Sirleaf v Republic of Liberia [2012] LRSC 15 (17 August 2012)

Martha Sirleaf of the City of Monrovia, Liberia, APPELLANT Versus The **Republic of Liberia**, by and thru **Moses Mitchell et al**, also of the City Of Monrovia, Liberia, APPELEE

ARMED ROBBERY

Heard: June 11, 2012 Decided: August 17, 2012

MR. JUSTICE BANKS delivered the Opinion of the Court.

This appeal to the Honourable Supreme Court by the appellant, Martha Sirleaf, is from a verdict returned by the petty jury of the First Judicial Circuit, Criminal Assizes, Court D, Montserrado County, for the crime of armed robbery, and the conviction thereon by the trial court, confirming the verdict and sentencing the defendant/appellant to 15 years imprisonment.

The trial proceedings against the appellant/defendant and one Otis Varfley had their origin in a fourteen-count indictment brought on the 27th day of December, A. D. 2010, by the Grand Jury for Montserrado County, sitting in the November Term, A. D. 2010, of the First Judicial Circuit Court, Criminal Assizes A on the charge of armed robbery. The fourteen-count Indictment outlined the basis for which the Grand Jury found that the defendants had committed the crime of armed robbery. We herewith quote the Indictment verbatim:

The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Otis

1. That on the night of December 10, A.D. 2010, and going on to the morning hours of December 11, A.D. 2010, at 12:21 a. m. or thereabout, in Bola Town, Careysburg, Montserrado County, Republic of Liberia, the defendants, Otis Varfley and Martha Sirleaf, with criminal minds and intent, purposely, knowingly, willfully and intentionally committed the crime of armed robbery against the private prosecutors, to wit:

2. That co-defendant, Martha Sirleaf, and private prosecutors are members of a savings club that is known as Bola Town Women Club in Careysburg, Montserrado County, Republic of Liberia, where the co- defendant serves as secretary to the club.

3. That as customary, during the month of December of each year, some of the members usually gather together to envelope their yearly gains for distribution.

4. That co-defendant, Martha Sirleaf who is secretary to the Club, together with some of the members of the club, to include Moses Mitchell et al, gathered in a room in the house to envelop the money at about midnight to 1'oclock a.m. for distribution to the club members the following day.

5. That while the packaging of the money was being done, the rest of the team observed co-defendant Martha Sirleaf receiving two telephone calls and could hardly respond to the caller in an audible voice, but only murmured something to the caller.

6. That not long after receiving the telephone calls, co-defendant Martha Sirleaf left the room under the pretext of going to the bathroom, but unbeknownst to the rest of the members of the club that were in the room, left the back door opened to permit the perpetration of the armed robbery.

7. That after the co-defendant Martha Sirleaf left the back door opened, three (3) unknown armed men with AK-47, cutlasses, knives and other deadly weapons, entered the room and threatened to kill anyone who would alarm, and made away with the money, in the amount of LD565,000.00.

8. That in the process, private prosecutor Moses Mitchell was stabbed on his left side, while private prosecutrix Tumu Jackson, was stabbed on her back. That the stab wounds made the private prosecutor and prosecutrix to seek medical treatment due to the bodily injuries sustained.

9. That when the crowd in the area mobilized and came together, they caught co-defendant Otis Varfley, who revealed to the police during preliminary investigation that it was co-defendant Martha Sirleaf, who is his aunt, who called him and asked him to stage the armed robbery and told him the club withdrew money from the bank and that they were about to distribute it and also paid his way to Careysburg; and that she was the one who left the door open to let the armed robbers into the room.

10. That the defendants have no affirmative defense.

11. An act is also in the course of committing a theft if it occurs in an attempt to commit theft is successfully completed.

12. An act is also in the course of committing a theft if it occurs in the immediate flight from the commission of or an unsuccessful effort to commit the theft.

13. Theft means to knowingly take and misappropriate and convert and exercise unauthorized control over and make an unauthorized transfer of an interest in the property of another, with the purpose of depriving the owner thereof.

14. Defendants' acts are contrary to: 4 LCLR, Title 26,Section15.32,4 LCLR, Title 26, Section 1.7(c), and 4LCLR, Title 26, Section 15.51 (a), of the statutory laws of the Republic of Liberia, and the peace and dignity of the· Republic of Liberia.

As noted from the fourteen counts of the indictment, the basis for which the appellant was charged with the offense of armed robbery is that she engaged co-defendant Otis Varfley and other unmanned persons to rob, with the use of dangerous weapons, certain members of a women's club to which co-defendant Sirleaf also belonged, of funds which the appellant had withdrawn from the bank earlier in the day and were intended to be disbursed the following day to the members of the club. The incident, as stated in the indictment, occurred between midnight on December 10, 2010 and one a.m. on December 11, 2010. The amount which the indictment charged the defendants with stealing was put at L$565,000.00.

It is worth highlighting at this juncture the chronology of events so that the assessment and evaluation of the evidence are viewed in their clear and proper prospective. We therefore begin from the date of the incident. The records reveal that the incident was reported to have occurred between the night of December 10, 2009 and the early morning hours of December 11, 2009. Not long thereafter, on December 11, 2010, the incident was reported to the police and the appellant arrested and taken into custody for interrogation. Whilst the police was still investigating the matter, and without having drawn any conclusions or released any findings, or appeared before any magisterial court to profert charges against the appellant which, under the command of Articles 21(f) of the Constitution, should have been done within forty-eight hours of the arrest of the appellant, one Moses Mitchell and other unnamed persons, stated to be the private prosecutors and private prosecutrix in the case, appeared before the Careysburg Magisterial Court on December 22, 2010, eleven days after

the matter was reported to the police, and swore out a complaint in regard to the identical incident that was being investigated by the police.

Precipitated upon the aforesaid complaint, sworn to by the named private prosecutor and prosecutrix, two writs of arrest were issued by the magisterial court mentioned herein. The first writ, issued against the appellant, charged her with the offense of criminal facilitation. In the writ, the appellant was accused of aiding one Otis Varfley in the commission of the crime of armed robbery and providing him with an opportunity" to commit the offense. The basis for the accusation, the writ stated, was that the appellant had promised to assist Otis Varfley with some money to start his business upon their sharing of the money, the fruits of the armed robbery, on the Saturday following the incident. The writ put the amount that was robbed at L$565,000.00 and concluded that for the role played by the appellant, she had acted in violation of section 10.2 of the Penal Law of Liberia, for which she was being charged.

The second writ of arrest, issued simultaneously with the issuance of the writ of arrest against the appellant, charged Otis Varfley and other unnamed persons with the crime of armed robbery. The writ stated that cutlasses, knives, AK-47, glass bottles and other deadly weapons were used by the defendants in the commission of the armed robbery and that two person who were at the scene at the time sustained serious injuries. As with the writ issued against the appellant, the arrest warrant issued against Otis Varfley also put the amount said to have been robbed from the Bola Women Savings Club at L$565,000.00. According to the writ, the act of Otis Varfley, in committing the armed robbery, rendered him in violation of section 15.30 of the Penal Law of Liberia.

The records do not reveal that there was any intervention by the police at the issuance of the two writs of arrest or whether there was any involvement by the City Solicitor or other State prosecutors in superintending the process. What the records do reveal is that on December 23, 2010, one day following the issuance of two writs of arrest against the appellant and defendants Otis Varfley et al., the cases were called by the magistrate for preliminary investigation. In the case involving Otis Varfley et al., when same was called, at which it appeared that only Otis Varfley was present, he stated that he had nothing to say. Whereupon, the prosecution made a submission to the court to the effect that as co-defendant Otis Varfley remarks was tantamount to a waiver of the right to preliminary examination, and that as the case was beyond the jurisdiction of the

court, the court should forward same to the appropriate court at the Temple of Justice which had jurisdiction to conduct a trial of the case. This request was granted by the court and the case involving Otis Varfley et al. was ordered transferred to Criminal Court D of the First Judicial Circuit, Montserrado County.

In the other case, which involved appellant Martha Sirleaf, was called by the court, the appellant requested a postponement until after the Christmas Holidays, which request the court granted and adjourned the case to December 28, 2010. All of these events in the Careysburg Magistrate Court occurred on December 23, 2010.

One day following the December 23, 2010 adjournment of the case to December 28, 2010, the Police Criminal Investigation Division (CID) issued a document captioned Police Confirmation Clearance in which, not finding any magnitude in the allegations levied against appellant Martha Sirleaf, it exonerated her from any association with or involvement in the commission of the armed robbery incident. The Police Clearance made no reference to the pending case before the magisterial court regarding the armed robbery incident which was before that court pending preliminary investigation. The Police Clearance, dated December 24, 2010, stated:

POLICE CONFIRMATION CLEARANCE
This is to confirm that on December 11, 2010 at 12: 21hrs., Mr. Moses M. Mitchell and others of Bolah Town, Careysburg, Montserrado County, reported an alleged armed robbery case on behalf of Bolan Town Women Club in which said organization suffered the loss of Three Hundred Fifteen Thousand, One Hundred and Eighty Five Liberian Dollars (L$315,185.00).

During Police/CSD crime scene investigation, it was established that the crime of armed robbery did occur, in that, while the Su-su Club members were about to share their savings, the perpetrator/s approached the scene, placed them (Members of Bolah Town Women Club) under gun point, inflicted wounds on the victim (Moses Mitchell) and made away with the amount of L$315,185.00, which was intended to be distributed on Saturday, December 11,2010.

In the course of police investigation, no evidence of any form of criminality was determined on the part of Madam Martha Sirleaf. Thereto, Madam Martha Sirleaf was exonerated from the investigation.

In view of the above, we have issued to Madam Martha Sirleaf this POLICE CONFIRMATION CLEARANCE for reference purposes.

Signed: Hon. Simeon F. Frank
Commissioner of CID/LNP/RL

It is not clear how the Police Confirmation Clearance indicated that the amount reported to have been stolen in the course of the armed robbery by Otis Varfley et al., the defendants in the armed robbery case pending before the magisterial court, was LD$315,185.00,whereas the amount stated on the charge sheet and writ of arrest issued by the magisterial court was L$565,000.00.What the records do reveal to us is that there was a complete disconnect between the police on the one hand and the private prosecutor and prosecutrix and the City Solicitor on the other hand.

In any event, notwithstanding the Police Clearance issued on December 24, 2010, counsel for appellant Martha Sirleaf made application to the Magisterial Court on December 28, 2010, seeking a preliminary investigation into the complaint. The application, not having been opposed, was granted by the court and the preliminary investigation was commenced. Thereafter, on January 4, 2011, at the close of the preliminary investigation, and on motion from the prosecution, the magistrate ordered the matter transferred to Criminal Court D of the First Judicial Circuit, Montserrado County.

At the November Term, A. D. 2010, of the First Judicial Circuit Court, Criminal Assizes, Court A, the Grand Jury, on January 24, 2011, indicted the appellant on the charge of armed robbery, a change from the original charged of criminal facilitation advanced in the magisterial court by the prosecution. Shortly thereafter, a jury trial was held at the February 2011 Term of Criminal Court D. Following the production of evidence by the state and the appellant, the petty jury, on the 11th day of April, A. D. 2011, returned a unanimous verdict of guilty against the appellant for the crime of armed robbery. The appellant, through her counsel, believing the jury to have been in error in bringing a verdict against her, excepted to the verdict and announced that she would take advantage of the statute. Acting upon the exceptions taken to the verdict, the appellant, on April 14, 2011, filed a motion for a new trial. The two- count motion, with sub-counts, contended basically that the verdict was against the weight of the evidence and that as such a new trial should be awarded by the court.

The motion was resisted by the prosecution, arguments pro et con were entertained by the court. On April 18, 2011,His Honour Benedict W. Holt, Sr.,

the Assigned Circuit Court Judge Presiding over the February 2011 term of Criminal court D, denied the motion for new trial, and entered judgment confirming the verdict of the petit jury, adjudging the appellant guilty of the offense charged and sentencing her to fifteen years imprisonment or more. Because we shall make comments on the court's ruling, which, although including the final judgment of the court, is actually captioned, Ruling on the motion for a new trial, we deem it appropriate to quote the said ruling verbatim. The Ruling states thus:

On April 11, at the hour of 10:00 A.M. the case Republic of Liberia, by & thru Moses Mitchell et al., plaintiff, versus Martha Sirleaf, of the City of Monrovia, defendant crime, armed robbery, was called for hearing for final argument. Before this case reached this stage, plaintiff, by & thru [its] counsel entered a nolle prosequi in favour of Moses Varfley thereby making him a state witness. The prosecution in presenting their side of the case to the jury produced thirteen (13) witnesses. The witnesses included rebuttal witnesses as well. During the course of the case the prosecution requested court to admit into evidence P/1-/7 as their physical evidence in support of their argument to the jury for [consideration]. The prosecution also produced rebuttal witnesses to rebut statement that were made by witnesses giving different interpretations to the jury for which there was a need for clarification. Prosecution rested and the defendant presented their part of the case to the jury. The defendant produced in all three (3) general witnesses to include Martha Sirleaf, Solomon Varfley and Charles Williams, and rested. Also she produced two subpoenaed witnesses that testified for and on behalf of the defendant. At the close of defendant's presentation of its general and subpoenaed witnesses the case was ruled to trial. During final argument, the prosecution produced their legal memorandum as the basis of their legal argument and the counsel for the defendant also produced their legal memorandum as their part of the side. At the close of oral argument on both sides, the counsels for the prosecution and the defendant requested the court and the judge to charge the jury on various points of law, which was accordingly done. Thereafter, the jury was escorted into their room of deliberation and after a lengthy period of discussion/ deliberation the trial jury brought a unanimous verdict. It is from their verdict that the counsel for the defendant took exception and filed a motion for a new trial. The first count in the motion reads: "movant in the aforesaid entitled cause of action moves Your Honour and this Honourable Court to set aside

the verdict of the petit jury and order a new trial for the following legal and factual reasons showeth to wit:

1. That the guilty verdict of the petit jury, handed down against movant, is utterly contrary to the weight of the evidence adduced at the trial.

2. That the prosecution in the presentation of its case and consistent with the indictment alleged substantially as stand to wit which counts run from A-G of defendant's motion for RE-TRIAL Also containing the question and other points of laws made in this motion. At the close of defendant's motion the movant counsel hereby prayed Your Honour and this Honourable Court to set aside the verdict of the petit jury as a matter of law and order a new trial and grant onto movant all that you may deem just and applicable.

The respondent's resistance, the respondent/plaintiff in the above entitled cause of action most respectfully resists movant/ defendant's motion in the form and manner to wit:

1. That as to count one of the motion respondent says that same is false and misleading and has no iota of truth in that the verdict of the petit jury brought by the jury on Monday, April, A. D. 2011, was not contrary to the weight of the evidence adduced by prosecution at the trial; rather, it was commensurate with the evidence.

2. That prosecution most respectfully requests court to take judicial notice of the testimonies of the twelve witnesses which shall be taken in part with prosecution first witness, Moses Mitchell, 2nd witness, Otis Varfley, 3rd witness, Tumu Jackson, 4th witness, Jenneh Mitchell, subpoena witness, Simeon F. Frank, first rebuttal witness, Patricia Flomo, 2nd rebuttal witness, Madam Elsie Gowur, and submit.

The court having received the contents of the motion and the resistance thereto souhgt refuge in chapter 2, subsection 22.1, at page 497, entitled motion for new trial (power to grant), and it reads: When the defendant has been found guilty by the court, a motion for new trial may be granted only on ground of newly discovered evidence. The court in its review of the movant's motion, the movant's counsel has not indicated to this court that she has discovered new evidence that was presented to this court that will change the outcome of the verdict when presented. The movant's counsel argued that there are inconsistencies in the records of this case which this court should give a

consideration to and accordingly set aside the unanimous verdict of the trial jury. This court also further says that there are other grounds given in chapter 22 for new trial that do not meet the requirement of the motion. Also, that one of counsels for the defendant in his closing argument prayed court to allow the bond which was granted by this court to the defendant not to be set aside while ordering a new trial for the defendant.

This court says the right to bail is a statutory as well as a constitutional right but there are limitations of substance in the statute which and of such limitations is chapter 13, page 461, entitled RIGHT TO BAIL and it reads: The person in custody for a commission of capital offence shall before conviction be entitled as a right to be admitted to bail when the proof is not evidence and presumption not great that she is guilty of the offence. After indictment for such offence the burden on the defendant to show that the proof is not evidence but presumption not great.

AFTER [CONVICTION] FOR THE CAPITAL OFFENSE NO PERSON SHALL BE CONTINUED AT LARGE ON (BAIL) OR BE ADMITTED TO (BAIL) [EXCEPT] IN [ACCORDANCE] [WITH] THE PROVISIONS [PARAGRAPG 3] OF THIS [SECTION].

The interpretation of the law, the criminal [appearance] bond early approved [by] this court is now hereby ordered set aside. The sheriff of this court is hereby ordered to have the defendant into custody after sentencing.

The court will proceed to affirm the unanimous verdict of the petit jury and it is hereby so ordered. And the court will now proceed to sentence the defendant to the term of 15 years or more because during the commission of the act some of the victims sustained injury. And it is hereby so ordered.

It is from the foregoing ruling that the appellant noted exceptions and announced an appeal to this Court for review of the proceedings in the trial court and the judgment rendered by the said court, alleging that the process was engulfed with a series of errors that warrant a reversal of the verdict and the judgment. In furtherance of its appeal, the appellant filed with the trial court, within the time allowed by the appeals statute, a thirty-two count bill of exceptions. Because we believe that there is a need for appreciation, or the lack thereof, of what the appellant deemed important to warrant review by this Court, we quote below the entire bill of exceptions verbatim:

(1) Your Honor erroneously erred when you granted prosecution's prayer for the amendment of the Indictment to read as follows:

That in paragraph 1 of the indictment the amended portion is read as follows (that on the night of December 10, A. D. 2010 and going on to the morning hours of December 11, A. D. 2010 at about 12:21 a. m. and thereabout, in Bola Town, Careysburg District, Montserrado County and Republic of Liberia, defendants Otis Varfley and Martha Sirleaf, together with two other persons unknown to the private prosecutor, got contracted by the defendant herein, with criminal mind and intent) and also in paragraph 7 of the same indictment which amended portion will read as follows, to wit: (three men, two unknown armed with guns, cutlasses, knives and other deadly weapons, entered the house where the private prosecutors were, burst bottles and they, the unknown armed men attacked, jumped on the private prosecutors for a fight and in the process hurt, injured and inflicted wounds on private prosecutors, Moses Mitchell and Tumu Jackson, all at the instant, orchestration and design of co-defendant Martha Sirleaf, thereby incapacitating them and they the unknown armed men took and carried away portion of the club's money which was already on the mat for counting and thereafter fled. (See sheet Four (4), 6th Day's Jury Session, Monday, February 21, February Term, A. D. 2011). That the amendment of the herein stated portion of the indictment is prejudicial to the interest of the defendant for it named her as the one who orchestrated and designed the armed robbery. The statute provides that the court shall permit an indictment or complaint to be amended at any stage of the proceedings to correct a formal defect if substantial rights of the defendant are not prejudiced thereby. 1LCLR, Title 2, Chapter 14, Section 14.7(1& 2), as found on page 115.

(2) That Your Honor committed reversible error when You sustained prosecution's objection to a question posed by the defense counsel to prosecution's first witness, Moses Mitchell, on the cross examination when said question was intended to show his bias, prejudice, motive and inclination because he testified that one of the alleged victims, Jenneh Mitchell, is his mother. The question reads: And you are sorry for her because she is your mother and she was armed robbed. (See sheet five (S), 43rd Day's Session, Tuesday, March 1, 2011).

(3) That Your Honor also committed reversible error when you sustained prosecution's objection to a question posed by the defense counsel to

prosecution's first witness, Moses Mitchell, on the cross examination when said question was intended to unearth the inconsistencies in the witness's statement with the view to establish reasonable doubt as well as discredit him. The question reads: Mr. Witness, in your testimony you said you saw two other men with the bottles EXHIBIT P/1.Now you are telling us that it is Otis who had one of the cracked bottles in his hand. For the benefit of the jury, please clarify how can the two bottles that were introduced and marked EXHIBIT P/1 be in the hands of the two men that ran away and at the same time be in the hands of Otis Varfley? (See Sheet six (6), 13th Day's Jury Session, Tuesday, March 1,2011.)

(4) That Your Honor also committed reversible error when you sustained prosecution objection to a question posed by the defense counsel to prosecution's first witness, Moses Mitchell, on the cross examination when said question was intended to unearth the inconsistencies in the witness' statement with the view to establish reasonable doubt as well as discredit him. The question reads: "Mr. Witness, it is my understanding that when two persons tussled for a particular item the one that over powered takes the item, not so?" (See sheet seven (7), 13th Day's Jury Session, Tuesday, March 1,2011).

(5) That Your Honor also committed reversible error when you sustained prosecution's objection to a question posed by the defense counsel to prosecution's first witness, Moses Mitchell, on the cross examination when said question was intended to show the inconsistencies in the witness' statement. The question reads: "The police took statement from Tumu Jackson, not so?" (See sheet seven (7), 13th Day's Jury Session, Tuesday, March 1, 2011.)

(6) That Your Honor again committed reversible error when you over- ruled the defense counsel's objection to a question posed to prosecution's second witness, Otis Varfley, on the direct examination when said objection was intended to prevent the prosecution from asking such question as similar question was asked the witness by the prosecution and the defense counsel objected to same and the objection was granted. The second question objected to reads: Mr. Witness, as an eye-witness to the December 10, 2010 armed robbery incident, do you have any other thing to claim the attention of the court and the jury apart from what you had already said, if so, what is it?" (See Sheet Twelve (12), 13th Day's Jury Session, Tuesday, March 1, 2011)

And the first question objected to reads: Mr. Witness, for the benefit of the court and the Jury please refresh your memory and say whatever you have to say in connection with the December 10, 2010, armed robbery incidence for which you were arrested and detained and later released. (See sheet eleven (11), 13th Day's Jury Session, Tuesday, March 1, 2011). The objection to this question by the defense counsel was sustained but the second one herein stated above was allowed.

(7) That Your Honor also committed a reversible error when you sustained prosecution's objection to a question asked by the defense counsel to prosecution's second witness, Otis Varfley, on the cross examination, when said question was intended to test the credibility of the witness's statement made to the police during the police investigation and that made during his testimony in chief in opened court; thereby, establishing reasonable doubts and discrediting him since in fact he was testifying as an accomplice testifying against another. The question reads: Mr. Witness, is it also correct that you told the police during the police investigation that after you arrived at George Mitchell's house, you knocked the door and heard someone asked, why, and you said Nana and she asked you what happened. Is it correct that this statement was made to the police? (See sheet three (3),14th Day's Jury Session, Wednesday, March 2,2011.)

(8) That Your Honor also committed a reversible error when you sustained prosecution's objection to a question asked by the defense counsel to prosecution's second witness, Otis Varfley, on the cross examination, when said question was intended to establish the inconsistencies between his statement made to the police during police investigation and his testimony in court. The question reads: Mr. Witness, you correctly and actually told the police the truth and nothing but the truth as contained in your voluntary statement upon the oath that you took in this open court in the view of the jury. Am I correct?" (See sheet four (4),14th Day's Jury Session, Wednesday, March 2,2011.)

(9) That Your Honor also committed reversible error when you overruled the defense counsel's objection to a question posed by the prosecution to its second witness, Otis Varfley, on the redirect when said question was a misquotation of the witness's testimony as he did not say that there were slight differences between his voluntary statement made at the police station and those made in the court. That the question was also assuming facts not testified to by the

witness on the stand. The differences between the witness's voluntary statement made to the police and those made in court were only unearthed by the defense counsel during the cross examination of the witness. (See sheet six (6), 14th Day's Jury Session, Wednesday, March 2,2011.)

10. Your Honor also erred when you sustained prosecution's objection to a question posed by the defense counsel to prosecution's second witness, Otis Varfley, on the re-cross, when said question was intended to test the bias inclination of the witness. The question reads: "For the benefit of the court please say how much money did you take during the robbery? (See the bottom sheet 2,15th Day's Jury Session, Thursday, March 3,2011).

11. Your Honor erred when you sustained prosecution's objection to a question posed by the defense counsel to prosecution's second witness, Otis Varfley, on the re-cross when said question was intended to impeach the credibility of the said witness. The question reads: In answer to one of my questions you said you knocked at the door and somebody answered who is that and you said Nana. My question is, it was also a cover-up when you answered and said, Nana, not so? (See Sheet Our (4) of the 15th Day's Jury Session, Thursday, March 3, 2011).

12. Your Honor erred when you sustained prosecution's objection to a question asked prosecution's third witness, Tumu Jackson, on the cross examination on grounds that it burdens the records when said question was intended to discredit the testimony of the witness with respect to the allegations of misapplication of the club's fund by the defendant, Martha Sirleaf. The question reads: As an official of the club, please say what happened to the deposit slips for moneys that are deposited?" (See sheet 3, 16th Day's Jury Session, Friday, March 4, 2011).

13. Your Honor also erred when you sustained prosecution's objection to a question posed to the prosecution's witness, Jenneh Mitchell, on the cross examination, when said question was intended to impeach the credibility of the witness. The question reads: Madam Witness, you, Tumu Jackson, and Martha Sirleaf, were among people that went to the Bank on the 10th day of December, A. D. 2010, to withdraw the money. Is this statement correct? (See sheet two (2), 19th Day's Jury Session, Tuesday, March 8, 2011.)

14. That Your Honor also erred when you sustained prosecution's objection to a question asked the prosecution's witness, Jenneh Mitchell, on the cross

examination, when said question was intended to test the veracity of the witness's testimony to the effect that the defendant misappropriated money entrusted to her by the Bola Town Women Club. The question reads: Madam Witness, when the armed robbers arrived that night they took some of the money and carried. Is this statement correct?" (See sheet three (3), 19th Day's Jury Session, Tuesday, March 8, 2011)

15. Your Honor also erred when you overruled the defense counsel's objection to a question asked prosecution's witness, Simeon Frank, on the direct examination where the question was a misquotation of the witness's testimony in chief. The question reads: Mr. Witness, by that answer, now that you have realized that the investigator you call your strength lied and did not actually conclude this investigation, to warrant the issuance of a police clearance, what have you to say to the court?" (See sheet six (6), 21st Day's Session, Thursday, March 10, 2011).

16. Your Honor committed a reversible error when you sustained prosecution's objection to a question asked prosecution's witness, Simeon Frank, on the cross examination when said question was intended to confirm the outcome of the police investigative report which cleared the defendant of all charges and based upon the witness executed, signed and issued her a Police Confirmation Clearance. The question reads: "Your investigative report also revealed that suspect Martha Sirleaf was not culpable. Not so?" (See sheet seven (7), 21st Day's Jury Session, Thursday, March 10, 2011.)

17. Your Honor erred when you sustained prosecution's objection to a question asked the prosecution's witness, Simeon Frank, on the cross examination when said question did not burden the records and it was intended to confirm the veracity of the witness's testimony with respect to the issuance of the Police Confirmation Clearance to the defendant. The question reads: Mr. Witness, you issued a police confirmation clearance based on the report of the investigation that was conducted by those you referred to as you strength clearing suspect Martha Sirleaf of all the charges, including the charge of armed robbery. Am I correct? (See sheet seven (7), 21st Day's Jury Session, Thursday, March 10, 2011.)

18. Your Honor erred when you sustained prosecution's objection to a question asked the prosecution's witness, Simeon Frank, on the cross examination when said question was intended to test the bias, motive, prejudice

and credibility of the witness with respect to the investigation of prosecution's second witness, Otis Varfley, and the issuance of the aforesaid police clearance. The question reads: Mr. Witness, my question is you do not believe what Otis told you at the investigation, not so? (See sheet eight (8), 21st Day's Jury Session, Thursday, March 10, 2011.)

19. Your Honor erred when you sustained prosecution's objection to a question asked prosecution's witness, Simeon Frank, on the cross examination when said question was intended to test the veracity of the testimony with respect to his reason for requesting the court to revoke the police clearance. The question reads: Tell the court who gave it to you?" (See sheet nine (9), 21st Day's Jury Session, Thursday, March 10, 2011)

20. Your Honor erred when you sustained prosecution's objection to a question asked prosecution's witness, Simeon Frank, on the cross examination when said question was intended to test the credibility of the witness with respect to his previous statement that he was misled by his strength. "The question reads: "Mr. Witness, lastly, you told this court that you were misled to issuing the Police Clearance by your strength, meaning the officers that conducted these investigations. My question is, your officers most often do not do thorough investigation, not so? Tell the court who gave it to you?" (See sheet nine (9), 21st Day's Jury Session, Thursday, March 10, 200.)

21. Your Honor erred when you sustained prosecution's objection to a question asked by the defense counsel to prosecution's witness, Pamelia Agbobo, on the cross when said question was intended to test the credibility of the witness with respect to her previous testimony that she was not one of those who investigated the incidence of December 10,2010. The question reads: Madam Witness, am I also correct to say that because you were not involved in the investigation, you did not have the opportunity to handle the two cell phones in question?" (See sheet three (3), 25th Day's Jury Session, Wednesday, March 16, 2011.)

22. Your Honor erred when you granted prosecution's request for the issuance of subpoena duces tecum ad-testificandum when same was requested for the same party to appear and testify and the said party appeared and testified as to his certain knowledge. (See sheet three (3), 26th Day's Jury Session, Thursday, March 17, 2011.)

23. That Your Honor erred when you overruled the defense counsel's objection for a mark of identification to be placed on the statement of account of the Bola Town Women Club when the instrument was not testified to and identified by the witness; moreover, the prosecution rested with the witness on the stand before requesting the court for a mark of identification to be placed on the document. (See sheets one (1) and (2) 31st Day's Jury Session, Wednesday, March 23, 2011.)

24. Your Honor also committed a reversible error when you overruled the defense counsel's objection to a question posed to its witness, Martha Sirleaf, on the cross examination when the said question was hypothetical, argumentative, opinionative, compound, complex and asked merely to entrap the witness. The question reads: Madam Witness, Otis had been away from Bola Town Community since childhood and that he does not know where and how the Bola Town Women go about the distribution of their club's money. Madam Witness, for Otis to be present on the site of the distribution the very day, the very moment of the distribution, you being the aunt and who happened to be the Secretary of the Bola Town Women Club, one would rightly imply that Otis went there at your call. Am I correct? (See sheet five (5), 35th Day's Jury Session, Monday, March 28, 2011.)

25. That Your Honor erred when you sustained prosecution's objection to a question asked the defense witness, Martha Sirleaf, on the re-direct when said question was intended to indicate and give evidence that prosecution's witness, Otis Varfley, did recognize and call the names of several other persons in Moses Mitchell's house where the alleged armed robbery is said to have occurred. The question reads: "Madam witness, indicated in response to a question on the cross examination that Otis Varfley called your name when there was an attempt to kill him and he said, "my aunt is in there call her if she says that she does not know me then you should kill me, besides calling your name who else name in the house did Otis Varfley call at this particular time of the incident of December 10, 2011?" (See sheet six (6), 36th Day's Jury Session, Tuesday, March 29, 2011.)

26. That Your Honor erred when you sustained prosecution's objection to a question asked the defense witness, Martha Sirleaf, on the re-direct when said question was intended to rebut the prosecution's allegation that she opened the door for the armed robbers to gain access to the room and thereby give

the name of the person who opened the door. The question reads: Madam Witness, you said during the cross examination that you did not open the before the alleged armed robbers broke in or entered, who opened the door?" (See sheet seven (7), 36th Day's Jury Session, Tuesday, March 29, 2011.)

27.That Your Honor also committed reversible error when you sustained prosecution's objection to question asked defense subpoenaed witness on the direct examination when said question was intended to show that the private prosecutors/prosecutrix were in possession of the club's money and distributed same without giving any account of same since in fact they accused the defendant of misapplying the club's money entrusted to her. The question reads: Mr. Witness, when was this money given to your wife?" (See sheet eleven (11), 36th Day's Jury Session, Tuesday, March 29, 2011)

28. That Your Honor also erred when you sustained prosecution's objection to a question asked defense subpoenaed witness on the direct examination when said question was intended to discredit the character and reputation of the prosecution's principal and accomplice witness, Otis Varfley, who put his character in issue when he admitted that he is one of the armed robbers of the December 10,A.D. 2010 incident. The question reads:

Mr. Witness, you also indicated that Otis Varfley stole from you a number of items which you named hereinabove, how did he go about stealing those things? (See sheet three (3), 37th Day's Jury Session, Wednesday, March 30,2011.)

29. That Your Honor committed reversible error when you overruled the defense counsel's objection to a question put to its witness by the prosecution when said question invaded the province of the jury whose responsibility it is to give credibility to any instrument identified, marked and admitted into evidence. The question reads: Mr. Witness, are you saying that when you get the Lone Star call log of Martha Sirleaf's contact number you will be convinced as to all those that she talked to on the night of December 10,2010?" (See sheet nine (9),37th Day's Jury Session, Wednesday, March 30,2011.)

30. That Your Honor committed reversible error when you denied the defense counsels' motion for a new trial and based your decision on what you termed movant's failure to indicate to the court that she had newly discovered evidence and if presented to the court will change the outcome of the verdict and you relied on 1 LCLR, Title 2, Chapter 22, Section 22.1 in part, as found on

page 497, entitled Motion for New Trial". That Your Honor's ruling runs contrary to movant's reliance for the submission of its motion for new trial. Movant relied on the same provision of Title 2, herein quoted, but invoked sub-section (e): "That the verdict was contrary to the weight of the evidence" and paragraph 1 of the same provision reads: 1. Power to grant. When a verdict has been rendered against the defendant, the court on motion of the defendant may grant a new trial on any of the grounds specified in paragraph 2 of this section. When the defendant has been found guilty by the court, a motion for new trial may be granted only on the ground of newly discovered evidence. There was a jury trial and there was a guilty verdict handed down by the jury; therefore, a motion for new trial on ground of newly discovered evidence will not lie.

31. That the verdict and subsequent judgment entered thereupon were against the weight of the evidence adduced at trial.

32. That the counsels for the defendant except to all of Your Honour's rulings not specifically mentioned herein.

We wonder about the essence or the utility of most of the thirty-two counts contained in the bill of exceptions, since most of them, counts 2-29, are of such minor importance or significance, and cannot contribute to or influence in any way the decision in the case, given the circumstances revealed by the records. We shall therefore focus our attention only on the few counts, 30 and 31, which we deemed important to the decision in the case.

However, before we begin to delve into the allegations made by the appellant in the few significant counts in the bill of exceptions, we believe that it is important to comment on what the judge termed as "Ruling on Movant's Motion for New Trial" but in which he pronounces judgment. The Ruling is of grave concern to us as it portrays either a lack of knowledge of the law, a gross disrespect for good grammar and a disdain for correct spelling by the trial judge, or a deliberate flaunting of the law and appreciation of the facts and the records of the court. We should indicate, for the record, that we are dealing with a circuit court, not a justice of the peace or magistrate court where one can forgive the errors of grammar and spelling. We cannot, however, forgive the gross misapplication of the law or a display of an inability to distinguish between the laws cited and relied upon by a party and an utterly inapplicable law. We dare to say that the errors made by the circuit court judge are not even errors

acceptable or tolerable in our magisterial courts. We must now begin the process of re-examining the process and mechanism utilized for the appointment of judges if the Judiciary is to gain momentum in the dispensation of justice.

Even more disturbing is that the ruling, in addition to not being able to differentiate amongst the relevant laws to dispose of the issue raised by the appellant, says nothing of substance upon which the verdict of the jury was confirmed. Moreover, the ruling mixes up the motion for new trial, the motion of the appellant for admission to bail, and what apparently was intended as the final judgment of the court.

Taking the first concern, the ruling makes reference only to the fact that a certain number of witnesses were produced by the appellee and the appellant. It makes no reference to the testimonies of the witnesses in order to address the issues raised by the appellant in the motion for new trial that the verdict of the petit jury was contrary to the weight of the evidence. How could the judge determine whether the verdict was contrary to the weight of the evidence if he did not believe that it was important to review the evidence presented by the parties? What was the basis upon which he proceeded to confirm the verdict of the jury by the mere statement that "the court will proceed to affirm the unanimous verdict of the petty jury without any reference to the evidence or the testimonies of the witnesses and documents produced by the prosecution as compared to the witnesses and documents produced by the defendant?

In a similar vein, we are constrained to pose the following query: How could the judge proceed to sentence the appellant to fifteen years imprisonment by the mere fact that some of the victims sustained injury', without examining the magnitude or gravity of the role of each of the perpetrators which could form the basis upon which the court could make a determination on the sentence to be imposed. This was an arbitrary approach to the law, something that we can no longer afford to enjoy the luxury of. When a judge determines that punitive action is needed to deter the commission of a crime or to punish for a crime allegedly committed, he or she must provide a sufficient legal basis, do a full examination of the evidence, and set out the appropriate rationale for the decision. We can no longer accept that because a judge is vested with authority to confirm a verdict of guilty brought by a petty jury, or that because he has the authority to sentence an alleged offender of the law, that this should form the lone and sole basis upon which the judge predicates the punishment or

sentence. The trial judge must explain in the most comprehensive manner, with full and adequate law citations and analysis of the evidence in the case, the rationale for his action in confirming or setting aside the verdict of the jury and/or entering judgment on the verdict.

This brings us to the further concern we have with the judge's ruling in the instant case and which we believe may have formed the basis or the premise for the trial judge's failure to examine and analyze the evidence presented by the State and the defendant. That premise is that the trial judge relied on a law that was not applicable to the challenge made by the appellant. The records reveal that the appellant, in her motion for a new trial, had requested a new trial because, she alleged, the verdict of the jury was against the weight of the evidence. The trial judge relied on section 22.1,sub-section 1, of the Criminal Procedure Law, which governs motion for new trial, in disposing of the assertion made by the appellant. The sub-section reads:

1. Power to grant When a verdict has been rendered against the defendant, the court on motion of the defendant may grant a new trial on any of the grounds specified in paragraph 2 of this section. When the defendant has been found guilty by the court, a motion for new trial may be granted only on the ground of newly discovered evidence.

The first sentence of the sub-section quoted above clearly refers to situations in which a trial was had before a petty jury and a verdict was returned by the petty jury adjudging the defendant guilty of the offense charged. The second sentence of the sub-section was designed to take care of the situation where there is a bench trial a non-jury trial or a trial before the court without the aid of a jury. The first sentence of the sub-section grants the defendant the latitude to set forth a number of reasons for requesting a new trial, amongst which is that the verdict of the jury is against the weight of the evidence adduced at the trial. The second sentence of the sub-section, recognizing that the trial is held before the court without a jury, limits the defendant's latitude in requesting a new trial to a single ground, which is, that there is newly discovered evidence which, had it been known to the trial court, could have resulted in a different judgment.

Unfortunately, the trial court, in addressing the defendant's claim that the verdict was against the weight of the evidence, relied upon the second sentence of sub-section *1,* quoted above, rather than the first sentence of the sub-section. The trial judge's quotation of the last sentence of sub-section one

showed a lack of recognition of the vast difference stipulated by the statute between a verdict brought by a jury and a judgment handed down by a court without the aid of a jury. We wonder how such an error was possible. Was it the lack of attention to the averments of the motion for new trial, or a lack of understanding of the motion for a new trial, or a lack of adequate appreciation and understanding of the law?

The first sentence of the sub-section makes It very clear that when a jury returns a verdict of guilt against a defendant, the defendant may seek a new trial on any of the following grounds, stipulated in sub-section (2}, viz: (a) That the jurors decided the verdict by lot or by any other means than a fair expression of opinion on the part of all of the jurors; (b) that the jury received evidence out of court other than that resulting from a view of the premises; (c) That a jury has been guilty of misconduct; (d) That the prosecuting attorney has been guilty of misconduct; (e) That the verdict is contrary to the weight of the evidence; (f) that the court erred in the decision of any matter of law arising during the course of the trial; (g) That the court misdirected the jury on a matter of law or refused to give a proper instruction which was requested by the defendant; (h) That new and material evidence has been discovered which if introduced at the trial would probably have changed the verdict or finding of the court and which the defendant could not with reasonable diligence have discovered and produced upon the trial; and (i) That for any cause not due to his own fault the defendant has not received a fair and impartial trial.

It seemed quite obvious from the contents of the motion for new trial that the defendant relied on sub-section (2}(e} of section 2, that is, that the verdict is contrary to the weight of the evidence. Why then did the trial judge choose to rely on the second sentence of sub-section 22.1(1),which is applicable only to trials conducted by the court without a jury? How could the judge not know that the latter part of the paragraph quoted by him was applicable only to situations in which a trial was conducted by the court without a jury? How could he not recognize that a ground for the granting of a new trial is that the verdict is contrary to the weight of the evidence? How could he not recognize that it is only a jury that returns a verdict, and not a court sitting without a jury? How could he not recognize that in the instant case, there was a jury and that it was not the judgment entered by the court without a jury? How could he rely on first sentence of sub-section 22.1(1) when the second sentence, the applicable part of the sub-section clearly mandated that in the case of a jury trial,

the court is obligated to and must rely on sub-section 22.1(2) in determining whether to grant a defendant a new trial or not?

We do not herein infer that the trial judge was compelled to grant a new trial to the appellant. Indeed, the statute is clear in stating that the judge may grant a new trial, inferring that the granting of a new trial is discretionary with the trial court. We do hold, however, that where the trial judge proceeds into a determination of whether to grant a new trial or not, the judge must proceed on the proper and appropriate ground for denying the motion for new trial. It is insufficient for the trial judge to merely state that there are other grounds stated in chapter 22 of the statute but that they do not "meet the requirement of the motion", whatever that may mean. Certainly it is not for the grounds stated in the statute to meet the requirement of the motion; rather, it is the motion that must meet the requirements stated by the statute in order for a new trial to be awarded.

In the instant case, the ground stated by the appellant was that the verdict was contrary to the weight of the evidence. It was therefore the responsibility of the trial judge to examine the evidence and to state whether the evidence presented by the prosecution met that standard, that is, that the evidence presented by the prosecution showed beyond a reasonable doubt that the appellant, defendant in the court below, committed the crime with which she was charged. This was a prerequisite to warrant the trial judge confirming the verdict of the jury. The trial judge clearly failed to live up to the standard of analyzing the evidence and determining on the records whether the evidence showed beyond a reasonable doubt that the appellant was guilty of the crime charged.

This lapse by the trial judge causes us to wonder whether our people are being accorded true justice in the trial of matters before some of our lower courts. We are especially concerned about the many cases which, for any number of reasons, never reach the Supreme Court for review. This is more the reason why we must ensure that the quality, standard and requirements for the position of or service as a trial court judge, and for public defenders, are raised to the highest level so that all of our people, not just those who can afford the good and expensive lawyers, are protected under the law and enjoy the benefits of a fair and impartial trial.

We believe that the time has come for this Court to insist on standards, quality and competence of the highest order for and of judges, so that they meet the

expectations of the law, the responsibilities of the legal profession, and the cravings of our people for due and equal process. Accordingly, under appropriate judicial guidelines trial judges will be required, in all cases, to prepare written judgments, whether in confirmation of verdicts brought by juries or judgments by trial courts without the benefit of juries, which will clearly set out the basis and the rationale for the judgments. In all such judgments, every cardinal species of the evidence must be fully examined and analyzed by the trial court and the basis for the trial court's decision or judgment, supported fully by the law, properly researched and cited, clearly articulated. This will minimize the errors legal, factual, grammatical, spelling, and others-- often seen in the rulings and judgments of our trial courts. A judge failing to meet this standard will be deemed not qualified to handle the matters of the court and of the law. The Supreme Court, under the appropriate direction of a judicial order, will have all judgments of our trial courts of record published, the same as are the Opinions of the Supreme Court. The members of the public, and particularly the legal community, must now become the judges of the opinions and decisions of our courts, both the Supreme Court and the subordinate courts of records.

In the instant case, the trial judge compounded the errors by addressing, in the ruling on the motion for new trial, the issue of whether the defendant should be admitted to bail, which was the subject of a separate and distinct motion filed by the appellant, and therefore should have been dealt with separately from the motion for new trial. We wonder why the trial judge could not recognize that where separate motions are filed, they are to be dealt with separately unless on the orders of the court or at the request of the parties they are consolidated. This Is particularly important where the issues raised are dissimilar.

We are further concerned that, as if to make matters worse, the trial judge, with no analysis or articulation of the evidence, oral and written, produced by the prosecution or the defendant, simply stated in the ruling that the court will proceed to affirm the unanimous verdict of the petty jury and it is hereby so ordered. That phrase, it would seem, was the trial judge's way of confirming or affirming the verdict of the jury. The phrase, carefully examined, indicates only what the trial court intended to do. Nowhere in the ruling is that intent carried into effect, for nowhere does the trial judge state that we hereby affirm or confirm the verdict. The trial court had a duty to ensure clarity in its decision, a duty that was absent in the Instant case, and it brings into question the competence of the judge to administer justice and interpret the law.

Because the foregoing addresses the contention raised by the appellant in count 30 of the bill of exceptions, we shall not dwell further on the issue raised with respect to the errors made by the trial judge in dealing with the appellant's motion for new trial.

We shall now address the core issue presented by the appellant in count 31 of the bill of exceptions and further stated in the briefs filed by the parties. We have determined to focus on the single count because while the other counts in the bill of exceptions, 29 in all, which relate to the trial judge sustaining or overruling objections to questions posed to witnesses by the prosecution or the defense, show a number of errors committed by the trial judge, the errors are not of such magnitude or of such meaningful prejudice to the rights of the appellant as would affect the outcome of the case, to warrant being addressed, especially as they would not add further to the value of this opinion. Hence, the one critical issue to which we direct our focus is whether the verdict of the empaneled jury was contrary to the weight of the evidence. In addressing this issue, let us first examine the obligation which the law imposes on the prosecution and the standard to which the State is held in order to secure a conviction of an accused.

Our criminal law is premised on the legal norm that an accused is presumed innocent until proved guilty. The Liberian Constitution, at Article 21(h), clearly sets out that in all criminal cases, an accused shall be presumed innocent until the contrary is proved beyond a reasonable doubt. LIB.CONST., Art. 21(f)(1986). Our Criminal Procedure Law subscribes to the same standard mandated by the Constitution. Section 2.1of the Criminal Procedure Law states: 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. Criminal Procedure Law, Rev.Code 2:2.1.

This position has also been espoused in numerous opinions of this Court, wherein we have confirmed the dictates of both the fundamental rights stated in the Constitution and reiterated in our criminal procedure statutes. In Keller v. Republic, 28 LLR 49 (1979),handed down several years before the adoption of the 1986 Constitution, this Court said: An accused in a criminal case is presumed to be innocent until the contrary is proved; and, in case of a reasonable doubt, he is entitled to an acquittal. See also: Swaray v. Republic, 28 LLR 194 (1979).Then in Alfred v. Republic, 33 LLR 87 (1985),decided one year

before the 1986 Constitution came into effect, this Court re-echoed its previous position that a defendant charged with the commission of a crime is presumed innocent until the contrary is proved. The Court stated further that Where a plea on arraignment of the defendant is not guilty, the onus probandi is on the prosecution to establish the defendant's guilt, devoid of all reasonable doubt. ld., at 90-91. And, as if to re-emphasize the point made, the Court added: Thus, although an accused's guilt is satisfactorily proved, if there is shown to exist any reasonable doubt, he is entitled to an acquittal. ld. Not very long thereafter, in 1988, two years after the new Liberian Constitution took roots and became effective, the Supreme Court, presented with the issue again, said the following: Under the Constitution [meaning the new Constitution], a defendant is presumed innocent until the contrary is proved beyond a reasonable doubt; and in case of a reasonable doubt, whether his guilt is satisfactorily shown, he is entitled to an acquittal." Munnah and Sommah, 35LLR 40 (1988). See also: Swaray v. Republic, 28LLR 194 (1979); Wreh v. Republic, 30 LLR 459 (1983); Thomas v. Republic, 35 LLR 759 (1988); Bah v. Republic, 36 LLR 541(1989);Republic v. Eid et al., 37 LLR 761(1995);Seegboe et al. v. Republic, Supreme Court Opinion, October Term, A. D. 2008, decided December 18,2008.

As noted in some of the cases cited above, as well as the Constitution and the Criminal Procedure Law, our criminal law, in addition to the presumption of innocence of a defendant, also imposes on the State the obligation not only to show by a preponderance of the evidence the guilt of the defendant but also to meet the standard of proof beyond all reasonable doubt before a conviction of the defendant can be upheld. See Saar v. Republic, 29 LLR 35 (1981); Feleku v. Republic, 30 LLR 189 (1982); Kroma v. Republic, 32 LLR 198 (1984); Davies v. Republic, 40 LLR 659 (2001);Okrasi v. Republic, Supreme Court Opinion, March Term, A. D. 2009, decided July 23, 2009; Wogbeh v. Republic, Supreme Court Opinion, October Term, A. D. 2009, decided January 21, 2010; and Brown et al. v. Republic, Supreme Court Opinion, October Term, A.D. 2009, decided January 21, 2010. In the *Brown* case, this Court said: A person charged with the commission of a criminal offense, ghastly as the crime may be, is presumed innocent until the contrary is proven, and where his plea is NOT GUILTY, the onus probandi is on the prosecution to establish his guilt, devoid of reasonable doubt.

The question then is whether, given the principle of presumption of innocence, the prosecution proved beyond all reasonable doubt the guilt of the appellant to warrant the jury returning a verdict of guilty against her. In addressing this issue, let us take recourse to the sequence of rather confusing action taken by the prosecution, but which nevertheless resulted in the conviction of the appellant for armed robbery.

Firstly, the indictment charged a different offense that was proffered in the magistrate court, even though they related to the same events. Secondly, while the matter was still being investigated by the police, Magistrate Court for the City of Careysburg was simultaneously conducting summary investigations, with the involvement of State prosecutors. Thirdly, although it was alleged that the armed robbery was carried out by three persons, one of whom, Otis Varfley, was apprehended by one of the prosecution's witnesses, the records reveal absolutely no further attempt, either by the police, the private prosecutors, or the State to pursue or identify the other two prime perpetrators of the crime to bring them to justice. In fact, no mention was ever made of their names, where they lived, whether they were acquainted with Otis Varfley, whether they knew the appellant, or if she had hired them to commit the crime. Thus, the only witness who linked the appellant directly to the commission of the crime was Otis Varfley, one of the perpetrators of the armed robbery, and who, after a nolle prosequi was entered by the prosecution during the trial, became the State's prime witness in securing the conviction of the appellant.

However, we believe that any examination of the prosecution witnesses testimonies ,in order to put them in their proper context and perspective, must be prefaced by a full understanding of the theory of the State's case against the appellant. We do so bearing in mind that it is not for the defendant in a criminal case to, in the first instance, provide evidence of his or her innocence, but rather, that it is for the State, at every stage of the proceedings, to prove the guilt of the defendant; and that unless that guilt is satisfactorily proved, a conviction of guilty cannot be upheld. Let us now look at the theory of the State's case.

According to the prosecution's theory, the appellant had engaged three armed robbers to commit the crime with which she was charged in order to cover up her misappropriation of L$350,000.00 of the funds of the Bola Town Women Savings Club. The theory suggested that a misappropriation of funds

had taken place within the Bola Women Club; that the appellant was the party responsible for the misappropriation; that the appellant needed to cover up her misdeed and sought to do so by staging an armed robbery and taking the funds which she and other members of the Club had withdrawn from the bank earlier on December 10,2010;and that seemingly she would then either have used the funds to replace the money she had misappropriated from the Club or claim that the armed robbers had taken the funds. This, the prosecution said, supplied the motive by the appellant for the commission of the armed robbery.

Thus, the first element of proof required of the prosecution was that a misappropriation had occurred. This meant that the prosecution was required to present proof that there was a shortage of funds within the Women Club, or that there had been withdrawals of funds from the Club's account by the appellant without the knowledge or consent of the officers or members of the Club, and that she had used the funds on matters other than that of or in the interest of the Club; that either only the appellant had access to the account or that her lone signature could effect withdrawal from the account, which she did without the knowledge of the officers and/or members of the Club; that records from the bank showed that withdrawals had been made by the appellant and no explanation had been provided by the appellant as to what she had done with the proceeds; or that funds having been legally withdrawn from the bank, the appellant had not been able to account for same; or that she had the said funds in her possession but had used the funds for her own personal gains and therefore needed to armed rob the Club to cove-up her misdeed. The question is whether this burden of proof was met by the prosecution.

The second level of proof required of the prosecution was that the appellant actually engaged Otis Varfley to commit the armed robbery. Otis Varfley is alleged to have stated, when he was caught, and whilst he was on the witness stand, that he had been engaged by the appellant to commit the crime, in concert with two other persons whom he did not name. Interestingly, however, no such statement was made by him to the police when the matter was investigated by the Criminal Investigation Division. This, in our view, increased the burden of proof imposed by law on the prosecution, and thus generates the further question as to whether the testimony of Otis Varfley was sufficient, given the entire circumstances and facts surrounding the case, to link the appellant to the crime.

In seeking answer to whether the prosecution established by the production of evidence, under the theory advanced by the State and to show the connection of the appellant to the crime, we take recourse to the evidence provided by the witnesses produced by the prosecution. This is how the prosecution, in its Brief filed with the Supreme Court, summarized its evidence and the evidence of the appellant, which it said showed that the guilty verdict returned by the petty jury was commensurate with the weight of the evidence:

This is how the prosecution, in its brief, summarized the testimonies of its witnesses:

The Prosecution, at the trial, produced 6 witnesses, including eyewitness accounts, police and an insider, Otis Varfley, who were qualified and sworn to testify before the Jury.

Prosecution's first witness, Moses Mitchell, a victim of the subject armed robbery, informed court and jury, that on the night of December 10,2010 in Bola Town, Careysburg, while in his room he heard a loud voice saying "give us the money or else we will teach every one of you people." SEE SHEET (2) 13th DAY'S JURY SESSION, TUESDAY, MARCH 1, 2011.

Witness Moses Mitchell further informed court and jury that he was able to apprehend Otis Varfley in the process, whilst the (2) other armed robbers managed to escape the crime scene (room). The witness asserted that Otis Varfley cried in a loud voice, in the presence of said Martha Sirleaf, saying Aunty Martha Sirleaf, will you sit down here and the people kill me, when you sent for me. SEE SHEET (3) 13th DAY'S JURY SESSION,MARCH 1,2011

Prosecution's 2nd witness, Otis Varfley, an insider, informed court and jury on the direct, and identified the defendant/appellant, Martha Sirleaf, as one of the armed robbers, while the other two 2 escaped and he was apprehended. Witness Otis Varfley further informed court and jury that Martha Sirleaf (appellant) is his aunt and she sent for him from his working place in Careysburg to carry on the armed robbery for her to recover because she misappropriated L$350,000 from their Club money and she needs to cover up. SEE SHEETS (NINE & TEN) 13th DAY JURY SESSION,MARCH 1,2011

The witness asserted that he and Martha Sirleaf (appellant) communicated over cell phone and that is how he got to know the place (same sheet, line 16) and that he and his collaborators met the door already opened by Martha Sirleaf, for them to enter.(Same Sheet 10)

State witness Otis Varfley concluded his testimony on the direct by informing court and jury that the defendant/appellant promised him US$650.00 when the mission is carried out, to buy a machine, which he earlier asked her to buy for him. SEE SHEET (12) 13th DAY'S JURY SESSION, MARCH 1, 2011.

Madam Tumu Jackson was prosecution's 3rd witness. She is also a member of the Club, of which the appellant is the secretary. The witness testified to the effect that she identified the appellant and Otis Varfley, including two (2) others who escaped, to be the armed robbers and pointed at appellant in the dock. SEE SHEET (9) 15th DAY'S JURY SESSION, MARCH 3, 2011, LINES 6-10.

Madam Tumu Jackson further informed court and jury that after the defendant/appellant left the door open, she went outside (to the door) and it was at that time the armed men stabbed her. SEE SHEET (9) LINE (13) 15TH DAY'S JURY SESSION, MARCH 3,2011.

Madam Jenuneh Mitchell was one of the prosecution's material witnesses and of the Bola Town Women Saving Club. She informed court and jury that on December 10, 2010, she, along with other members, namely: Martha Sirleaf, Tumu Jackson, Patricia Flomo et al. went to the bank for their Club money, and took it to Bola, for distribution amongst the Club members at which time she, appellant, joined them later. She testified that when the appellant arrived, she, the appellant, was counting money very slowly, which was very unusual and that while in the room, the appellant kept going outside faster, under the pretext that she is going to pepe; that just within that time she, appellant, received phone calls about two times after which three armed men, including Otis Varfley, entered the room where they were packaging the money and threatened to kill them. The witness also identified Martha Sirleaf, the defendant/ appellant, and Otis Varfley as two of the armed robbers, because she, the appellant, opened the door for Otis Varfley and the two (2) other armed robbers to enter. SEE SHEETS 4 & 5,18th DAY'S JURY SESSION, MARCH 7, 2011.

The witness, Jenuneh Mitchell, concluded by informing court and jury that when Otis Varfley was caught, he started to cry saying that it was Martha Sirleaf who sent him. SEE SHEET (6),18TH DAY'S JURY SESSION,MARCH 7, 2011.

The prosecution produced one Nathaniel Kevin, an employee of the Lone Star Communications Corporation, who testified to and identified the call log bearing cell phone numbers 06438001/06903916 that were used by the appellant and Otis Varfley on December 10,2010,during the planning of the armed robbery. SEE SHEET TWO (2), 19TH DAY'S JURY SESSION, MARCH 10,2011.

This was the prosecution's summary of the evidence produced at the trial. The appellant, on the other hand, recapped in her brief, also in summary form, the prosecution witnesses' testimonies, as follows:

Prosecution 1st witness in person of Moses Mitchell took the stand on March 1st 2011 and testified substantially that while he was lying down, he heard a loud voice saying 'give us the money'. He then left his room and entered in the next room which was dark and where he engaged a manwearing jacket and with arm. Moses Mitchell accordingly overpowered that man who ran away and apprehended the other man who had stabbed him on his back and who is Otis Varfley. That Otis Varfley after his apprehension, cried in a loud voice saying Aunty Martha Sirleaf you will sit down here and the people kill me. Moses furthered said that Martha told him to kill Otis Varfley even though she was still in the house. The witness further said that Otis Varfley told him that if he, Moses Mitchell thinks that he, Otis Varfley was lying, let him, Moses Mitchell take his phone from his pocket and will see Martha Sirleaf's missed call therein but he did not take Otis Varfley's phone as instructed. Prosecution then entered a plea of nolle prosequoi in favor of co- defendant Otis Varfley and used Otis to testify against Martha Sirleaf. Prosecution 2nd witness in person Otis Varfley took the stand on March 1st, 2011 and testified substantially that his aunty Martha Sirleaf called him on 10th December, 2010 to meet her at red light where she was waiting with two motor cyclists and when he got at the red light, Martha Sirleaf told him that she had misapplied L$350,000.00 of the Bola women club's money. Martha Sirleaf give them 10 USD as transportation and authorized him to carry those two boys to Bola town to Mitchell's house where she will be waiting and for them to rob the balance of the club money so that everybody can loss and that Martha Sirleaf promised to give him US$650.00 after the armed robbery mission. Accordingly, Otis Varfley and the other two boys went to 15 Gate to await Martha's call. Martha Sirleaf called them and told them that they have passed by Bola and later show them the exact location of the house in which they were packaging the money at Bola. When they got to Bola, Martha Sirleaf opened the back door for them. That his number is 06903911 and Martha Sirleaf number is 06438650 and Martha promised to give him US$650.00 after the mission.

On the cross, Otis admitted that during police investigation, he told the police that he rode motorbike from red light and stopped to Philip's farm to ask for Martha Sirleaf and by-standers told him to check at 15 Gate and while at 15 Gate

and further inquiring about the whereabouts of Martha Sirleaf, someone told him to go to George Mitchell's house. That he saw some motor cyclist and asked them to drop him to Bola. Otis agreed also that he told the police that when he got to Mitchell's house he knocked at the door and identified himself as Nana at which time he saw two guys with cutlasses and who attacked him. That all of the statements he made to the police were voluntary but a cover-up for Martha Sirleaf's misapplication of the club's money. That while he was detained at the Monrovia Central Prison; all the club's members visited him several times. On the re-cross, Otis Varfley said that Martha Sirleaf told them to go to 15 Gate and wait for her call because it was 7:45pm and people were still passing around in Bola.

Prosecution third witness, in person of Tumu Jackson, took the witness stand on March 3, 2011 and testified substantially that they were four persons that withdrew the money from the bank but the money was small. That after she, Martha Sirleaf, Jenneh Mitchell and Patricia Flomo withdrew the money from the bank, Martha Sirleaf did not go directly with them to Bola. Martha later arrived at Bola around 7:35 pm and told them that while she was coming into the house she heard strange voices. That Martha Sirleaf only gave her $40.00USD as the USD withdrawn from the bank. That Martha Sirleaf later asked them to keep the money until 1:00 am before packaging it but Tumu Jackson objected.

Tumu Jackson also narrated that Martha received three calls, the first call from her boyfriend and Martha give Tumu the phone to talk with her boyfriend. That Martha received a second and third call and responded to the second call saying you pass, three times and Martha walked out and stay there for 16 minutes. That Martha Sirleaf later came in and hooked the room door without locking it and when asked, Martha told them that she heard strange voices; that when she and Patricia Flomo attempted to go outside, the armed robbers entered and began to ask for the fat woman who has the money. That when she came outside she saw Otis Varfley in Moses Mitchell's hand, Otis Varfley was then tied, Otis began shouting with his Aunty Martha Sirleaf's name but Martha did not come outside. Witness Tumu Jackson also admitted that L$310,000.00 was withdrawn from the bank on the 10th of December, 2010 and taken to Bola but the money collected by the club should have been L$900,000.00 plus and they were having L$400,000.00 and US$150.00 keeping at the Mitchell's house.

On the cross, Tumu Jackson said that the club has always collected dues from its members, credit some out and save some with the Bank. That Martha Sirleaf and Jenneh Mitchell are the signatories to the club's account. Tumu Jackson also narrated that when Martha entered the house, she asked that they try their uniforms because they usually do playlet. That they checked the L$310,000.00 which they brought from the bank and it was correct and the L$400,000.00 they were keeping in the house was also correct. That while they were checking the money Hawa and Bendu also went outside and after the armed robbery; the other executives of the club members took the Liberian dollars bank book. That she, Tumu Jackson told the police that Martha asked them to sleep until 1:00am before they begin to check the money and told the court while on the witness stand that Martha told them to sleep until 12:00 midnight.

The witness continuing on the cross admitted telling the police that when Martha Sirleaf went outside, she remained there for four minutes and also told the court while on the stand that Martha Sirleaf went outside and remained there for 16 minutes.

Prosecution fourth witness in person of Jenneh Mitchell took the witness stand on the 7th of March 2011 and testified substantially that on the 10th of December, 2010 she, Martha Sirleaf, Patricia Flomo and Tumu Jackson withdrew L$310,000.00 from the club's account at LBDI and Martha Sirleaf asked them to carry it in front. That when Martha Sirleaf reach Bola around 7:45 p.m. and enter the house in which they were waiting, Martha Sirleaf told them to bring the money for checking. That when they brought the money out for checking, Martha Sirleaf also asked them to put the money back into the bag and go to sleep, a request which was objected to and at that moment Martha Sirleaf receive a call from her boyfriend. Martha received the second call, and she answer and said you pass. That Martha Sirleaf received the third call, she, Jenneh Mitchell asked as to who was calling and Martha answer and said that it was one woman who asked her to take her share of the club's money. The witness furthered that Martha Sirleaf began to go outside fast, fast under the pretext of going to pepe and tried to stop them from carrying light outside. When Martha was asked as to why she was frequently going outside, she answered and told them that there were strange people outside. The witness also narrated that the last time Martha Sirleaf went outside, she left the door open and stood at the door and when Tumu

Jackson pushed her and before Tumu Jackson touch the door, the armed robber open the door and asked for the fat woman that had the money and threaten to kill all of them. That when Otis Varfley was caught he told them that it was Martha Sirleaf who sent him.

On the cross, witness Jenneh Mitchell said that people called Martha Sirleaf three (3) times and she answer three (3) times. That some money was left after the armed robbery, but refused to say how much of the money was left, even though, she jumped through the window when the armed robbers entered the house.

One of prosecution's subpoenaed witness, in person of Nathaniel Kavil, took the witness stand and presented a call log from Lone Star intended to establish contact between cell number 06438002 and 06903916.

On the cross, the witness did not have any identification to show that he works with Lone Star Cell and indicated that the document presented did not have anything or inscription to show that it was from Lone Star Cell. Another prosecution subpoenaed witness, in person of Simeon F. Frank, took the stand to give clarification about the police confirmation clearance issued in favor of Martha Sirleaf. The said witness testified substantially that the clearance was issued by him based on recommendation of the investigators who handled the investigation that because calls were exchanged by Otis Varfley and Martha Sirleaf, and the said Otis Varfley testified that he lied in order to cover-up for his aunty; [and that] he was revoking the clearance issued to Martha Sirleaf even though the police investigation team did not make any effort to get the call log to show the communication between Martha Sirleaf and Otis Varfley. Although there are some variances in the prosecution and defense accounts of the testimonies of the prosecution and defense witnesses, and prosecution reflection of the testimonies of its witnesses is fairly accurate, the issue warranting our attention is whether the testimonies of the witnesses and other circumstances attending the case, as revealed by the records, met the required threshold of proof beyond a reasonable doubt. let us review the testimonies of the prosecution witnesses, not how the prosecution perceived the testimonies but how the records showed them, and from that review ascertain whether the threshold of the prosecution's theory as to the motive of the appellant and the extent of her involvement were shown by the evidence.

We shall preface the examination of the testimonies of the witnesses, in order to put them in proper perspective, by recapping the theory of the prosecution's case, keeping in mind that it is not for the defendant in a criminal case to, in the first instance, provide evidence his or her innocence, but rather, that it is for the State, at every stage of the proceedings, to prove the guilt of the defendant; and that unless that guilt is satisfactorily proved, a conviction of guilty cannot be upheld.

The first theory of the prosecution case relates to the motive by the appellant for committing the crime. The prosecution presented a number of witnesses, presumably for that purpose. The first witness was Moses Mitchell, named as one of the private prosecutors in both the indictment and the arrest warrants issued by the Careysburg Magisterial Court. Mr. Mitchell testified as follows:

DIRECT EXAMINATION

Q. Mr. Witness, for the benefit of the court and the jury, please state your name?

A. My name is Moses Mitchell.

Q. Where do you live Mr. Witness?

A. I live Careysburg

Q. What work do you Mr. Witness, if any?

A. I am a farmer.

Q. Mr. Witness, tell the court and the jury if you know the defendant in the dock?

A. Yes.

Q. where were you on December 10,2010?

A. I was in my room

Q. There is your room?

A. Careysburg, Bola Town

Q. Mr. Witness, what happened that night while you were in you, roam?

A. I heard in a loud voice saying give us the money or else we will each and every one of you people.

Q. Mr. Witness, who were the people that made that remark if you know?

A. These people were armed robbers.

Q. Mr. Witness, what happened thereafter?

A. I decided to leave my room and entered in the next room opposite my room.

Q. And what happened next?

A. There where I engaged a man with a jacket

Q. What did you do next?

A. I tried to protect myself.

Q. In protecting yourself what did you do?

A. He and I were tussling over with an arm.

Q. In the process of tussling over the arm what did you do next?

A. I over powered him.

Q. What happened next?

A. There where another robber stabbed me on my back.

Q. Who was the robber that you said stabbed you on your back?

A. That was Otis Varfley.

Q. Were you able to apprehend any of the armed robbers? If so, where are they?

A. Yes, Otis Varfley was apprehended by me in the process.

Q. Where are the other armed robbers if you know?

A. Two escaped.

Q. Mr. Witness, when you apprehended Otis Varfley [what] did he say to you?

A. He cried in a loud voice saying, Aunty Daddy (Martha Sirleaf) will you sit down here and the people kill me? While in process, I decided to go in for cloth to tie the wound and there where Martha Sirleaf told me the man had harmed you, go and kill him. While on my way my mother went and fell over him, protecting him (Otis Varfley). Later Otis Varfley said if you think that I lie put your hand into my pocket. When we miss[ed] the area the last call my aunty, Martha Sirleaf made directing me the area is now stored in the phone.

Q. Mr. Witness, where was Martha Sirleaf at the time if you know?

A. Martha Sirleaf was in the house.

Q. Mr. Witness, you had told the court and the jury that you and one of the armed robbers tussled over a gun while also another staffed you on the back. What else did you see with the arm robbers?

A. They had broken bottles.

Q. What happened after your injury?

A. At time the police came and took me to the nearby clinic.

Q. And what happened next?

A. The case was forwarded to justice after I was treated.

Q. Mr. Witness, you made reference to broken bottles. Were you to see same, will you be able to identify same?

A. Yes.

Q. By that answer Mr. Witness, and by kind permission of court, I pass you over a black plastic bag, please look therein and tell the court what are its contacts?

A. These are me of the bottles that I identified on that day.

Q. Mr. Witness, for the benefit of the court and the jury, 1 pass you over court's marked instrument P/1. Please look at same and tell the court and the juror if the instrument that you had identified and testified were the same instrument marked by court?

A. Yes, these are the same instruments.

Q. Mr. Witness, you told the court and the jury that after your injury you were taken to the clinic for treatment. What did you do thereafter?

A. When I was treated the police came in and took at the Careysburg Magisterial Court.

Q. Mr. Witness, refresh your memory for the benefit of the court and jury and say whether or not you did anything to remind you of your injury?

A. Yes, I took some photos.

Q. Mr. Witness, by that answer were you to see said photo, will you be able to identify same?

A. Yes.

Q. By that answer Mr. witness and by kind permission of court, I pass you these instruments (photos). Please look at same and tell the court and the jury what you take them to be.

A. These are the photos that were taken by me when I was stabbed by the armed robbers.

Q. Mr. Witness, by kind permission of court I pass you over court's marked instruments P/2 in bulk. Please tell the court and the jury whose photos are they?

A. These photos are my photos when I was attacked that night.

Q. Mr. Witness, in your testimony in chief, you told the court and jury about phones that were used by Otis and his aunt, armed robbers defender, Martha Sirleaf. For the benefit of the Court and the jury where are the phones?

A. This phone is in the hands of the CID Commander in Careysburg.

Q. Mr. Witness, for the benefit of the court and the jury say whether you were able to know the contact numbers of Otis Varfley and Martha Sirleaf?

A. I don't know Martha Sirleaf's contact number.

Q. Mr. Witness, what is about Otis Varfley's number?

A., No.

Q. Mr. Witness, for the benefit of the court and the jury please give a vivid description of your room and the house?

A. My house is on the upper right of the Monrovia-Kakata Highway and my room is on the right opposite the room in which the incidence took place.

CROSS EXAMINATION

Q. Mr. Witness, in your answer to a question on direct, as to whether you knew Martha Sirleaf you said yes. Not so?

A. Yes.

Q. You know to be the secretary of the Bola Woman Savings Club. Not so?

A. Yes

Q. And you know that she had been serving this savings club for a very long time. Not so?

A. I don't know because I am not a member of this club.

Q. Mr. Witness, even though you are not a member of this club but you know some members of this club. Not so?

A. Yes.

Q. You know that Jaaneh Mitchell is a member of this club. Not so?

A. Yes.

Q. And Jaaneh is your mother, not so?

A. Yes.

Q. In your statement you said while in your room you heard a loud voice, not so? And that voice said that if you don't give me the money I will kill all of your, not so?

A. Yes.

Q. And the voice was not the voice of Martha Sirleaf, not so?

A. It was not her voice.

Q. Mr. Witness, according to you, when you heard the loud voice, you came out of your room and went into the room directly opposite yours. Not so?

A. yes.

Q. And in that room you met the man with a big jacket. Not so?

A. Yes.

Q. Please tell and say for the benefit of the jury who all were in that room beside the man with the big jacket?

A. Two other men were fighting.

Q. So Mr. Witness, by that answer only the two other men and the man with the big jacket were in the room, not so?

A. The place was dark.

Q. Mr. Witness, you rightfully said that the room was dark because it was between 12:00 to 1:00 in the night but yet, you were able to see broken bottles in the person's hand. Say for the benefit of the jury how you saw the gun in the darkness and how, you saw the broken bottles in the darkness, Mr. Witness?

A. I held the gun by the muscle and we tussled over it and then Otis Varfley was captured right handedly with the bottles in his hands.

Q. Mr. Witness, when the man in the black jacket jumped on you, according to you, you over powered him, not so?

A. Yes.

Q. You also said after the incident the police was called to the *scene,* not so?

A. Yes.

Q. The police took statement from you, not so?

A. Yes, Careysburg police took statement from me.

Q. Mr. Witness, let me take you to the broken bottles. This pece of bottle is green, not so?

A. Yes.

Q. You said in your testimony that one of these was used by Otis, not so?

A. yes.

Q. Mr. Witness, for the benefit of the jury, please say if you saw bottles of this nature broken even before the incident?

A. I saw the bottles after the incident and not before the incident.

Q. Mr. Witness, you said in your statement that when you grabbed Otis and left Otis and went to the house to take cloth and tie your wound, Martha Sirleaf said why did you not kill him, not so?

A. *Yes,* that is what she told me.

Q. And where was Martha Sirleaf when she made this statement to you?

A. She had already left the room and entered into the hallway of the house.

Q. You said she had already left the room, which room? Is it the same room that you were tussling with the man with the big jacket or different room, Mr. Witness?

A. The room in which they were packaging their money.

Q. By that answer, the room they were packaging their money and the room which you tussled with the man with the big jacket are two different rooms, not so?

A. That is the same room.

Q. Mr. Witness, when you grabbed Otis and he asked you to put your hands into his pocket to see the calls that was received from his aunty, Martha Sirleaf, you took the phones, look inside and saw the calls received, not so?

A. I did not take the phone, rather turned over to the police by one of the men who came to our rescue.

Q. Mr. Witness, you know Otis prior to the incident, not so?

A. No. I heard of him but did not know him at that time.

Q. What did you hear of him, Mr. Witness?

A. That he is related to Martha Sirleaf.

Q. Mr. Witness, you affirm and confirm all of the statements you made before the grand jury consistent with you oath, not so?

A. Yes.

JURY'S QUESTION

Q. Matthew Williams: The gun that is in question that was tussled over by you and the armed robber, where is the gun?

A. As I previously said in the process of tussling and overpowering this armed robber, I was stabled on my back by Otis Varfley and that was the time the man escaped.

Q. John Blackie: How many armed robbers did you see and which of them attacked you?

A. There were three armed robbers. Two attacked me with bottles and gun.

Q. Alice Johnson: Mr. Witness, in your testimony you said when you were sleeping you heard a loud noise "if you don't bring this money we will kill your" and when you left your room making an attempt to enter the room where the armed robbers were, were you not afraid by entering that room?

A. As I previously said, I did not say that I was sleeping. I said I was in my room. I was not afraid, reason being I am an old ROTC student and then I have to protect life and property in my house.

Q. Mary Peabody: Mr. Witness, were you aware that people were sharing money in that room at that time?

A. Yes, I was aware.

This was the testimony of Moses Mitchell. We have narrated the entire testimony to see if there is any part of it that linked the appellant to the commission of the crime or established the prosecution's theory that the crime was planned and executed by the appellant in order to cover-up for an amount of L$350,000.00 which she had misappropriated from the funds of the Bola Women savings Club. We do not believe that either of those basis advanced by the prosecution was met by the testimony of this witness. The testimony states only that a crime was committed; that one of the perpetrators was the nephew of the appellant; that he had cried out something about her sitting by and letting the people kill him; that the nephew of the appellant had said that the appellant had given him directions to the house and that this could be verified by the number was on his phone; and that the appellant had asked the witness why he, the witness, did not kill her nephew since her nephew had hurt him.

In addition to the fact that the testimony of the witness is at variance with some of the testimonies of other witnesses and the records of the court in a number of respects, it provided no first-hand account that linked the appellant to the armed robbery. There was no statement that she participated in the ongoing armed robbery, except that she acknowledged that Otis Varfley was her nephew. Nowhere also did the witness, in whose presence Otis Varfley is said to have named the appellant as the one who had masterminded the armed robbery, state that Otis said my aunt masterminded the entire affair, although he sought to make some inference by reference to

Otis telling him to examined his (Otis) phone to verify that he had been in contact with the appellant, a request which the witness said he did not carry through. Hence, there was no verification as to the telephone calls.

Moreover, the witness stated that upon the arrival of the police on the scene he was taken to the hospital and that from the hospital the police, presumably with him, proceeded to the Careysburg Magisterial Court. This is contrary to the records we have reviewed. The records show that it was the witness and another person, not the police that went to the Careysburg Magisterial Court and swore to the writ for the arrest of the appellant, and that this occurred not just after the release of the witness from the clinic but rather on December 22, 2010, a period of eleven days following the incident. The records also reveal that this was the same day the Police Charge Sheet was issued charging only Otis Varfley with the commission of the crime. Indeed, it was only two days thereafter, on December 24, 2010, that the police issued what they called a "Police Confirmation Clearance" which completely exonerated the appellant from any association with the crime.

Thus, at best, much of the testimony of Witness Moses Mitchell was based on conjecture, not supported by proof, or on what the witness said he heard Otis Varfley say following Otis apprehension by the witness. We note also that in several respects the testimony of the witness was in contradictions to the testimonies of others of the prosecution witnesses. He stated, for example, that he had overpowered one of the armed robbers but that Otis Varfley had stabbed him, causing the overpowered robber to escape. Yet, with the wounds, he sought to have the court believe that he let the other two armed robbers go but apprehended Otis Varfley. Somehow the story did not seem to add up convincingly and we have difficulty appreciating the narration. In addition, the witness' statement was also at variance with the statements of some of the other witnesses as to exactly what Otis Varfley said. Nowhere in his statement did he say that Otis Varfley, whom he had apprehended, had uttered the words that his aunt had sent him to commit the armed robbery and that she should not let him alone suffer for the act. Yet, other witnesses, who were not involved in the apprehension of Otis and who seemingly were therefore not present when Otis was overpowered by the witness, said that Otis had made such statement. Who then should the jury has

believed, Witness Mitchell who had actually performed the act of apprehending Otis, or the other witnesses?

Even as he acknowledged that Otis Varfley had asked him to take the phone from his pocket to verify that he and his aunt had been in communication just minutes before the armed robbery, the witness testified that he did not take the phone to verify that such exchange of calls had been made. Instead, he said, he had the phone delivered to the police. But no police officer was brought to testify that the phone showed exchanges of calls between Otis Varfley and the appellant. What then happened to the calls or the registration of the calls in the phone since it is a matter of common public knowledge that all such calls are reflected on the cell phones, showing the times of the calls are made and the phone numbers of the callers, unless the callers are calling from unknown phones, which was not the situation in the instance case.

Indeed, from our entire review of the case, we have found that only one witness actually testified, by way of first-hand information, that the appellant had planned the crime and was a part of it. This is the person who Mr. Moses Mitchell, in his testimony had implied implicated the appellant in the armed robbery. That witness, the person, who turned out to be the State's principal witness, was Otis Varfley. Otis Varfley admitted to being one of the three armed robbers. It was he who, during the trial, the prosecution had entered a nolle prosequi in favour of. While there is no specific timing as to when the state may enter a nolle prosequi in favour of an accused, we have wondered about the motive of the prosecution in its timing in entering a nolle prosequi in favour of Otis Varfley. The State entered nolle prosequi in favour of Otis Varfley on February 28, 2011, the same day the appellant entered a plea of not guilty to the charged of armed robbery. It is interesting to note the reason for the State's decision to enter a nolle prosequi in favour of Otis Varfley. This is what the prosecution said:

At this stage prosecution begs to inform court and Your Honour that due to the lack of sufficient evidence to warrant a successful prosecution of this case against co-defendant Otis Varfley and in exercising its right under the law, as contained in section 18.1, page 372 of 1 LCLR, prosecution at this stage hereby enters a plea of nolle prosequi against co- defendant Otis Varfley. Prosecution however gives notice and reserve the right to refile if and only if

the need arises." See Minutes of Court, 12th Day's Jury Session, February Term, A. D. 2011, Monday, February 28, 2011,Sheet 1.

It is noteworthy that the prosecution did not believe that it had sufficient evidence to successfully prosecute the person who was named by all of the prosecution witnesses as one of the persons who committed the offense of armed and who was apprehended in the process of committing the act, but that it could use his testimony to convict the person who did not actually participate in the act but is said to have conspired and planned to have the act committed.

It is also worth noting that although the prosecution stated that it did not have sufficient evidence to convict Otis Varfley, and that therefore it had chosen him to be a witness for the prosecution, yet it was the same Otis Varfley who, upon taking the witness stand, and who had exonerated the appellant from any association with the commission of the crime, admitted that it was he and two other person that carried out the armed robbery.

We know that it is the right and the prerogative of the State to determine whom it will prosecute for the commission of a crime, whom it will exonerate from prosecution, whom it will enter a nolle prosequi in favor of in order to have said person used as a witness for the State. The State is not required to state any grounds or reason for entering a nolle prosequi in favour of an accused. No court can or should question the State for entering a nolle prosequi in favour of any one or several accused persons. That is a decision for the State and the State alone. However, when the State chooses to state a ground for seeking nolle prosequi of an accused person, it must be cautious not to embarrass itself by a showing in the records that the grounds set forth by the State was false or had no legal basis. In the instant case, the State had said as the basis for entering a nolle prosequi in favour of Otis Varfley that it has insufficient evidence to successfully prosecute him even though most of the state witnesses had identified him personally as being one of the armed robbers and that in fact he had been captured in the process of committing the crime with which he was charged. The State's ground for entering the nolle prosequi became even more ridiculous in the face of the testimony of Otis Varfley that not only was he one of the three armed robbers but that indeed he was the one who had injured witness Moses Mitchell in the process of committing the armed robbery and that he had been captured by

Moses Mitchell and prevented from escaping as had his other two armed robbing companions.

Again it is not our prerogative to tell the State how to prosecute its cases. However, we do wonder how the State determined that three armed robbers who had actually committed the crime not be prosecuted. let us now turn to the testimony of Otis Varfley.

In the course of his testimony, Otis Varfley advanced what he said was the motive for the appellant in planning the armed robbery and in engaging the three armed robbers to commit the crime. Here is the dialogue that occurred between Otis Varfley and the prosecution counsel on the direct and between Otis Varfley and the defense counsel on the cross-examination:

Q. Mr. Witness, what is your name again?

A. My name is Otis N. Varfley.

Q. Where do you live?

A. live on Jamaica Road, Bushrod Island

Q. What work do you do Mr. Witness, presently?

A. I work as a tailor.

Q. Who do you work for, Mr. Witness, if any?

A. Mrs. Edith James.

Q. Until yesterday, Mr. Witness, you were in detention. What were you in detention for?

A. For armed robbery.

Q. When did the armed robbery take place?

A. December 10, 2010.

Q. Where did it take place?

A. Careysburg District, Bola.

Q. Who were the armed robbers if you know?

A. The armed robbers were Martha Sirleaf, two others and I.

Q. Where are the others if you know?

A. Two escape[d] and Martha is here in the court.

Q. Mr. Witness, who is Martha Sirleaf to you?

A. Martha is my aunt.

Q. How did you get to Bola, Careysburg on December 10, 2010?

A. My Aunt Martha called me from my working place to meet her at the Redlight and she said that she was waiting there with two motorcyclists.

Q. Mr. Witness, what did Martha Sirleaf, your aunt and the defendant in this proceeding, exactly tell you?

A. Martha Sirleaf told me that she had misappropriated almost three hundred fifty thousand (LD350,000.00) of their club money that she needs cover up. After I asked her to loan me six hundred United States (US$600.00) dollars to buy a design diesel.

Q. Mr. Witness, how were you to cover up the defendant, Martha Sirleaf, after she misapplied the club's money in the amount of three hundred fifty thousand (L$350,000.00) dollars?

A. She said: "carry these boys straight to Careysburg District, Bola, to Mr. Mitchell's house. There I will be waiting and I want you people to rob the balance of the money so everybody can lose.

Q. Mr. Witness, what the defendant do to facilitate your trip to Bola, Careysburg District?

A. She gave us ten dollars United (USD10.00) to buy gas for the motorcycle.

Q. Mr. Witness, where did you go directly when you left Paynesville?

A. We went directly to 15 Gate to await her call.

Q. Did she call you, if so what did she say to you?

A. She said you pass and go to 15th Gate.

Q. Mr. Witness, how did you get to know the exact location of the house?

A. Martha Sirleaf and I communicated over cell phone and that is how I got to know the place.

Q. Mr. Witness, you told the court and jury that you were going to rob. What were you having to subdue the victims in case of any eventuality?

A. I use knife and broken bottles.

Q. Mr. Witness, how did your group gain entrance to the house?

A. It was Martha that opened the back door for us.

Q. For the benefit of the court and the jury Mr. Witness, please explain what part she played and how was it accomplished?

A. As a fourth in the click I stayed outside to guard the perimeter.

Q. What happened at the Mitchell's house when you and your group got there?

A. As I said, the door was already opened by Martha Sirleaf and two other persons went in and by then Tumu was at the door. While outside fighting was going on inside the house between Mitchell and one of the boys. Mitchell disabled him and that was when I came within and stabbed Mitchell on his back. That was how Mitchell left him and both of them escaped.

Q. Mr. Witness, you told the court and jury that Martha Sirleaf, the defendant and the architect of the December 10, 2010 armed robbery incident communicated with you minutes before the incidence. For the benefit of the court and the jury refresh your memory and say the numbers that were used by you both at the time?

A. 06903916 that is my number and 06438002 is Martha Sirleaf's number.

Q. Mr. Witness, please tell the court and the jury where and who arrested you?

A. Mitchell. Careysburg District, at Mr. Mitchell's residence.

Q. You made reference to broken bottles that you had when you went on the mission. Were you to see specimens thereof will you be able to recognize same?

A. Yes

Q. By that answer and by kind permission of court I pass you over court's marked instrument P/ 1. Please look at same and tell the court and the jury what you take it to be?

A. This is one what I used while in the fight; it dropped from me at the crime scene.

Q. Mr. Witness, as an eye witness to the December 10, 2010 armed robbery incidence, do you have any other thing to claim the attention of the court and the jury apart from what you had already said, if so what is it?

A. I told her [Martha Sirleaf] that his mission is a deadly one. Should in case something happens to me and I die will you not bury on the farm among the people that committed the act. She said nothing will happen to you; just go. After this mission I will give you the amount of six hundred fifty United States Dollars (US$650.00) to buy the machine that you requested for. Before then, I asked my father for this money and he refused that was how I called her to help me with this said amount. Lastly, I directed her where she could find my wife and children, should something happens to me in case I die, and she said you go, nothing will happen to you and that was how we left.

CROSS EXAMINATION

Q. Mr. Witness, you informed this court and the jury that you were arrested and taken to the police station. It is my understanding that you were investigated by the police. Am I correct?

A. Yes. I was investigated by the police.

Q. By that answer Mr. Witness am I also correct to say that you made a voluntary statement to the police during that investigation?

A. Yes

Q. By that answer Mr. Witness, is it correct to say that you told the police during that investigation that you rode a motorbike from the Redlight to Philip's Farm junction and asked for the whereabouts of your aunty, Martha Sirleaf, the defendant in these proceedings. Am I correct?

A. Yes, that is correct.

Q. By that answer Mr. Witness, am I also correct to say that when the inquiry was made that is when you asked for the whereabouts of your aunty, Martha Sirleaf, you were told by the by-standers to check around 15-Gate? Am I correct?

A. Yes, you are correct because it was a team work.

Q. Mr. Witness, is it also true that you told the police during this investigation that while at 15-Gate someone told you to go to George Mitchell's house?

A. Yes

Q. Mr. witness, in your testimony in chief you told this court that you were at your work place when your aunty the defendant in these proceeding called you to meet her at the Redlight and that she was awaiting for two motorcyclist to join her?

A. Yes

Q. By that answer Mr. Witness, it is also my understanding that you informed the police during the investigation that the same two motorcycles and they told you that they were on their way back to town and that you thought it wise they should drop you to Bola Town and they did. Am I correct to say this?

A. Yes. Because it was a cover up.

Q. By that answer Mr. Witness you told the jury and this Honourable Court that the defendant Martha Sirleaf told you to carry the two boys straight to Careysburg District to Mr. Mitchells' house and there she would be awaiting you. Is that correct?

A. Yes

Q. Mr. Witness, is it true that you informed the police that when you got to Mr. George Mitchell's house you knocked at the door?

A. Yes, based on the cover up.

Q. By that answer Mr. Witness, are we correct to also say from the police investigation that upon knocking at Mr. Mitchell's house door you felt a force from the back and people begin to shout. Am I correct?

A. That is correct based on cover up.

Q. Mr. Witness, by that answer, is it also true from the police investigation that you identified yourself as Otis Nana Varfley. Was this a cover up?

A. I called my name and that was not cover up.

Q. Mr. Witness, is it also true from the police investigation that you informed the police that upon the knocking of Mr. George Mitchell's door you saw two guys with cutlasses in their hands who attacked you with the said cutlasses and sticks?

A. Yes

Q. Mr. Witness, you informed the police that the defendant is your aunt. Is it true that the last time you saw the defendant prior to December 10, 2012, was in the year 2006?

A. No.

Q. Mr. Witness you informed this court that you requested assistance from the defendant in the amount of six hundred (USD600.00) United States to purchase diesel. By what means did you communicate to her said request?

A. Telephone first and them face-to-face.

Q. By that answer Mr. Witness is it correct that this request to your aunt was made in 2010,September?

A. Yes

Q. Mr. Witness, in the same September 2010, you also requested your aunt to call your father in U.S.A and advised him to help with some money and when she didn't you got outraged. Am I correct?

A. After I asked her for the money, she told me that she had misappropriated three hundred fifty thousand Liberian dollars so I should wait for December. To correct your answer, I asked her to call my father for the money that she had misappropriated because she is the only one that he can listen to.

Q. Mr. Witness, is it true that you lied to the police in your voluntary statement even after you were advised that said statement could be used against you in the court of competent jurisdiction.

A. The statement from the police station was a make-up story by Martha Sirleaf and I, Otis Varfley for a cover-up, because she had told me from the beginning including the whole family that I shouldn't uncover her up that she would find a lawyer to plea on my behalf, but all of time that I stayed in prison, I could not see a sign of a lawyer. So I said this was an organized crime, I alone will not suffer it. That is how I had to uncover her up. So that before this Honourable Court and the jury that the truth should be revealed. In so doing, Martha Sirleaf is my blood aunt so I had no reason to lie on her.

Q. Mr. Witness, you informed this Honourable court and the jury that you were accompanied by two motor cyclists who took you to Bola town at Mr. George Mitchell's residence; these motorcyclists and you were co-armed robbers. Is that correct?

A. Yes, that she had provided.

Q. Mr. Witness, by that answer, for the benefit of the Petit Jury and this Honourable Court please state the names and descriptions of your two co-conspirators?

A. She did not give me their names.

Q. Mr. Witness, is it correct that while you were detained at the Monrovia Central Prison some members of the Bola women Club to include Tumu Jackson visited you with respect to these proceedings?

A. Yes, the whole group visited me including these two counsels, the defense counsels.

Q. Mr. Witness, you were arrested wearing the same trousers and shirt you are wearing. Am I correct?

A. No

RE-DIRECT
Q. Mr. Witness, you told the court and the jury that you made "voluntary" statement at the police station which statement maybe slightly different from what you said in the opened court. For the benefit of the court and the jury what do you have to say about that voluntary statement?

Q. Mr. Witness, by that answer, you were taken to the Monrovia Central Prison and detained in the same clothes you are wearing. Is that correct?

A. The statement I made at the police station. I continuously say to this Honourable Court and the Jury that it was a cover-up made by my aunt , Martha Sirleaf and I, Otis N. Varfley. I also want to inform this court that I made such cover-up because of what she had promised me after the mission. And because she did not meet up to her promises, so I deemed it necessary upon the oath that I had taken in this court to say the truth and nothing but the truth, so help me God.

Q. By that answer Mr. Witness, are you telling the court and the jury that what you had said here in this opened court is the truth of all matter?

A. Yes, it is the truth and nothing but the truth, because I am the one she had previously told about this money which is three hundred fifty thousand Liberia dollars that she had misapplied form their club money. So she told me that we should use this mission as a cover-up.

RE-CROSS
Q. Mr. Witness, you did the cover-up because the promised to give the money. Not so?

A. Yes.

Q. So Mr. witness tell this court since indeed and in fact that you and Martha Sirleaf and the other two persons did plan to do the armed robbery and you

and the other two persons executed the said plan. Simply say what was the plan that was put in place to do with the money that was armed robbed after the armed robbery, Mr. Witness?

A. I said in my statement before this Honourable court and the jury that the plan for the armed robbery that was carried on by Martha Sirleaf and few others and I was complete cover-up for three hundred fifty thousand Liberian dollars she told me that she misapplied. In so doing, you will come to know the facts that those two motorcyclists she connected and I, Otis Varfley went directly to 15-Gate to await her call, when she told us to pass and reach 15-Gate to wait for her call, because it was around 4:45 PM and people were still passing around in Bola Town. I want the court to also know that the police officer that investigated this case from Careysburg will tell this court that it was said or proven by the owner of the bike that the two motor cyclist and I waited for the call from Martha Sirleaf.

Q. So, you are telling the court and the jury that the intent of the robbery was only to do a cover-up. Not so?

A. That is what I was told by Martha Sirleaf

Q. So by that answer you people did not take any money but only did the robbery for the mere purpose of hiding the three hundred fifty thousand Liberian dollars that was allegedly misapplied by Martha Sirleaf, Not so?

A. I said in my statement before this Honourable court and the jury that Martha Sirleaf had contacted these two motorcyclists before calling me to meet them at Redlight, so, I *don't* know if she had other plan under her sleeves besides the one she and I discussed. So this mission as a cover-up and I also said before this court that I remained outside to guard the perimeter of Mr. Mitchell's residence, so if those that went in and Martha Sirleaf had planned to take money from in Mitchell's house it was not to my knowledge.

Q. Mr. witness, you said in response one of my question on the re-cross that you and the rest of the two other persons were motorcyclist went to 15-Gate in order to await to the call of Martha Sirleaf not so?

A. Yes

Q. And what time as it Mr. Witness:

A. Around 8:45

Q. And she did call you?

A. Yes

Q. Mr. witness, you also told tis court that he police officer who investigated this case initially will say that it was proven by the owner of the bike that the two motorcyclist and you waited for Martha Sirleafs call not so?

A. I told this court that the police officer that initially investigated this case talked with the owner of the bike that we were waiting at the call of Martha Sirleaf and if he will be allowed to testify under oath the court will hear what he has to say about my above statement.

Q. Mr. Witness, it was a cover-up when you told the police that Martha Sirleaf promised to give you some money. Not so?

A. In my statement to the police if this Honourable Court and Jury will study and also my statement that I made before this court you find clued that lead to my factual statement. I made before this Honourable Court and the jury and to lead this court to the facts, I would like to state the clues that lead to the facts in my statement that I made in this court after taking oath:

1. In my statement to the police, I said two motorcyclist dropped me at Philip Farm Junction and later on dropped me back to Bola. It is the clue that lead to the facts in my statement that I made before this Honourable Court that Martha had contacted two motorcyclists for us to wait for her at 15-Gate for her call.

2. In my statement to the police, I said Mr. Mitchell's door was knocked on and I called my name, Nana. This is a clue that lead this Honourable Court when I said in my statement that Martha Sirleaf said he was going to leave the back door open for us to enter through.

Q. Mr. Witness, my question is, you said your statement at the police was a cover-up. So, the statement that your aunty, Martha Sirleaf, was also a cover-up?

A. I want to tell this court that it is the money that my aunty Martha Sirleaf promised me that motivated me to do what I did. A. No. that is not a cover-up.

JURY QUESTIONS

Q. Glen Johnson: Mr. Witness, in your testimony yesterday, you told this court that you and Martha Sirleaf are related, not so?

A. Yes, Martha Sirleaf is my aunt.

Q. Mr. witness, you said in this court that you people were four in number that went to armed rob unfortunately two of you were captured, while the other two escaped. I would like to know Mr. witness, as to whether you ever recognized any of these guys by their names or places of origin?

A. I said before this Honourable Court and the jury that Martha Sirleaf was the one that contacted the two armed robbers that escaped and Martha Sirleaf before among us the four persons names is the one I know. I do not know the other two.

Q. John Blackie: Mr. Witness you told the court and the jury that your name is Otis Varfley. My question is have ever armed robbed before and if yes or no why were contacted?

A. I would like to inform this court that I. Otis N. Varfley, had never armed robbed before or do I have bad records at any police station or court. To clear your doubt why I was contacted, it was because I am the only family she trusted at the time and that she used to share this information with for misapplying her club's money.

Q. Nelson Gbongon: Mr. Witness, all of these plans were they on phone or on one to one basis?

A. Most of this plan between Martha Sirleaf and I was on phone till lately when I met her at the Redlight with the two motorcyclist awaiting me and if you have the communication call log from Lone Star here now you will notice that we have been communicating much apart from all other times.

Q. Chris Faye: Mr. Witness, what was guaranteed you for Martha Sirleaf that if this mission was successful she would give what she promised?

A. Like I said previously, she is my aunt and I am very closed to her and she is closed to me so that guaranteed the promise she made to me after the mission.

Q. Matthew Williams: Mr. witness, according to you , your father is residing in the U.S.A. and you wanted to purchase a designing machine and also after your aunt, Martha Sirleaf the club's money you advised her to contact your father in U.S.A. to credit her some money to assist her. My question is Mr. Witness, since you were in dire need for money why you cannot request from your father for assistance?

A.I asked my father before even going to Martha Sirleaf and he told me your mother is sick and I don't have any money to give you now. Based upon that, I was encouraged to ask my aunt, Martha Sirleaf. That was when she told me that she had misappropriated $350,000.00 of her club.

From the foregoing testimony of Otis Varfley, the question is, did it meet the test of establishing for the prosecution the motive of the appellant in planning and engaging him and the other two perpetrators of the crime with which the appellant is charged, taking into consideration the testimonies of other witnesses, to warrant the jury returning a verdict that indicated such a test was established? We do not believe that testimony of the witness met the test or the standard to warrant the verdict returned by the jury, considered with all of the other testimonies, the credibility issues arising from his conduct, and particularly given the sequence of events and the status of the witness. A review of the testimony shows enormous contradictions. But let us start with the status of the witness.

Otis Varfley was not just another witness for the prosecution. He was one of the perpetrators of the act of which the State complained. In legal parlance, he was an accomplice to the crime. In the case Monie and Garzu v. Republic, this Court defined an accomplice as: one who knowingly, voluntarily and with the principal offender unites in the commission of a crime. 34 LLR 502 (1988). Given the position of such a person, this Court has also held that "the testimony of [such] accomplice to a crime should be taken with caution, adding that what is of concern in such situation "is the credibility of his testimony. ld., at 516. In examining Otis Varfley's testimony, we must therefore do so with caution, ensuring that the standard which the law requires in such circumstances is fully upheld and that the testimony is credible.

We should note that we do not here set out that an accomplice to a crime cannot testify for the State. Indeed, in the case Kpolleh et al. v. Republic, 36 LLR 623 (1989), this Court held that "an accomplice is competent to testify as a witness for the State. The Court added: "Where several persons conspire to commit a crime, the act and declaration of any co-conspirator pending such conspiracy and in furtherance thereof, are admissible evidence against any conspirator on trial. *ld.,* at 658. t is a settled principle of law that an accomplice testifying for the prosecution notwithstanding the turpitude of his conduct is not on that account an incompetent witness; the fact that a witness is an accomplice

as a matter of law does not preclude the use of his testimony by the State. The same is true even though he has pleaded guilty. This is likewise true even though the accomplice witness confesses his criminal culpability or testified under promise of immunity. Citing 2 Wharton's Criminal Evidence, section 729, at p.1224.

In the case Davies v. Republic, 40 LLR 659 (2001), this Court, noting that the prosecution of all criminal matters in our jurisdiction has its foundation in certain basic principles of law, then proceeded to hold that in all trials upon indictments order for the State to convict the prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence; that material facts essential to constitute the crime charged must be proved beyond a reasonable doubt; otherwise, the accused will be entitled to a discharge. ld., at 676-77. The Court, citing the case Burphy v. The Bureau of Traffic, 25 LLR 12 (1976), in support of its holding, added: To warrant a conviction in a criminal case, the state must prove its case beyond a reasonable doubt; and the burden of proof remains with the prosecution throughout the trial. The Court further propounded: In criminal prosecution, in order to eradicate every reasonable doubt, the evidence must be conclusive; and if it be circumstantial, it should be so connected as to positively connect one element within another for a chain of evidence sufficient to lead the mind irresistibly to the conclusion that the accused is the guilty party. Citing Kojee v. Republic, 20 LLR 18 (1970); Republic v. Smith, 25 LLR 207 (1976). The Court then set out the critical question. Citing the case Kamara v. Republic, 22 LLR 329 (1974) the Court said: The question in criminal cases therefore, is not of mere proof but proof beyond a reasonable doubt. Thus, where an accused has presented proof or evidence as to raise a strong doubt regarding the substance of prosecution's case, the latter is under a duty to rebut said evidence or the conviction will be overturned. The question is whether the prosecution formed link by link the chain of evidence needed in criminal cases to lead any reasonable mind to the conclusion of the guilt of the appellant beyond a reasonable doubt. Id., at 680. See also Heith v. Republic, wherein this Court said: A judgment of conviction in a criminal case must be supported by proof of all elements of the crime charged beyond a reasonable doubt. 39LLR SO (1998). And while in the *Davies case,* the Court held that the prosecution had adequately rebutted the appellant's claim of innocence, we

cannot say that in the instant case, that rebuttal standard was met. Whenever there is reasonable doubt, the defendant is entitled to an acquittal. Heith v. Republic, 39 LLR 80 (1998).

It is therefore critical that we review his testimony in light of the sequence of events, the lack of other evidence to support his theory, and the inconsistencies in his testimony. We commence the examination with his appearance at the police investigation. This is what the police charge sheet, issued on December 22, 2010 and submitted to the Magistrate Court for the City of Careysburg on December 23,2010,said:

That on December 11, 2010, at the hour of 12:21A.M., defendant Otis Varfley was arrested, acquainted with his constitutional rights, investigated and charged with the crime of armed robbery in violation of Chapter 1S, section 1S.32 of the Revised Penal Code of Liberia based on the complaint of victim Moses Mitchell in which the Bola Town Women Club sustained the loss of L$31S,18S.OO and complainant Moses Mitchell sustained serious bodily injuries on his left side of his ribs with knife by the robbers.

According to the complainant, on December 11, at 12:21A.M. while in doors, they heard a loud noise in the house at the front door, after which about three unknown men brandishing cutlasses, knife, AK-47 rifle, glass bottle and other deadly objects, entered, boot the house door, threatened to kill anyone who alarm at the same time· demanding and searching for their cash that the unknown men took away the money in question. Two of the armed robbers absconded with same and defendant Otis Varfley was caught by the citizens of the town.

Suspect Otis Varfley told the investigation that he was arrested at Mitchell's residence by some people (Mitchell's family). During Police/CID investigation conducted with the herein named defendant, he denied his involvement into said crime (armed robbery). Defendant Otis Varfley further [said] that he went to see his Aunt (Martha Sirleaf), when promised to assist him with some monies to start his business after they share their club on Saturday, December 11,2010.

In view of the above, coupled with eye witnesses accounts and the arrest of defendant Otis Varfley at the scene of the crime, the investigation has resolved to charge defendant Otis Varfley with armed robbery, criminal

facilitation and criminal solicitation and criminal trespass in violation of chapter 15, section 15.32, 15.51and chapter 10, section 10.2 of the New Penal Code of Liberia and forwarded to court.

The records further reveal that as a consequence of the findings of the police, upon which the charge sheet was issued, the police took the further step in issuing, on December 24, 2010, another document captioned Police Confirmation Clearance. The Police Confirmation Clearance stated in part: In the course of police investigation, no evidence of any form of criminality was determined on the part of Madam Martha Sirleaf. Thereto, Madam Martha Sirleaf was exonerated from the investigation." This latter document was also based on the failure of Otis Varfley, during the course of the investigation, to implicate the appellant in the armed robbery. And while we do not believe that the prosecutors were bound to accept the findings of the police, it makes the burden of proof of the prosecution much greater, for the State must now demonstrate reasons for deciding not to accept the findings of the police. The issuance of the police charge sheet as well as the Clearance given to the appellant was predicated upon the statements made by Otis Varfley during the police investigation. During the investigation, as his answers on the cross-examination show, he completely exonerated the appellant from any association with the armed robbery. Yet, in his testimony he implicated her. The explanation he gave for not implicating her at the police investigation is that he wanted to protect her. How is one to be sure that at the trial he sought to implicate her in order to be free from accounting for his crimes, even though he admitted being a principal perpetrator of the crime?

How also could one believe, although the possibility cannot be completely erased, that a person would associate with others to commit such gave offense as armed robbery without knowing the persons with whom he was associating? There were just too many lingering questions. Who, for example, was the team leader? How were the proceeds to be divided, i.e. who would take what amount or what percentage? Where were they to assemble to divide the proceeds following the robbery? How confident was he that following the armed robbery, the others would not take off without him, as indeed occurred?

Also disturbing regarding the testimony of the witness is that it is littered with inconsistencies. For example, the witness stated that it was due to Mr.

Mitchell being injured that he let the other perpetrators escape from the scene of the crime, yet he states that it was the same Mitchell that apprehended him. Had Mr. Mitchell recovered from his injuries?

Then there was the unimpeachable evidence that the accounts of the Bola Town Women Savings Club had several signatories. How was it possible for the appellant to have taken the proceeds from the bank without their knowledge? Indeed, on the day the proceeds were withdrawn from the bank, the appellant was accompanied by several other members of the Club. All of them knew how much was in the bank. No one complained that the amount which should have been in the bank was not there. They were all aware of the amounts that were to be distributed and they prepared themselves for the distribution. Where then was the misappropriation that the appellant sought to cover up by putting together the scheme to commit the armed robbery? One must also keep in mind that all amounts collected for the Club were deposited into the bank, except for amounts determined by the Club to be kept by certain members. The deposit slips were delivered to the President of the Club at all times. We have seen nothing in the records evidencing that deposits were not made by the appellant when they should have been made and that therefore, there was a shortage in the Club's account.

Further, the amount which was withdrawn from the Club on December 10, 2010 for distribution was L$310,000.00, which presumably was the correct amount deposited into the account. Where then did the L$350,000.00 which the appellant was supposed to have stolen come from? How then was it possible for the appellant to have stolen an amount of money that belonged to the Club that no one knew about, or that didn't exist?

But more importantly, there was not a single witness who could show or present any documentary or other evidence that there was any shortage of any amount within the Club prior to the incident and the records of the bank showed no such shortage. In the absence of such showing, the prosecution's theory, the motive of the appellant for allegedly committing the crime crumbles, and the testimony of Otis Varfley as to why the appellant initiated the armed robbery also crumbles. How could a person commit a crime in order to cover up a misappropriation when no misappropriation was shown by the prosecution?

Further, Otis Varfley stated that he had made several calls to the appellant just immediately prior to the occurrence of the incident or the commission of the crime to get the location of the town and house where they were to commit the crime. That information, standing by itself, could have been given some credence. Yet, he also testified that he had stopped at 15 Gate to get directions for the place. We wonder as to what was the need for him to stop at 15 Gate to ask for directions if he had already been given directions by the appellant. Nevertheless, the prosecution believed the story and therefore requested the court to subpoena the records from the Lone Star Communications Corporation, which request was granted by the court.

A person, under the name of Nathaniel Kevin, purporting to be from Lone Star, appeared in court, with documents which he said were the records from Lone Star. This is the dialogue that occurred between the witness and the prosecution counsel on the direct and re-direct and the witness and the defense counsel on the cross-examination and re-cross:

Q. Mr. Witness, [what] is your name?

A. My name is Nathaniel Kevin

Q. Where do [you] live?

A. live on Randall Street, Monrovia, Liberia.

Q. work at Lone Star Communication Corporation.

Q. "Mr. Witness, the management of your employer was summoned by this Honourable Court upon the request of prosecution to produce call log of cell phone number 06438002 and 06903916 made on December 10, 2010. Now that you are on the witness [stand] representing the management, my question to you is do you have said call log ready and if so can you preen t same to the Court?

A. Yes, I do have the call log.

Pros. At this stage, as per virtue of the witness response, prosecution prays court for the mark of identification to be placed [on the] instrument (call log) presented by the witness on the stand and submits.

The Court: The instruments, call log with two cell phone numbers, cell phone 06438002 and 06903916 is hereby ordered marked plaintiff's exhibit P/4. And submits.

Q. Mr. Witness, by kind permission of court pass you over court's marked instrument P/4. Please look at same and tell court and jury if the document that you presented to court is the same document been marked by court?

A. Yes, it is the same document." This was all that the prosecution extracted from the witness. On the cross-examination of the witness, the following transpired:

Q. You said you worked with Lone Star Communications right?

A. Yes.

Q. Do you have any identification to show that you work with Lone Star Communications?

A. I don't have it on *me,* but I can get it if I can leave the court and go to my car.

Q. So Mr. Witness, you do not have any identification to show that you work with Lone Star?

A. Yes, I do not have it on me.

Q. Mr. Witness, on the face of the document you have just identified and marked by court P/4, you have said is a call log from Lone Star. Not so?

A. Yes, the document is from Lone Star.

Q. Mr. Witness, by that answer I pass to you court's P/4 which you have identified from Lone Star. Please look at it Mr. Witness and say whether for the clarity for the court and jury it has on its face the name Lone Star.

A. The document do[es] not have on its face Lone Star.

Redirect:

Q. Mr. Witness, in your last response to the question on the cross you said that the document that you presented does not have the inscription on its face. For the benefit of the court and jury, please look at the document and say what on it indicates that it is from Lone Star?

A. There are several columns on the document and I speak to the first column. The first column state subscriber number and that is subscriber of Lone Star as evidence requested for to produce today.

Re-cross

Q. Mr. Witness, you have just told the court that the first column shows that subno-abbreviation in the first column for subscribed number shows that the document P/4 comes from Lone Star, not so?

A. Yes, sir.

Q. By that answer Mr. Witness, taking into consideration that there are several communication companies here in Liberia, tell this court and jury whether the abbreviation subno which is the abbreviation according to you for subscribed number is unique to Lone Star Communication?

A. I cannot speak for any other company but I can speak for Lone Star. I can say yes.

From the quoted minutes, it can clearly be seen that the prosecution failed in its attempt to verify the testimony of Otis Varfley that he was in communication with the appellant just before the armed robbery took place, seeking direction from her for the Mitchell's house.

Firstly, the witness had no form of identification on his person to verify that he worked with Lone Star Communications Corporation or that he was authorized by Lone Star Communications Corporation to present the documents which he brought to the court. The defense attacked him on that ground, effectively challenging his statement that he worked with the corporation. Yet, the prosecution made no effort to cure this defect. Why did the prosecution not ask the court to allow a few minutes recess to enable the witness to secure his identification card, if he had one? Why was another witness not produced with the appropriate identification to verify that the witness did work with and for Lone Star and that he was authorized to respond to the writ issued by the court on Lone Star to produce the documents requested by the court? How could any person otherwise determine that the witness actually work for Lone Star?

Secondly, according to the prosecution, the armed robbery is said to have taken place at about 12:21a.m. on the morning of December 11, 2010. This is also the time stated in the Police charge Sheet, the Arrest Warrant issued by

the Careysburg Magisterial Court, the Police Confirmation Clearance and the Indictment brought by the Grand jury against the appellant and Otis Varfley. Yet, no effort was made by the prosecution to have the witness specifically identify the times indicated on the call log as to when the numbers of the appellant and Otis Varfley appeared to show that at about or close to the time of the armed robbery, they were in contact, since that was the objective of the prosecution in praying the court for the wit to subpoena the document. Such questions may even have raised suspicion in the minds of the jurors as to how just pass midnight the appellant and Otis Varfley were still in communication at that unusual hour. It certainly would have raised credibility issues with the testimony of the appellant that she communicated with Otis Varfley around 7:30 p.m. on the evening of December 10,2010.

Thirdly, how was the so-called call log to be authenticated as being from the Lone Star Communications Corporation, when the said document has no make of identification of the corporation on it? It is possible that any person could have prepared such a log. And given the fact that this was needed by the court for purpose of verification of certain call times, there was certainly a need for the document to have such identifiable symbols as would authenticate or verify that it was from Lone Star and not be susceptible to challenge. We note that no corrective steps were taken to cure the situation. How then could the jury not have had reasonable doubt as to the guilt of the appellant, exclusive of whether the appellant was actually guilty as charged or not?

But even more than that, it would have at least corroborated and verified the claim made by Otis Varfley and the other witnesses who said that they suspected that the appellant was speaking with Otis Varfley at the times they indicated she was whispering on the phone, just before the armed robbery took place. It certainly would have corroborated or added some measure of credibility to the testimony of Otis Varfley that he had been on the phone with the appellant just before the armed robbery.

We believe that all of the above mentioned shortcomings raised or should have raised reasonable doubt in the minds of the jury. They certainly raised such doubts in the eyes of the law, unless they were overcome by the testimonies of other witnesses. Our review of the testimonies of the other

witnesses connecting the appellant to the crime remained mere speculation and conjecture, and cannot be give validity. Several witnesses, for example, testified to accounts held at various banks by the Bola Town Women Savings Club, but none of them testified to any misappropriation by the appellant as would have confirmed the prosecution's theory relative to the motive of the appellant in wanting to commit the crime.

Our examination of the testimonies of other witnesses also showed that most of the testimonies of the witnesses who testified for the prosecution bordered on conjecture and hearsay rather than substantive evidence of the magnitude to warrant the conclusion that definitively the defendant/appellant was responsible beyond any reasonable doubt for the crime that was committed or that she was a part of the crime. None of the witnesses testified that the appellant arrived on the scene of the armed robbery along with the other armed robbers; none of them testified, other than stating that she was an armed robber, that she participated in the armed robbery. The sole claim asserted by them was that she received a number of telephone calls and responded in inaudible tune and that she left the door opened which enabled the armed robbers to enter the house. No one disputes. that an armed robbery occurred in the early morning hours of December 11, 2010. But that is not the issue in the case. What is at issue is whether the appellant was a part of the armed robbery. The police that investigated the matter did not believe that to have been the case, and the State's prime witness who could have linked the appellant to the crime admitted that he had told the police that she was not involved in the commission of the crime. His testimony, with such credibility issues, was of no aid to the State. To the contrary, our examination of the witness testimony shows that he was of more harm to the State than of assistance.

We also have difficulty understanding why the sole concentration seemed to have been on the appellant, rather than expanding the investigation to seek out and find the other members of the gang that committed the act, so that justice is truly served. No logical explanation is revealed by the records for this failure. Moreover, although the police charge sheet, the arrest warrant from the magisterial court and the indictment indicated that L$350,000.00 was robbed, the evidence showed that not only was this amount in excess of the amount withdrawn from the Bank, but also that the amount actually robbed was far less than the stated amount, and that the members of the Club shared in the amount which they claimed was robbed from the Club.

This Court has held in a number of cases that where the evidence is insufficient or show reasonable doubt, as in the instant case, a jury's verdict of guilty cannot and will not be upheld. We believe such to be the situation in the instant case.

Accordingly, we hold that the prosecution, having failed to meet the threshold of establishing the guilt of the appellant beyond every reasonable doubt, the verdict of guilty brought by the petit jury and the judgment of the lower court entered confirming the said verdict be and are hereby reversed. We further hold that in accordance with our holding, the appellant be released forthwith from imprisonment and not be answerable any further for the offense of armed robbery with which she was charged. We direct that her bond be returned to her.

The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over the case and to give effect to this judgment.

Judgment reversed.

Counsellor Sayma Julius Syrenius Cephus of Kemp and Associates Legal Consultancy Chambers appeared for the appellant. Counsellors M. Wilkins Wright, Solicitor General of Liberia, and Samuel K. Jacobs, Senior Legal Counsel,
Ministry of Justice appeared for the appellee.