

ROBERT WILLIAMS AND JOHN MULBAH, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL
CIRCUIT, BONG COUNTY.

Heard June 24, 1986. Decided August 1, 1986.

1 A charge by the judge to the jury that the State had proved a prima facie case against the defendant is prejudicial.

2 It is error on the part of the court to instruct the jury that because the defendant refused to take the stand to testify on his own behalf he must be considered guilty.

3 The defendant's refusal to testify on his own behalf is no proof of his guilt, as it is the duty of the State to prove its case against the defendant beyond all reasonable doubt.

4 Flight on the part of the defendant leads to the presumption of his guilt.

5 Uncorroborated testimony of an accomplice is insufficient to convict a defendant.

Accepting this as a hypothesis, the converse to it must be "the testimony of one defendant exonerating another defendant is sufficient to acquit him."

Co-appellant Williams requested his friend, co-appellant Mulbah to accompany him to Palala, Bong County to see a Mr. Charara, from whom co-appellant Williams said he intended to take goods against two thousand dollars owed him by Mr. Charara. Co-appellant Williams took a shot gun along with him on the trip. Upon arrival to Mr. Charara, co-appellant Williams proceeded into the store/house leaving co-appellant Mulbah outside. Shortly thereafter, Mulbah heard what sounded like a gun being fired. Co-appellant Williams then came out of the house holding the gun and announced that Mr. Charara was dead. It is alleged that co-appellant Mulbah took the gun from

coappellant Williams and hid it behind the decedent's house. Coappellant Mulbah later turned the gun over to the police when he was requested to do so.

Both Williams and Mulbah were indicted: Williams as principal defendant, and Mulbah as an accessory before and after the fact. The trial judge in his charge to the jury said that the State had made a prima facie case against the defendants. The jury found the defendants guilty as charged.

By the time the Supreme Court heard this matter, defendant Williams had already died in prison. The Court therefore concentrated on the aspects of the indictment that pertained to defendant Mulbah. After a finding that the case against defendant Mulbah had not been proved beyond a reasonable doubt, the Supreme Court reversed the judgment of the trial court as to accomplice John Mulbah.

Francis Garlawolo and *Henrietta M Koenig* appeared for appellants. Solicitor General *McDonald Krakue* appeared for appellee.

MR. JUSTICE TULAY delivered the opinion of the Court.

This homicide case began on October 9, 1979 at one Malobe's farm near Palala Town when the principal defendant, Robert Williams, asked co-defendant John Mulbah to accompany him to Palala, Bong County, to one Mr. Tachin Charara from whom he said he intended to take some goods on account against the two thousand some odd dollars owed him by said Mr. Charara.

Before leaving the farm, defendant Robert Williams borrowed a single barrel shotgun which he carried with him to Mr. Charara's house/shop. Upon arrival, defendant Williams and Mr. Charara went into the store/house and locked themselves in, leaving defendant John Mulbah outside. There they remained until the sound of a gun rang out and defendant Williams came out with gun in hand and announced that Charara was dead. It is alleged that co-defendant Mulbah, out of fear, grabbed the gun from defendant Williams, ran to the back of the house and hid it, but eventually

turned it over to authorities when he was asked to do so.

Both Robert Williams and John Mulbah were arrested and subsequently indicted - Williams as principal defendant, and Mulbah as an accessory before and after the fact - for the murder of Tachin Charara.

As defendant Williams died in prison after they had appealed from the judgment convicting and sentencing them to death by hanging, we shall concentrate on John Mulbah and that part of the indictment which charged him as accessory before and after the fact. Below is the salient portion of the indictment:

"A person is guilty of an offense committed by the conduct of another person when:

g) With the purpose that an offense be committed, he commands, induces, procures or aids such other person to commit it or having a legal duty to prevent its commission, he fails to make proper effort to do so."

That co-defendant John Mulbah who accompanied defendant Robert Williams from their village to Palala and spent the day with him up to and including the time defendant shot and killed decedent Charara aforesaid, did unlawfully, intentionally with the purpose of aiding and abetting defendant Robert Williams aforesaid, to commit the crime of murder aforesaid, take the gun that defendant used in the commission of the crime aforesaid, smelled the muzzle and having found out it has a very fresh odor of gun powder, and realizing the fact that it was the gun defendant took to defendant's store while co-defendant was put outdoors with the watchman, ran away with the gun and hid it until police demanded him for its production, thereby aiding and abetting the commission of the crime of murder, contrary to the existing statute."

In an attempt to corroborate the averment given above, the prosecution introduced witnesses. The first three who testified told the court and jury thus:

PARAMOUNT CHIEF NOWAL LEEMUE:

"That was one night one young man by the name of Robert Williams, they say he is Charles Williams' son. Decedent Charara and defendant Williams were in the store doing business. There were plenty of goods and it was way late hour, 12:00 midnight. I heard the noise of a gun in the store and I got up at once and opened my door. I also saw him when I opened my door; decedent's house and my house are adjoining and I immediately saw Robert Williams coming from Charara's house (store). I also saw him with one shotgun and a carton containing a gas light. When defendant and I butt up he asked 'where is the Chief?' and I said that am I.' Then he told me that something happened in Charara's store and that we should go there. I asked him Charara and who were there in the store and he said, two of us, meaning he and Charara. He told me that he and I should go into the store to see what happened and I said to him that you said that you and Charara were in the store, and I heard the sound of a gun. I said I cannot go with you because I saw you coming out from Charara's store with gun. I cannot go there because there is no other person there. On our way going, he Robert Williams told me that Charara died. I told the people that since Robert Williams, told me that Charara died and only two of them were in the store before we go there let us send for the CID. While we were doing this, one boy came and took the gun and ran away with it and went and hid it and came back to us, and I ordered the people to follow him to show where he kept the gun. The people went with him and he showed them where he hid the gun. I chartered the taxi and put the boy who ran away with the gun and Robert and sent them here to Gbarnga to the Police Headquarters

WITNESS REEVES:

"What I got to know Robert Williams and John Mulbah, it was on the 9th of October 1979 at about 4:30 p.m. I saw Robert Williams, John Mulbah and Oldman Alfred Norobi come in the town of Palala, marched to the shop of Mary Neweleh. Robert Williams ordered the shop owner to give him three bottles of can juice. When

they were drinking I heard him say with a list prepared by him in a red ink that he was going to the store to buy goods for his shop. He went further to say that since his father's boys are going to take pay the next day, he went to purchase the goods for the shop. That he will go to one Zekpah Koko to get permission that he give him one car to carry the goods to the farm. After that statement he said that he was going to meet the man at 6:30 p.m. to buy the goods. I then left and went home. I returned to Tachin's store around about 5:30 p.m. to buy one tin of sardine. Just as I got in I met Robert and his friend John Mulbah telling Tachin to await them until they get better negotiation with him for the car. Tachin told him that as for the car business to carry your things I will help you to enable you to carry them. I then left them in the store and went home. Unfortunately, after 12:30 midnight I heard gunfire and I heard a human shout, ooci00000! It was about 10 minutes from the Paramount Chief to my house. It is not so far. I heard 'no man in Palala town' and right away I got up. I had already dressed myself, and ran to her and I saw a man rushing in my house. They told me as a town crier, I should cry in the town to announce that all men in the town should assemble, that Tachin has been shot dead. When I got there, Paramount Chief Nowai Leemue and I held Robert Williams hand. I stood right between Robert Williams and Paramount Chief Leemue and then she explained to me that this man killed Tachin 000! I ask with what? And she said the gun that fired here. Then right away I turned and asked Robert Williams, that is you? Robert Williams replied, 'Mr. Reeves since you arrived here if I had wanted to do something to you, I would not have done it?' Nowai Leemue then sent for Jerome Clarke. When Clarke entered then I asked Robert whether it is true that you killed Charara with gun? He replied me, 'Mr. Reeves, what about it? This thing just look to me like a dream, ah man, my throat dry, I want to drink water man.' He told me that he already did the act. 'I who committed this act, I am not afraid. Why should my friend John Mulbah grabbed the single barrel gun and run away with it. . .

WITNESS WOLOVAH:

"What I know is one day I saw John Mulbah one of the defendants and Robert Williams also a defendant. Robert Williams came and passed and went in the store

with a gun and John Mulbah and I were sitting outside the door. Robert Williams and Tachin Charara were in the store and the store was closed on them while they were in the store. I asked John Mulbah what both of Robert Williams and Charara were doing in the store while the door was closed on them. why? Then he answered that Charara owes Robert Williams certain amount so he came to him to ask him to pay some in goods to carry to their farm so if any of their boys needed any of the goods they could credit it on orders. I asked, 'John Mulbah are you also working on the farm?' and he told me 'no'. John Mulbah told me that he was living at Alfred Malobe's farm, but that Robert Williams asked him to accompany him to Charara's store."

MATTER SUSPENDED. TRIAL CASE RESUME. Defendants in the dock, panel full, representations as of record. ANSWER CONTINUED

"It was not too long that I heard the report of the gun and we heard the noise of the man crying (Shrinded). Paramount Chief Nowai at once came out and asked me where was the gun fired. And I told her that it was in the store.. And John Mulbah and I stood up. While John Mulbah and I were standing up, we saw Robert Williams coming out of the store with one shot gun and gas light in his hand. When Robert Williams step out of Charara's store with the gun, he leaned the gun on the house and at once John Mulbah picked it up and ran away with it. I ran and called the Town Chief, the Town Chief and some townsmen came and were looking for John Mulbah. They found and caught him and he went along with the people to the place where he hid the gun, in the bush at the back of Jerome Clarke's house and he picked it up and brought it. They arrested Robert Williams and John Mulbah and brought them to Gbarnga. This is all I know.

"This was the evidence which the trial judge in his charge to the jury said the state had made a *prima facie* case against the defendant; this was the evidence on which the jury convicted the defendants.

In no part of the evidence do we find that defendant John Mulbah aided, advised, connived or conspired with Robert Williams to murder Tachin Charara; in no part of

the evidence is it shown that John Mulbah knew of Robert Williams intention to murder Charara; it was not brought out in evidence that John Mulbah had any share in the two thousand some odd dollars Charara allegedly owed Robert Williams.

To carry a single barrel shotgun around is not a strange practice among the tribal people of this country. In fact, many men take pride in owning a single barrel shotgun and they, with stiff neck and head high in the air, roam the country displaying their possession. This certainly does not create suspicion in others that the holder or bearer of the gun has an evil intent.

To conclude therefore that John Mulbah knew of the evil intent of Robert Williams simply because he accompanied him with a gun in his hand to Palala Town, would be a working hypothesis short of further investigation. Count four of the bill of exceptions which complained of the judge's prejudicial charge that the state had proved a prima facie case against defendant John Mulbah must be sustained. *Vianini v. McBorrowh*, 17 LLR 439 (1966). Additionally, it is error on the part of the court to instruct the jury that because the defendant refused to take the stand to testify on his own behalf he must be considered guilty. The defendant's refusal to testify on his own behalf when he believes the evidence given against him is flimsy is not proof of his guilt. It is the duty of the State to prove its case against the defendant beyond a reasonable doubt. *Garbien v. Republic*, 21 LLR 423 (1973) and *Cooper v. CFAO*, 20 LLR 554 (1972). Count five of the bill of exceptions is also sustained.

Flight on the part of a defendant leads to the presumption of his guilt. But did defendant John Mulbah run away? Grabbing the gun from defendant Robert Williams in the presence of Paramount Chief Leemue and running to hide it behind the shop house, probably to prevent defendant Williams from perpetrating another murder, did not constitute flight for which he could be convicted. Here is the remark made of him by defendant Robert Williams himself: "I who did the act am not afraid why is my friend John Mulbah afraid?" Uncorroborated testimony of an accomplice is insufficient to convict a defendant. *Gio v. Republic*, 17 LLR 681 (1966). Accepting this as a hypothesis, the converse to it must be "the testimony of one defendant

exonerating another defendant is sufficient to acquit him."

In view of the above, it is the determination of this Court that the evidence adduced at the trial against defendant John Mulbah was so flimsy that the verdict brought on it was manifestly against its weight. Therefore, the judgment entered upon it convicting defendant John Mulbah as an accessory before and after the fact, for the murder of the late Tachin Charara and sentencing him to death by hanging is hereby reversed and the defendant is discharged from further answering for the crime of murder hitherto. The Clerk of this Court is hereby instructed to send a mandate to the trial court to resume jurisdiction over the cause and execute this judgment. And it is so ordered.

Judgement reversed.