WEH COLLINS, Appellant, *v.* **REPUBLIC OF LIBERIA,** Appellee.

Heard November 4, 1985. Decided December 18, l985.

APPEAL FROM THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT, GRAND GEDEH COUNTY.

1. When the facts surrounding a homicide indicate the absence of a premeditated design and intent to kill, the crime is manslaughter and not murder.
2. Malice, premeditation, or deliberation may be shown by the acts and conduct of the accused and other circumstances and facts attending the homicide, including the atrocity of the attack, the circumstances under which it was made, the nature and extent of the injury inflicted, the condition of the body and wearing apparel, the deadly nature of the weapon used and the manner of using it.
3. Evidence is admissible of matters occurring before the homicide which legitimate-ly tend to show malice or premeditation.
4. Within proper limits, evidence of previous declarations and threats by the accused to do violence to the person eventually slain, although not communicated to the deceased, and all declaration and demonstrations of personal hostility are admissible in evidence as evincing malice and premeditation and tending to prove the criminal intent charged in the indictment.
5. Where a party unlawfully carries about a loaded gun, and from carelessness and neglect, a human being is killed or injured, the act is not regarded in law as an accident and therefore excusable, but is punishable according to the magnitude of the offense.
6. Where a party who intends to kill another kills a third party instead, he cannot justify or excuse himself on the ground that the victim was not the person or object he intended to kill.
7. Legal malice does not require ill will towards the victim. Hence the crime may be murder although the person killed was not the one the accused intended to kill.
8. In a trial for murder, actual malice toward the unintended victim is not necessary. The grade of the crime in such cases will be the same as though the accused had killed the person or object whom he intended to kill. The intent in such a case is transferred by law from the intended victim to the person killed.

9. To constitute deliberation and premeditation, the design to kill must precede the killing by some appreciable space of time, but the time need not be long. If it is sufficient for some reflection and consideration upon the matter, for the choice to kill, and for the formation of a definite purpose to kill, it is enough.
10. The questions to be answered in determining premeditation are: was there sufficient time for reflection? Did the defendant think over what he was about to do? Did he cooly form a settled purpose?

Appellant was convicted of the crime of murder and sentenced to death by the Circuit Court for the Seventh Judicial Circuit, Grand Gedeh County, for the fatal shooting with a single barrel gun of a teenage boy whom appellant claimed he had mistaken for an animal. The appellant appealed to the Supreme Court for a review of the verdict and judgment, contending that the evidence was insufficient to support a verdict and judgment of murder. The appellant claimed that as he did not know the victim, and that as he had seen an animal which he had shot at, not intending to kill or injure the victim, the charge should not have been murder, but rather negligent homicide.

Although the Supreme Court agreed with the appellant that when the facts surrounding a homicide indicate the absence of a premeditated design and intent to kill, the crime is manslaughter and not murder, it disagreed with appellant that the principle was applicable to the instance case. The Court, after a review of the testimonies produced by the witnesses for the prosecution, concluded that the act was done with malice and premeditation, and hence was murder.

Malice and premeditation, it said, could be determined from the acts and conduct of the accused and from other facts and circumstances attending the homicide, or from the atrocity of the attack or the circumstances under which it was made, or from the nature and extent of the injury inflicted, or from the condition of the body and the wearing apparel, or from the deadly nature of the weapon used. Moreover, the Court said, where a party unlawfully carries a loaded gun and from carelessness and neglectfulness a human being is killed or injured, the act is not regarded in law as an accident and therefore excusable, but is punishable according to the magnitude of the offense.

Relying on the case *George v. Republic*, the Court concluded that the decedent had died from the voluntary and deliberate act of the appellant. It observed that the evidence adduced at the trial showed malice and deliberation by the appellant in the com-mission of the act. He had refused to respond to the greetings extended to him by the decedent and his friend

as they passed before his house; he had broken into the room of another man and had taken therefrom a single barrel gun; he had then gone to the river where the decedent and his friend were digging bid and had shot them; he had refused to provide them with assistance after hearing their cries; and he had, following the shooting, returned to his house, changed his clothes and taken seat in the from thereof as if nothing had happened. These statements, evidencing implied deliberation, meditation and malice, were never rebutted by the appellant, the Court said.

The Court observed that it did not matter that the shot which killed the decedent was intended for an animal, as alleged by the appellant. It cited the rule of this jurisdiction that where a person, intending to kill another person or object, kills a third party or object, he cannot justify or excuse himself on the ground that the victim was not the person or object he intended to kill. The malice, it said, was under such circumstances, transferred from the intended person to the victim

Moreover, the Court opined that even assuming that the appellant did see an animal, he failed to exercise human prudence before shooting the waiting animal. All of the fore-going circumstances, the Court concluded, justified the jury in convicting the appellant of murder and provided an appropriate legal basis for the trial judge's confirmation of the said verdict. The Court therefore *affirmed* the judgment of the trial court sentencing the appellant to death.

George S. Kadea appeared for appellant. *S. Momolu Kiawu* and Solicitor General *McDonald Krukue* appeared for the appellee.

MR. JUSTICE NYEPLU delivered the opinion of the Court.

Jacob Wreh, at one time a human being alive, is no more; for Weh Collins, appellant, gunned him down to death. In the peace of God, according to the records of the trial court, Weh Collins killed him with a single barrel shot-gun by inflicting wounds on his head and various parts of his body.

On the 26th day of November, A. D. 1983, during the morning of the fatal incident, the late Jacob Wreh and his friend Raymond Nyemah, left their parents at a place known as Double Bridge, Grand Gedeh County, to go fishing. As they passed through the farm of appellant Weh Collins, and got in front of his village house, Jacob Wreh and Raymond Nyemah greeted appellant, but he refused to respond.

According to the facts culled from the records, upon their arrival at the Waterside, Jacob Wreh and Raymond Nyemah decided to dig bits. It was during that moment of bits digging

that appellant shot the both of them, wounding all two. How-ever, Jacob being wounded very seriously, became unconscious and bled profusely, without opening his eyes, until his untimely death. Growing out of the death of Jacob Wreh, appellant was indicted during the November A. D. 1983 Term of the Seventh Judicial Circuit Court, Grand Gedeh County, on the charged of Murder.

On May 21, 1984, appellant was arraigned. He pleaded not guilty and thus joined issue with the state. Thereafter appellant was tried, convicted and sentenced to death. From this conviction and sentence, appellant appealed to this Court of last judicature.

We, with a profound sense of the seriousness, gravity and enormity of the crime charged, and in view of the human life lost, especially an infant in his prime age, approached the decision of this cause, as we have done in all matters coming before us for adjudication, with eyes blinded to everything except the evidence contained in the records certified to us from the lower court and the law controlling the same, as symbolized by the hand of justice which hangs suspended on the walls of this courtroom. Regardless of the social aspect, poverty ridden situation, or high tension in the public mind, because of the rarity of such occurrences in this country, or of any other consideration, we look with eyes and mind fixed and centered only on the motto of this Court which has guarded our actions from time immemorial: "LET JUSTICE BE DONE TO ALL MEN".

After defendant was arraigned and had entered his plea, and a jury empaneled, the prosecution produced fifteen witnesses to prove its case. Raymond Nyemah was the first witness to depose. In his statement in chief on the direct examination, this is what he had to say:

> "One day, me and my friend Jacob Wreh, decided to go fishing. We met the defendant and both of us spoke to him, that is greeting him and passed and went on our way to fish. While digging our bit the dog we carried along with us saw the defendant, and the dog barked. While looking at the dog, the defendant fired at us. I began to cry, and I said to him 'Oh you have shot us'. The defendant did not even come to us, but went to his house. I started going to my mother's house while crying. Then the defendant's wife went and called my mother. When my mother came, she looked around for my friend Jacob Wreh, but she could not find him. The defendant's wife had to lead her to the place where my friend, the late Jacob Wreh, was lying on the ground. The gunshot that was in me was hurting me, so I could not clearly see to know what was happening. This is all I can remember".

That witness was cross examined and discharged. The prosecution second witness, Sam

Brown, then took the stand. This is what he said:

"On the 26th of November, 1983, I was in the room when I was called to rush two persons to the hospital. Upon my arrival on the scene, I saw Jacob Wreh, whose head was broken by the gunshot, and the other victim. We wrapped the decedent, Jacob Wreh and put him in my car. I brought them from where they were shot and delivered them to the hospital and I left. This is all I know".

The prosecution rested with this witness, whereupon he was cross-examined.

The prosecution third witness, A. Quesay Bloeh, took the stand and testified, inter alia:

"On November 26, 1983, at 7:30 a.m., Raymond Nyemah and Jacob Wreh went fishing in the creek that is about three minutes distant away from Weh Collins' farm house. About 8:00 a.m., we heard a gun sound but there was no noise. About 8:05 a.m. Weh Collins' wife reluctant-ly reported the incident to us, the villagers, that her husband had shot the two children that went fishing. Weh Collins who did the shooting failed to report the incident; he went to his house and sit down unconcerned. While we were going on the scene, we met Weh Collins in front of his form house, dressed as a gentlemen, with a single barrel gun in his hands, which was already loaded. We forced the gun from him and took the cartridges from the gun. Then we passed and went on the scene where the shooting was done. When we reached on the scene, we met Jacob Wreh, who could not talk, he could not open his eyes and he could not stand. We hurriedly arranged for a car and we put the two victims in the car, including Weh Collins himself and rushed them to the Martha Tubman Memorial Hospital. After the admission in the hospital, we carried Weh Collins, the single barrel gun and one cartridge and turned them over to the joint security, the soldier and police. The incident took place at Double Bridge. This is all I know about the case".

The witness, on the direct examination, was asked the following question:

"Q. Mr. witness, were I to show you the single barrel gun as you just testified to, will you be able to identify it?

A. Yes."

The prosecution then rested with the witness and requested the court for a mark of identification to be placed on the single barrel gun. The application was granted and the gun was ordered mark court P-1. Thereafter, the defense cross-examined the witness.

The prosecution's next witness, Mr. Jerry Quarbo, took the witness stand and testified as follows:

"The two children, the late Jacob Wreh and Raymond Nyemah, left the house one

morning around 7:30 a.m. to go fishing. When they met the defendant, they spoke to him but he did not reply. Well, they passed by him, went to the water side and began to dig bits to fish with. The defendant went after them. At this stage, the dog they carried saw the defendant and began barking. The boy who was digging the bits was looking at the place where the dog was barking. While the boy was looking, the defendant shot the two children; one of them shouted and said: 'Oldman you shot us'. The defendant replied: 'I am coming'. However, he went to his house and never returned to the place where the children were shot. It took a long time before one woman went and informed us. The woman who went to inform us is the wife of the defendant. I think her name is Mary. Now, after the woman informed us, we went to look for the wounded one. But we did not find him until the woman who gave us the information came and showed us to the spot. The other boy tried his best and went to us. When we saw the wounded boy, my mother ran to the car owner. While my mother was going to the car owner, being the only one on the spot, ran after her. While going I met her with two other men. Isaac Williams and Alphonso. The three of us then returned to the crime scene and we met the defendant with his single barrel shotgun. We then took the gun from him. When we uncooked the gun, we saw a fresh gun shot. This is all I know".

The witness was put on direct examination, at which time the following questions were put to him:

Q. "Mr. witness, were you to see the gun (single barrel) which you took from the defendant, will you be able to identify same?

A. Yes.

Q. I have an instrument, look thereupon and tell the court and jury what you identify it to be?

A. This is the gun the defendant used to commit the act which we took from him."

The prosecution then requested the court for confirmation of the single barrel gun which was done.

The defense then put the witness on the cross-examination.

The prosecution's fifth witness, Theresa Musu, took the stand and testified as follows:

"What I know about this matter is that one day, the children left the house and went fishing. It was not long when we heard sound of a gun. After this, it took some minutes before we saw defendant's wife coming to inform us. When she got to us, she asked whether the children left our area and went fishing, we replied yes. She then told

us that her husband, the defendant had shot and wounded the two boys and one had died. After receiving this information, I began running to go on the scene and while going, I met up with the other wounded boy on the way coming to inform us of what had happened. I then asked him about his friend and he told me that he left him at the water side. Upon hearing this, I ran to the water side and he took me to the spot where the boys were shot and got wounded. When I saw him, I ran back to inform the other people. I then went to George Smith who then put me in the car and we came on the crime scene. When we got there, I was crying".

The prosecution's sixth witness, Mr. Peter W. George, a Police CID Agent, took the stand and here is what he had to say whilst testifying for the State:

"On November 26, 1983, report reached into our office, the police station which explained that a certain man by the name of Weh Collins shot two children; namely, Jacob Wreh and Raymond N. Nyemah in the bush while the two victims engaged themselves in fishing. Upon this report, a team of security headed by me rushed to the military barracks in Zwedru to ascertain the report. Upon arrival at the military barracks, we were told that the two boys (vic-tims) were taken to Martha Tubman Memorial Hospital. We then went to the hospital where the victims were undergoing treatment. Fortunately on our part, we were able to talk with victim Raymond Nyemah, who was not on a critical list. Jacob Wreh could not speak. Raymond Nyemah told us briefly at the hospital that he and Jacob Wreh left their village and went fishing; while going, they met the defendant in front of his house at which time they spoke to him but the defendant refused to speak. After reaching the water side, they decided to dig bits. During the period of the bits digging, their dog started barking and so when he, Raymond looked around, the defendant shot at them and instantly wounded two of them, leaving Jacob Wreh critical and unconscious. After the shooting, Ray-mond Nyemah started crying while Jacob Wreh remained on the crime scene in a pool of blood. Having gathered this first hand evidence, we left the hospital and returned to the police station. On November 28, 1983, continuing the investigation, Mr. Brooks, who is one of those that went on the crime scene following the crying of Raymond Nyemah and the subsequent noise of the people, told us that upon his arrival on Weh Collins' farm, he met defendant, Collins, sitting down unconcerned in front of his house as though he had done no wrong to any human being. Mr. Brooks also confirmed that the defendant had changed his clothes which means after the shooting and whilst the victims were in the state of being unattended, the defendant went to his

house, got dressed, loaded his gun with a fresh cartridge and took his seat. When we asked Mr. Collins if it is true that he did change his clothes after the shooting, he admitted by saying that he changed his clothes so as to come down to Zwedru. During the investigation it was disclosed that defendant Collins stole the gun from the room from one Oldman Neneman who was away from the farm. After leaving the hospital, it was not too long when we got the news that Jacob Wreh had died in the peace of God. During the investigation, it was revealed that the defendant had been killing innocent people and that this was his third time. This is the police investigative record and prosecutorial summary. This is all that I know".

The witness, while on the direct examination, and in answer to a question in regard to the identification of the records, did identify said documents. The documents were then ordered marked by court, and were marked P/2 & P/3. P/2 was the diagram of the crime scene and P/3 was the police record, prosecutorial summary and magistrate charge sheet respectively. The witness, also in answer to a question on the direct, identified the signature on the documents as being his.

The prosecution's seventh witness, Doctor Kedrick Kiawon, took the stand and was questioned on the direct by the county attorney, as follows:

"Q. Mr. witness, are you acquainted with Raymond Nyemah and Jacob Wreh?

A. Yes.

Q. Please tell the court and jury the whereabout of these fellows?

A. Jacob Wreh died in the hospital November 27, 1983, at 7:50 a.m. and Raymond Nyemah left the hospital at 6 p.m. on the 26th of November, A.D. 1983, in good condition.

Q. Mr. witness, refresh your memory and tell the court and jury the possible cause cf the death of Jacob Wreh, as a medical doctor?

A. Jacob Wreh died of brains injury as a result of trauma to the head caused by gun shot.

Q. Please refresh your memory and explain the term trauma?

A. The word trauma in this connection, I mean, he was hit by gun shots.

Q. Refresh your memory and explain to the court and jury the position and/or the part of the head where the trauma appeared?

A. Evidence of the gun shots wound was multiple over the scalp and the patient was bleeding mostly from the frontal region of the head. He was also bleeding from the nose and mouth and having generalized convulsion. On clinical grounds, this is

evidence of brain injuries.

The prosecution then rested questions.

The prosecution having rested questions on the direct, the witness was cross examined.

The court also questioned the witness and having rested questions, witness was discharged. Following the testimony of Doctor Kiawon, the prosecution rested oral evidence requested the court for the admission into evidence of documents marked by the court P/2 and P/3. The application was granted.

The defendant, now appellant, then took the stand in his own defense and testified as follows:

> "I made a bush trap fence in the bush. Now the place I made the trap there is a water vine passing by my trap to go to the big water. There also is another little water from the hill passing by my village, leading to the same big water, which made my trap fence higher than the water. Early one morning, I went to look at the trap but I did not see any one there. I saw meat and I went to my house to get my gun. When I returned, the meat I saw got down under the fence, so I saw the meat behind the fence and I fired the gun. When I fired the gun the two boys were behind the fence. One of them got up and said to me 'you fired the gun and you had killed my brother'. I then grabbed the boy and started crying and called my woman. When I reached there, then I saw the dog, I said "Oh Lord." When the boys were passing I did not see them, because there is another road leading to the spot from Musu's village. The road from Musu's village does not pass through my village. This is the road the children took that morning of the incident. They did not pass through my village. If they had passed through my village, I would have seen them. The children and myself do not have any palaver and I do not know them. So when the boy hallowed, I was crying. I told my woman to go to Musu's village to find out whether the children came from there as they were not from our side. So I myself ran behind my wife to go to Musu's village. My woman reached first and while the people was crying I reached there also, so I asked Musu's wife and she told me that Musu had gone in the bush and we ran back to where the incident took place. The people did not know the area where the children got shot. Since they were running and I called them back and carried them to the scene. And all of them left and came to the village. I myself, and my wife was confused. Myself, I born children. I observed that the boy who was shot, the 'T' shirt he had on was just like the color of the dog. I have my own children and I cannot see human being children and shoot them. I do not know the children parents or where they came from. So I

reported the matter. Now the two boys, one name is Isaac Smith, and he said yes. And I told him to go and call George Smith to bring his car and they came and myself called them to go on the spot where the boy who got shot was lying. I took my blanket and gave it to them to wrap the boy inside. Then George Smith brought the car and we put the body inside and I paid the fare. So my people, I did not mean it. I did not see them. There is no dog in the area. So we took the car to the hospital and the soldier car followed us. They took me and put me in their pick-up and carried me in the soldier barracks. Even I want to say that I am the one who took Nyemah behind the fence. This is what happened. I rest".

Defense having waived direct examination, the defendant/ appellant was cross-examined.

Defendant's second and only witness, Lucy Collins, took the stand. Mrs. Collins stated as follows:

"I made up my fire early one morning to cook plantain after we got through eating the plantain, the defendant went and cut one big stick for us to use to fix the kitchen, to put up the rice. After he got through fixing the stick, he had a ratite in his hands and went in his room. I myself took up my kinjah and went to the pepper farm to cut wood. While cutting wood I heard a sound of a gun and someone holler. After this, I heard someone crying calling for help, 'COME OH'. I left everything and ran on the spot. I saw a little boy sitting in this courtroom standing up and blood bleeding from his hand. When I got there, the defendant said to me that one of the boys is dead; here he is behind the fence. And I also saw the boy. I then started running and went to Musu's village to call the people that there. The people then left me and came on the spot. I then started crying and followed them. We went back on the scene to see what was happening. I was crying after they brought the body to the village. They found a car and brought the wounded boy and the body in town, including the defendant also. I left the next day and came to town. This is all I know".

The defense having waived direct examination of the witness, she was then cress-examined by the prosecution who thereafter rested with her.

This is the evidence in the case presented by both the prosecution and defense. Having discussed the evidence, we now proceed to address the law controlling, and to see whether appellant's contention that the crime charged should be reduced to negligent homicide instead of murder, should be upheld.

Appellant, in arguing his brief before this altar of justice, laid specific emphasis on count two thereof, wherein he stated:

"Appellant further contends that the State's evidence was insufficient to support a verdict of guilty for murder; in that, prior to the shooting and killing of Jacob Wreh, appellant did not know Jacob Wreh nor Raymond Nyemah in persons, and there was no misunderstanding between the victims and the appellant. The victims went fishing and while they were digging bits behind the fence, appellant went hunting to his trap fence and saw the decedent behind the fence aforesaid, where he observed through behind trap fence an animal which he fired at and after the gun sound appellant heard human voice and rushed on the scene of the incident, where he recognized decedent Jacob Wreh and Raymond Nyemah who were injured by gun shots. Therefore, the charge should not be murder, but negligent homicide. Appellant requests Your Honours to read sheets 4 & 6, 9th day's session, May 24, 1984, of the records in this case". For reliance: *Jalloh v. Republic*, 21 LLR 255, (1972); *Nimley et al. v. Republic*, 21 LLR 348, (1972)

In *Jalloh v. Republic*, upon which the appellant relied, this Court held: "when the facts surrounding a homicide indicate the absence of a premeditated design and intent to kill, the crime committed is manslaughter and not murder". 21 LLR 255.

The Court observes that counsel who conducted the trial in the court below for appellant did not follow and/or scrutinize the evidence adduced by the prosecution with regard to the attitude of the appellant after the commission of the crime, or the method by which the homicide was committed, or the violence used to obtain the gun from someone's room which was forced open by the appellant after seeing the children passed in front of his house. Corpus Juris states the following with reference to premeditation, malice and deliberation, in connection with the crime of murder:

"The acts and conduct of accused and the other circum-stances and facts attending the homicide may be shown on the question of malice, premeditation or deliberation. The directness and atrocity of the attack, the circumstances under which it was made, the nature and extant of the injury inflicted, the condition of the body and wearing apparel, the deadly nature of the weapon used and the manner of using it, are proper subjects of inquiry. Evidence is admissible of matters occurring before the homicide which legitimately tend to show malice or premeditation. So also, within proper limits, evidence of previous declarations and threats by accused and of the state of feeling between the parties, is also admissible, threats of the accused to do violence to the person eventually slain, although not communicated to deceased, and all declarations and demonstrations of personal hostility are admissible in evidence, as evincing a malice

and premeditation and tending to prove the criminal intent charged in the indictment. Such evidence is of special importance when accused claims that the homicide was excusable or justifiable". 40 C. J. S., *Homicide*, §§366- 67.

The appellant in this case, according to the surviving victim, Raymond Nyemah, was greeted by him Nyemah and Jacob Wreh, the decedent, when they were passing in front of his house to the water side to fish. The appellant refused to respond to the greetings extended to him; hence, he demonstrated hostility and crafty design to kill the children, especially when he, not having a gun, forced out a gun from another man's room and ran behind the children.

Defendant/appellant contended that he saw a meat behind his fence that morning, and that after seeing the meat, he went back to his house, got his gun and went back in the bush where he allegedly met the animal waiting for him in the same area where the children were digging bits. The animal which he claimed to have shot later turned out to be Jacob Wreh and Raymond Nyemah.

In the case *George v. The Republic of Liberia,* this Court held: "where a party unlawfully carries about a loaded gun and from carelessness and neglectfulness a human being is killed or injured, the act is not regarded in law as an accident and there-fore excusable, but is punishable according to the magnitude of the offence". 1 LLR 239 (l892).

Looking at the appellant's act from this standpoint, one can readily see that the deceased died from the appellant's voluntary and deliberate act, for it is he who cocked the gun, took aim and fired the gun. It was therefore not an accident. Contrarily, the result of his act presents evidence of malice, which the law implies. Further, the appellant argued that he meant to kill an animal which he allegedly saw and not Jacob Wreh because the shooting was intended for an animal. Granted that the appellant really saw an animal, did he exercise human prudence before shooting the waiting animal? We do not believe that he did.

It is an established rule that where a party who intends to kill another kills a third party instead, he cannot justify or excuse himself on the ground that the victim was not the person or object he intended to kill. In Corpus Juris Secundum we have the following rule:

"Since legal malice does not require ill will toward the victim, the crime may be murder although the person killed was not the one the accused intended to kill as where the victim is mistaken for another, or where one shooting at another kills a bystander or third person coming within range, or where one partakes of poison which the accused intended for another, or receives a blow intended for another. Actual malice toward the unintended victim is not necessary. The grade of the crime in such cases will be the same as though accused had killed the person or object whom he had intended to kill.

The intend in such case is transferred by law from the intended victim to the person killed". 40 C. J. S., *Homicide,* § 18.

Witness Raymond Nyemah, the survivor of this fatal incident, testified that when they reached the appellant, he was sitting in front of his house; that they greeted him but he (the appellant) refused to speak to them; and that when they reached the water side and began to dig bits before carrying on their fishing, it was then that appellant, within that short space of time, rushed on them and shot them. Added to his testimony is the fact that although he (Nyemah) shouted and said to appellant "Oh Oldman you shot us", the appellant deliberately refused to go on the scene and to their rescue. Instead, the appellant went back to his house, got dressed and sat down as though nothing had happened. From this statement of witness Nyemah, it is quite clear that when appellant saw Nyemah and Wreh going to the area where his purported trap fence was, his mind became so depraved that he deliberately formed the design to kill them. Hence, he forcefully broke open another man's room and took his single barrel shotgun, which he used to effectuate the commission of the crime.

Appellant further contended that he did not carry his gun in the bush when he was going to his trap fence where, upon his arrival, he saw the alleged animal. He argued that it was upon seeing the animal that he left the spot and went back to his house for his gun, which he took and went back to his trap fence, where he met the animal still on the spot. This area was the same spot where the children were digging bits.

What is of utmost importance, however, is that Raymond Nyemah, the only eye witness on the spot, testified to the effect that the appellant, after shooting them, refused to go to their rescue, but instead returned to his house, got his clothes changed, and took his seat. This statement of Nyemah and the testimonies of other prosecution witnesses were not rebutted by the appellant. Hence, deliberation, premeditation, and malice are implied. The law on this point provides that:

"To constitute deliberation and premeditation, the design to kill must precede the killing by some appreciable space of time. The act must not be done on sudden impulse. But the time need not be long. If it is sufficient for some reflection and consideration upon the matter, for the choice to kill, and for the formation of a definite purpose to kill, it is enough. The questions to be answered are: was there sufficient time for reflection? Did defendant think over what he was about to do? Did he cooly

form a settled purpose?" *State v. Greenleaf*, 71 N.H. 606. 54 AH. 38"; 21 CYC, *Homicide*, 729, N.94 (1906).

The appellant, whose mind had become so engraft to take away human life, upon seeing the children behind his fence digging bits that morning, walked a distant of more than 79 feet, according to police diagram admitted into evidence. He therefore had enough time to reflect, to cool off the heat of passion which had built up sufficiently to destroy the sway of reason, and to know that the sway of reason had not been dethroned and temporarily suspended.

Considering the conclusiveness of the evidence adduced and the law controlling, coupled with appellant not having due regard for human life, it is the holding of this Court that the judgment of the lower court be and the same is hereby confirmed and affirmed. And it is so ordered.

Judgment affirmed.