

BOIMA GISSIE, et al., Appellants, *v.* **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT,
GRAND CAPE MOUNT COUNTY

Heard: December 3, 1979. Decided: December 21, 1979.

1. It is our practice that indictments are proved as charged, and charged as proved.
2. Variance in the prosecution's evidence must operate in favor of the accused.
3. Evidence, which might have supported the charge against defendant and could have been used, must be produced at the trial or the defendant will be acquitted.

Appellants, all of whom are members of the Gissie tribe in Grand Cape Mount County, were charged, indicted and found guilty of theft of property. On appeal, the Supreme Court reversed the judgment and discharged the appellants. The Supreme Court found that there was no evidence to substantiate the crime charged; the testimonies of witnesses for the prosecution were at variance; and other evidence, which might have supported the charge, was never produced at the trial. Consequently, the decision of the lower court was *reversed*.

M. Fabnbulleh Jones appeared for appellants. The *Solicitor General* and Counsellor *M. Fulton W. Yancy, Jr.*, appeared for appellee.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

The indictment in this case charged the accused with having robbed the people of the town of Neumaguima in Grand Cape Mount County of cash and goods totaling \$4,967.45. This sum represents the value of goods supposed to have been taken from several citizens of the aforementioned town, and was made up, as follows:

| | |
|---|------------|
| From Varnie Kroma, cash and goods, value..... | \$1,141.50 |
| From Momo Kroma, goods value at | 160.50 |
| From Varnie Kono, goods valued at | 1,763.00 |
| From Boakai Bao, cash and goods..... | 119.75 |

LIBERIAN LAW REPORTS

| | |
|---|------------|
| From Momo Kallon, cash and goods | 482.75 |
| From Massa Kroma, goods valued at | 65.70 |
| From Ciafa Dressie, cash add goods..... | 618.00 |
| From Jebbeh Kallon, goods valued at | 138.50 |
| From Ciafa Boa, cash and goods | 125.50 |
| From Howa Kroma cash and goods | 352.25 |
| Grand Total | \$4,967.45 |

The cash and goods belonging to the persons named hereinabove were alleged in the indictment to have been robbed from the inhabitants of the aforementioned town; putting the town's people in fear by discharging firearms and using force and violence, and thereby putting the town's people in fear.

The first witness to testify for the prosecution was Varnie Kroma, one of the persons who had been allegedly robbed according to the indictment. He said one Moses came to the town and carried away Ciafa Dressie, another one of those claimed to have lost goods in the robbery. The next morning the robbers brought him back to the town tied with a rope around his waist. They entered the town and began shooting in the air, they tied men and women, shot a ram and destroyed property. Fahn Batta, the chief of the town came on the scene and questioned the behaviour of the wrong-doers and they were alleged to have informed him that Boima Gissie had sent them to destroy the town. He said that the assistant clerk of court was present and witnessed these things. But the assistant clerk was not called to testify.

On cross-examination this witness was asked the following question:

Q. "You have stated that when Chief Fahn was on his way to your town he met some of Boima Gissie's men with some of the alleged things that were robbed from your town. Is it not a fact that some of these things were taken away from them?"

A. I did see them taking some of the things away from that. All of them were tied, even the rope we were tied with is in the office here."

There are two important points brought out in this witness' testimony which we regard very relevant to the fair determination of this case: 1) Chief Fahn is supposed to have met the robbers with the goods robbed on his way to the town, yet he seems to have made no effort to recover the goods he saw or testify at the trial and tell what he knew. According to this witness Chief Fahn is supposed to have untied them when he entered the town, yet he was not brought to testify. 2) The rope that this witness claimed was used to tie the people, and which he said was in the court's office was not brought to the trial. If the rope was

LIBERIAN LAW REPORTS

available, it certainly would have been convincing evidence. But there was no fruit of the crime brought to court or put in evidence, even though witnesses testified to the destruction of personal property - such as teacups, plates and things like that some of the broken pieces might have been brought to court. But what happened to the goods taken away from the robbers according to him? He said he saw them taking some of the robbed goods from the accused.

Ciafa Dressie testified next, and in his testimony which was much like that of Varnie Kroma, he claimed to have lost in the robbery a gun and two radios and other things. All of the State's witnesses testified in this strain, but there was nothing put in evidence to substantiate what they had said. He also testified to destruction of the town, even the indictment does not change this. Each private prosecutor testified to what he or she was supposed to have lost in itemized detail when the town was allegedly attacked and robbed, without any supporting evidence, and that is the trend of the State's case. Several prosecution witnesses testified to the Gissie people making war in the area, but this isn't mentioned in the indictment either.

A witness, Momo Dorma, also testified for the state. His testimony seemed to have been intended to accuse all persons of the Gissie tribe, the tribe of Boima Gissie who was chief of the Gissie people. During his testimony the court asked this question:

Q. "During your statement and in your answers to questions, you sometimes referred to the defendants by name, as Gissie people, the same group and plenty of people. To clear the mind of the court and jury, when you used these teams, do you mean all of the defendants each time?"

A. All of them did the same thing together at the same time."

Now according to the records before us, there were twenty-one (21) persons, all of them of the Gissie tribe who were arrested and held in custody; is it possible that all of these people were doing the same thing at the same time?

Police Officer A.B. Kamara testified for the State; and he said that he and others had been sent from the magistrate court in the vicinity, upon report made to the magistrate that the Gissie people had declared war in the area. They went to the area but saw no fighting as had been reported. But here is relevant portion of his testimony in his own words:

"After the investigation they called us and turned over to us Puma Gissie and Numa Taylor. They told us these persons were the war leaders in the fight. There were twenty-one turned over to us and I made two trips with them in the police van. I never saw the investigation results, but rather they simply told us to carry the people before

LIBERIAN LAW REPORTS

the magis-trate. They ordered us to put these twenty-one people in jail and so we put them there. Two days time I saw a lawyer from Monrovia, he went to over lieutenant and they gave us order to take the twenty-one people out. Whether they were under bond or they were free that day I cannot tell."

This police officer attached to the magistrate's court had testified that he was given these twenty-one Gissie people in his charge, and that he took them by police van to the magistrate making several trips to do so. He was a prosecution witness.

Another prosecution witness, Clarence Stuart testified that another police officer called Varflay had arrested the people and taken them to the police station. The variance between the testimonies of these two prosecution witnesses respecting the arrest and transportation of the arrested Gissie defendants is most outstanding. The cross examination of witness Stuart is very interesting; here are his answers to questions put to him:

Q. "Mr. Witness, after the said arrests, as alleged by you, were made by police officer Varflay, I presume it was only those arrested, with you and police officer Varflay that left Neumaguima, leaving the others that were not arrested. Am I correct?"

A. When Varflay made the arrests we came on with the arrested persons.

Q. Upon leaving Neumaguima with the arrested persons please say for the benefit of the court and jury where did police officer Varflay take them?

A. Men Varflay arrested the people he brought them to Mano River at the police station.

Q. Mr. Witness, is it not a fact that it was police officer A.B. Kamara that transported the defendants from Boganda to Mano River and not you and police officer Varflay?

A. Varflay and myself took the people at Mano River. I never saw A.B. Kamara with us."

Clearly, the testimony of this state witness does not agree with that of police officer A. B. Kamara, also a prosecution witness, and if there is variance in the prosecution's evidence, that variance must operate in favour of the accused.

Several prosecution witnesses testified that Boima Gissie had sent his men to the town in question with orders that they should destroy the town and bring human heads: Some testified that the Gissie people had declared war in the area. But neither of these charges was laid in the indictment. It is our practice that indictments are proved as charged, and charged as proved. It is therefore puzzling as to why the state's witnesses went outside the scope of the indictment to talk about declaration of war, and orders from Boima Gissie to destroy the town and bring human heads. These allegations had nothing to do with robbery, but seemed to have been an attempt to charge a more serious crime. At this point the State rested its case.

LIBERIAN LAW REPORTS

Boima Gissie, the Gissie Chief, who is the principal appellant in the case testified on their behalf, and told of an uncle of his called Tamba alleged to have been missing in this town where the robbery is alleged to have taken place. He reported his uncle's disappearance to Commissioner Coke and other leaders in the areas. A search was ordered but for fifteen days the man was not found. Two other Gissie men went to the town in question, and they also disappeared. Here is his story in his own words:

". . .The acting Paramount Chief Muana Bondu, Clan Chef Fahn, Chief Fahn Musa and Momo Dorma came and the paramount chief ordered that we would go to the Town of Neumaguima (where the crime is supposed to have been committed). He had with him ten militia men, and plenty people went ahead of me When I got in the town of Neumaguima the paramount chief told me that we should go back, and I said how, we came to look for the man and you say we should go back? He said, yes, because another chief on this side did not come, and we returned to Boganda. The next morning I saw a group of police and they ordered me to get inside the car. I asked what happened? Police Officer Kamara said get inside the car and let us go. They carried me and put me in jail. While I was in jail I heard that they brought other Gissie people and they had been placed in jail also. . . . One of our brothers came from Monrovia with a lawyer, and my brother asked me why I am in jail for two days? After the lawyer came they releases me from the jail. From that day I never took one thing from Neumaguima and I never say anybody holding machine. And not one day they have gone to my house and found something there from Neumaguima. They say that I sent people to Neumaguima which I did not do. This is all I know."

This testimony of the witness held under severe cross examination. The jury had asked questions:

- Q. "During your arrest did you ask the arresting officer what charge they brought against you, or what did you do?"
- A. We asked the police what did we do, and the police said that the Acting Paramount Chief Muana Bondu said that we had declared war, and we did not declare war.
- Q. In the testimony it was alleged that you had sent to the town of Neumaguima to arrest the people and destroy the town. Did you do these acts?"

A. I swear to God I did not do them. “

Several defense witnesses testified and their stories supported that told by Boima Gissie, but Augustine Jalieba testified and brought another phase into the matter. He told the same story Boima Gissie had told up to the point that Boima Gissie had been arrested by the police and taken away. He said:

“. . . After that Chief Boima Gissie, Moses No. 1 and Numa Taylor were taken down to Mano River. After they left, the paramount chief ordered the area wherever Gissie people were, they should have them arrested. Not too long they started catching some Gissie people and locking them up in the town of Boganda. And afterwards a man came and complained to me by saying that they were asking them to pay the sum of Five Dollars, and upon said payment of five dollars the chief will set them free. . . .”

Quite strangely, this damaging accusation made against the Chief, of arresting Gissie people and releasing them upon the payment of five dollars, was not refuted. Could it be that the whole exercise was a money-making contrivance? The true answer to that question is anybody's guess.

We find ourselves unable to affirm and judgment in this case because: (1) there is variance in the evidence of the prosecution; (2) evidence which might have supported the charge against the accused was never produced at the trial, although the evidence was available and could have been used; (3) awarding a new trial would serve no useful purpose since so much time has elapsed since 1970. We therefore reverse the judgment of the trial court, and order the defendant/appellants discharged without day. 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 this case and give effect to the judgment.

Judgment reversed.