

IN THE HIGH COURT OF THE SUPREME COURT OF GUYANA
CRIMINAL JURISDICTION

Indictment No. 25/ 2011

THE STATE

V

ORWIN HINDS

KEVIN OCTOBER

CLEON HINDS

ROY JACOBS

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Teshana Lake and Ms. Nerissa Leander representing the State

Mr. George Thomas representing the Accused, Orwin Hinds.

Mr. Motee Singh representing the Accused, Kevin October.

Mr. Raymond Ali representing the Accused, Cleon Hinds.

Mr. Maxwell McKay representing the Accused, Roy Jacobs.

RULING

It has come to this Court's attention that the Magistrate admitted into evidence photocopies of all of the documentary material tendered at the Preliminary Inquiry in this matter. It appears that this being a paper committal type Preliminary Inquiry done under section 71A of the Criminal Law and Procedure Act, CAP 8:01 of the Laws of Guyana, the Magistrate admitted the photocopies of the documents attached to the statements of the witnesses filed with the Magistrate's Court.

The defense has, as a group, raised the so called best evidence rule which demands that the contents of a document must, in the absence of legal excuse, be proved by primary and not by secondary evidence.

This rule is merely a survival of the ancient doctrine of *profert*, where, originally at common law no secondary evidence was allowed.

In the present day, however, it is not true that the best evidence must be always given since all admissible evidence is generally accepted, though its non production may affect the weight of that which is produced. It is noted that section 133 of the Criminal Justice Act 2003 of the Laws of England and Wales permits the use of copies in criminal proceedings, irrespective of the existence of the original, authenticated in any way approved by the Court. It is further noted that under the very section 71A of the Criminal Law and Procedure Act under which this Preliminary Inquiry was conducted, it is a copy of a witness' statement that makes up his evidence in chief and not viva voce evidence, which is secondary evidence in itself.

In the present case, it appears that the originals produced during the cross examination of the witnesses were not tendered but rather were returned to the witnesses. This in itself is not strange since exhibits are sometimes returned to police witnesses for safekeeping.

As a result, photocopies were admitted into evidence in the Preliminary Inquiry though the originals were and still are available.

Defense Counsel have severally raised the objection that they not being able to examine the originals would have been prejudiced in the preparation of their defense, however, it is noted that in the normal course of things defense counsel would only have been provided with a photocopy of these documents with the depositions and therefore the Court fails to see how in this case there has been any prejudice as asserted.

It was also raised that in these circumstances there would not have been full disclosure of the State's evidence at the Preliminary Inquiry. I have to disagree with that. All of the evidence that the State asserts that it intends to present in this trial is all there, just in secondary form.

Since it appears to this Court that the Magistrate, either by lapse or a non fatal procedural mistake, admitted the photocopies and since there were no objections to this being done at the time that it was done in the Magistrates' Court, there was obviously no prejudice to any of the

Accused persons in the conduct of their cases and none of them cannot be said to have been taken by surprise by the original forms of the evidence being presented in this trial.

In the circumstances, under section 46 of the Evidence Act, CAP 5:03, this Court will permit the originals of the copies of the documents admitted into evidence at the Preliminary Inquiry to be tendered and in fact directs that the originals of such documents be tendered. Provided that this Court is satisfied as to the chain of custody of the original document exhibit and the Court is also satisfied that the document being sought to be tendered is in fact the original of the copy tendered and admitted in the Magistrates' Court by means of what can only be described as a reverse authentication by the Court such documents will be admissible into evidence in this trial.

Justice N. A. Singh
PUISNE JUDGE

Dated the 3rd day of November, 2015.