

COURT OF APPEAL SITTING

**SAINT LUCIA
10th – 14th December 2012**

STATUS HEARING

Case Name: Christopher Alsace also called
Christopher Matthew
v
Choc Estates Limited c/o Ferrel Charles
[High Court Civil Appeal No. 25 of 2011]

Date: Monday, 10th December 2012

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:	Mr. Colin Foster
Respondent:	Mr. Anthony Bristol

Issue: Status of the appeal

Result / Order: [Oral delivery]

1. Status hearing of this matter is adjourned to the week commencing 25th March 2013 in Saint Lucia.
2. Counsel undertake to have discussions with a view to arriving at a consent order or an agreed record on the basis of which the matter can progress.

Case Name: [1] Heirs of Avril Africain represented by
L.P.R. Benedict Joseph
v

- [1] Estate of Adrienne Felicien
represented by Antonius Ralph Felicien
[2] Estate of Medas Felicien represented
by Marie Felicien
[3] Estate of Emmanuel Felicien
represented by Thomas Walcott
[4] Estate of Edward Felicien
[5] Estate of Mary Felicien represented
by Andre Felicien
[6] Arnold Felicien represented by
Joseph Felicien
[7] Estate of Lawrence Felicien
represented by S. Headley Felicien
[8] Samuel Felicien
[9] Estate of Marie Ambroise represented
by Simon Ambroise
[10] Heirs Anne Marie Modeste
represented By Simon Ambroise
[11] Bernadette Sylvester represented By
Augustin Sylvester
[12] The Attorney General

[High Court Civil Appeal No. 9 of 2007]

Date: Friday, 14th December 2012

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Lucious Joseph

Respondent: Mr. Dexter Theodore

Issue: Status of the appeal

Result / Order:

[Oral delivery]

1. Status hearing of this matter is adjourned to the Monday 25th March 2013.
2. All parties are to be served with notice of the

status hearing.

Case Name:

[1] Norina Cooper
[2] Lanthorn Cooper
v
[1] Boniface Son
[2] Attorney General of Saint Lucia
[3] Office of the Commissioner of Crown
Lands

[High Court Civil Appeal No. 10 of 2012]

Date:

Monday, 10th December 2012

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Ms. Maureen John

Respondent:

Mrs. Brender Portland-Reynolds

Issue:

Status of the appeal

Result / Order:

[Oral delivery]

1. Leave to appellant to file and serve amended skeleton arguments on or before 21st December 2012.
2. Leave to appellant to file and serve amended record of appeal by adding to existing record of appeal the transcript and amended skeleton arguments on or before 21st December 2012.
3. Leave to the respondent to file and serve (if necessary) amended skeleton arguments on or before 11th January 2013.
4. The respondent is hereby directed to serve its skeleton arguments and amended skeleton arguments on or before 18th January 2013.

5. Leave to the ancillary respondents to file and serve skeleton arguments on or before 8th February 2013.
6. All parties are to file and exchange a list of all authorities on which they wish to rely on or before 25th February 2013.

Case Name:

**[1] Alexis Alcide as Heir to the Estate of
Gerard Alcide aka Gerald Alcide Jn.
Marie aka George Alcide**

**[2] Alexis Alcide as Administrator of the
Estate of Emilienne Alcide nee Gilbert**

v

**[1] Josephine Lansiquot as Executrix of
the Estate of Joseph Alcide c/o of
Monica Alcide of Bagatelle, Castries**

**[2] John Cherubin as Administrator of
the Estate of Veronica Alcide of Monchy**

[3] Monica Alcide of Bagatelle, Castries

[High Court Civil Appeal No. 7 of 2012]

Date:

Monday, 10th December 2012

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

In person (Monica Alcide)

Issue:

Status of the appeal

Result / Order:

[Oral delivery]

1. The appellant is ordered to re-file the record of appeal on or before 10th January 2013 including in the re-filed record the documents required to be included in

accordance with Rule 62.12(3)(c) and an index to the record.

2. The respondents are ordered to file and serve skeleton arguments on or before 11th February 2013.
3. The matter is to take its usual course thereafter.

APPLICATIONS AND APPEALS

Case Name:	Re: Bryan Stephen (An Attorney at Law) [High Court Civil Appeal No. 41 of 2010]
Date:	Monday, 10th December 2012
Coram:	The Hon. Mde. Janice M. Pereira, Chief Justice The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal
Appearances:	
Applicant / Intended Appellant:	Mr. Leon Gokool
Respondent:	Mr. Raulston Glasgow, Solicitor General, with him Mr. Deale Lee
Issue:	Application for leave to appeal to Her Majesty in Council
Result / Order:	Matter stood down.
Reason:	The Court decided to stand the matter down so that attorney for the respondent, Mr. Leon Gokool, can furnish both the Court and the appellant with copies of his authorities.

Case Name:

**[1] Marguerite Desir
[2] Marguerite Desir
(Qua Executrix of the Will of the late
Albertha Bella Butcher)
v
Sabina James Alcide**

[High Court Civil Appeal No. 30 of 2011]

Date:

Monday, 10th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of
Appeal
The Hon. Mde. Louise E. Blenman, Justice of
Appeal**

Appearances:

**Applicant / Intended
Appellant: Mr. Peter Foster, QC with him Ms. Diana
Thomas**

**Respondent
Applicant: / Mr. Dexter Theodore with him Mr. Eghan
Modeste**

Issue:

**Application for conditional leave to appeal to
Her Majesty in Council**

Result / Order:

[Oral delivery]

**1. By consent, the applicants are granted leave
to appeal to Her Majesty in Council on the
following conditions:**

**a) The applicants do within 90 days of
the date hereof enter into good and
sufficient security in the sum of £500
(five hundred pounds sterling)
pursuant to section 5(a) of the West
Indies Associated States (Appeals to
the Privy Council) Order 1967, for the**

due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office.

- b) The applicants within 90 days hereof do take the necessary steps for the purposes of procuring the preparation of the records, the settling of the same and the certification of the record by the Registrar of the Court of Appeal.
 - c) The record shall be prepared in accordance with Rules 18-20 Judicial Committee Rules 2009 and Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5 and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay when final permission to appeal has been granted.
- 2. The applicants shall make an application to the Court for final permission to appeal to Her Majesty in Council supported by a certificate from the Registrar that security for costs has been given by the time prescribed by this Order to the satisfaction of the Registrar.
 - 3. The costs of the applications for conditional leave shall be costs in the appeal to Her Majesty In Council.

Reason:

The applicants satisfied the requirements for leave to appeal to Her Majesty in Council.

Case Name:

Coecilia St. Romaine

V

The Attorney General

[High Court Civil Appeal No. 19 of 2012]

Date:

Monday, 10th December 2012

Coram:

The Hon. Mde. Janice M. Pereira, Chief Justice

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal

Appearances:

Appellant: Mr. Martinus Francois

Respondent: Ms. Jans Drysdale with her Ms. Cagina Lubrin

Issues:

Application for stay of proceedings in the Criminal Division – Application for relief from sanctions – Application that appeal be heard as a summary appeal

Result / Order:

[Oral delivery]

- 1. The application for stay of all proceedings in the High Court is refused.**
- 2. No order as to costs.**

Reason:

The appellant did not provide any evidential basis to meet the threshold for the granting of a stay. The Court concluded that if a stay was not granted it will not have a disastrous consequence on the appellant.

The Court noted that the exercise of fairness must be understood and examined as a whole to both the accused person as well as the State. Notwithstanding the appellant is indigent, his lack of means is not a factor the Court will take into account in and of itself for the granting of a stay.

Case Name:

Helen Television Systems Limited

v

Victoria Alcide

[High Court Civil Appeal No. 42 of 2011]

Date: Monday, 10th December 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal

Appearances:

Appellant: Mr. Dexter Theodore

Respondent: Mr. Peter I. Foster, QC with him Ms. Shellone Surage

Issue: Assessment of damages

Result / Order: [Oral delivery]
1. By consent, the matter be remitted to the High Court for notice of assessment to be given and for an assessment thereafter to be conducted allowing for the participating of the defendant in the assessment.
2. No order as to costs.

Reason: In light of decision in George Blaize v Bernard La Mothe (trading as "Saint Andrews Connection Radio" SAC FM Radio) Grenada Civil Appeal No. 4 of 2012, which struck down rule 12.13 of the Civil Procedure Rules 2000 in so far as it deprives a defendant of the right to be heard on an assessment of damages after a default judgment has been entered, the Court determined that the decision of the learned trial judge ought to be set aside.

Case Name: Re: Bryan Stephen (An Attorney at Law)
[High Court Civil Appeal No. 41 of 2010]

Date: Monday, 10th December 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal

Appearances:

Appellant: Mr. Leon Gokool

Respondent: Mr. Raulston Glasgow with him Mr. Deale Lee

Issue: Application for conditional leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]

1. Leave to appeal to Her Majesty in Council is granted pursuant to section 108(1)(c) of the Saint Lucia Lucian Constitution Order 1978 on the following conditions:
 - (a) The appellant/applicant do within 90 days of the date hereof enter into good and sufficient security in the sum of equivalent to £500 (five hundred pounds sterling) pursuant to Section 5(a) of the West Indies Associated States (Appeals to the Privy Council) Order 1967, for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office.
 - (b) The applicant within 90 days hereof do take the necessary steps for the purposes of procuring the preparation of the records, the settling of the same and the certification of the record by the Registrar of the Court of Appeal.
 - (c) The record shall be prepared in accordance with Rules 18-20 Judicial Committee Rules (2009) and Practice Direction 4.2.1 to 4.3.2 and Practice Direction 5 and shall be transmitted to

the Registrar of the Privy Council without delay where final permission to appeal has been granted.

2. The applicant shall make an application to the Court for final permission to appeal supported by a certificate from the Registrar that security for costs has been given by the time prescribed by this Order to the satisfaction of the Registrar.
3. A stay of execution of the judgment of the Court of Appeal until the hearing and determination of the appeal to her Majesty in Council is granted.
4. The costs of the appeal to Her Majesty in Council shall be the applicant's in any event.

Reason:

In the appellant's appeal grounds albeit the issue of a right to a fair hearing was not specifically expressed, the appeal grounds were wide enough to canvass that issue.

In addition, the appellant had appealed to the Appeals Commission and up to the present time his appeal was not yet heard. The Court took the view that the appellant was deprived of the benefit of that appeal process.

Case Name:

[1] Juliet Sutherland

[2] Derrick Satchell

V

The Bank of Saint Lucia Limited

[High Court Civil Appeal No. 21 of 2012]

Date:

Monday, 10th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of**

Appeal

Appearances:

Appellant: Ms. Renee St. Rose with her Ms. Diana Thomas

Respondent: Mr. Thaddeus M. Antoine with him Mr. Daniel Francis

Issue:

Application to discharge order of a single judge

Result / Order:

[Oral delivery]

- 1. By consent, the Orders of Mitchell, JA dated 5th September 2012 and the Master dated 27th April 2012 are set aside.**
- 2. The case is remitted to the High Court for a trial of all the issues raised in the pleaded cases.**
- 3. Each party shall bear his own costs.**

Reason:

The Court held that a factual basis was required in order for there to be a determination of the Bills of Sale Act Cap. 13.06 Revised Laws of Saint Lucia 2008. As it was a finding as to whether or not a person was the true owner of a chattel, there needed to be evidence of the same. That evidence could not be entered by way of submissions.

Case Name:

**[1] Edme Celestin aka Edmay Celestin
[2] Thomas Celestin**

V

**[1] Lindley Lubin
[2] Francis Lubin**

[High Court Civil Appeal No. 11 of 2012]

Date:

Monday, 10th December 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal

Appearances:

Appellant:	Ms. Lydia Faisal
Respondent:	Mr. Evans Calderon

Issues: Whether a trial judge can make an order of her own initiative without complying with rule 26.2 of the Civil Procedure Rules 2000 – The learned judge made an order striking out the appellant from the proceedings of her own initiative without complying with part 26.2 of CPR

Result / Order: [Oral delivery]

1. The appeal is allowed.
2. The order dated 12th March 2012 striking out the 2nd claimant as a party to the proceedings is set aside.
3. The application for extension of time to file an amended statement of claim, witness statements and pre-trial memorandum and relief from sanctions is granted.
4. The appellant shall file and serve the amended statement of claim and his witness statements on or before Thursday, 27th December 2012.
5. The appellant shall file and serve a pre-trial memorandum on or before Thursday, 27th December 2012.
6. The matter to proceed to further pre-trial review in accordance with the Rules of Court.
7. Costs of this appeal shall be costs in the cause in the Court below.

Reason: The trial judge had before her an application to amend a statement of claim and an application for an extension of time; there was no

application to strike. Notwithstanding this, the judge went ahead and made the order appealed against.

The Court held that if the learned trial judge was minded to make that order (which was not contemplated), the appellant ought to have been given an opportunity to be heard. This is a rule which is enshrined in natural justice. Further, rule 26.2 of the Civil Procedure Rules 2000 states that where the court proposes to make an order of its own initiative any party likely to be affected must be given a reasonable opportunity, at least 7 days, to make representations. The learned trial judge therefore fell into error when she made the order.

Case Name:

Sheldon Fletcher

v

The Queen

**[High Court Criminal Appeal No. 2 of
2009]**

Date:

Tuesday, 11th December 2012

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon Mr. Mario Michel, Justice of Appeal

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Leslie Mondesir

Respondent:

Mr. Giovanni James

Issues:

Criminal appeal against conviction – Murder

Result / Order:

[Oral delivery]

The appellant be retried with expedition.

Reason:

The appellant has been in custody since 2004. He was convicted of murder in February 2009 and sentenced to life imprisonment on 27th April 2009. He filed his notice of appeal on the day he was sentenced.

His appeal was heard at the last sitting of the Court of Appeal in Saint Lucia where directions were given to locate the missing part of the record, being the tape containing the judge's summation. However, to date the search proved futile.

On this occasion, the Court noted with importance that the appellant's grounds of appeal did not impugn in any way the summation of the learned trial judge, yet that is the only part of the record that cannot be located. On the contrary, his filed grounds of appeal were based on the findings of the jury.

The Court took into consideration that the charge was one for murder which attracted a life imprisonment sentence. The Court concluded that it must engage in a balancing exercise; it must determine whether the balance of justice lies in favour of the appellant and it must also consider its duty towards the victim and society. In so doing, the Court was of the opinion that when one compares the delay of eight years of the appeal in conjunction with the fact that a jury of the appellant's peers convicted him of the serious crime of murder after what appeared to be a fair trial and which conviction attracted a life imprisonment sentence, the delay of eight years was a short time.

The Court followed the case of Saied Christopher Talal Tohme v The Police, Saint Lucia, Magisterial Criminal Appeal No. 6 of 2011

where the Magistrates' notes went missing due to her relocation and the matter had to be traversed 3 times. In that case, the Court considered that a retrial of the matter was the best course. Although Saied Christopher Talal Tohme was never incarcerated, in the circumstances of the instant case where the appellant was convicted of the serious crime of murder and where the Court was not seized of any evidence at all against the ordering of a retrial, the Court was of the view that the interest of justice is best served by ordering a retrial of the matter.

Case Name:

Simon Marius

v

The Queen

**[High Court Criminal Appeal No. 7 of
2008]**

Date:

Tuesday, 11th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of
Appeal**

The Hon. Mr. Mario Michel, Justice of Appeal

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Alberton Richelieu

Respondent:

**Mrs. Victoria Charles-Clarke, Director of Public
Prosecutions with her Ms. Tina Mensah**

Issues:

Criminal appeal against conviction – Murder

Result / Order:

Judgment reserved until this afternoon.

Case Name:

**Mitchel Joseph
V
The Queen**

**[High Court Criminal Appeal No. 1 of
2011]**

Date:

Tuesday, 11th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Shawn Innocent with him Mr. Al Elliot

Respondent:

Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues:

Criminal appeal against conviction – Murder

Result / Order:

**Matter adjourned until Wednesday, 12th
December 2012.**

Case Name:

**Simon Marius
V
The Queen**

**[High Court Criminal Appeal No. 7 of
2008]**

Date:

Tuesday, 11th December 2012

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Alberton Richelieu

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions with her Ms. Tina Mensah

Issues: Criminal appeal against conviction – Murder

Result / Order: [Oral delivery]
The appeal against conviction is dismissed and the conviction is affirmed.

Reason: On Wednesday 10th July 2002, the appellant, Simon Marius, was arrested for the murder earlier that day of Pedro Joseph, the bodyguard of Uzma Ahmed, his ex-girlfriend. His arrest was in large part based on his identification by Uzma Ahmed. No identification parade was held, nor was there a confrontation with the eyewitness, and he was charged on 17th July 2002. His Preliminary Inquiry commenced before the Magistrate in August 2002, and he was committed to stand trial. He was indicted on a charge of murder on the 28th November 2007. On 7th July 2008, the accused was arraigned in the High Court, and on the charge of murder being put to him, pleaded not guilty. At the trial, the Crown's case depended substantially on the powerful recognition evidence of the appellant by Uzma Ahmed, the appellant's ex-girlfriend, and direct eyewitness to the murder. At the end of his trial, he was on 16th July 2008 convicted of the offence of murder as charged, and he was subsequently sentenced to life imprisonment, and he has now appealed his conviction. This appeal turns on a

simple point. Was the evidence of identification wrongfully admitted by the trial judge?

The appellant argues one ground of appeal. It is that the learned trial judge erred in failing to appreciate that the Evidence Act of Saint Lucia Cap. 4:15 Revised Edition 2008 (“the Act”), applied to the facts of this case; and that the appellant did not receive the benefit of the safeguards provided by the Act in relation to the issue of identification. Counsel for the appellant submits that the identification evidence led against the appellant in the circumstances of this case was inadmissible in light of his defence, and accordingly the appellant did not receive a fair trial. The issue he submits, therefore, is not the safety of the conviction, but the fairness of the trial to the appellant. In his oral submissions, he explained it this way: The learned trial judge erred in failing to appreciate that it was the Act that applied to the proceedings before this Court and not the common law. In consequence, the learned trial judge erred in law when he permitted the prosecution to adduce inadmissible identification evidence in the course of the trial in a manner which was not in accordance with section 100 of the Act, thereby depriving the appellant of a fair trial.

In reply, the learned DPP submits that the Act does not apply to these proceedings, because the Act came into effect on 1st November 2005, and the proceedings commenced in August 2002, and the Act did not apply retroactively.

The Act was enacted in the year 2002, but it came into effect on 1st November 2005. Section 10 of the Act provides that the Act applies to all proceedings in a court in St Lucia, but it does not apply to, “proceedings the hearing of which began before the commencement of this Act.” Section 2 of the Act defines “criminal proceedings” as including “proceedings for the commitment of a person for trial for an offence”. Section 100 of the Act provides that

identification evidence adduced by the prosecutor is not admissible in evidence unless either an identification parade that included the defendant was held before the identification was made, or it would not have been reasonable to have held an identification parade. The section explains that one of the circumstances that would cause it not to be reasonable to have held an identification parade would include the nature of the relationship between the defendant and the witness. But, where it is not reasonable to hold an identification parade, subsection (5) requires a confrontation to be held.

In this case there was neither an identification parade, nor a confrontation. In the circumstances, counsel for the appellant submits, the identification evidence should not have been admitted, and the conviction should be quashed, and the accused discharged. We are satisfied that the provisions of the Act relating to identification evidence did not apply to this criminal trial. The proceedings in issue here began at the stage of the preliminary inquiry in the year 2002, which preceded the coming into effect of the Act. The Act is not retrospective. We are satisfied that the judge's directions on identification were quite adequate. He gave the jury an appropriate warning on recognition evidence in accordance with the guidelines in *R v Turnbull and others* [1976] 3 All ER 549. In the circumstances, the appeal against conviction is dismissed. There is no appeal against sentence. The conviction is therefore affirmed.

Case Name:

**Jeff McVane
v
Bertly Ferdinand**

[Magisterial Criminal Appeal No. 2 of

2010]

Date: Wednesday, 12th December 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Giovanni James

Issues: Criminal appeal against conviction –
Possession of a firearm without licence

Result / Order: Matter stood down.

Reason: The appellant was absent so the Court was minded to stand the matter down to ascertain whether or not the appellant was in custody.

Case Name: Germain Tobie
v
The Police

[Magisterial Criminal Appeal No. 4 of
2011]

Date: Wednesday, 12th December 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: No appearance (Mr. Leslie Mondesir appear for appellant but had a death in family so he was absent)

Respondent: Mr. Stephen Brett

Issues:

Criminal appeal against conviction –
Possession of firearm without licence

Result / Order:

Matter adjourned to Friday, 14th December 2012.

Reason:

The Court took into consideration that attorney on record for the appellant Mr. Leslie Mondesir, had a death in his family. The respondent had no objections to the requested adjournment.

Case Name:

Elvis King

v

The Police

**[Magisterial Criminal Appeal No. 14 of
2011]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant: No appearance (appellant was present)

Respondent: Mr. Stephen Brett

Issues: Criminal appeal against conviction – Possession of a controlled drug

Result / Order: Matter stood down.

Reason: The appellant's attorney was absent so the Court was minded to stand the matter down.

Case Name: Magnus Louisy
v
The Police

[Magisterial Criminal Appeal No. 16 of 2011]

Date: Wednesday, 12th December 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Jeannot-Michel Walters

Respondents: Mr. Giovanni James

Issues: Criminal appeal against conviction – Assault

Result / Order: [Oral delivery]
1. The appeal is allowed. The sentence of imprisonment is substituted with the payment of a fine in the sum of \$800.00.
2. The said sum of \$800.00 to be paid on or before 12th January 2013, in default 3 months

imprisonment.

Reason:

The appellant was sentenced without a pre-sentencing report. If a court is minded to impose a custodial sentence they must request a pre-sentencing report.

The Court considered the appellant's guilty plea and the fact that he is a first time offender. The Court further considered the aggravating factors and the manner in which the act was done.

Section 426 of the Criminal Code Cap. 3.01, Revised Laws 2008 of St. Lucia stipulates that a fine of \$1000.00 or one year imprisonment be imposed on summary conviction. The Court concluded that the higher end of the scale would be an appropriate sentence in light of all the circumstances of the offence and that the interest of justice would not be served by sending a first time offender to serve a term of imprisonment.

Case Name:

**Elvis King
v
The Police**

**[Magisterial Criminal Appeal No. 14 of
2011]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Al Elliot
Respondent: Mr. Stephen Brett

Issues: Criminal appeal against conviction – Possession of a controlled drug

Result / Order / Reason: [Oral delivery]
At the request of counsel for the appellant, this appeal is adjourned to the next sitting of the Court in St Lucia scheduled for the week commencing 25th March 2013. This is the final adjournment.

Case Name: Terry Charles
V
PC 56 Allyn Prospere

[Magisterial Criminal Appeal No. 19 of 2011]

Date: Wednesday, 12th December 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Colin Foster
Respondent: Ms. Tina Mensah

Issues: Criminal appeal against conviction – Possession of unlicensed firearm

Result / Order:

Matter stood down.

Reason:

The Court was minded to stand the matter down to ascertain whether the appellant is presently in custody.

Case Name:

**Amis Victor
v
The Police**

**[Magisterial Criminal Appeal No. 1 of
2012]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Alberton Richelieu

Respondent:

Mr. Giovanni James

Issues:

**Criminal appeal against conviction –
Possession of firearm and ammunition without
licence**

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. The default term of imprisonment, being unlawful, is replaced with a default term of 6 months.**

Reason:

The prosecution's case was conducted on the

basis of joint possession. The appellant in his position as a police officer had an active duty to take possession of the firearm. The magistrate had an abundance of evidence on which he could have concluded that the appellant, given his status as a police officer coupled with the definition of joint possession under the Criminal Code Cap 3.01, Revised Laws 2008 of Saint Lucia section 6(4) could be deemed to be in joint possession.

Case Name:

**Josephine Edward
v
Melchoir Louis PC 546**

**[Magisterial Criminal Appeal No. 3 of
2012]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Alfred Alcide

Respondent:

Ms. Tina Mensah

Issues:

**Criminal appeal against sentence – Intentionally
causing harm**

Result / Order:

Matter stood down.

Reason:

To ascertain the whereabouts of the appellant.

Case Name:

**Terry Charles
V
PC 56 Allyn Prospere**

**[Magisterial Criminal Appeal No. 19 of
2011]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Colin Foster

Respondent:

Ms. Tina Mensah

Issues:

**Criminal appeal against conviction –
Possession of unlicensed firearm**

Result / Order:

**[Oral delivery]
The appeal is traversed to the next sitting of the
Court in St Lucia commencing the week of the
25th March 2013.**

Reason:

**Counsel for the appellant indicated to the Court
that he received instructions that morning and
requested that the matter be traversed to the
next sitting of the Court of Appeal in Saint
Lucia.**

**The Court noted that the appellant had no other
charge or reason why he was still in custody.
He filed his recognizance since 2011. Under
section 723 of the Criminal Code Cap. 3.01**

Revised Laws 2008 of Saint Lucia a magisterial appeal operates as a stay; the appellant having entered into his recognizance to prosecute his appeal his sentence is suspended by virtue of section 723 and ought to be released.

Case Name:

**Jeff McVane
v
Bertly Ferdinand**

**[Magisterial Criminal Appeal No. 2 of
2010]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Mr. Giovanni James

Issues:

**Criminal appeal against conviction –
Possession of firearm without licence**

Result / Order:

Matter adjourned to Friday, 14th December 2012.

Reason:

**The Court was minded to adjourn the matter to
locate the whereabouts of the appellant. A
bench warrant was issued but was not
executed.**

Case Name:

**Josephine Edward
v
Melchoir Louis PC 546**

**[Magisterial Criminal Appeal No. 3 of
2012]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Alfred Alcide

Respondent:

Ms. Tina Mensah

Issues:

**Criminal appeal against sentence – Intentionally
causing harm**

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The sentence of eight months imposed is substituted by a fine of \$1,500.00 to be paid in two months. However, the order for payment of compensation to the virtual complainant as ordered by the magistrate remains.**
- 3. In default, the appellant is to be imprisoned for three months.**

Reason:

The Court was of the view that the sentence imposed by the learned magistrate was wrong and excessive and failed to take into account the sentencing principles as set out in Desmond Baptiste and The Queen (Saint Vincent and the Grenadines High Court Criminal

Appeal No. 8 of 2003 delivered 6th December 2003). Considering those principles and having regard to the mitigating factors which outweighed the aggravating factors, the Court was of the opinion that the learned magistrate ought not to have imposed a custodial sentence particularly where the appellant was a first time offender. The Court also took into account the seriousness of the injury and the offence and determined that the appropriate sentence should have been a fine. The Court concluded that each case has to be determined by taking into account all the relevant circumstances and facts.

Case Name:

**Mitchel Joseph
v
The Queen**

**[High Court Criminal Appeal No. 1 of
2011]**

Date:

Wednesday, 12th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptise, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Shawn innocent with him Mr. Al Elliot

Respondent:

Mrs. Victoria Charles-Clarke with her Ms. Tina Mensah

Issues:

Criminal appeal against conviction – Murder

Result:

[Oral delivery]

The decision is reserved.

Case Name:

**Angus Wayne Vitalis
v
Florentius St. Marie**

[High Court Civil Appeal No. 48 of 2011]

Date:

Friday, 14th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

Ms. Diana Thomas with her Ms. Renee St. Rose

Respondent:

Ms. Lydia Faisal

Issues:

Contract – Challenge to trial judge’s findings of facts

Result / Order:

[Oral Delivery]

- 1. The appeal is dismissed.**
- 2. Costs to the respondent agreed in the sum of \$3000.00.**

Reason:

An appellant who seeks to upset the findings of fact of a trial judge faces an uphill task and the Court would not easily reverse such findings unless there are compelling grounds to do so; that is more so when the factual findings are premised on the judge's assessment of the oral evidence and issues of liability and credibility and that is the most critical aspect of the appellant's case. The Court must be satisfied

that the learned trial judge was plainly wrong. The learned trial judge in the instant case had the benefit of seeing and hearing the witnesses and was well positioned to make the finding of fact on the evidence. He had the view of examining the credibility of the witnesses as they gave evidence. He had certain findings which were not always independent of his assessment of the documents. The Court opined that the appellant did not reach the threshold to persuade the Court that the findings which the learned trial judge arrived at were wrong.

Case Name:

**Jeff McVane
v
Bertly Ferdinand**

**[Magisterial Criminal Appeal No. 2 of
2010]**

Date:

Friday, 14th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of
Appeal
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

No appearance

Respondent:

Mr. Giovanni James

Issues:

**Criminal appeal against conviction –
Possession of firearm without licence – Report
on execution of bench warrant**

Result / Order:

[Oral Delivery]

The hearing of the appeal is traversed to the next sitting of the Court in Saint Lucia scheduled for the week of 25th to 27th March 2013.

Reason:

The appellant could not be located as he no longer resides at last known address and the information provided was that he no longer has a fixed place of abode as such the bench warrant remained unexecuted.

Case name:

**Germain Tobie
v
The Police**

**[Magisterial Criminal Appeal No. 4 of
2011]**

Date:

Friday, 14th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant: Mr. Leslie Mondesir

Respondent: Mr. Stephen Brett

Issues:

**Criminal appeal against conviction –
Possession of firearm without licence or permit**

Result / Order:

**[Oral delivery]
The hearing of the appeal is traversed to the next sitting of the Court in Saint Lucia scheduled for the week of 25th March 2012.**

Reason: Counsel for the respondent submitted late submissions as such counsel for the appellant needed time to respond.

Case name: [1] James Valton
[2] Natiana Valton
v
[1] Phillip Etienne

[Magisterial Civil Appeal No. 2 of 2012]

Date: Friday, 14th December 2012

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: In person

Issue: Appeal against order of the magistrate

Result / Order: [Oral delivery]
1. The appeal is allowed to the extent that the award of \$6000.00 is set aside.
2. Each party to bear their own costs.

Reason: The magistrate had no basis to award the respondent the sum of \$6000.00 based on the statement of claim filed. The statement of claim filed claimed the sum of \$2400.00. The learned magistrate did not give any indication to show

how she arrived at that sum. In the premises the Court was minded to allow the appeal.

Case name:

**[1] Frederick John
v
[1] Attorney General
[2] Police Officer one Myers
[3] Police Officer one Dexter
[4] Police Officer one Emmanuel
All of the Royal St. Lucia Police Force**

**[Magisterial Criminal Appeal No. 3 of
2012]**

Date:

Friday, 14th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant: Mrs. Cynthia Hinkson-Ouhla

Respondent: Mr. Dwight Lay

Issues:

Civil appeal – Jurisdiction of the Court

Result / Order:

**[Oral delivery]
1. The court has no jurisdiction to hear the appeal. The appeal is to the High Court and is hereby dismissed.
2. No order as to costs.**

Reason:

The Court of Appeal had no jurisdiction to entertain the appeal. The appeal lies to the High Court and not to the Court of Appeal.

Case name:

**Dimitrios Adamopoulous
v
Georgis Kouda**

[Magisterial Civil Appeal No. 5 of 2012]

Date:

Friday, 14th December 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

Mr. Shawn Innocent

Respondent:

In person

Issue:

Whether magistrate acted outside jurisdictional powers

Result / Order:

[Oral delivery]

- 1. Leave is granted to the appellant to withdraw paragraphs 1, 3, 4, 5 and 6 of the notice of application filed on 30th November 2012.**
- 2. The application to remove the magistrate Mr. Velon John as a respondent in the appeal is granted.**
- 3. Mr. Colin Foster, amicus curae is to file and serve skeleton arguments on or before 10th January 2013.**
- 4. The appellant is to file and serve submissions in reply on or before 18th January 2013.**
- 5. The matter will be heard on written submissions.**

Reason:

In the interest of moving forward the matter expeditiously the application for leave to file amended grounds was withdrawn by counsel for the appellant.

The matter before the Court was of high importance and was against points of law as such the Court invited Mr. Colin Foster to appear amicus in the matter. The Court opined that for justice to prevail there must be equality of arms.