

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

Claim Number: **NEVHCR2019/0003**

Between

Director of Public Prosecution

and

Shakel Campbell

Before: His Lordship Justice Ermin Moise

Appearances:

Mr. Vaughn Henderson and Ms. Megan Nisbett of counsel for the Crown
Mr. Chesley Hamilton of counsel for the Defendant

Defendant present

2019: November, 13th

JUDGEMENT

[1] **Moise, J.:** The defendant was indicted on one count of robbery contrary to section 31(1)(a) of the Larceny Act. It is alleged that on 17th February, 2017 he, along with other persons unknown, robbed a business establishment at gun point. Contained in the depositions collated after the preliminary inquiry is evidence of identification by a witness who claims to have known the defendant before. Further to that, the investigating officer has presented a statement made by the defendant on 3th March, 2017 which amounts to a full confession. Even outside of the statement there is an indication in the investigating officer's evidence that the defendant had pointed to some clothing which he confessed to having used during the course of the robbery. A voir dire was held to determine the admissibility of the identification evidence. During that time counsel for the defendant also raised objection to the confession statement and cross examined the investigating officer in that regard. After assessing the evidence and submissions presented in the voir dire, I have

determined that the evidence of identification and the confession are inadmissible and ought not to be presented to the jury. These are the reasons for my decision.

The Facts

- [2] On 17th February, 2017, the business establishment of S.L Horsford's Company Limited was robbed by two individuals at gunpoint. The investigating officer in his evidence during the voir dire indicated that he responded to a report of robbery on 17th March, 2017. I take this date to have been identified in error and that the officer was in fact referring to 17th February, 2017. He therefore visited the premises on the date of the incident. He spoke to a number of employees; none of whom identified anyone as the perpetrators of the crime. He later spoke to the employees on 20th February, 2017 and took statements from them. These statements were not tendered during the course of the voir dire. However, in cross examination the investigating officer could not recall if any of the witnesses from whom he recorded these statements were able to identify the robbers to him on 20th February, 2017.
- [3] The investigating officer then states that he met with the defendant at the police station on 3rd March, 2017. He was unsure as to who made the arrest and how the defendant got to be in police custody. However, he states that he cautioned the defendant, although he did not specify the precise words used by him during that process. According to the investigator, after cautioning him the defendant indicated that he wanted to "tell me what happened." He states that he informed the defendant that he intended to write down what he had to say. He states that he informed the defendant that he had a right to have a lawyer, family member or friend present to witness the statement. According to the officer, the defendant "denied having any." I'm not sure that I understand what is meant by that statement. However, it would seem that the officer was implying that the defendant waived his right to have an attorney, family member or friend being present.
- [4] The officer indicates that he then contacted the Social Services Department and secured the attendance of Ms. Udorna Liburd as a witness to the statement of the defendant. In Ms. Liburd's presence the defendant allegedly gave a full confession to his involvement in the robbery. After the statement was read over to him he signed it and Ms. Liburd did the same as well as the investigator.

- [5] Despite the investigator's insistence that he informed the defendant of his rights to a lawyer, family member or friend witnessing the statement, none of that information is recorded anywhere. The statement was not audio or video recorded and it contains no information as to the precise representations made to the defendant regarding his rights prior to or at the time of the taking of the statement. The only issue signed and recognized on that statement was that the defendant was informed that he need not say anything but if he did it will be taken down into writing and given in evidence. Ms. Liburd in her own deposition indicated that the defendant asked the investigator whether this statement will be seen as cooperation to which the officer responded "yes". There is nothing in her deposition which speaks to the defendant being informed of his rights during that process, let alone his right to have an attorney of his choice present during this confession.
- [6] I also note that subsequent to the taking of the statement, at least according to the investigator's evidence, the defendant pointed to some clothing which was apparently collected from his home during the execution of a search warrant. The officer indicates both in his deposition and during the voir dire that the defendant informed him that this was the clothing which he used during the robbery. None of that was reduced to writing and signed by the defendant in the presence of his lawyer or an independent witness.
- [7] During the course of the preliminary inquiry, the magistrate heard evidence from Donnette Lewis. She is an employee of the business establishment and was present during the robbery. In her statement she identified the defendant as one of the robbers. She states that one individual came and put a gun to her face and said that he knew her family and where she lives. He asked her not to make any noise. During that time another person entered the store with a mask. She described this person as slim in stature. He had a hat and dusk mask on and was wearing dark clothing. He also had a bag. After the robbery and during the departure, she looked up and saw this individual and it looked to her like Shakel Campbell, the defendant. She states that she knows him as he had worked at that very establishment from July, 2015 to June, 2016. She would see him on a daily basis as he visited the office regularly. According to her "just by the way he walked, his stature and he is usually well groomed and by looking at him that is how I was able to identify him." During cross examination she stated that the recognition was made when the individual was leaving and

from the back. Although he spent about two minutes in her office during the robbery, it was only when he turned his back to leave did she recognize him.

- [8] The prosecution therefore wishes to tender this evidence to the jury. I note that the investigating officer acknowledged that he did not conduct an identification parade; or any identification procedure for that matter. During the course of the voir dire, he offered no explanation as to why he felt it was not reasonable to conduct such a procedure.

The Law and Its Application

- [9] In 2011 the parliament of Saint Christopher and Nevis passed a New Evidence Act. This act sought, among other things, to alter the procedure for the collection and presentation of identification evidence in criminal proceedings. In particular section 110 states as follows:

(1) Subject to subsection (2), identification evidence adduced by the prosecutor is not admissible unless

(a) either an identification parade that included the accused was held before the identification was made and there is no evidence that the witness was intentionally influenced to identify any particular person in that parade; or

(b) identification was made in accordance with section 111 .

(2) Without limiting subsection (1), the matters to be taken into account by a court in determining whether it was reasonable to hold an identification parade as mentioned in that subsection include

(a) the kind of offence and the gravity of the offence;

(b) the importance of the evidence being sought;

(c) the practicality of holding such a parade having regard, among other things,

(i) to whether the accused refused to co-operate in the conduct of the parade, and to the manner and extent of, and the reason, if any, for the refusal; and

(ii) in any case, to whether the identification was made at or about the time of the commission of the relevant offence; and

(d) the appropriateness of holding such a parade having regard, among other things, to the relationship between the accused and the witness who made the identification.

[10] The leading authority on the interpretation of these provisions is that of the court of appeal in the case of **Earl Hunte v. The Queen**¹. There Justice of Appeal Ola Mae Edwards made it abundantly clear that the prosecution cannot lead evidence of identification unless it first satisfies the trial judge that the provisions of the legislation have been complied with. In short, the prosecution must prove, either that an identification parade was conducted or that the conduct of an identification parade was not reasonable in the circumstances of the case. Edwards JA stated the following at paragraph 44 of her judgment:

The effect of section 100(1)(a)(i) and (b) is that there now exists the cardinal rule that before identification evidence can be admissible and as such: (i) an identification parade as defined by PACE Code D paragraph 3.7 which included the accused should have been held; (ii) the identification of the accused as the offender should have been made in the course of and as a result of an identification parade; (iii) an identification parade should have been held before the identification was made; and (iv) the identification should have been made without the person who made the identification being intentionally influenced to identify the accused.

[11] Not only did Her Ladyship refer to the this procedure as being a cardinal rule, but she went on to note that by promulgating section 100 of the Evidence Act in Saint Lucia, parliament had ***“frowned on the casual methods customarily employed by the police for detecting the identity of the perpetrators of crimes.”*** She was of the view that the new legislation being implemented ***“demands that that custom must now change. The preference for properly controlled methods for testing a witness’ ability to identify the perpetrator of a crime are reflected in section 100(1) and (5) and within the hierarchy of those controlled methods, the identification parade procedure ranks first.”*** In 2011 the legislation passed by the Parliament of Saint Christopher and Nevis was in similar terms. Unfortunately, as I understand it, between then and now there has never even been an identification parade conducted on the island of Nevis. That much can be gleaned from the representations of counsel for the crown; although I sincerely hope that this is not the case if identification evidence was lead in criminal proceedings where the procedure was necessary since then.

¹ SLUCRAP2006/0012

[12] Edwards JA went on to note the following in her decision:

“Where identification evidence is captured by section 100 of the Saint Lucia Act; the prosecutor is prohibited from leading such evidence unless the court rules that the evidence is admissible, upon being satisfied by the prosecutor that an identification parade was held, or that it would not have been reasonable to have held an identification parade; and that any identification that was made of the defendant by a witness was not intentionally influenced. It must be remembered that the DPP who may be represented by Crown counsel, ultimately bears the responsibility of deciding how the prosecution will be conducted. Commencing the trial without a determination as to whether such identification evidence is admissible is certainly not a good practice.”

[13] I note here that no identification parade was held and the investigating officer, during the course of the voir dire, presented no reason at all for his decision not to conduct a parade. Indeed he wasn't even certain as to what point in the investigation was the identification of the defendant made to him by the witness. Mr. Henderson for the crown argued that this is a case of recognition in that the witness worked with the defendant for a year and in these circumstances the court should have regard to section 110(2)(d) where it states that in determining ***“the appropriateness of holding such a parade having regard, among other things, to the relationship between the accused and the witness who made the identification.”*** Mr. Henderson argued very strenuously that in these circumstances the recognition is strong and it would therefore not be reasonable to have held an identification parade.

[14] I do not accept that submission. I note that in ***Earl Hunte v. The Queen***, the witness who identified the defendant also claimed to have known him for some time. Yet the court of appeal felt that the failure to follow the proper procedure was not acceptable in that case. Thirdly, I express some concern as to the circumstances under which the defendant was identified, enough to question whether a parade ought to have been conducted. The witness claimed that the robber was in her office for two minutes and yet it was only upon his departure from the back that she was able to identify the defendant. He had not worked at this establishment for a number of months and the identification was not given on the date of the incident, despite the officer having spoken to the

employees on the very day. Further, the witness claims to have recognized the defendant, at least partially, because he is always well groomed. This despite the fact that the robber was wearing a dusk mask and a hat on his head at the time. It is not merely because a witness claims to have recognized the defendant that an identification parade becomes unnecessary. The circumstances of the identification ought to be taken into account.

[15] Lastly, there is much doubt as to the timing of this identification to the investigating officer. He spoke to the workers on the day of the incident and no one identified the defendant as one of the perpetrators. He was unsure as to whether this identification was provided on 20th February, 2017 when statements were taken from the witnesses or perhaps even after the confession statement by the defendant was made. The only evidence before the court on this voir dire was a deposition given before the magistrate over two years later, during which time the witness was certain that it was the defendant she saw on that date; despite the fact that he was wearing a mask and other items to conceal his face. It would have been clear during the preliminary inquiry, which I emphasize was conducted two years later, that the defendant was raising issues regarding identification. The court has noted in the past that a procedure can be conducted at any time before the trial takes place.

[16] In ***Earl Hunte v. The Queen*** when the investigator put the case to the defendant he replied that he knew nothing about it. These would have been circumstances enough to have raised the officer's duty even further to conduct a parade. In this case this seems to not have been done but rather a statement was taken from the defendant. Perhaps it can be argued that it was unreasonable to conduct a parade since the defendant had made a confession. Given that counsel for the defendant objects to the circumstances under which that confession was made, I will address my mind to that issue at this stage in this judgment prior to coming to a conclusion on the issue of the identification evidence.

The Confession

[17] Counsel for the defendant had indicated from the onset that he was challenging the confession statement. Insofar as that is the case it is important to highlight the law as it relates to admissibility of confessions of accused persons whilst in police custody. For that purpose I turn to section 84 of the New Evidence Act. The section states as follows:

(1) This section applies only

- (a) in criminal proceedings;**
- (b) in relation to evidence of a confession made by an accused person who, at the time when the confession is made, is or ought reasonably to have been suspected by an investigating official of having committed an offence; and**
- (c) where the confession is made in the course of official questioning.**

(2) Evidence of a confession, referred to in subsection (1), is not admissible unless

- (a) the confession is made in circumstances where it is reasonably practicable to take a sound recording of the confession and the questioning of the person and everything said to and by the person during that questioning is recorded; or**
- (b) the questioning is conducted, and the confession made, in the presence of a person, not being an investigating official, who**
 - (i) is a legal practitioner acting for the person who made the confession, or**
 - (ii) if no such legal practitioner is reasonably available or is chosen by that person, and a document prepared by or on behalf of the investigating official to prove the contents of the questions, representations and responses is signed, initialed or otherwise marked by the person making the confession and by the legal practitioner or other chosen person present, acknowledging that the document is a true record of the questions, representations and responses; or**

[18] In the case of *The Queen v. Kevin Edward*², Benjamin J came to consider the interpretation of provisions in the Evidence Act of Saint Lucia which are in similar terms to that of Saint Christopher and Nevis. He determined that where a police officer visits a defendant whilst in custody, informed him of the investigation against him and his right to remain silent, a confession made under such circumstances is made in the course of official questioning. In particular Benjamin J stated that ***“I consider it inescapable that when the investigator in the present case told the defendant of the report and cautioned him, this was done within the broad interpretation of the term in the course of official questioning.”*** To my mind, the circumstances under which the defendant in this case came to have made the alleged confession fall within the ambit of section 84 of the Act. There was reasonable suspicion that he had committed an offence and the confession was given

² SLUCRD2009/0111

during the course of official questioning. In Those circumstances the provisions of section 84 ought to have been complied with.

[19] Unlike the provisions relating to the admissibility of identification evidence, it would be for the defendant to raise objection to the confession. Otherwise the court would not enquire into the circumstances on its own volition. Here defence counsel raises serious objection to the tendering of this statement to the jury and I too share a similar reservation. I note also that similar issues were raised during the course of the preliminary inquiry, enough to have put the prosecution on notice that the evidence was being challenged.

[20] The investigating officer indicates that he cautioned the defendant and informed him of his right to an attorney, family member or friend of his choice being present during the recording of the statement. Certainly it is very important for persons in police custody to be adequately informed of their rights prior to the taking of any statement. This becomes even all the more important if he is not legally represented at the time. This is because the role of the attorney is not merely to witness a statement but to advise the prisoner of his rights. If an attorney is not present that duty falls squarely on the investigating officer and he would do well to properly document this process. The difficulty however, is that although the investigating officer claims to have informed the defendant of these rights, those representations were not reduced into writing and is contained nowhere in the statement signed by the defendant and this independent witness.

[21] Section 84 of the Act is very specific in its content. Evidence of a confession is not admissible unless:

(a) ***“the confession is made in circumstances where it is reasonably practicable to take a sound recording of the confession and the questioning of the person and everything said to and by the person during that questioning is recorded”.*** or

(b) the questioning is conducted, and the confession made, in the presence of a person, not being an investigating official, who

(i) is a legal practitioner acting for the person who made the confession, or

- (ii) ***if no such legal practitioner is reasonably available or is chosen by that person, and a document prepared by or on behalf of the investigating official to prove the contents of the questions, representations and responses is signed, initialed or otherwise marked by the person making the confession and by the legal practitioner or other chosen person present, acknowledging that the document is a true record of the questions, representations and responses; or***

[22] It seems to me that there is a clear intention on the part of parliament here to move away from such statements or interviews being taken in circumstances where they are not recorded; at least with a sound recording. However, in the alternative the statement must be taken in the presence of someone other than an investigating official. If the defendant does not have a lawyer, or waives his right to one, including his right to have another person of his choice present, then the officer may select another individual to witness the making of the statement. In those circumstances however, a document prepared to prove the contents of the questions, representations and responses must be signed by the defendant, the witness and the investigating officer.

[23] To my mind a key component of any statement given by a defendant whilst in police custody must include a clear and unambiguous explanation of his rights in custody. This becomes even all the more important where he is not legally represented or waives his right to counsel. Further, any representation of those rights form part and parcel of that process and must comply with the provisions of section 84 of the Act. The Act does not allow the court to simply rely on unilateral and uncorroborated evidence from the investigator, whether on oath or otherwise, as to what representations were made to the defendant during this process and what his responses were. This is further compounded by the fact that Ms. Liburd in her deposition indicated that the defendant enquired as to whether this would be seen as cooperation and the investigating officer replied "yes". None of this is contained in the statement, in clear defiance of the strict procedure outlined in section 84 of the Act.

[24] Mr. Henderson for the crown argues that this has been the practice in the Federation, despite the provisions of the Act. He states that whilst he accepts that the court's position would be best practice, perhaps investigators can alter this behavior in the future, given the court's admonition. It

seems that the practice has simply been for investigators to “caution” individuals without placing the exact nature of that caution into writing and ensuring that the defendant acknowledges that he has been informed of his rights and understands what they are. Mr. Henderson encourages the court however to admit the statement under its general discretion to do so. He also requested that perhaps the court should adjourn this matter to the following morning at which point the he may be in a better position to address the issues raised in the voir dire thus far. The court duly obliged.

[25] On the following morning, Mr. Henderson presented the court with two cases emanating from the Caribbean Court of Justice. The first was that of ***R. v. Sealy***³ in which the CCJ came to consider an appeal from Barbados where the police officer was allowed to refresh his memory of an oral confession made by the defendant during the course of police questioning. The trial judge allowed this without necessarily conducting a voir dire and heard the objections in the presence of the jury. This was frowned upon by the court of appeal in Barbados and the CCJ. They nevertheless upheld the judge’s exercise of this discretion and the need for caution which was directed to the jury. The specific section of the Barbados legislation under consideration by the CCJ states as follows:

“Where an oral admission was made by a defendant to an investigating official in responses to a question put or a representation made by the official, a document prepared by or on behalf of the official is not admissible in criminal proceedings to prove the contents of the question, representation or response unless the defendant has, by signing, initialing or otherwise marking the document, acknowledged that the document is a true record of the question, representation or response.”

[26] Counsel for the crown therefore submits that the terms of the legislation in Barbados are similar to that in Nevis and that the CCJ was quite prepared to accept that where the statement was reduced into writing but not signed by the defendant, the court may admit the oral confession by allowing the officer to refresh his memory. On that basis, even if there are questions arising from the statement in the present case, the court has a discretion to allow the evidence of the confession.

³ [2006] CCJ 1

[27] It was further submitted that the court should rely on section 143 of the New Evidence Act in Nevis as a more general provision under which the evidence may be admitted despite the court's concerns. That section relates to ***“oral evidence of the official questioning of a defendant, where the questioning is recorded in writing that has not been signed or otherwise acknowledged in writing by the defendant.”*** Such evidence may be put to a jury provided that an adequate warning was given to them regarding the reliability of the evidence.

[28] To my mind, however, there are a number of distinctions to be drawn here. Firstly the legislation in Barbados is substantively different from that of Nevis. What the section in Barbados seeks to do is to make any document of that nature not signed by the defendant inadmissible if it is being tendered to ***prove the contents of the question, representation or responses*** made to and by the defendant. It is, according to the CCJ, the document which is inadmissible and not oral evidence of the confession. In Nevis however, section 84 of the Act makes ***Evidence of a confession*** inadmissible if the provisions of the section are not complied with. Whereas in Barbados, it is the document which is rendered inadmissible, in Nevis it is the evidence of the confession itself which is inadmissible.

[29] Secondly, the judges of the CCJ were very careful to point out that the legislature in Barbados had suspended the obligation to conduct sound recordings of such interviews. Given that the general spirit of the legislation was to move away from the primary use of closed door and unrecorded interviews, this was a factor which the court took into consideration in coming to its conclusion. In Nevis the legislation seems to be very heavily focused on encouraging a sound recording of the interview process. Indeed my experience in the jurisdiction tells me that video recording facilities have been used in the past as such evidence has been presented to this court. Even in circumstances where a written statement had been taken otherwise than in accordance with section 84 (2) (a) and (b), section (c) requires that the statement subsequently be read over to the defendant and a tape recording of that reading be made. That is the extent to which the legislation seeks to move in the direction of sound recording of confession statements. This is to ensure that the integrity of the process is further enhanced. It is not that the court is imputing anything untoward about investigating officers, but it is simply that parliament seems to have intended to usher in a new, more advanced and foolproof manner of operating; especially as it relates to what transpires when defendants are in the custody of the police.

[30] It is my considered view that where an accused is in police custody and is to give a statement, especially a confession, he must, of necessity, have his rights adequately and properly explained to him in clear and unambiguous terms. I am of the view that a full explanation of his rights and the circumstances under which he comes to be interviewed are part and parcel of the representations which ought to be made to him and fall within the provisions of section 84 of the Act. His responses to those representations, especially a waiver of his right to counsel, also form part of that process. Insofar as that is the case, those representations and his responses should be placed in writing, signed and acknowledged by the defendant in the presence of an independent witness.

[31] Other than the fact that the police were conducting an investigation into the robbery, the only representation placed on the statement signed by the defendant is that he was informed that he is not obligated to say anything but if he does it will be reduced into writing and given into evidence. In my view, even that is not an adequate reflection of the right to remain silent. His right to remain silent is so crystalized into law that his silence cannot be used against him in the determination of his guilt or innocence. This is an important feature of that right which ought to have been carefully explained to him. It is not merely that he may remain silent but that such silence can have no adverse effect in the determination of whether he is innocent or guilty. This is important insofar as it must be explained to the defendant so that he fully appreciates the extent of his right against self-incrimination. I say so as I also hold the view that the voluntariness of a statement given in the line of police questioning must be based on a circumstance where the defendant is fully apprised of his rights at the time the statement is given.

[32] It seems to be the practice that investigating officers simply say under oath that the defendant was "cautioned". But what exactly is that caution? What precisely was told to him? And did he formally acknowledge his understanding of those rights? I say so as the circumstances of the case suggest that the defendant was in police custody without an attorney. The investigating officer in the voir dire insisted that he was cautioned. However he gave no explanation as to what was said to the defendant and no indication as to whether there was a contemporaneous note taken anywhere that he could refresh his memory from. On 3rd March, 2017 the investigating officer had communicated with the defendant for the first time. He knew nothing about when the defendant was taken into custody and whether his rights had been adequately explained to him. If the defendant was

informed of his rights and intended to waive his right to legal counsel that much ought to have been reduced into writing. He gave no evidence during the course of the voir dire that this was done; even if only in his pocket book or the station diary.

[33] The evidence suggests that there were more representations made to the defendant than what were reduced into writing. These were critical representations which lead to the defendant allegedly waiving his right to counsel during a full confession of a major crime. It is compounded by the fact that the depositions reveal that the independent witness does not claim to have witnessed the waiver of the defendant's right to an attorney and she makes representations to the effect that there was at least one important question raised by the defendant and replied to by the investigating officer which was not reduced into writing.

[34] Further, and finally as it relates to the submissions of Mr. Henderson, I do not find reliance on section 143 to be particularly helpful. This appears to me to be a broad section regarding the admissibility of evidence during a police interview. As the CCJ pointed out at paragraph 75 of the judgment in **R v. Sealy**, the court must have regard to section 84 as a section which makes specific provisions for confession statements. Section 143 is a broader section which, to my mind, does not seek to detract from the specific provisions put in place in section 84 for the admissibility of confession statements. Perhaps one may wish to rely on section 143 if the defendant gives a confession but later refuses to sign the statement or some other circumstance warrants it.

[35] However, I am of the view that there seems to be a general disregard for the intent and spirit of the legislation which was passed over 8 years ago now. It is no longer the case that the defendant needs to raise specific allegations about the statement so as to render the issue one of reliability as opposed to admissibility. Parliament appears to have been concerned about the process of confessions made by persons whilst in police custody so much so that the legislation renders the confessions inadmissible unless the court is sure that the procedure has been complied with. My view is that the process of cautioning the defendant and reading him his rights is part and parcel of what ought to be properly documented if the crown wishes to rely on a confession made by a defendant whilst in police custody which emanated during the course of official questioning. Whatever responses he gives to those representations, particularly his waiver of his right to counsel, must also be properly documented in the manner prescribed by section 84 of the Act.

Conclusions

[36] In these circumstances, I am not of the view that the confession ought to be admitted for the jury's consideration. As I see it, there are omissions as to the representations made to the defendant and his responses which ought to have been reduced into writing. These are not minor matters. The court must balance the public interest in ensuring that persons who commit such crimes are brought to justice. However, the court has to concern itself with the manner in which statements taken from defendants whilst in police custody are derived. His rights in custody are a critical element of that process and a proper procedure must be put in place to ensure that whatever representations made to a defendant in those circumstances are properly documented and acknowledged.

[37] Having come to this conclusion regarding the confession, this leaves the issue of the identification evidence to be considered. I would have accepted that an identification parade would have been unreasonable in the face of a confession. However, as I indicated earlier, it would have been apparent to the prosecution that the defendant had subsequently raised issues regarding both his confession and the identification made of him by the witness. Mere recognition is not enough to oust the need for an identification parade, which can be held at any time leading up to the trial. The prosecution can certainly adduce additional evidence even after the preliminary inquiry. I would rule that the identification evidence is also inadmissible and ought not to be presented to the jury.

**Ermin Moise
High Court Judge**

By the Court

Registrar