

THE STATE

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v

JAMUNA PRASAD

[HIGH COURT, 1995 (Pain J), 22 November]

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Appellate Jurisdiction

Crime-procedure-Constitution-prosecution's duty to disclose witness statements to the defence-DPP's guidelines approved subject to further observations.

C A Resident Magistrate ruled that a consequence of S11(2)(b) of the Constitution was that an accused was entitled to copies of all witness statements. On appeal the High Court overruled the Magistrate and elucidated the limits and extent of the prosecution's duty of disclosure.

Cases cited:

- D *Baksh v R* [1958] AC 167
Berry v The Queen [1992] 2 AC 364
Christie v Leachinsky [1947] AC 573
Commissioner of Police v Ombudsman [1988] 1 NZLR 385
Dallison v Caffery [1964] 2 All ER 610
Franklyn v The Queen [1993] 1 WLR 862
- E *Josua Tuiqqa v R* (Cr. App. 2 of 1986)
Leyland Justices, ex parte Hawthorne [1979] QB 283
People v Rosario (1961) 213 NYS 2d 448
Police v Wyatt [1966] NZLR 1118
R v Aylesbury Justices, ex parte Wisbey [1965] 1 All ER 602
R v Bromley Magistrates Court ex parte Smith [1995] 1 WLR 944
- F *R v Brown* (1995) 1 Cr. App. R 191, 198
R v Bryant and Dickson (1946) 31 Cr. App. R 146
R v Clarke (1930) 22 Cr. App. R 58
R v Davis & Ors [1993] 2 All ER 643
R v Foxford [1974] N.I. 181
R v Hennessey (1978) 68 Cr. App. R 419
- G *R v Paraslcera* (1982) 76 CT. Appeal R. 162
R v Ward 1993 2 All ER 577
Sakaraiia Vakaturugania v The State - Crim. App. 55 of 1994
Stinchcombe v The Queen unreported, 7th November 1991
Vincent v The Queen [1993] 1 WLR 862
Wheatley v Lodge [1971] 1 WLR 29
Wilson v Police [1992] 2 NZLR 533

Appeal against ruling in the Magistrates Court.

Ms N. Shameem (Director of Public Prosecutions) for Appellant
P. Sharma for Respondent

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Pain J:

This is an appeal by the State against an order made in the Magistrates Court that the prosecutor give to the Respondent (the defendant in the Magistrates Court) copies of witnesses statements and other documents. No challenge has been made to the jurisdiction of this Court to entertain an appeal from such a pre-trial ruling in the Magistrates Court. The Court of Appeal decision of *Josua Tuiqaga v R* (Crim. App. 2 of 1986) is authority for such jurisdiction.

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Twenty charges of embezzlement were laid against the Respondent in the Magistrates Court on the 7th August 1992. The Respondent was a bailiff employed by Wing Lee Motors Limited to collect debts owing to the company. It is alleged that during the period from 3rd January 1992 to 3rd July 1992 he collected various sums ranging from \$5 to \$1,500 and failed to pay this money to his employer.

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After numerous adjournments for a period well in excess of two years, the Magistrates Court was asked to rule on the Respondent's request for certain documents that had been refused by the prosecutor. These documents, (as recorded in the decision of the Learned Magistrate) are:

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- (1) Copies of the complaint's authority to the accused to seize property and collect money on its behalf;
- (2) Copies of records compiled by the accused;
- (3) Copies of all receipts issued by the complainant in favour of the accused for all moneys received;
- (4) Copies of all witnesses statements the prosecution intend to call at the trial, including their names and addresses;
- (5) Copies of all witness statements the prosecution does not intend to call at the trial, including their names and addresses;
- (6) The previous convictions of the witnesses the prosecution intend to call."

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After considering prosecution and defence submissions the learned Magistrate delivered a decision on the 11th July 1995.

This decision considers and interprets the provisions of Section 11 of the

A Constitution of Fiji in relation to prosecution duties of disclosure. Considerable reference is made to the report of the Commission of Inquiry on the Courts presented by the Commissioner, The Honourable Sir David Beattie on the 8th August 1994. Copies of pages 362 and 363 of that report, 'Rules of Criminal Discovery' are annexed to the decision. The learned Magistrate concluded (drawing support from the Report) that Section 11 (2) (b) of the Constitution requires full disclosure of all witnesses statements and other relevant materials prior to trial. This is expressed in these terms:

C "What does S. 11 (2) (b) above mean? In my view, it means exactly what it says. Once a person is formally charged with a criminal offence in the Courts, a constitutional duty is imposed on the State to inform him as soon as possible in a language that he understands and in detail of the nature of the offence. In other words, this not only encompass the State providing the accused with copies of his caution statement, charge statement, and the charge itself; it also includes providing him with copies of all witnesses statements or briefs; including copies of exhibits." (Page 7)

D "For the abovementioned reasons, I held that the accused, by virtue of S.11(2)(b) of Fiji's 1990 Constitution has a legal Constitutional right to the documents he is requesting. The State (i.e. the prosecutor) is duty bound to give him copies of all the documents he is requesting i.e. documents No. 1, 2, 3, 4 and 5. I accordingly order the prosecutor to give the accused copies of the abovenamed documents within 14 days. Any disagreement on this point can be taken up on appeal later." (Page 9)

E "With regard to document No.6, I understand that the accused is entitled to the same under common law: R v Paraslcera (1982) 76 CT. Appeal R. 162." (Page 10)

F The State appeals this decision and the issue for this Court to determine is whether the learned Magistrate was correct in holding that "the accused, by virtue of S. 11 (2) (b) of Fiji's 1990 Constitution has a legal constitutional right to the documents he is requesting".

Section 11 (2)(b) of the Constitution states:

G "Every person who is charged with a criminal offence shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence."

This right given by the Constitution is not new. Like many others, it is the codification of a right that has been long recognised at common law. It arises when a person is charged with an offence. He must be informed of the nature

of the offence. It creates a corresponding duty on the charging authority to give him this information.

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Under the law and practice in Fiji there are two aspects to a person being charged. First there is the charging of a suspect by the Police. That person is then arrested and taken before the Court. Secondly there is the charging of that person in Court. A formal written charge in a prescribed form is presented to the Court. (Section 78 Criminal Procedure Code). In both these situations an obligation to inform the person "charged" with details of the offence has been recognised by common law and statute.

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When a person is initially charged by the Police, in accordance with the long standing practice, he is advised details of the charge and given the opportunity to say anything in answer to it. This is formally recorded and signed by the charging officer and the person charged. Further, the common law has clearly laid down that when a person is arrested he must be told the grounds for his arrest. He must be reasonably informed of the nature of the charge (Christie v Leachinsky [1947] AC 573 and Wheatley v Lodge [1971] 1 WLR 29). This common law right has been incorporated in Section 6 (2) of the Constitution.

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The formal charge document that is filed in Court must contain a statement of the offence charged, together with particulars giving reasonable information as to the nature of that offence (Section 119 Criminal Procedure Code). If sufficient particulars are not given the Magistrates Court can order that they be supplied (R v Aylesbury Justices, ex parte Wisbey [1965] 1 All ER 602). The substance of the charge must be stated to the defendant when he is called upon to plead. (Section 206 (1) Criminal Procedure Code)

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In my view Section 11(1) of the Constitution is confirmatory of these long standing practices and the rights given by common law and statute. The particular form of words may vary slightly but the underlying principle is the same. An accused person is entitled to be informed of the nature of the charge and to be given details of it "with reasonable particularity" (R v Aylesbury Justices, ex parte Wisbey (supra) at page 606). That is what is secured for an accused person by Section 11(1). The right to be informed in detail of the nature of the offence charged. However the section does not provide that the accused is to be advised of the evidence relied upon by the prosecution to support that charge.

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Nor has this been required by the Courts in enforcing an accused's right to details of the charge. In R v Aylesbury Justices, ex parte Wisbey (supra) the defendant was charged with perjury. The charge alleged that he made a false statement as a witness in a particular judicial proceeding but did not identify the particular evidence alleged to be false. The Court of Appeal (at page 606) held that the particulars "fell far short" of giving reasonable information of the

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nature of the charge and ordered that further particulars be given. However the Court refused to order disclosure of a statement filed by the prosecutor in support of the information which gave the names of the witnesses and the evidence they would give as this went “further than is necessary to give reasonable information of the nature of the charge”. Further in Police v Wyatt [1966] NZLR 1118 the Court of Appeal considered Section 17 of the Summary Proceedings Act 1957 which provided that “every information shall contain such particulars as will fairly inform the defendant of the substance of the offence with which he is charged”. In his judgment McCarthy J said at page 1133:

“... sufficient particulars must be given reasonably to inform the person charged of the act or omission alleged and to identify the transaction. A requirement stated in the general terms of S.17 cannot be reduced to a mere list of particulars which is to be common to all charges. Obviously the degree of particularity needed to inform a person adequately of the substance of a charge must vary according to the nature of the offence. I point out that it is the substance, the essence or pith, of the charge which must be revealed by the particulars, not the details relied upon to establish the charge.”

This well recognised right is preserved for a defendant by Section 11 (1) of the Constitution. It is the right to be informed as soon as reasonably practicable after being charged of the nature of the offence with which he is charged. That must be given “in detail” which means sufficiently to describe the legal offence, to inform the person of the acts or omissions alleged to constitute that offence and identify the particular transaction. That information must be supplied in a language that the person understands. However it does not include a requirement to advise details of the evidence relied upon to substantiate the charge.

Accordingly the learned Magistrate was wrong in holding that Section 11 (2) (b) of the Constitution gives the Respondent a right to copies of the various documents including witnesses’ statements. The section only relates to the giving of details of the nature of the offence charged and does not create a new regime for criminal disclosure in this country. In normal cases the provision of a copy of the charge statement and a charge or complaint that meets the requirements of Section 122 of the Criminal Procedure Code will be sufficient. In special cases the Court can order that further particulars be given if this is shown to be necessary. In the present case there is nothing to suggest that the Respondent has not been given adequate details of the nature of the offences with which he has been charged.

This is sufficient to determine this appeal on the specific ground of Section 11(2)(b) of the Constitution relied upon by the learned Magistrate.

However a decision on this narrow point alone would be evading the wider issues of criminal disclosure that have been raised. This appeal has been presented as a test case. It is appropriate for this Court to determine whether the disclosure ordered by the learned Magistrate is justified by a constitutional or common law right of an accused person to a fair trial or by a duty of fairness in the conduct of a trial by the prosecution.

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The right under S. 11 (1) of the Constitution of a person charged with a criminal offence to be given a "fair hearing" is declaratory of the common law. The Courts of common law countries with no constitution still recognize "the right of every accused to a fair trial as a basic or fundamental right" and "an accused's right to fair disclosure as an inseparable part of his right to a fair trial" (R v Brown [1995] Cr. App. R 191, 198). However, from a consideration of the authorities cited by counsel (and particularly the examples given in Berry v The Queen [1992] 2 AC 364) it is clear that the extent of this disclosure varies markedly from country to country.

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In England extensive disclosure is required. The Court of Appeal in R v Brown (supra) adopted a test that includes disclosure of all material "which can be seen on a sensible appraisal by the prosecution to be relevant or possibly relevant to an issue in the case or to raise or possibly raise a new issue" and "an issue in the case must be given a broad interpretation". That includes oral and written statements, any other kinds of documents and material affecting the credibility of prosecution witnesses. It also includes material gathered in the investigation but not being used for trial. Disclosure in the Magistrates Court is governed by the Magistrates' Courts (Advance Information) Rules 1985. Under these the prosecution, on request, is required (inter alia) to provide copies of those parts of witnesses' statements in respect of which evidence is proposed to be adduced at trial. The courts have also extended to summary trials the requirement for the prosecution to disclose 'unused material' (R v Bromley Magistrates Court ex parte Smith [1995] 1 WLR 944).

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In Northern Ireland the defence cannot inspect the statement of a prosecution witness but the Crown ought to offer the statement to the defence if it is materially at variance with the evidence given in Court. (R v Foxford [1974] N.I. 181).

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In Canada the Crown has a legal duty to disclose all relevant information on the basis that "the fruits of the investigation which are in its possession are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done" (Stinchcombe v The Queen (Supreme Court) unreported, 7th November 1991).

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In the United States, the Court of Appeals of New York, by a 4-3 majority following a Supreme Court decision, ruled that the entire previous statements of prosecution witnesses ought to be shown to defence counsel after the direct

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A examination. The minority favoured the existing practice that defence counsel could only examine those portions of a statement that the trial judge considered were at variance with the evidence given. (People v Rosario (1961) 213 NYS 2d 448).

B In New Zealand the Court of Appeal, in the landmark decision of Commissioner of Police v Ombudsman [1988] 1 NZLR 385, held that the provisions of the Official Information Act 1982 were wide enough to apply to Criminal proceedings. This Act entitled a person to obtain access to any personal information about himself held by a government department. Accordingly a defendant in criminal proceedings in the Magistrates Court is entitled to obtain from the Police briefs of evidence, witness statements and notes of interviews containing such personal information. Prior to this, such documents were not disclosed by the prosecution although other established common law duties of disclosure were recognized.

C In New South Wales, Australia the issue of disclosure is being addressed by specific legislation. Part 9A of the Criminal Procedure Act provides that, for indictable offences, an accused must be given the full brief of evidence before being called upon to elect. There are also plans for legislation to make service of complete briefs mandatory in summary matters.

D In Jamaica, for trials on indictment, there is a rule of practice for Crown counsel to inform the defence of any material discrepancy between a witness's statement and the evidence given in court (Berry v The Queen (P.C.) [1992] 2 AC 364). In summary trials, except for petty offences, the prosecution should, upon request, provide either copies of witnesses statements or a summary of the nature of the prosecution case (Vincent v The Queen; Franklyn v The Queen (P.C.) 1993 1 WLR 862).

E The rules developed in other common law countries for prosecution disclosure as part of a defendants right to a fair trial provide helpful guidance but the lack of uniformity is immediately apparent. Individual countries have developed rules that meet the requirements for a fair trial in their own jurisdictions. What is appropriate or required in one country is not necessarily fitting for another country. Therefore in determining the disclosure requirements for a fair trial in a Magistrates Court in Fiji, appropriate consideration must be given to local conditions and practices. It would be wrong to simply adopt laws or precedents from another country, without first ensuring that they meet or are adapted to meet and reflect the nature, needs, values and criminal system of this society. As Lord Lowry said in delivering the judgment of the Privy Council in Berry v The Queen (supra) at page 376:

G "... in a civilised community the most suitable ways of achieving such fairness (which should not be immutable and require to be

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reconsidered from time to time) are best left to, and devised by, the legislature, the executive and the judiciary which serve that community and are familiar with its problems".

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I agree with the submission of the Director of Public Prosecutions that full disclosure by provision of copies of all witnesses statements and other relevant material is an ideal system in an ideal society. However the imposition of such a comprehensive duty on police prosecutors in Fiji would ignore the realities of the criminal justice system in this country. The Magistrate Court sits at 30 Court Houses and Centres throughout the islands of Fiji. These vary from daily sittings in three courts in Suva to monthly sittings on Kadavu to quarterly sittings on several islands in the Lau Group. There are 35 police prosecutors throughout the country, handling approximately 40 files each sitting day. Only those in Suva have access to a photocopier and some in remote areas do not have typewriters. As legal aid is not generally available most defendants are unrepresented and likely to be illiterate. The provision of copies of all witnesses statements in all cases would place an unnecessary and excessive burden on the prosecution and provide little benefit for a great many defendants. A fair trial can be satisfactorily safeguarded for most defendants by less onerous methods of disclosure. A further important factor is that Section 11 (1) of the Constitution secures for a defendant the right to a fair hearing, but that hearing is to be "within a reasonable time". The proper administration of justice requires the speedy disposition of criminal cases. Unfortunately that is not being achieved in the Magistrates Court at the present time (This case under appeal is a good example). A procedure for disclosure should not be imposed that unnecessarily compounds that unsatisfactory situation.

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In my view the practice for disclosure in summary trials in Jamaica, which was laid down by the Privy Council in Vincent v The Queen (supra) would satisfactorily meet the needs of this country. The Privy Council considered the issue in terms of the rights given by the Constitution of Jamaica to a person charged with a criminal offence. Those rights, to a fair hearing, to be informed of the nature of the offence and to be given adequate facilities for the preparation of a defence are virtually identical to those in Section 11 of the Constitution of Fiji. The Privy Council concluded that the prevailing practice of refusing disclosure and, as a matter of course, never providing copies of any witness statement to the defence, was inappropriate. It held that disclosure of the prosecution evidence would undoubtedly assist a defendant in the preparation of his case and safeguard his right to a fair trial. However the extent of disclosure required must depend on the circumstances of each particular case. The Privy Council suggested that the Director of Public Prosecutions could issue appropriate guidelines for this and said (at page 871 of the judgment delivered by Lord Woolf):

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"This being the position, the Director of Public Prosecutions may like to consider whether or not he should give further guidance on

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A this subject. Clearly it would be preferable if the need to consider each case in relation to its particular circumstances could be avoided by a general practice being promulgated which requires the disclosure of statements of witnesses or alternatively giving- the defence a statement of the nature of the evidence, which will be relied upon by the prosecution, before trial (in the absence of special circumstances) to assist the defendant in the preparation of his defence". (emphasis added)

B In relation to the cases under appeal Lord Woolf said (page 871):

C "Returning to the present cases, their Lordships regard them as being cases where, if a request had been made, it could well have been thought proper to provide either copies of the witnesses statements or a summary of the nature of the prosecution's case." (emphasis added)

D At the hearing I was informed that the Director of Public Prosecutions has issued, pursuant to Section 76 of the Criminal Procedure Code, guidelines to all Police Prosecutors and Public Prosecutors on disclosure of prosecution evidence. They are to "disclose a summary of the prosecution case to all accused persons charged with an offence or offences under the Penal Code, Cap. 17." The form and procedure for this is detailed in paragraphs 3, 4 and 5 of the Guidelines as follows:

E "3. This summary is to be in the form of an "Evidence Adduced By" sheet to be prepared by the investigating officer in each case. This summary should contain the witness number (A-1, A-2, A-3) but not the name of the witness. The summary should include all relevant details of the witness statement and is expected to be completely accurate. Accuracy and details must be checked by the Prosecuting Officer handling the case. Every Penal Code docket should include the original summary sheet and a carbon copy for the accused.

F 4. It is the responsibility of every Prosecutor to hand over to the accused the "Evidence Adduced By summary at First Call, or a Mention Date, shortly thereafter. Disclosure at the Hearing Date is not acceptable.

G 5. If the accused requests a translation of the summary into the vernacular, the Prosecuting Officer must request the Investigating Officer to prepare the translation as quickly as possible."

In my view these guidelines generally satisfy the requirements for disclosure approved by the Privy Council in Vincent v The Queen (supra), which give the alternatives of copies of statements or summaries of the nature of the prosecution case. Although (as observed by Lord Woolf at page 868 of that decision) it is desirable that copies of statements should be given, I have already mentioned that it is quite unrealistic to expect that in all cases in this country. The guidelines provide for a summary of the evidence to be given by each witness. This goes a considerable distance towards the position that would be obtained by the provision of copies of witnesses statements and is certainly of greater assistance than a mere summary of the nature of the prosecution case. That summary of evidence, given in the vernacular if requested, will be in a form that is meaningful and informative to the defendants in summary trials. In the normal run of cases, it will be quite sufficient to inform a defendant of the nature of the prosecution case and ensure a fair trial for him.

Although approving of this form of disclosure there are some further observations that I wish to make:

1. It is noted that in terms of the guidelines, disclosure is to be automatically made without any request by the defence.
2. It is noted that, in terms of the guidelines, the names of witnesses will not be disclosed. However such information may be required if, for instance, it is necessary for a defence.
3. Paragraph 7(v) of the Guidelines refers to documentary evidence. For the purposes of a fair trial, intended exhibits must be made available for inspection by the defence. If it is practicable to do so, photocopies of documentary evidence should be provided, especially for a defended hearing.
4. Some cases may require further and better disclosure by the prosecution for the purposes of a fair hearing. This is recognised in paragraph 7 (iv) of the Guidelines. It could extend to copies of some or all witnesses statements and other documents. Criteria for such special cases cannot be determined in advance. This will depend upon the facts of the case including such matters as the nature of the charge, the circumstances of the alleged offending, any legal or factual complexities and the particular material held by the Police or prosecution.
5. These guideline directions for disclosure are given, in terms of Section 76 of the Criminal Procedure Code, to Police and Public Prosecutors. They apply only for offences under the Penal Code. Disclosure may not be necessary for trivial offences. However the guidelines may be appropriate and necessary for a fair trial for

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prosecutions for offences under some other statutes.

- A 6. A requirement for disclosure of a document does not necessarily mean the provision of a copy. That is ideal but not essential. In many cases making the original document available for inspection will be sufficient. This method of discovery has proved satisfactory in civil litigation over many years. It is part of the procedure adopted for disclosure of unused material for summary trials in England (See R v Bromley Magistrates Court, Ex parte Smith - supra at p. 949).
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7. These guidelines are directions to prosecutors which do not have the force of law. (R v Brown - supra). They set generally satisfactory standards for disclosure which should meet the requirements of most cases. However it remains for the Court to determine in any particular case the extent of disclosure required for the purposes of a fair trial and to decide any disputed issues thereon. This includes a Magistrates Court exercising summary jurisdiction (R v Bromley Magistrates Court, ex parte Smith - supra). It is important that in such disputed cases the Magistrates Court should, if possible, give its ruling in a relatively summary way after hearing the parties. Undue delay should be avoided and unnecessary and oppressive requests by the defence must be firmly discouraged. There may be cases where the prosecution seeks to withhold material that would normally be disclosed, for instance, for the necessary protection of a witness or public interest immunity for sensitive material. For such cases the decision of R v Davis & Ors [1993] 2 All ER 643 sets out a form of procedure that could be adopted for applications to the Court.
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8. These principles for disclosure do not affect the common law duties on a prosecutor which have been regularly applied in this country. They include for instance, a duty to inform the defence of persons interviewed but not called as witnesses (R v Bryant and Dickson (1946) 31 Cr. App. R 146), of any statement made by a prosecution witness which is inconsistent with evidence he gives on oath (R v Clarke (1930) 22 Cr. App. R 58; Baksh v R [1958] AC 167) and of previous convictions of a witness affecting credibility (R v Paraskeva (1982) 76 Cr. App. R 162; Wilson v Police [1992] 2 NZLR 533) and to make available to the defence a witness whom it is known can give material evidence but is not being called by the prosecution (R v Hennessey (1978) 68 Cr. App. R 419; R v Ward [1993] 2 All ER 577). Such duties apply in summary proceedings and convictions may be quashed if they are not observed (R v Leyland Justices, ex parte Hawthorne [1979] QB 283).
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I turn now to the particular documents that the defence is seeking to have disclosed in this case.

Items 1, 2 and 3 are documents coming within a rather unique category. They comprise first, authorities given by the complainant to the respondent authorising the respondent to collect specific sums from debtors of the complainant, secondly, records compiled by the respondent of collections made by him from each client and, thirdly, receipts given by the complainant to the respondent for payments made by him. All are the respondents documents. They were handed over by the Respondent for the purposes of the police investigation and are not intended to be produced as exhibits at the trial. In all fairness, the Respondent should not be denied access to them. Furthermore the Respondent faces a number of fraud charges. From the limited information available it seems very likely that access to the documents would be required to enable the respondent to properly prepare his defence to these charges. If this is so, the respondent's right to a fair trial would require disclosure of the documents and this should be done before and not during the trial. These two factors are sufficient to make this a special case requiring disclosure of all those documents.

Item 4 relates to the statements of prosecution witnesses. Disclosure must be made of a summary of the evidence of proposed witnesses in terms of the guidelines already outlined in this decision. There is nothing to suggest that these summaries would be inadequate or insufficient in this case.

Item 5 relates to the names, addresses and statements of persons interviewed by the Police, who are not intended to be called as witnesses. As earlier stated, there is a common law duty on the prosecution to provide a defendant with the names and addresses of people known to be able to give material evidence who are not being called to give evidence for the prosecution (R v Bryant and Dickson - supra). However there is some conflict of authority as to whether a copy of

that person's statement need also be supplied (See Dallison v Caffery [1964] 2 All ER 610 at p.618). In this Court it has been held that the failure to supply a copy of the statement does not amount to a breach of the prosecutors duty (Sakaraia Vakaturagania v The State - Crim. App. 55 of 1994). In my view there cannot be an inflexible rule that a copy of the statement need never be supplied. This could result in an injustice if, for instance, the person had a poor recollection or refused to make a further statement. The general principles for disclosure to ensure a fair trial for a defendant should also apply in this situation. The name and address must be given. If it is practicable to do so and there is no good reason for withholding it, a copy of the statement or a summary of its contents should also be given or the statement should be made available for inspection. These are issues for the prosecutor to consider. Again any dispute can be speedily resolved by the Court.

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The final item, 6, relates to previous convictions of prosecution witnesses. Again, as the learned Magistrate correctly noted, there is a common law duty on the prosecution to inform the defence of previous convictions affecting credibility (R v Paraskeva and Wilson v Police - supra). If the prosecution is in doubt as to whether a particular conviction needs to be disclosed, this must be determined by the Court.

For the reasons given in this decision the appeal is allowed. The order made in the Magistrates Court for copies of all documents in categories 1, 2, 3, 4 and 5 to be supplied to the respondent is quashed. In substitution therefore it is ordered that

1. The prosecutor make disclosure to the respondent of the documents in categories 1, 2, and 3 by providing copies thereof or, if this is impractical, by making them available for inspection.
2. In respect of category 4 the prosecutor make disclosure to the respondent of the evidence to be adduced at trial by providing a summary of relevant details of the witnesses statements.
3. No specific orders are required in respect of categories 5 and 6. The prosecutor is obliged to fulfil the common law duties earlier explained in this decision.

(Appeal allowed.)