

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN IN GEORGE TOWN, GRAND CAYMAN**

3 **IND. NO. 61 OF 2010**

4
5 **REGINA**

6 **V.**

7 **RAZIEL JEFFERS**

8

9 **Appearances: Mr. Trevor Ward of the Office of the Director of Public**
10 **Prosecutions for the Crown**

11
12 **Mr. Peter Polack of Polack & Company instructing**
13 **Mr. Peter Champagnie for the Defendant**

14 **Before: Hon. Justice Henderson**

15 **Heard: July 21st 2011**

16

17 **RULING**

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19 1. The accused, Raziel Jeffers, is charged with murder, a Category A offence. He
20 applies for a dismissal of the charge pursuant to the new Fifth Schedule to the
21 *Criminal Procedure Code*, which reads in part:

22 "Fifth Schedule (Section 85A) Application for Dismissal.

23 1. Where a person has had a matter transmitted to the Grand Court under
24 section 85A of this Law, that person may, on any charge or charges, at any
25 time -

26 (a) after he is served with copies of the document containing the evidence on
27 which the charge or charges are based; and

28 (b) before he is arraigned and whether or not an indictment has been preferred
29 against him,

1 apply orally or in writing to the Grand Court for the charge or any of the
2 charges in the case to be dismissed.

3 2. The Judge shall dismiss a charge and accordingly quash any count relating
4 to it in any indictment preferred against the applicant, which is the subject
5 of any such application if he is satisfied that the evidence against the
6 applicant would not be sufficient to put the applicant on his trial."

7 I will refer to such a hearing as a "Fifth Schedule hearing."
8

9 2. The amending law - the *Criminal Procedure Code (Amendment) Law, 2011* -
10 was proclaimed in effect as of February 1st, 2011. I will refer to that date as
11 the "amendment date".
12

13 3. Prior to the amendment date, a person charged with murder had a right to a
14 preliminary inquiry in the Summary Court. There was a long form preliminary
15 inquiry into the sufficiency of the evidence against Mr. Jeffers in our
16 Summary Court and he was committed for trial in July 2010 under the former
17 procedure.
18

19 4. The intent of the Legislative Assembly becomes apparent when one examines
20 the provision, section 85A of the Criminal Procedure Code, which is referred
21 to in section 1 of the Fifth Schedule. Section 85A reads:

22 (1) Where a charge has been brought in a Summary Court against a person in
23 respect of a Category A offence, the court shall transmit the matter
24 forthwith to the Grand Court for hearing.

25 (The rest of that section is not material.)

1

2 5. In other words, persons charged with Category A offences will no longer have
3 preliminary inquiries in the Summary Court. Instead the case must be
4 transmitted forthwith to this court. Section 85A is an entirely new provision
5 which did not exist in any form before the amendment date.

6

7 6. The legislative intent is clear. As a substitute for the preliminary inquiry which
8 is no longer available to an accused, he may apply instead for a Fifth Schedule
9 hearing. The procedure on such an application differs somewhat from that
10 followed at a preliminary inquiry but the underlying intent is the same. In each
11 case, the object is to obtain a judicial determination at a relatively early stage
12 in the case of whether there is sufficient admissible evidence against the
13 accused to justify a trial. The procedure in each case is an important safeguard
14 of the rights of an accused person.

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16 7. There is nothing in the provisions to which I have so far referred which
17 suggests that the Legislative Assembly intended to make available to an
18 accused both a preliminary inquiry and a Fifth Schedule hearing. The latter is
19 simply meant to be a substitute for the former. The opening words of section 1
20 of the Fifth Schedule show that it is intended to apply only to those whose
21 cases have been transmitted to the Grand Court under section 85A, a section
22 which did not exist until the amendment date.

1 Mr. Jeffers' argument is based upon the transitional provisions found in
2 section 25 of the amending law. Section 25(1) is of no assistance to the
3 accused. It applies only to preliminary inquiries commenced before the
4 amendment date but concluded on or after that date or to trials commenced
5 before the amendment date but concluded on or after that date. It has no
6 application in the case at bar.

7 Section 25(2) reads:

8 "Where a person has been charged but no committal hearing or trial has
9 commenced in the relevant court when the new Law comes into force, the
10 committal hearing or trial is to be taken to be a committal hearing or trial
11 commenced under the new Law and the provisions of the new Law are to
12 apply accordingly."

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14 8. By a careful parsing of this subsection, Mr. Champagne urges upon the court
15 a conclusion that Mr. Jeffers is entitled now to a Fifth Schedule hearing in
16 addition to the preliminary inquiry he has had. Mr. Champagne says: first,
17 Mr. Jeffers had been charged by the amendment date when the new *Law* came
18 into force; second, his trial had not commenced by that date; third, as a
19 consequence, the last part of section 25(2) applies, that is, the part which
20 reads: "...the committal hearing or trial is to be taken to be a committal
21 hearing or trial commenced under the new Law..." and the provisions of the
22 new *Law* are to apply accordingly.

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24 9. In my view, the Legislative Assembly intended section 25(2) to be read
25 disjunctively as embodying two distinct rules of transition. First, where a

1 person had been charged by the amendment date but no preliminary inquiry
2 had been commenced by that date the new *Law* is to apply and the accused's
3 remedy, if he chooses to exercise it, is a Fifth Schedule hearing instead of a
4 preliminary inquiry. Second, where a person had been charged by the
5 amendment date but no trial had been commenced by that date, procedural
6 changes brought in by the new *Law* are to apply at the trial. Neither of these
7 two transitional rules applies to Mr. Jeffers. The first has no application as his
8 preliminary inquiry was completed before the amendment date. The second is
9 not applicable as his trial has not yet started.

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11 10. For these reasons, Mr. Jeffers' application for a Fifth Schedule hearing is
12 dismissed.

13 Dated this 21st day of July, 2011

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Henderson, J.
Judge of the Grand Court