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**CHAPTER 95
EVIDENCE**

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§ 95.10. Evidence to be Taken in Open Court; Competency as in Civil Actions Unless Stated Differently in Law.

Except as otherwise provided by law, in all trials under this Code, the testimony of witnesses shall be taken orally in open court and the admissibility of evidence and the competency and privileges of witnesses shall be governed in the same manner as in civil actions.

COURT DECISIONS: DISTRICT COURT, APP. DIV. 1978. Another criminal act is relevant to the issue of identity only if it discloses a distinctive modus operandi which gives rise to a reasonable inference that the charged and uncharged offenses were committed by the same person. *People v. Santos*, D.C. Guam, App. Div., Cr. App. #76-2A, Decided 02/13/78.

C.A.9. 1978. It was error for the Superior Court to fail to give a cautionary instruction regarding evidence of an informer-accomplice even though no local statutes requires such cautionary instructions. *People v. Dela Rosa*, C.A.9 1980, #79-1739, _____ F.2d _____.

Comment cited in support of verdict. *People v. Zamis*, D.C. Civ. No. 85-00095A (1986).

COMMENT: This decision is in conformity with the legislative history repealing § 1111 of the former Penal Code of Guam which required, as did California, that accomplice testimony be corroborated. Testimony favoring repeal was to the effect that defendants would continue to be protected since a cautionary instruction, as required in the Federal Rules, would be required in place of the absolute requirement that such testimony be corroborated.

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NOTE: Section 95.10 is substantively similar to former Rule 26. However, it has been reorganized to make clear that exceptions to the rules of evidence in civil cases do exist and supplant such rules where applicable. Compare former § 1102. See, *e.g.*, §§ 1.11, 60.80 (inadmissibility of plea discussions), 95.15-95.80. For exceptions to the taking of oral testimony, see §§ 70.70 (use of deposition); 90.29 (jury view); 95.15 (evidence of prior conviction); 95.75 (proof of official record).

§ 95.15. Establishment of Prior Convictions.

For the purpose of establishing prima facie evidence of the fact that a person charged with a crime has previously been convicted of another crime in this Territory, or in any state, territory, or insular possession of the United States, which would be punishable as a crime in this Territory, or has been convicted of an act declared to be a crime by any act or law of the United States, and has served a term therefor in any penal institution, the records or copies of records of the penal institution, in which such person has been imprisoned when such records or copies thereof have been certified by the official custodian of such records, may be introduced as such evidence.

NOTE: Section 95.15 continues the substance of former § 969b. Compare Cal. Pen. Code § 969b. See § 95.75 (proof of official records). This Section is not intended to limit other means of proof of prior convictions, Guam Code Civ. Proc. §§ 1902 (evidence of laws of any state), 1904-1905 (proof of judicial records), 1918 (proof of official documents), nor does it imply that the person must in all cases have served a prison term before a prior conviction may be considered in sentencing *i.e.*, conviction, not service of a prison term is required under §§ 80.38 and 80.40 of the Criminal and Correctional Code. See 9 GCA § 80.44.

§ 95.20. Corroboration Required in Certain Crimes.

No person shall be convicted of an offense defined in §§ 52.15, 52.20 or 52.30 of the Criminal and Correctional Code when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

NOTE: Section 95.20 supersedes former § 1103a. It has been revised to conform in part to § 1103a of the California Penal Code and also to include the new offenses of official false swearing (Section 52.20) and unsworn falsification (§ 52.30) added to the Criminal and Correctional Code. See also Guam Code Civ. Proc. § 1968 (proof and perjury requires testimony of one witness and corroborating circumstances). See generally B. Witkin, California Evidence 2d Introduction of Evidence at Trial § 1123 (1966, Supp. 1972); 2 B. Witkin, California Crimes, Crimes Against Governmental Authority §§ 854-859 (1963), Supp. 1967).

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§ 95.30. Overt Act Required for Conspiracy Conviction.

Upon trial for conspiracy, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment, information or complaint nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

NOTE: Section 9530 is substantively the same as former § 1104. See also Cal. Pen. Code § 1104 (same). See generally B. Witkin, California Criminal Procedure Proceedings Before Trial § 192(1963, Supp. 1973). For the substantive requirement of an overt act, see 9 GCA § 13.30.

§ 95.40. Proof of Marriage in Bigamy Trial.

Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of this Territory, proof of that fact, accompanied with proof of cohabitation thereafter in this Territory, is sufficient to sustain the charge.

NOTE: Section 95.40 is identical to former § 1106. See also Cal. Pen. Code § 1106 (substantively same). See generally 1 B. Witkin, California Crimes, Crimes Against Decency and Morals § 533 (1963); B. Witkin, California Criminal Procedure Jurisdiction and Venue § 42(1963). See also 9 GCA § 31.10 (bigamy).

§ 95.50. Corroboration in Trial for Compelling Prostitution.

Upon a trial for compelling prostitution the defendant cannot be convicted upon the testimony of the person compelled to commit or engage in prostitution, unless she (or he) is corroborated by other evidence.

NOTE: Section 95.50 is based on former § 1108. Compare Cal. Pen. Code § 1108. The section is revised to conform to the provisions of § 28.30 of the Criminal and Correctional Code relating to compelling prostitution. See generally B. Witkin, California Evidence 2d Introduction of Evidence at Trial §§ 1118-1121 (1966, Supp. 1972); 1 B. Witkin, California Crimes, Crimes Against Decency and Morals § 577 (1963); B. Witkin, California Criminal Procedure Trial § 490 (1963).

§ 95.60. Proof in Trials for Illegal Lottery.

Upon a trial for the violation of paragraph (3) of Subsection (a) of § 64.10 of the Criminal and Correctional Code, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket, or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager, but in all

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cases proof of the sale, furnishing, bartering or procuring of any ticket, share or interest therein, or of any instrument purporting to be a ticket or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

NOTE: Section 95.60 is substantively the same as former § 1109. See also Cal. Pen. Code § 1109 (identical).

§ 95.75. Proof of Official Record or Lack.

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

NOTE: Section 95.75 is identical to former Rule 27. See also Fed. R. Crim. P. 27. § 95.75 provides an exception to the “confrontation” rule provided by § 95.10 and the 6th Amendment to the United States Constitution. For the manner of proof, see Rule 44 of the Rules of Civil Procedure for the Superior Court. See also §§ 1904-1907, 1916, 1918-1919b, 1921-1924.

§ 95.80. Determination of Foreign Law.

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice of such intention. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under § 95.10. The court's determination shall be treated as a ruling on a question of law.

NOTE: Section 95.80 is substantively the same as former Rule 26.1. See also Fed. R. Crim. P. 26.1 and Rule 44.1 of the Rules of Civil Procedure for the Superior Court. See generally 8 Moore, Federal Practice §§ 26.1.01- 26.1.02 (1974).

§ 95.85. Appointment of Expert Witnesses by Court.

(a) The court may order the defendant or the government or both to show cause why an expert witness should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witness agreed upon by the parties, and may appoint a witness of its own selection. An expert witness shall not be appointed by the court unless he consents to act.

(b) A witness appointed pursuant to Subsection (a) shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have an opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court or by any party. He shall be subject to cross-examination by each party.

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(c) The court shall determine the reasonable compensation of a witness appointed pursuant to Subsection (a) and direct his payment out of such funds as may be provided by law.

(d) Nothing in this Section precludes a party from calling an expert witness of his own selection.

NOTE: Section 95.85 is substantively the same as former Rule 28(a). See also Code Civ. Proc. § 1871; Fed. R. Crim. P. 28(a). See generally 8 Moore, Federal Practice ¶¶28.01-28.04 (1974). Subsection (d) makes clear that the parties may call their own expert witnesses. In a proper case, the defendant may obtain an expert witness necessary to his defense at government expense. See § 75.15.

§ 95.90. Appointment by Court of Interpreter.

The court may appoint an interpreter of its own selection. The court shall determine the reasonable compensation of such an interpreter and direct his payment out of such funds as may be provided by law.

NOTE: Section 95.90 is substantively the same as former Rule 28(b). See also Fed. R. Crim. P. 28(b). See generally 8 Moore, Federal Practice ¶28.02[2] (1974).
