19. For the above reasons, the Prosecution requests, under Rule 54, that the Chamber issue a subpoena to Naomi Campbell requiring her appearance before this Chamber

¹⁸ Letter to Mr. Gideon Benaim from the SCSL Prosecutor, dated 20 January 2010.

¹⁹ ABC News, "Naomi Campbell Tells Oprah She Fears For Her Family - Supermodel Says Talking About 'Blood Diamond' She Allegedly Got From Dictator Puts Her Family in Danger", By Brian Ross and Anna Schechter, 3 May 2010, available at <http://abcnews.go.com/Blotter/naomi-campbell-tells-oprah-fears-family/story?id=10521090>. Also see the third video at this web page: <http://jezebel.com/5530162/naomi-campbell-on-oprah-i-dont-have-an-excuse-for-my-behavior/gallery/>.

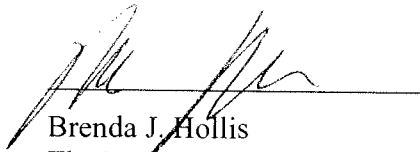
to give testimony regarding her interactions with the Accused in September 1997 in South Africa while the Accused was on a trip to various countries.

20. The Prosecution further requests the Trial Chamber to order the Registrar to take all necessary measures to have the subpoena served and executed, and, in accordance with Rule 8(C), to seek the assistance, where appropriate, of the authorized representatives of the country where Ms. Campbell is residing, working or visiting to ensure that Naomi Campbell appears at the time and place indicated in the subpoena.

Filed in The Hague,

20 May 2010,

For the Prosecution,


Brenda J. Hollis
The Prosecutor

INDEX OF AUTHORITIES

SCSL

Prosecutor v. Taylor

Prosecutor v Taylor, SCSL-03-01-T, “Public Prosecution Motion to Call Three Additional Witnesses”, 20 May 2010.

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 14 January 2010, pp. 33344-33345, 33348

Prosecutor v Norman et al

Prosecutor v. Norman et al., SCSL-04-14-T-617, “Decision on Interlocutory Appeals Against Trial Chamber Decision refusing to Subpoena The President of Sierra Leone”, 11 September 2006.

Prosecutor v. Norman et al., SCSL-04-14-T-617, “Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone”, 13 June 2006

Prosecutor v Sesay et al

Prosecutor v. Sesay et al, SCSL-2004-15-T-357, “Written Reasoned Decision on Motion for Issuance of a Subpoena to H.E. Dr. Ahmad Tejan Kabbah, Former President of the Republic of Sierra Leone”, 30 June 2008.

ICTY

Prosecutor v. Brđanin and Talić, IT99-36-AR73.9, “Decision on Interlocutory Appeal”, 11 December 2002.

<http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Decision/NotIndexable/IT-99-36-AR73%239/MRA4965R0000040469.TIF>

OTHER

ABC News, “Naomi Campbell Tells Oprah She Fears For Her Family - Supermodel Says Talking About 'Blood Diamond' She Allegedly Got From Dictator Puts Her Family in Danger”, By Brian Ross and Anna Schecter, 3 May 2010, available at <http://abcnews.go.com/Blotter/naomi-campbell-tells-oprah-fears-family/story?id=10521090>.

Third video at web page <http://jezebel.com/5530162/naomi-campbell-on-oprah-i-dont-have-an-excuse-for-my-behavior/gallery/>.

Letter to Mr. Gideon Benaim from the SCSL Prosecutor, dated 20 January 2010.

The New York Times, "Star Turns at Liberian's War Crimes Trial", by Marlise Simons, 18 January 2010, available at <http://www.nytimes.com/2010/01/18/world/africa/18taylor.html>.

Strictly Confidential Letter from Brenda Hollis to Courtenay Griffiths entitled "Fresh Evidence to be used in Cross Examination of the Accused", 4 December 2009 (and annexed Declaration of Mia Farrow dated 9 November 2009).

United Nations Security Council Resolution 1688 (16 June 2006), available at http://www.un.org/Docs/sc/unsc_resolutions06.htm.

Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone signed in Freetown on 16 January 2002.