

**IN THE HIGH COURT OF JUSTICE  
(CRIMINAL)**

**SAINT LUCIA**

**CASE NO. 5 OF 2006**

**THE QUEEN**

**Vs**

**EARDLEY DETERVILLE**

**For Burglary**

**APPEARANCES:** Ms. Charon Gardener for the Crown  
Defendant unrepresented

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**2006: April 25, May 5**

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**RULING**

**FACTUAL BACKGROUND**

- [1] **EDWARDS J:** The Defendant Mr. Eardley Deterville was arraigned on the 24<sup>th</sup> of April, 2006 on an indictment charging him with Burglary, contrary to Section 207 (1) (a) of the Criminal Code of St. Lucia 2004. The offence was allegedly committed on the 22<sup>nd</sup> January, 2005.
- [2] Upon his plea of “Not Guilty”, Crown Counsel requested the Court to empanel a Jury to try him, and for the evidence to be adduced on the 25<sup>th</sup> April, 2006.
- [3] I did not have the opportunity to read the file before Court as it was handed to me late. I acceded to the request of Crown Counsel without examining the file and without carrying out further investigations, on the assumption that the Witness

Statements had been served on the Defendant, although the Magistrate had committed him for Sentence.

- [4] While the Virtual Complainant Mrs. Andra Gokool Foster was testifying, it became obvious to me that there were no Witness Statements taken by the Police. The evidence for the prosecution was therefore being marshaled from the Investigating Officer's summarised report dated 4<sup>th</sup> October, 2005.

### **THE LAW**

- [5] Section 801 of the Criminal Code 2004 states that: **“If the Magistrate holding a preliminary inquiry thinks that the evidence is sufficient to put the accused person on his...trial, or to commit him for sentence, he or she shall commit him or her for trial to the next sitting of the High Court or for sentence accordingly.”**

- [6] A practice seems to have developed in the Magistrates Courts of St. Lucia whereby a defendant charged with an indictable offence is pleaded, and if he pleads guilty, he is immediately committed for sentence in the High Court on a Warrant of Committal for Sentence without the provisions in Section 752 (2) of the Repealed Code having been complied with.

- [7] Section 752 (1) provides—  
**“Where the accused is charged with an offence other than murder, treason or manslaughter, the Magistrate shall take the plea of the accused and if the accused pleads guilty, the Magistrate shall commit him for sentence at the next sitting of the Assizes”**

- [8] Before committing the accused for sentence, **“The Magistrate shall accept any written statements and exhibits tendered by the prosecution pertaining to the charge and the same shall be considered for all purposes as if they were depositions taken in a preliminary inquiry...”** (Section 752 (2) )

- [9] Based on Section 752 (1) and (2) of the Repealed Code, along with the likelihood, probability, or possibility that an accused person who is committed for sentence can on arraignment in the High Court change his plea to “Not Guilty”, prudence dictates that Magistrates should not commit an accused for sentence in the High Court until the prosecutor has tendered the written statements of potential witnesses, and any other relevant documents and exhibits to the Magistrate.
- [10] Now the new Criminal Code does not contain any provisions similar to Section 752 (1) and (2) of the Repealed Code. Consequently, a Magistrate cannot lawfully entertain any plea from a defendant before commencing a preliminary inquiry.
- [11] Section 798 of the new Criminal Code prescribes the procedure for taking the depositions of Witnesses and the Statement of the Accused.
- [12] It may happen during the hearing of the preliminary inquiry that a defendant indicates that he is guilty.
- [13] Such a defendant may indicate that he is guilty during cross-examination of witnesses, or when the (Form No 49 Criminal Code 1920) “Caution to and Statement of Accused Person” form has been read out to the defendant. This form is read out to comply with the procedure under Section 798 (4) and (7) of the 2004 Criminal Code.
- [14] By then, the Magistrate should have already taken or received all of the evidence that the prosecution is presenting at the preliminary inquiry.
- [15] Where the defendant makes a statement in answer to his charge and or gives evidence and calls any witness, the Magistrate must record this also pursuant to Section 798 (7) and (9) of the New Criminal Code.

[16] In my view, it is only after all of this has been done, that Section 801 of the New Code begins to operate. And where the Magistrate **“thinks that the evidence is sufficient...to commit him...for sentence,...[the Magistrate] shall commit him...to the next sitting of the High Court...for sentence...”**

[17] To proceed with this trial without any depositions or Witness Statements will result in a travesty of justice.

[18] Consequently, I will have to discharge the jury after explaining my reason for doing so.

[19] Having ruled ex tempore, I thought at the time that the law allowed me to exercise one of 2 options in the factual circumstances –

- 1) Remit the file to the Magistrate’s Court for compliance with the procedure under Section 798 of the Criminal Code 2004; or
- 2) Adjourn the trial to another date with directions regarding the filing and serving of a Notice with Witness Statements.

[20] I now have second thoughts about exercising the second option and for the following reasons:

- (a) The terms of Section 798 are imperative. Section 798 (1) states that **“... a Magistrate inquiring into an offence SHALL cause the evidence of each witness ... to be put into writing ....”** Section 798 (2) states that where **“...the Accused is absent the evidence...SHALL BE RECORDED on the deposition of the Witnesses ....”**

Section 798 (4) states that ... **“the Magistrate ... SHALL READ THE CHARGE...”** to the Accused

Section 798 (5) states that **“... the Magistrate SHALL...”** warn the Accused in terms stated therein.

- (b) Consequently, if the magistrate does not strictly comply with these statutory procedural requirement in Section 798, during the course of the Committal Proceedings, the Committal for trial or sentence is a NULLITY: (Stones Justices Manual 1972, Vol. 2 at page 3923, discussing identical provisions in the U.K. Magistrates Courts Rules 1968 made under Section 15 of the U.K. Justices of the Peace Act 1949 as extended by Section 122 of the U.K. Magistrates Courts Act 1952).
- (c) Since the Magistrate’s Committal Order is not in accordance with the relevant procedure under Section 798, then there has been no valid committal of the Accused for Sentence or for trial in my view.
- (d) It follows therefore that no bill of indictment can properly be preferred against the Accused from a Committal for trial or sentence which is a nullity.
- (e) Consequently, it is now my considered view that what has taken place in the High Court so far in relation to this Accused is also a nullity.

[21] These reasons constitute a good ground for refusing to allow the trial to proceed on the 8<sup>th</sup> June 2006 as scheduled.

[22] I therefore direct that the Accused be brought back to Court before me on the 10<sup>th</sup> May 2006 so that I can remit this matter to the Magistrate’s Court for a proper

preliminary inquiry to be held in accordance with Section 798 of the Criminal Code 2004.

Dated this 2<sup>nd</sup> day of May 2006.

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**OLA MAE EDWARDS**  
**High Court Judge**