

Richelieu A. Davies of the City of Monrovia, Liberia APPELLANT VERSUS
J.Boima Kontoe, Assigned Circuit Judge, Criminal Assizes "C" Montserrado
County, and the **Management of LBDI**, by and thru Its General Manager, Mildred
Reeves APPELLE

APPEAL. JUDGMENT AFFIRMED

HEARD: October 21, 2008 DECIDED: December 18, 2008

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

At the instance of the appellee/plaintiff, Republic of Liberia, an indictment was returned by the grand jury of the First Judicial Circuit of Montserrado County, sitting in its August Term, A.D. 2006. Appellant Richelieu A. Davies, who was criminal defendant below, along with Nojan Brown and Minnie Sirtor, were charged with theft of property in the amount of US\$205,000.00 (Two hundred five thousand United States dollars).

Consistent with Criminal Procedure Law, 1LCL Rev. title II, Section 18.1 (1973), the State's application for leave of Court to enter nolle prosequi in favour of co-defendants Nojan Brown and Minnie Sirtor was granted. The indictment against the two was therefore dismissed.

Section 18.1 aforementioned upon which prosecution relied, reserves the right to the prosecuting attorney to file a dismissal of an indictment, or of a count contained therein, as to either all or some of the defendants and, with leave of court, terminate prosecution as indicated in the application for nolle prosequi.

Upon arraignment, the appellant pleaded "not guilty" to the charge. Issue having been joined with the State, a petit jury was empanelled and regular trial had. After due consideration, the jury returned a verdict of "guilty" against the appellant.

To this verdict the appellant excepted. Appellant's motion for a new trial in which he contended that the jury's unanimous verdict was unsupported by the evidence, was denied by the trial court. In its final ruling, the trial court adjudged the appellant guilty of theft of property, sentencing him to five years imprisonment and ordering restitution of US\$205,000.00 as charged in the indictment. Hence, this appeal.

But before treating on the primary issue raised in appellant's bill of exceptions, let us provide a picture of the case. A brief resume of the records taken in this case in the court below shows that the appellant was charged and tried for violating Section 15.51(b) of the New Penal Law (1978). This section of the Liberian Penal Code provides that:-

"A person is guilty of theft if he knowingly obtains the property of another by threat with the purpose of depriving another of his property by deception or by threat."

On Restitution, the section further provides "Unless restitution has been made prior to sentencing, the court shall include in the sentence an order directing the defendant to return the property or pay its value to the person wrongfully deprived thereof...."

The indictment upon which appellant was convicted reads in its main part, as follows:-

1. That from the 18th day of October A.D. 2004 up to and including the 19th day of May A.D. 2006 (a period of 19 months) at the head Office of the Liberian Bank for Development and Investment, private prosecutrix, located at the corner of Randall and Ashmun Streets, city of Monrovia, Liberia, Co-defendant, Richelieu A. Davies there and then being an employee of the Liberia Bank for Development and Investment, private prosecutrix, a financial institution organized and engaged in the business of commercial and development banking as well as money transfers to and from foreign countries through Western Union, operating in the city of Monrovia, Montserrado County, Harbel Firestone, Margibi County and Republic of Liberia aforesaid, and by virtue of said employment with private prosecutrix, the co-defendant aforesaid was assigned and responsible for the printing of all foreign banks daily statements from internet; that the Co-defendant Richelieu A. Davies being moved by the devil, did wickedly and criminally connive with Co-defendants Norjan Brown and Minnie Sirtor and defrauded the said private prosecutrix by cleverly and with deception, manipulating the bank statements and inserted the amounts, not originally included in the official and authentic statements and presenting said falsified statement for processing; thus by their connivance, the Defendants did unlawfully, wrongfully, illegally, feloniously, fraudulently, purposely, criminally and intentionally take, steal and put into their own use and benefit, the sum of US\$205,000.00 (Two hundred and five thousand United States Dollars) by the operation of the following accounts:

Richelieu A. Davies A/C# 0240616081902

Nojan BrownA/C# 0240116568202

Florence A. Finuku.....A/C# 0240116638901

2. In their unlawful, wrongful, illegal, felonious and fraudulent design to deprive the private prosecutrix of the amounts above referred, the Codefendants Richelieu A. Davies, Nojan Brown and Minnie Sirtor had their respective role played following the creation of names of several persons as Remitters who had no knowledge about the fictitious transaction but were alleged to have made several transfers to defendants' individual account as follows:

ROLE PLAYED BY EACH OF THE DEFENDANTS A.) Co-defendant Richelieu A. Davies

With respect to the role played by Co-Defendant Richelieu A. Davies, it is worth noting that prior to the theft, the co-defendant aforesaid opened an account #0240616082902 with the private prosecutrix and thereafter commenced the operation of said account by making both deposits and withdrawals of funds; that prior to October 18, 2004, the date on which codefendant aforesaid was sponsored by the private prosecutrix to undergo training in Swift Operations and Messaging in Accra, the Republic of Ghana in the month of February, 2004, Swift being an electronic system for secure and effective interbank funds transfer; that co-defendant was given the swift training to give him better control and mastery over the electronic system for interbank funds transfer, purposely for the common good and benefit of the private prosecutrix; that notwithstanding the good intention of the private prosecutrix towards the betterment of Co-defendant Richelieu A. Davies, he however, following his training in Swift, used the knowledge so acquired to his advantage and to the disadvantage of private prosecutrix by manipulating statements which resulted in the making of the first fictitious transfer of US\$1,500.00 to his account #0240616082902 on October 18, 2004 which he drew down, thereby depriving the private prosecutrix of funds; that this unlawful, wrongful, illegal, felonious, fraudulent and criminal practice of Codefendant Richelieu A. Davies continued up to and including April 11, 2006 when the co-defendant aforesaid manipulated foreign statements and the last fictitious transfer of US\$6,000 was made and subsequently withdrawn, thereby depriving the private prosecutrix of the total sum of US\$71,550.00 as stated below:

RICHELIEU A. DAVIES ACCOUNT #0240616082902

[Please see pdf for table]

B.) Co-defendant Nojan Brown Co-defendant Nojan Brown in connivance with Co-defendant Richelieu A. Davies to defraud the private prosecutrix, on November 24, 2004 opened a savings account #0240116568202 with the private prosecutrix with an opening balance of US\$75.00 and commenced the operation of same by making both deposits and withdrawals of funds; that as a result of the existence of this account, Co-defendant Richelieu A. Davies made several fictitious transfers of funds to said account #0240116568202 on many occasions during the period commencing from September 8, 2005 with the sum of US\$5,000.00 up to and including May 6, 2006 with the last amount of US\$16,000.00, all of which totalled the sum of US\$84,950.00 and were respectively withdrawn from said account by Co-defendant Nojan Brown whose role it was to make such withdrawals whenever such fictitious transfers were made by Co-defendant Richelieu A. Davies. Hence, by their connivance, Co-defendants Nojan Brown and Richelieu A. Davies did unlawfully, wrongfully, illegally, feloniously, fraudulently and criminally deprive private prosecutrix of the total sum of US\$84,950.00 as stated below:

B.) Nojan Brown Account #0240116568202

[Please see pdf for table]

C.) Co-defendant Minnie Sirtor Co-defendant Minnie Sirtor in connivance with Co-defendant Richelieu A. Davies defraud the private prosecutrix during the period commencing from March 7, 2005 up to and including March 15, 2006, signed for, received and encashed several manager's checks totalling US\$48,500.00 issued by private prosecutrix in favour of Co-defendant Minnie Sirtor on the strength of several fictitious transfers made in favour of Co-defendant Minnie Sirtor by Co-defendant Richelieu A. Davies, thereby depriving the private prosecutrix of the sum of US\$48,500.00 as stated below:

MINNIE SIRTOR REMITTED BY MANAGER'S CHECKS

[Please see pdf for table]

D.) Florence A. Finuku That although the amount of US\$25,000.00 was also criminally and maliciously placed or credited to one Florence A. Finuku's account #0240116638901, she did not withdraw it because she had no knowledge of the fraudulent and dubious transaction perpetrated by the master mind of principal Defendant Richelieu A. Davies as stated below:

3.) That the Defendants with criminal intent, feloniously, knowingly took, received and converted to their personal use, the total sum of US\$205,000.00 (Two Hundred and Five Thousand United States Dollars) from the Liberian Bank for Development and Investment at the time and place aforesaid in manner and form aforesaid, thus the CRIME OF THEFT OF PROPERTY the defendants aforesaid did do and commit, contrary to the form, force and effect of the statutory laws of the Republic of Liberia, against the peace and dignity of the Republic.

To support its indictment, the prosecution produced eight (8) witnesses including two (2) experts. On the other hand, appellant and an expert witness testified on behalf of the defence. Thereupon, the jury returned a verdict of guilty against the appellant.

It is to this final judgment, appellant has appealed. Appellant is strenuously contending that the verdict as well as the final judgment thereon is un-supported by the weight of the evidence adduced during trial. In support of this contention, appellant has urged upon this Court of final arbiter a review of his bill of exceptions containing nineteen counts.

We have determined that count eighteen (18) thereof is germane and dispositive of this case. We quote the count:

"18. That Your Honor reversibly erred when you adjudged the defendant guilty of "Theft of Property" in that:

a. There was no evidence adduced at the trial to prove that the defendant ever played a role in the prosecution witnesses receiving money from the bank.

b. The testimonies of some of the prosecution witnesses that there were more persons investigated and that the defendant was not the only one who had access to the foreign account created a reasonable doubt as to the guilt of the defendant;

c. That the failure of the comptroller to testify created reasonable doubt as to the guilt of the defendant;

d. That the judgment was against the weight of the evidence adduced at the trial."

The dispositive issue before this Court is:

Whether the State made out a prima facie case to warrant conviction in the case at bar.

The controlling law in this jurisdiction is to the effect that conviction of a criminal defendant will be reversed by the appellate court where the evidence adduced at trial was insufficient. Dyson v. Republic, 1 LLR 481, 483 (1906), Attoh v. Republic, 9 LLR 3, 14, (1945), Ali v. Republic, 13 LLR 125, 131(1957).

To make its case, the prosecution produced eight (8) witnesses.

The first of the State's eight witnesses was the head of the Technical Investigation Unit, Criminal Investigation Division, Liberia National Police, Mr. F. Nowoukue Konie. In his testimony in chief, witness Konie told the court that in May 2006, he received a written complaint under the signature of Mildred Reeves, through his chain of command.

According to the witness, the complaint indicated that one Richelieu Davies, a staff of the Liberian Bank for Development and Investment, (LBDI) who was in charge of the bank daily foreign statement and sending transfers, cleverly manipulated the system and defrauded the bank of more than US200,000.00 (Two Hundred Thousand United States Dollars). He said that based on this complaint, agents of the Criminal Investigation Division proceeded to the bank and were furnished with one Dell Gray color lab top computer by the Executives of the bank. The staff informed the witness that the computer was the instrument used in executing the fraud against the bank. The witness also explained that as a means of enhancing their investigation, the investigators requested, and the bank gave them signature cards of the appellant. Subsequently, appellant was arrested and the investigation adequately acquainted him with his Miranda Rights including the right to remain silent. According to the witness, the appellant chose the right to remain silent. But when Ms. Nojan Brown, who was also named in the letter of complaint was invited to answer to allegation against her, and having been duly acquainted also with her rights under the Miranda Rule, chose to talk to the investigators in the presence of her legal counsel.

Witness Konie further explained:

"During interrogation of Ms. Brown, she admitted to the investigation that she met Richelieu Davies in November, 2005 and [has] been in that relationship. Richelieu asked her in April 2006 if she had a USD account with LBDI and she responded yes. And he requested for the account number which was given to him. According to her, when she [went] to withdraw some amount to purchase some used clothing, she saw a considerable increase in her account; and based upon this, she asked Richelieu whether he was the one that added [money] to her account. And according to her, Richelieu said yes; that he has a business partner in Europe that was transferring this money. She also revealed that whenever any money was transferred into her account, Richelieu would come and inform her to go and withdraw it. She also mentioned that whatsoever amount that [was] withdrawn from her account, was turned over to Richelieu."

The witness informed the court that with Ms. Brown's statement, coupled with verified receipts from the bank indicating the various transactions, the investigation had no alternative but to charge defendant Richelieu Davies with commission of Theft of Property.

The prosecution's second witness, Minnie G. Sirtor, in substance, testified as follows:-

"... Richelieu and I started having a relationship January, 2005. And it was a trusted relationship. Early 2005, sometime in March, Richelieu called me out from my house since he knew I was not working that day to come to the LBDI bank with identification. Previously, we talked about opening a joint account at the bank. Taking along with me was my passport and my Ministry of Health ID card. When I got to the bank, I met Richelieu in the front of the building. He handed me a paper that bears the name and address "Davies James England, London and the rest I can't remember. He then directed me to an office and told me that there is a check in my name that I was to endorse. When I tried to ask, he said I should just collect the check and meet him in the office I then collected a manager's check with the total sum of US2,000.00 (Two Thousand United States dollars). I took the cheque to his office; he then walked me to one of the counters where I could cash the check. He stayed until the money was about to be counted, and he then told me to take the money at his house where he will meet me later.

"After working hours, he joined me at his house. After our normal discussion as to how was work, he just couldn't ask me about the money. So I decided to ask. My question was, what is this money all about? He replied that the money was for business purpose and the business was computer graphic. He also said their partner was in Europe or London and he has local partner who was member of the bank. And I asked him again, why it didn't come in your name or any of the partners. He then replied that the tax involved in receiving money from the bank as a worker of the bank is higher to that of a customer not being a worker of the bank.

Having no knowledge of banking, I believed him... I then took the entire sum, which was less USD200 (Two hundred United States dollars), and handed it to Richelieu. This repeated itself many times [with] figure is] ranging from USD2,000.00 (Two Thousand United States dollars) to USD10,000.00 (Ten Thousand United States Dollars)."

"After sometime, early 2006 I again asked Richelieu who was this business partner that kept sending money in my name and just did not care to talk to me. He asked me whether getting the money was a problem. I said no. Because each time I went to the Bank I did not receive any hindrance from any member of the bank that I should sign or release the check."

"One evening, I then decided to talk it over again. This was March 2006. We met at Musu's spot and we had a heated argument pertaining to his business and his business partner. All I wanted to know was to meet his local business partner or to talk to Mr. David James who usually sent the money in my name. He was not prepared to do that; and we concluded that I should never be called upon to sign for any check until I talked to David James."

"And from that day forward he just did not call me again but said to me that he will find another person to do it. We went on for sometimes until May 19. I went to Richelieu's house that evening and he came and met me there. I said I have been trying to call his number but it was off. His reasons were "my battery was down and more besides I have to keep it off because I was arrested for a fraud that I did at the bank." I became confused and decided to ask him further question. He said he was not prepared to discuss anything and needed to rest. He took out USD3,800.00 (Three Thousand Eight Hundred United States Dollars) and told me to keep it until he requested it."

"The next morning, which was Saturday, he instructed me to buy some items and keep the rest of the money until he called, for he was on his way again to the police station. I insisted on coming and he only said to me I should not go there. During the later morning hour, he called me again and said I should take the car off the street and get home and instructed me to use the money and fly to Nigeria to my friends to avoid further embarrassment."

I told him his friends that knew me have started calling to inquire from me as to what is going on. I just didn't know what was going on so I just could not say anything. One of his friends in person of Mr. Cooper told me to meet him at Pizza opposite UNMIL headquarters. Apparently, he was from the police station and knew what was going on but kept insisting that I leave Liberia immediately. I told him that I just could not leave Richelieu without knowing what is happening to him."

"After my insistence, he showed me a text message from one of their friends saying that people are looking for me. Based on his persistence and in obedience to Richelieu, I left for Nigeria the next day with the sum of USD1,0100.00 (One Thousand One Hundred United States dollars) the rest of the USD2,500.00 (Two Thousand Five Hundred dollars) I sent by my friend to my mother (and) instructed her that Richelieu may need money because he was in problem.

My parents did not know that I was leaving the country. While in Nigeria, I decided to contact back home as to what was happening in Liberia. Richelieu could not give any information but insisted that I stayed in Nigeria."

"After some weeks, I found that I was implicated in a bank fraud and was awaiting arrest. I decided to come home. With the little I had, my friend added it up and I decided to come. All he said to me was, you are listening to your parents and friends and do not care about what I say.

But (it) you do want to come, do not use your passport; get a laissez-passe with a different name and come to Liberia. He also said that my parents insisted that he should show me a lawyer since he knew what he has done. He agreed but kept delaying. I then told him that I am coming with my Liberian passport and what is to happen, let it be for I knew that I did not do wrong but to fall in love. I came to Liberia by Belview Airlines, through RIA airport with my Liberian passport that I always took along when I went to collect the checks. I was not harassed nor arrested until I got to Monrovia. He said to me that I should not go home because there was police surveillance at my place. I resided on the Old road with my friends. That particular day, Richelieu came over and all he said was, I will talk to the lawyer; but you remain in-door until I do so.

I called my parents. My mother insisted that we go to the police station and I told her I was not going there. I begged them to handle the issue with Richelieu's mother. Richelieu set the appointment with his mother for a Sunday evening. When they got to his mother, my father and my uncle, Richelieu was no where around. I was not there for their discussion; but according to my parents, they said Richelieu's mother listened to what they were telling her to go at the bank and talk to the Administration (or)... find alternative measure.

All she said was I am not saying that he did not do it; but he will answer these questions for himself you can find a lawyer for your daughter. Based upon her reply, my parents and I along with Miss Cecelia Morris decided to meet Mr. Francis Dennis to explain what I knew about this matter. We went to the bank one afternoon and everyone was staring (as if asking) where is she from? How did she get here? We met Mr. Dennis who called some counsellors and some lawyers along with some members of the bank, those I do not know in persons for me to explain what I knew about this matter. I did explain and we came to this court. My parents gave some documentation and I was allowed to go home This is what I know about this matter."

Prosecution's third witness, Nojan Brown, told the court: *"Member of the Jurors, I got to know Richelieu Davies 2005, September and he told me that he loved me. We started loving. As time went on, he asked me, "Nojan, do you have an account?" I said yes. I have an account. He asked me; "please let me see your account number" I gave it to him. So this day, I went to the bank on my own to make some deposit and I saw increase in my account. Then it came to my attention (that) he was the only one that asked for my account number. So I picked up my phone and I called him. I said, Richelieu today I went to the bank and I saw increase in my account; so I want to know; you (are) the only person I gave my account number to. He told me yes Nojan. I am the one who put that amount in your account. I asked what for. He said it is business money; I have my business partner overseas who asked me for an account number; so as my girl friend, I gave him your account number. Then he said, that money is a business money; when I get ready for it I will let you know to go and collect it."*

"So the first time, he called me, he and I walked to the bank together. He had the withdrawal slip and he wrote the amount he wanted and then asked me to write my account title and then sign. Then he said when I collect the money, I should go to his office. After signing for the money, I went to his office and gave him the money. And I left. So for every time the money came, he will call me and let me know that the money is here. And then he will tell me, my business has sent me money; please go and withdraw it. So the withdrawal was going on....And he continued to send me for the money over and over. It continued until May 19, 2006 when I was arrested by the Police and they said there is a fraud at LBDI bank. And the CID asked me, we learnt that money was transferred into your account; we want to know how this happened and then I reduced it in writing to one Koenig, and Koenig asked me for my bank book also and I gave him the bank-book. From there, the book (was) left with Koenig; and from there, they released me from Central..."

The fourth witness for the State was Mr. Lester Kroma. He recalled that while he was employed by LBDI, he and the appellant had a discussion regarding a house that was out for sale. The witness explained that the appellant asked about the location of the house and wanted them to go and inspect it. Following the inspection, the appellant was informed that the initial price for the house was USD28,000.00 (Twenty-eight thousand United States dollars) subject to negotiation. The witness further narrated that the appellant agreed to the amount of USD25,000.00 (Twenty Five Thousand United States Dollars). He said the appellant informed him that he will pay fifty percent of the amount through a bank transfer. But a few days thereafter the appellant sent him a text message which reads as follows:

" Please send account number... from Richelieu."

Upon receipt of said text message, the witness said he inquired from the appellant which account precisely he was referring to. To which appellant replied "*your account....*" The witness further informed the court that he instead sent his girl friend Florence A. Finuku's account number to the appellant. One week thereafter, upon inquiring at the bank, the witness found out that his girl friend's account had been credited with the USD 25,000.00 (Twenty-five thousand United States Dollars)) representing the full purchase price for the house.

The witness further informed the court in these words:-

"Upon knowing that my girlfriend's account had been credited, the suspicion that I personally have held for Mr. Richelieu Davies was nearing confirmation. So with that information the fact that Mr. Davies in the far past was an individual who I was acquainted with and knew could not afford certain basic things, but Mr. Davies, over a reasonable period, had started to boom. Mr. Richelieu became very flamboyant spending a lot of money. I recalled personally asking Mr. Davies about his source and Mr. Davies would simply say he was doing business.

So when this big transfer was made to my girlfriend's account, I saw it and concluded that it must have been done fictitiously so I decided to bring [this] to the attention of management. In doing so, I contacted immediately a senior manager named Mr. James Boker. I explained to Boker everything regarding the business transaction between Mr. Davies and I told Mr. Boker that this had been [my] suspicion all along and I believed that the amount was fraudulently transferred by Mr. Davies and that the issue required an investigation.

Mr. Boker immediately took interest and conducted a preliminary investigation and immediately found out that Mr. Davies, apart from transferring the amount of USD25,000.00 (Twenty-Five Thousand United States Dollars) to my girlfriend's account, [he] had also transferred money to his own account.... and also to other account. Infact I had seen Richelieu closely interacting with two other ladies by the names Nojan Brown and Minnie Sirtor. I informed Mr. Boker that it was worth the while to check whether there was similar transaction done with Nojan Brown and Minnie Sirton. At that point, Mr. Boker informed me that the matter would be forwarded to the management and a joint investigation involving sections of the Bank could be conducted to ascertain the fact. Henceforth, said investigation was conducted. It established that similar transfers had been made by Mr. Davies to Nojan Brown and Minnie Sirton. So beginning October 18, 2004 up to May 19, 2006, the investigation shows that Mr. Davies had made transfer fictitiously to his account, to the account of Nojan Brown and for Minnie Sirtor, transfer came in her name but was paid to her by manager's check. The investigation established that a sum totalling USD71,550.00 (Seven One Thousand Five Hundred and Fifty United States Dollars) had been transferred to Mr. Davies own account.

For Nojan Brown, in that [same] period Mr. Davies transferred a total of USD84,950.00 (Eighty-Four Thousand Nine Hundred and Fifty United States Dollars). Minnie Sirtor who received her transfers through manager check received a total of USD48,500.00 (Forty-Eight Thousand Five Hundred United States Dollars). So then the bank after generating the information on these accounts, compiled three booklets containing statements and withdrawal slips for the accounts that were under investigation. At that point, the Bank had sufficient reasons and facts to hold Mr. Davies liable for the theft of USD205,000.00 (Two Hundred and Five Thousand United States Dollars)....

Mr. James Boker also testified for the State. He told the court that he conducted a preliminary investigation upon a tip-off. He narrated in the following words:-

"In the process, I reviewed the account of Mr. Richelieu Davies and also the accounts of Miss Nojan Brown and Ms Florence Finuku. I determined that Mr. Richelieu Davies made 17 transfers to his account totalling USD71,550.00 (Seventy one thousand five hundred and fifty United States Dollars), made twelve transfers to the account of Nojan Brown totalling USD84,950. He also made nine transfers to accounts in favour of Minnie Sirtor valued at USD18,500.00 which were all paid by way of manager' checks unlike the others"

"In my investigation I tried to determine how a person in Richelieu position could carry on such a fraud. Mr. Richelieu Davies was the staff responsible for our SWIFT account and also responsible to print the statement from standard charter via the SWIFT system. / also realised that only authorized person would have access to the SWIFT. I then called for all SWIFT statements that Mr. Richelieu Davies presented to management for processing I examined the statements and recorded all the amounts that were placed in the account of Richelieu Davies, Nojan Brown, Florence Finuku and also transfers made in favour of Minnie Sirtor. I then requested for the original statements which were sent by standard charter to the mailing system. We could not find the original statements. We later realised that Mr. Davies was hiding the statements and not presenting them to management to cover up his fraud. We immediately called standard charter by way of telephone to verify if the transactions placed on the statement were indeed true and originated from standard charter.

After a few moments, Standard Charter called back to say that the transactions amounting to USD205,000.00 (two hundred and five thousand United States dollars) and another transaction for USD25,000.00, were all false. The Bank then decided to write standard charter and to obtain an affidavit stating indeed that the transactions were false. It was at this point, I realized that the statements presented to management were manipulated (and) changed to include amounts that were not on the original statements, to the benefit of Mr. Richelieu Davies through his own account and

that of Ms. Nojan Brown, Florence Finuku and Minnie Sirtor. I then reported my findings to the rest of management."

"Management then set up a special team to continue the investigation. After their investigation, we then called Mr. Richelieu Davies into the office of the general manager and explained to him what we had uncovered. We then asked him if indeed he knew of these transactions and whether he was the one who made them up. After a moment, Mr. Richelieu Davies confessed to committing the crime. We then asked him to put that into writing (and) he refused to do so. At that point, the management sent to the Ministry of Justice to report the matter and Mr. Davies was then turned over to the state..."

Following his general testimony, witness Boker was cross-examined and asked whether the appellant was the only person authorized to operate the LBDI SWIFT system. The witness answered in the following words:-

"No. He was not the only one who had access to the SWIFT System but it was his responsibility alone to print the statement and forward it for processing."

In addition to these strong links in the chain of evidence for the State, Prosecution produced its eighth witness, an expert witness called Prof. Theo Joseph, managing partner of Voscon Incorporated, assistant professor of accounting at the University of Liberia and a certified fraud examiner licensed by the State of Texas, United States of America and also Forensic Accountant licensed in the State of Washington, U.S.A. with field experience of over twenty years.

Testifying for the State, the expert witness said:-

"We conducted a fraud and forensic examination into the allegation of USD230,000.00 (Two Hundred and Thirty Thousand United States Dollars) that was believed to have been fraudulently withdrawn from the LBDI foreign account by one of their employees in the office of the financial comptroller by the name of Richelieu Davies.

"Our examination reveals that thirty-nine (39) payments were unsuspectingly made by the LBDI to Richelieu Davies through false sources. To himself, he made seventeen (17) payments, amounting to US\$71,550.00 (Seventy One Thousand Five Hundred and Fifty United States Dollars). Through his instrumentality twelve (12) other payments were made unsuspectingly also to Nojan Brown and nine (9) other payments were made unsuspectingly to Minnie Sirtor amounting to US\$45,550.00 (Forty-Five Thousand Five Hundred and Fifty United States Dollars)... The twelve (12) payments that were made to Nojan Brown amounted to US\$84,950.00 (Eighty-four thousand nine hundred

and fifty United States Dollars). The fourth (4th) payment which was a set-up payment was to be made to Florence Finuke in the amount of US\$25,000.00 (Twenty-Five Thousand United States Dollars).

This amount was not paid to Florence as this transaction was set up by the Bank to catch Mr. Richelieu Davies after the bank received information concerning the past fraudulent transactions.

Further testifying, the expert witness told the court:-*"We talked to the Financial Comptroller of the LBDI and she told us that Richelieu Davies worked in her office as an assistant;... that Richelieu Davies is the person responsible to receive bank statements from LBDI foreign bank when (those statements were sent) to Liberia; that Richelieu Davies was also responsible to liaise on foreign bank website and to print out foreign bank statements on a daily basis. And these statements were presented to the comptroller for her signature; Richelieu Davies was also responsible to distribute copies of the signed statements to the various sections which included the bank operations department which was responsible to make payments on foreign transfers that have been deposited with the foreign bank.*

We also learned that Richelieu Davies was the only one at the bank that was sent to Ghana to be trained in the operation of the bank SWIFT CODE. Richelieu Davies also had pass code to the SWIFT CODE [and] no other employee in the bank was trained in that area. We also found out that Richelieu Davies was in the habit of downloading the foreign bank actual and true statement and then loading it onto his own lap top computer and manipulating the figures on those statements. And we found out that it was actually the fake statements manipulated by Richelieu Davies which were indeed reported to the financial comptroller for her signature. The financial comptroller unsuspectingly signed and approved those fake statements...."

The expert witness also explained to the court that the appellant, Richelieu Davies, over nineteen (19) months period, had acquired five vehicles and a house under construction in the name of Minnie Sirtor. According to the expert witness, this finding prompted us and we learned that Mr. Davies' salary at the bank including all benefits did not exceed US\$500.00 (Five Hundred United States Dollars).

The expert witness further explained that the appellant took steps after perpetrating his fraudulent activities to alter the bank records.

He said:-

"At the end of the year 2004, the foreign bank credited the LBDI with the amount USD1,369.00 (One thousand three hundred and sixty nine United States dollars) as interest earned for the month

of December 2004. It was very important to Richelieu Davies that the bank balance at December 31, 2004 reconciled or equal to the bank balance on his Richelieu fake statement. In other words, the balance on his fake statements should be equal to the balance of the actual statement from the foreign bank. Richelieu Davies had earlier made a fake transfer of USD2,000.00 (two thousand United States dollars) that was not on the actual statement. He therefore, to cover up the amount of USD2,000 (two thousand United States dollars) that he had fraudulently transferred to his account, altered the amount of USD1,362.00 (One thousand three hundred and sixty two United States dollars) that was originally credited to the LBDI by the foreign bank to an amount of USD3,362.00 (Three thousand three hundred sixty-two United States dollars).

The difference of USD2,000.00 (Two thousand United States dollars) was meant to cover the Two thousand dollars that Richelieu Davies had previously fraudulently transferred. And another case in point is USD7,000.00 (Seven Thousand United States dollars) check that was deposited in the foreign bank account and paid by the bank, was reinstated by Richelieu Davies into the fake statement as being unpaid. The reason was that Richelieu Davies was trying to conceal USD5,000.00 (Five Thousand United States Dollars) fake transfer and a USD2,000.00 (Two thousand United States dollars) fake transfer that he had earlier included in the fake bank transaction...."

Answering on cross to a question regarding difference between the SWIFT CODE and the on-line website, the expert said:

"Anyone can go online to download any website at anytime. But to gain access to one's account, one should be privileged to have an access code."

When the expert witness concluded his testimony, the State rested with production of both oral and documentary evidence. With leave of court, the State also admitted into evidence a bunch of evidentiary instruments, identified, marked, confirmed and re-confirmed during the trial. These included sworn affidavit by Mr. David Jason Mathews, Senior Manager, Customer Services Department of Standard Charter Bank dated December 18, 2006, and authenticated on January 31, 2007, by the Liberian Embassy near London, United Kingdom, referring to 39 (thirty-nine) fictitious transfers reflected by the appellant; LBDI bank statements of Nojan Brown, Richelieu Davies and Florence Finuku; 3 (three) booklets detailing various transactions including transfer statements and withdrawal slips and manager's checks in favour of Nojan Brown and Minnie Sirtor respectively; and a forensic audit report authorized by Professor Theo Dekontee Joseph, Managing Partner of Voscon Incorporated highlighting series of transactions, subject of these proceedings.

It was on the strength of these testimonies supported by voluminous evidentiary instruments, that the petit jury returned a unanimous verdict of "guilty" against the appellant.

In his appeal, as summarized in his bill of exceptions, appellant has strongly argued that the judgment of the trial court is not supported by the weight of the evidence adduced at the trial.

This Court is un-impressed by this argument and disagrees with appellant's submission that a prima facie case was not established against him.

A long-held principle as to what prima facie evidence is in criminal jurisprudence, is elaborated in *Swaray V. Republic* 15 LLR 149, at page 177 (1963). Speaking for this Court, Mr. Justice Mitchell said:

"Prima facie evidence is that which, either alone or aided by other facts presumed from those established by the evidence, shows the existence of the fact it is adduced to prove, unless overcome by counter evidence; evidence which, unexplained or un-contradicted, is sufficient to maintain the proposition affirmed. Prima facie evidence is sufficient to support a verdict in favour of the party by whom it is introduced where no contraverting evidence is introduced by the adverse party...."

Also as far back as 1945, this Court, in the case: *McCauley V. Republic* 9 LLR 116, 120-121 (1945), on the same principle indicated:-*"The advantage that the defendant derives from the fact that the burden is on the prosecution to prove his guilt beyond a reasonable doubt, ceases when the prosecution has done this to such an effect as to sustain a verdict of guilty.*

At this point, should the case close and go to the jury, it goes free from the presumptions arising from the imposition of the burden of proof. The rule requiring the actor to take on him the burden of proof is a rule of practice adopted for the proper development of the case, and ceases to operate when the evidence on the part of the prosecution establishes the defendant's guilt beyond a reasonable doubt "

"But the presumption of innocence never ceases throughout the trial, but goes, with all the evidence, to the jury for consideration."

Clearly, all the testimonies and documentary evidence generated during the trial pointed to only one perpetrator, Appellant Richelieu Davies. Under these circumstances, the law in this jurisdiction is that where damning testimony has been placed on record against a criminal defendant, only refuted, such will constitute prima facie evidence of fact.

This principle of law is articulated in *Pave V. Republic of Liberia* 10 LLR 55, 56 (1948). Mr. Justice Russell speaking for this Court, said:-

"Prima facie evidence of fact is in law sufficient to establish a fact, unless rebutted..."

The principle of law mentioned above, applies to the case at bar. A perusal of the records before us, detailing the various testimonies and supporting documentary evidence adduced at the trial, clearly leads to only one undeniable conclusion: that the crime, theft of property was committed at the LBDI through cyber fraud during the period October 18, 2004 to May 19, 2006, over a period of 19 (nineteen) months; that said crime was committed, even by appellant's own expert witness' opinion, by an insider. Who could that insider be?

A further review of the records in this case indicates that when prosecution rested, appellant took the stand in his own defence. We quote verbatim appellant's testimony in his own defence:

"...(the) testimonies said by the prosecution {were intended} to confuse the honourable court and the jury. He (prosecution) stated:-

"1. That I was sent to Ghana for training in the operation of SWIFT is definitely ignorant of the fact or source to confuse the situation. I was sent to Ghana for an introductory course in Swift training which can now be verified on the internet at www.swift.com/education. On this site, you will find your course or courses I undertook in Ghana."

"2. The Standard Charter website which is different from the swift website as demonstrated here by the prosecution witness are two different systems. To verify, you may go to the internet. www.standardcharter.com. I like to mention also that I have worked tirelessly for the Liberian Bank for Development for many years through the war when there was no personnel available to take the risk to perform the functions designated to me by my boss. Without hesitation, I performed these functions expected of responsible dedicated staff. As also stated by prosecution's witness that I was very flamboyant, this shows his jealousy which clearly signified while he testified against me. I have no remorse for working for the bank making my sacrifices for the bank as an obligation of dedicated staff which can be verified by the management of the bank during my tenure. I feel bad and broken hearted for an institution which I have given my life and sweat without requesting any remuneration or increasing salary or any the special services to put me on trial. May God be my helper. I rest."

A subpoenaed expert witness, Stephen H. Howard, also testifying on behalf of appellant, told the Court that SWIFT is an acronym for "Society World-wide Inter-bank Financial Telecommunication". He further explained that SWIFT is simply a carrier of message between and amongst financial institutions.

He further testified:-"*.... The provider of SWIFT leaves the responsibility of control to the sender and the receiving bank. To the best of my knowledge, SWIFT in the case of outgoing transfer, there are normally three basic steps to complete swift transaction. (1). There must be an importer or verifier, authorizer and control in the expert of receiving bank. Normally from where I know it there should be minimum of man intervention in the printing of SWIFT statement. In this situation you will have Epsom or dot matrix as a major control because with man intervention there is high possibility of foul play especially in the case of copy and paste, meaning you are extracting from Swift to word perfect or word paste. Again I will say it is mere carrier. I rest.*"

Asked by the court to explain what he meant by "minimum men intervention as a control measure in the SWIFT system, the expert witness answered saying:-

"With my knowledge of bank fraud, over 80 percent are committed by insiders. As such, (what is] is advisable is internal control so that what come in SWIFT, is what comes out from a diligent printer. In this sense I mean that this printer is attached or connected to the SWIFT server to allow messages from SWIFT throughout. It is almost impossible for you to delete or erase dot matrix print out. For all of Dot matrix if you have seen one before, it may have a print out like a typewriter print. And therefore, they are difficult to erase, If they are done with copy of SWIFT to word; [in which case], the receiver can take from SWIFT to word and can edit."

As can be seen from the records, both the appellant's testimony and that of his expert witness said nothing to refute the very serious and key damning testimonies made against the appellant.

These very damning testimonies against the appellant, which stand un-rebutted, included the following:-

(1) That he, Appellant Richelieu Davies, criminally and maliciously credited USD25,000.00 (Twenty-five Thousand United States Dollars) to the account of Ms. Florence Finuku for the purpose of purchasing a house. Appellant said nothing to rebut this serious testimony made against him.

(2) That the appellant used his official office and transferred USD71,550.00 (Seventy-one thousand five-hundred fifty United States dollars) to his personal

account; neither the appellant nor his expert witness said a word to dislodge or refute this fact.

(3) That on the strength of fictitious transfers made in favour of Minnie Sirtor by Appellant Richelieu A. Davies, said appellant deprived the private prosecutrix, Liberia Bank for Development & Investment of the sum of USD 48,500.00 (forty-eight thousand five hundred United States Dollars). Again the appellant was equally stone silent about this serious testimony against him.

(4) That the appellant was the sole person responsible for the printing of all foreign banks daily statements from internet; that the appellant, Richelieu A. Davies, instigated by the devil, wickedly and criminally connived with others and defrauded the LBDI by manipulating the bank statements and inserting amounts not originally included in the official and authentic statements and presented said falsified statement for processing. Again appellant said nothing to under-mine this very serious testimony against him.

(5) And as indicated by expert witness testifying on appellant's behalf, it was clearly established that a receiver of a copy of SWIFT "can take from SWIFT to word and can edit" and that eighty percent of bank frauds are the work of insiders. The insider squarely pointed to the appellant as *the personnel in charge of the pass code to the SWIFT and no other employee in the bank was trained in that area*. Again appellant woefully failed and neglected to either produce a witness to contradict this serious point against him, or refute said testimonies against him.

In the face of these strong links in the chain of evidence against him, appellant took the stand but submitted nothing in oral or written evidence, to support the plea of not guilty.

As laid down and emphasized in Paye V. Republic of Liberia, 10 LLR 55, 56 (1948), the law in this jurisdiction is that where damning testimony has been placed on record against a criminal defendant, unless rebutted, such will constitute prima facie evidence of fact. Mr. Justice Russell speaking for this Court in said case, stated:

"Prima facie evidence of fact is in law sufficient to establish a fact, unless rebutted."

We therefore hold that the prosecution did establish a prima facie case and prove beyond reasonable doubt the guilt of the accused to such a great extent as to justify a verdict of guilty.

This Court therefore must, and hereby affirms the verdict of the jury and the judgment entered thereon sentencing the appellant to five (5) years in common jail and ordering him to retribute the amount as contained in the indictment.