TODY HEITH, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT CRIMINAL ASSIZES "C", MONTSERRADO COUNTY.

Heard: April 1, 1998. Decided: August 5, 1998.

1. For issues to be reviewed by the Supreme Court, they must be set forth in the bill of exceptions which is to contain the objections made at the time of the trial, for the consideration of the Supreme Court.

2. An accused in a criminal prosecution shall be legally represented at every stage of the proceedings.

3. The court shall furnish an accused in a criminal prosecution all available facilities to aid him to secure counsel and shall allow a reasonable time and opportunity to privately consult with counsel before any further proceedings are heard.

4. The best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence.

5. A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt, whether his guilt is satisfactorily shown, he is entitled to an acquittal.

6. A judgment of conviction in a criminal case must be supported by proof of all elements of the crime charged beyond a reasonable doubt.

Appellant Tody Heith, filed this appeal before the Supreme Court, having been adjudged guilty of the crime of theft of property by the First Judicial Circuit Court, Criminal Assizes, Court "C", Montserrado County, during its May Term, A. D. 1989, under the gavel of the late Judge Eugene Hilton. She was indicted by the grand jurors for Montserrado County on May 26, 1989, for the alleged commission of the crime of theft of property.

The records certified to the Supreme Court indicated that between January 1, 1989 and March 31, 1989, the appellant became very friendly with the private prosecutrix in Congo Town to the extent of voluntarily rendering services, but the intent was to steal from the private prosecutrix. The services rendered, including cleaning her

bedroom and other parts of the home. In March 1989, private prosecutrix left appellant in the private prosecutrix's house and went on the farm. It was alleged tha appellant entered the private prosecutrix's room and locked herself up under the pretext of packing private prosecutrix's clothes.

During the trial, the prosecution produced five witnesses who testified to the guilt of the appellant. Although the witnesses, including the private prosecutrix, testified that the appellant had stolen her jewelry and other items, none of them testified to seeing her moving the items or seeing the items listed in the indictment with her. The testimonies of the police officers who investigated the case varied as to the appellant's admission to stealing the items with which she was charged in the indictment. As for the appellant, she confirmed her friendship with the private prosecutrix and admitted the latter's home on the Saturday the items were alleged to have been stolen, but she denied stealing the jewelry and other items. Appellant also testified that she was detained at the police station for one week and three days, and that her husband, who had been hospitalized at the Catholic Hospital, and her little brother were also arrested and detained for eight days upon the request of the private prosecutrix. The other defense witnesses confirmed the friendship between appellant and private prosecutrix and also testified to the maltreatment meted out to them, and that some of them were threatened to be taken to Belle Yalla, the notorious criminal prison.

Following the closing of the evidence and arguments, the trial judge charged the empaneled jury, which proceeded to its room of deliberation, from whence they returned a verdict finding the defendant guilty of the crime of theft of property. The trial judge affirmed and confirmed the verdict of the jury in . his final judgment, in which he fined the appellant $500.00, to be paid forthwith into the government revenue, as well as ordered her to make restitution of the amount of $17,705.00 constituting the value of the stolen items.

Appellant excepted to the judgment and announced an appeal to the Honourable Supreme Court of Liberia, filing in pursuance thereof a six-count bill of exceptions.

Following the hearing of the appeal, the Supreme Court reversed the judgment of the trial court, stating as reason therefor that the prosecution had failed to meet the burden of proof beyond a reasonable doubt, necessary for a criminal conviction. The Court noted that none of the witnesses for the prosecution had testified to seeing the appellant remove the alleged stole items from the private prosecutrix home; that all of the private prosecutrix family members had access to her home and any one of them could have stolen the items, especially since the items were only discovered to be

missing several weeks after the appellant were alleged to have stolen the same; that there were contradictions in the police officers testimonies as to the appellant' admission of guilt; and that the prosecution had failed to rebut certain of the testimony of the appellant as to her flight or disappearance of the appellant, which the State had deemed to be an indication of guilt. The Court opined that an accused is presumed innocent until the contrary is proved beyond a reasonable doubt. This burden, the Court said, had not been met by the prosecution.

The Court agreed with the prosecution that matters not excepted to could not be included in the bill of exceptions and was not cognizable by the Court, and that in the instant case the records revealed that the appellants counsel had failed to except to the charged of the judge. The Court ruled, however, that it had to consider the issues of the judge's charge to the jury, raised in the bill of exceptions, because the trial court had violated the appellant's constitutional right to legal representation of her choice. The Court then opined, as a further reason for the reversal of the trial court's judgment, that the charge of the trial judge was not only prejudicial to the appellant and tended to influence the minds of the jury by characterizing the appellant's behaviour as un-becoming of a good lady, but also because on the principle of the best evidence rule was prejudicial the judge suggested that the jury should bring in a verdict of guilty if the appellant failed to produce the best evidence. The Court noted that while the law requited that the best evidence in a case must be produced and that no evidence is sufficient which presupposes the existence of better evidence, the burden was on the prosecution to produce the best evidence.

The Court observed further that the trial court had violated the constitutional right of the appellant to counsel of her choice. It noted that the trial court could not appoint a defense counsel for the appellant where the appellant had demanded that she be accorded the right to the selection of her own counsel, observing that the demand made by the defense counsel of a certain amount from the appellant as a condition for pursuing the matter clearly demonstrated the of the defense counsel towards the appellant.

Lastly, the Court observed that the prosecution had failed to establish the elements of the offense charged, noting that the theft which the prosecution sought to establish related to items not included in the indictment. Noting that the State was under a duty to prove the allegations in the indictment and that the proof offered by the prosecution to establish the theft did not relate to the items mentioned in the indictment, the Court opined that the failure of such proof required the acquittal of

the accused. Accordingly, it reversed the judgment and ordered the appellant discharged.

M Kron Yangbe appeared for appellant. Theophilus Gould, Solicitor General of Liberia, appeared for the State.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case is before us on appeal by the appellant, Tody Heith, from a judgment confirming her conviction of the crime of theft of property by the First Judicial Circuit Court, Criminal Assizes, Court "C", Montserrado County, during its May Term, A. D. 1989, presided over at that time by the Late Judge Eugene Hilton.

The certified records in this case revealed that the grand jurors for Montserrado County indicted the appellant on May 26, 1989 for the commission of the crime of theft of property. The indictment alleged that during the period of January 1, 1989 up to and including March 31, 1989, at Congo Town, appellant became very friendly with the private prosecutrix, the intent of that friendship being to steal from her by voluntarily rendering services to the private prosecutrix, such as cleaning her bedroom and other parts of her house, and which relationship gave the appellant access to the bedroom of the private prosecutrix during her absence. The indictment also alleged that the private prosecutrix left the appellant in her house in March 1989 when she went on her farm, and that the appellant entered and locked herself up in said room under the pretext of packing clothes and cleaning the bedroom of the private prosecutrix, at which time appellant allegedly stole jewelry amounting to the sum of $17,705.00.

Appellant was arraigned and pleaded not guilty to the crime charged, thus shifting the burden of proof on the prosecution. The prosecution produced five witnesses during the trial: Private Prosecutrix Olivia Shannon, Wetti Greene, her niece, George Allison, her houseboy, and Police Officers Boniface Manneh and Marvin Dahn.

The private prosecutrix testified that during the trial that she and the appellant became friends in December, 1988, and that the appellant was very serviceable, humble, kind and extremely friendly and therefore became a member of her family, which gave her access to her house. The private prosecutrix also testified that she was informed by her niece, Wetti Greene, and her houseboy Allison, in late February, that appellant once entered and locked herself in her room allegedly to pack her clothes, but that she, private prosecutrix, ignored the report and did not check. She further

testified that the houseboy informed her on a Saturday in March, upon her return from the farm, that the appellant had entered and locked herself in her room to continue packing clothes, and that the appellant had hurriedly left the house for the market but never returned. She stated that she saw her clothes packed but that she had not check her jewelry.

Moreover, she testified that she did not see the appellant for two weeks thereafter and that she went to her house on a Saturday, when she saw her green blouse hanging on the line of the appellant but she did not ask about the blouse; that when she returned home and dressed that afternoon for a wedding she discovered that her jewelry was missing; that the matter was sent to the Joint Security, but was later transferred to the Headquarters of the Liberia National Police. She testified that they were told by the Police that appellant was a notorious rogue, and that she was threatened to be photographed and put in the newspapers when she admitted stealing the jewelry upon the request of her boyfriend. See minutes of the 25 th day's session., Tuesday, June 6, 1989, sheet 2, 3, and 4.

Prosecution's second witness, in person of Wetti Green, also testified during the trial that she informed her aunt that appellant had, in February 1989, entered and locked herself in the room of private prosecutrix allegedly to pack clothes, and that the appellant and thereafter left along with her boyfriend. The witness also testified that the houseboy told them upon their return from the farm that appellant had locked herself up in the room pretending to be cleaning up, and that she had taken her bag and left for the market but had never returned. Further, she said, her aunt had sent her to the home of appellant as a detective but that she did not see any of the missing items as the appellant had refused to permit her enter the room of appellant. She testified that it was on March 11,1989 that the private prosecutrix knew that her personnel effects were missing when she dressed for a wedding that afternoon and decided to use some. See sheet 2, 26th day's session, Wednesday, June 7, 1998.

The prosecution's third witness, in person of George Allison, the houseboy, was the only witness in criminal prosecution whose testimony this Court deems necessary to hereunder quote for the benefit of this opinion.

"It was on a Saturday, the Old ma left I and Tody in the house and went on the farm. Tody was in the house and I was outside washing. While I was hanging up the clothes, Tody came from out of the house and she told me that she was going to the market and I then told her that Tody the Old ma said you should wait for her, she

said yes, but I am going to come back to the house. That is all I know about the case." See sheet 4, 26 th day's sessions, Wednesday, June 7. 1998.

The prosecution's fourth witness, in persons of Boniface Munneh, an officer of the Liberia National Police Investigative Unit, testified during the trial that appellant denied committing the crime, but that she later admitted to it during a thorough investigation. He also testified that the appellant was left in charge of the house where there was no breakage into the room when the private prosecutrix went on the farm, along with the house boy, one David. He further testified that appellant, under these circumstances entered the room and took delivery of the jewelry and some other clothes. He moreover testified under direct examination that appellant was arrested on four different occasions by the police in 1984, 1985, 1987, and 1988 for theft offenses, and that appellant was seen by eye witnesses with a bag while leaving the residence of the private prosecutrix. See sheets 2 and 27th day's session June 7, 1989

Prosecution's fifth witness, Captain Marvin Dahn of the Liberia National Police, testified that appellant denied taking the jewelry during a short interview, and that the squad unit did not investigate appellant due to the issuance of the writ of habeas corpus. He also confirmed the testimony of Officer Manneh that the appellant was previously arrested for theft. See sheets 8, 9, 27th day's session, Thursday, June 8, 1989.

The defense produced four witnesses including the appellant. The appellant testified that she and the private prosecutrix were friends and used to visit one another, but she denied taking delivery of the missing jewelry although she admitted that she visited the home of the private prosecutrix on the Saturday the prosecution alleged the items were stolen. She also testified that the private prosecutrix went to her house and requested her to accompany the private prosecutrix to a sand cutter because the private prosecutrix suspected the houseboy had taken away her bracelet and a chain. She further testified that the sand cutter accused the niece of the private prosecutrix, in person of Wetti Green, of taking the jewelry, and that another sand cutter at Newport Street had also described the niece as the person who had stolen her bracelet and chain. Moreover, she testified that she saw Wetti Greene at her house the next morning with an officer, and that Wetti Greene had informed her that she, Wetti Greene, was taken to the Joint Security with respect to the missing items and that the appellant was also needed to make a statement pertaining to the stolen jewelry. She testified that she was surprised to learn at the Joint Security that $10,000.00 worth of jewelry was missing, and she gave a statement denying taking the

items. Appellant also testified that her husband, in person of one Willie, was sick at the Catholic Hospital, which was where she went on the Saturday after her departure from the home of the private prosecutrix. She stated that she informed the private prosecutrix about her husband's illness and his admission. She further testified that the private prosecutrix promised to visit her husband at the hospital but failed to do so. Appellant also testified that she went back to the house of the private prosecutrix after some time and ask why the private prosecutrix had not visited her husband, and that the private prosecutrix had informed her that she was too busy. Appellant testified that she was detained at the Police Station for one week and three days because the private prosecutrix, in her presence, had informed the police not to release her until she confessed to taking the jewelry, and that her husband and her little brother were also arrested and detained for eight days upon the request of the private prosecutrix.

The other three witnesses for the defense also testified to the effect that the appellant and the private prosecutrix were intimate friends who used to visit one another and that appellant was brutalized by the police to force her to admit-to taking the missing jewelry. Witness William Johnson confirmed the testimony of the appellant to the effect that he and appellant's husband were detained and threatened to be sent to Belleh Yalla. They also denied that the appellant took the jewelry.

On Thursday, June 13, 1989, the trial judge charged the empaneled jury. We quote hereunder the relevant portion thereof for the benefit of this opinion.

"...She produced witnesses to connect her behavior with other attitude that are becoming of a good lady like the defendant, so it is left with you, Mr. Foreman, ladies and gentlemen of the empaneled jury, to see that the evidence adduced by the private prosecutrix can clearly connect the defendant in the dock with the theft of property on the question..."

The prosecution asked us to charge you on the following law issues that are the principle of best evidence. The principle of best evidence is that whoever produces the best evidence, it must operate in their favor. Now the defendant and the private prosecutrix if according to your understanding who brought in the best witnesses to say that I have done it, that is to say, to charge the defendant; any witness saying that she did not do it you have confidence that she did not do it, but if the prosecution produced best witnesses to show that the defendant had really committed the crime, it must operate in favor of the state."

The trial jury having been charged, proceeded to the room of deliberation and returned with a verdict finding the appellant guilty for the crime of theft of property. On the 20th day of June, A. D. 1989, the trial judge rendered his final judgment affirming and confirming the verdict of the trial jury. The judge fined the defendant the amount of $500.00, to be paid forthwith into Government revenue, and ordered her to make restitution of the amount of $17,705.00, constituting the value of the stolen items. Appellant excepted to the judgment and appealed to this Honorable Court upon a six-count bill of exceptions. This Court deems counts 3 and 6 thereof worthy for the determination of this case on appeal.

Appellant alleged in count three of the bill of exceptions and argued before this Court, that the trial judge committed a reversible error when he affirmed and confirmed the verdict of the jury on grounds that the evidence adduced at the trial did not support the verdict of guilty, and that the charge of theft of property was not proved as required by law. Appellant maintained that the prosecution failed to prove the case beyond all reasonable doubt, in that there was no evidence showing that appellant stole and converted to her own use any of the items listed in the indictment or that she ever gained any benefit therefrom. It was strongly argued by appellant that the testimony of the private prosecutrix showed that everybody in her home was a member of her family who has complete access to her home and that the prosecution witnesses testified that they had not seen the defendant taking any of the items listed in the indictment, thereby creating a doubt as to whether it was appellant who stole the items, or some or any of the other members of the private prosecutrix's family. Hence, she said, this doubt should have operated in her favor, for which the judgment should be reversed and she be ordered discharged.

Appellant also alleged in count six (6) of her bill of exceptions and argued before this Court that the trial judge's charge on the principle of best evidence was erroneous and that this erroneous charge influenced the minds of the jury against appellant, in that the law requires that the best evidence which the case admits of must always be produced as no evidence is sufficient which pre-supposes that existence of better evidence. Appellant therefore prayed this Honorable Court to reverse the judgment of the lower court, acquit appellant and order her bond returned to her.

The prosecution, on the other hand, contended that appellant committed the crime and that she had escaped from the scene of the crime and from the police authority, such escape constituting sufficient admission of the commission of the crime of theft of property. The prosecution also argued that it had established a prima facie case because of appellant's presence at the scene of the crime, and that it was the

responsibility of the appellant under the plea of alibi to show not only a improbability, but impossibility as well, that she could have been present at the commission of the crime. In short, the prosecution maintained that the appellant and her witnesses admitted that she was at the scene of the crime and that appellant did not deny that she had been twice arrested prior to this case for the commission of the same crime of theft of property.

The prosecution further argued that appellant logically took away the items, in that she was a frequent visitor of the private prosecutrix and that in the absence of the private prosecutrix, the appellant was, on two separate occasions, locked up in the room of said private prosecutrix wherein the jewelry was missing. The prosecution also strongly averred that the appellant did not deny the commission of the crime and that she did not set forth any set of facts to exonerate her from the commission of the crime. Finally, the prosecution argued, this Court should not consider the issues raised in the bill of exceptions relating to the judge's charge to the jury since the appellant had not excepted to the judge's charge to the jury. The prosecution therefore requested this Court to confirm and affirm the judgment of the trial court.

From the foregoing facts and arguments, the issues germane for the determination of this case are:

1. Whether or not the prosecution proved beyond all reasonable doubt the crime of theft of property charged in the indictment; and

2. Whether or/not the judgment rendered against appellant by the trial judge is supported by the evidence adduced at the trial.

However, we shall first proceed to decide other issues raised and argued by the parties before deciding the issues referred to above. The prosecution contended that the escape of the appellant from the scene of the crime and the police authority constituted a sufficient admission of guilt. This Court says, firstly, that there is no evidence to prove that the departure of appellant from the home of the private prosecutrix was an escape. Secondly, the unrebutted testimony of the appellant to the effect that she visited the home of the private prosecutrix the following Saturday to inform her of the illness of appellant's husband and admission at the Catholic Hospital and her subsequent visit to inquire from the private prosecutrix why she had not visited her husband at the hospital are clear indications that her departure from the house of the private prosecutrix was not an escape. See minutes of the 30th day's session, Monday, June 12 1989

With regard to appellant's escape from the police authority, this Court says that the testimony of Police Officer Boniface, who alleged the escape of the appellant, was not confirmed by Capt. Marvin Dahn, whose testimony clearly showed that the appellant was in police custody until the issuance and service of a writ of habeas corpus. See minutes 8 and 9, Thursday, June 8., 1989 Hence, the prosecution's contention regarding appellant's escape from the scene and the police authority has no merit and is not sustained.

The prosecution also contended that this Court should not consider the issues raised in the bill of exceptions because counsel for appellant did not except to the charge of the judge, made to the jury. The State relied on the case Wilson v. Dennis, 23 LLR 263 (1974), wherein this Court held that "for issues to be reviewed by the Supreme Court, they must be set forth in the bill of exceptions which contain the objections made at the time of trial, raising such issues for the Court's consideration ."

The records in this case showed that the defense counsel for Montserrado County, Counsellor Ignatius Weah, failed and neglected to except to the judge's charge to the jury. However, the Court will consider the issues raised in the bill of exceptions with respect to the judge's charge to the jury for reasons that the trial court violated appellant's constitutional rights to legal representation of her choice, in that the court failed to allow her reasonable time and opportunity to consult her counsel of choice but instead elected to request Defense Counsel Weah to represent her legal interests against her will. The Court observes from appellant's letter of June 15, 1989 that Defense Counsel Weah requested from appellant the sum of $1,500.00 after the verdict of guilty was brought against her as a precondition to announcing an appeal from the final judgment of the trial court to this Court for appellate review. This clearly demonstrates the of the defense counsel towards appellant, as well as his intentional and knowing neglect and failure to perform the legal duty imposed upon him by law, to the detriment of appellant.

Moreover, our criminal statute requires that an accused in a criminal prosecution shall be legally represented at every stage of the proceedings, and that the court shall furnish said accused with all available facilities to aid him or her to secure counsel and allow a reasonable time and opportunity to privately consult with counsel before any further proceedings are heard. Criminal Procedure Law, Rev. Code, 2:2.2.

Another issue raised by the prosecution is that the appellant was under the obligation, under the plea of alibi, to prove that she was not present at the scene of the crime.

The prosecution also contended that appellant did not deny during the trial her pervious arrests for the commission of theft of property, which failure of appellant to deny, it deemed as an admission. The prosecution relied on the case Yancy v. Republic 27 LLR 365 (1978).

In the Yancy case, defendants Francis Nyepan and Wreh Taryennoh testified that they were not present on the scene when the Late Moses Tweh was brutally killed on a Sunday night, July 3, 1977, in Harper City. Defendant Nyepan's paramour in person of Miss Margaret Johnson, testified that she slept with Defendant Nyepan on the 3rd of July 1977, and that the defendant remained at home. Defendant Taryennoh's daughter, in person of Laurine Nyepan, testified that she slept in the room with her mother that night. The prosecution produced rebuttal witnesses which established that the defendants were present and participated in the murder of Moses Tweh.

In the instant case, appellant testified that she visited the home of private prosecutrix on that Saturday, but she denied entering the room of private prosecutrix and taking and carrying away her personal effects. The facts and circumstances in the Yancy case and the case at bar are not analogous. Hence, the plea of alibi raised by the prosecution, instead of appellant is inapplicable and therefore not sustained. Secondly, the appellant was not tried for any previous crime for theft of property for which she was allegedly arrested, and as such, she could not deny commission of any previous allegations of theft. Hence, appellant's failure to deny that she had been arrested twice prior to this case for the commission of the same crime of theft of property does not in any way constitute an admission.

Counsel for appellant argued before this Court that the trial judge's charge on the principle of best evidence was erroneous and that it influenced the minds of the jury against appellant. We observe that the judge's charge on the principle of best evidence is indeed erroneous and that it did influence the minds of the jury, in that the trial judge described the behavior of appellant as unbecoming of a good lady, which prejudiced the interest of appellant. Further, the judge's charge to the jury to bring a verdict of guilty if appellant failed to produce the best evidence, was also erroneous. Our statute provides that "the best evidence which the case admits of must always be produced, that is, no evidence is sufficient which supposes the existence of better evidence. See Civil Procedure Law, Rev. Code 1:25.6. In this regard, it is the prosecution which ought to produce the best evidence in criminal prosecutions, not the defendant.

We shall now decide issue number one in this case, which is, whether or not the theft of property, charged in the indictment, was proved beyond all reasonable doubt. The answer to this question is in the negative. The records in this case showed that the private prosecutrix considered everybody in her house as a member of her family. As such, they had complete access to her home. The evidence also showed that the private prosecutrix employed a houseboy and had her own children, all of whom had access to her home, not excluding appellant. Witnesses for the prosecution testified that they did not see the appellant taking and carrying away any of the missing items listed in the indictment. Their testimonies created a reasonable doubt as to whether it was appellant who stole the jewelry or whether the theft was committed by other members of the private prosecutrix family.

The failure to prove the guilt of appellant is obvious from the testimony of the private prosecutrix that she discovered her jewelry missing three weeks after the departure of appellant from her house. The time interval between appellant's departure and the discovery of the personal effects missing creates another doubt as to the exact time the items in question were allegedly stolen. The doubt created by the testimonies of prosecution's witnesses ought to have operated in favor of appellant. We have reviewed the evidence adduced at the trial, but we have not found it to be so conclusive as to exclude every reasonable doubt as to the guilt of appellant. Criminal Procedure Law, Rev. Code 2:2.1.

A defendant is presumed innocent until proved guilty, and reasonable doubt requires acquittal. Elaine v. Republic 27 LLR 133 (1978).

The final issue in this case is whether the judgment rendered against the appellant by the trial judge is supported by the evidence adduced at the trial.

The indictment alleged that in the month of March, A. D. 1989, the appellant entered the bedroom of private prosecutrix and locked herself therein, pretending that she was cleaning up, but that she stole and took away 21 personal effects belonging to the private prosecutrix amounting to $17,705.00. The Court reviewed the testimony of the only eye witness, George Allison, the houseboy, and observes that his testimony, quoted herein before, did not establish the allegations contained in the indictment. His testimony failed to connect appellant to the commission of the crime of theft of property. It is also shown by the records that none of the witnesses of the prosecution ever testified that appellant stole, carried away, and converted to her own use any or all of the items listed in the indictment. Instead, the prosecution attempted to prove that appellant stole a blouse belonging to the private prosecutrix, which was

not a part of the items listed in the indictment. The records also show that prosecution withdrew their request to produce a rebuttal witness to contradict appellant's testimony to the effect that the blouse was given to appellant by the niece of the private prosecutrix. There is a variance between the indictment and the testimonies of the witnesses for the prosecution.

A further review of the testimonies of Police Officers Manneh and Dahn prejudiced the interests of appellant in that their statements that appellant was previously arrested by the police for the crime of theft of property inflamed the minds of the jury. They however contradicted one another, in that Officer Manner testified that appellant admitted committing the crime during a thorough investigation, whereas Captain Dahn testified that appellant denied committing the crime during a short interview and that the police investigative unit did not conduct any investigation due to the issuance and service of a writ of habeas corpus.

Finally, this Court observes that the State failed to establish the necessary elements of the crime charged in the indictment and that the judgment of conviction was not supported by the evidence adduced at the trial. This Court held in the case Johnson v. Republic, 15 LLR 66 (1962), that judgment of conviction in criminal case must be supported by proof beyond a reasonable doubt of all elements of the crime charged.

This Court is reluctant to sustain a judgment of conviction in a criminal prosecution where the evidence adduced at the trial is not conclusive and void of reasonable doubt, and where the judgment is not supported by establishment of all the necessary elements of the crime charged.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the trial court should be and the same is hereby reversed. The appellant is acquitted and her bond is ordered returned to her. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. And it is hereby so ordered.

Judgment reversed.