Harris Nagbe of the City of Fish Town, River Gee County **APPELLANT** Vs. His Honor **Charles K. Williams**, Resident Circuit Judge 15th Judicial Circuit, River Gee County, Liberia and the **Republic of Liberia** by and thru the County Attorney of River Gee County of the Ministry of Justice, Republic of Liberia **APPELLEES**

LRSC 4 (2011)

HEARD: October 20, 2010 DECIDED: January 20, 2011

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This is an appeal from a judgment brought down in the 15th Judicial Circuit Court of River Gee County, convicting the appellant guilty of manslaughter in the November 2009 Term of Court. Excepting to the verdict of the jury and judgment of the court below, the appellant filed a 4 count bill of exceptions as follows:

1. "That Your Honor erred when you denied the defendant's motion to dismiss the indictment since there was a variance between the coroner's report and the Police charge sheet as found on page 3 of the 8th day of Jury Sitting, November 18, 2009.

2. That Your Honor further erred when you disallowed defendant's question to the prosecution's lead witness to explain the difference between Manslaughter and Negligent Homicide as found on page 7 of the 8th day of Jury Sitting on November 18, 2009.

3. That Your Honor also erred when you denied defendant's request to subpoena the two pastors and the police officer who conducted the preliminary investigation in the hunting incident for the defendant was charged with Negligent Homicide which was later changed to Manslaughter.

4. That Your Honor erred when you rendered a judgment in support of a verdict which was contrary to the evidence adduced by the prosecution and an appeal was announced to the Honorable Supreme Court of the Republic of Liberia."

The facts in this case are undisputed. In the records is a report of the Coroner of River Gee County, Moses W. Wesseh. In his report, Mr. Wesseh states that Mr. Roosevelt S. Harrison, District Coroner, reported to him that an accident had occurred in Webbo Wleboken on Saturday, October 31, 2009, at 6:30 p.m. He proceeded to the scene of

the accident along with the District Coroner and the community members included the police officer assigned in Konowroken, Webbo District and police officer known as Maxwell Tarwily. The coroner put together a team of fifteen (15) men to serve as jurors for the inspection and investigation of the incident.

During the team's investigation, the appellant explained that he and the victim, Boy Charles Collins, went to hunt for monkeys. They entered the forest in different directions. While walking in search of animals, the appellant said, he saw an object with eyes like animal eyes, in the form of a deer. He fired at the object but when he rushed to the scene, he met the late Collins lying in the creek. Appellant then lifted the deceased head from the creek to avoid water entering his nose and mouth. The appellant ran to town and told Pastor Chegbo and Rev. Allison who advised him to report himself to the Liberia National Police.

Upon inspection, the Coroner Jurors saw the deceased lying in the creek with his head out of the water, his face, and hands riddled with bullets, evidencing that the victim was faced toward the hunter when he was shot. The distance at which the appellant stood and fired at the deceased was measured at fifteen (15) feet. Fifteen (15) bullets were found to have entered the victim's body, resulting to his immediate death.

Similarly, the police charge sheet dated November 2, 2010, alleges that on November 1, 2009, the police received a communication from the community police in Webbo-Wlegboken, indicating that defendant Harris D. Nagbe had shot and killed one Boy Charles Collins in Wlegboken. Predicated upon the allegation, a team of police investigator(s) was dispatched to the crime scene to ascertain the information. During the police preliminary investigation conducted, it was established that the victim, Boy Charles Collins was shot and killed on October 31, 2009, at 6:45 p.m. The incident took place at about one hour forty-five minutes walking distance from the town; that the defendant admitted shooting the deceased but said it was a mistake. He said, he had seen this object which appeared like a black deer and shot at it. Having fired at the object, the defendant ran to the spot which was about fifteen feet from where he was, and realized that he had shot his friend whom he had entered the bush with earlier.

The charge sheet alleged that the deceased died from fifteen to sixteen rounds of bullets being shot in his neck, shoulders and face; thus, leaving the police with no alternative but to charge the appellant/defendant for manslaughter

Thereafter, appellant was indicted by the Grand Jury for manslaughter, a felony of the second degree.

The indictment charged the defendant for recklessly and carelessly causing the death of Boy Charles Collins in violation of §14.2 of the Penal Code Law of Liberia, which states:

"a person is guilty of manslaughter if he:

a) Recklessly causes the death of another human; or

b) causes the death of another human being under circumstances which would be murder except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse, the reasonableness of the excuse shall be determined from the view point of the person in this situation under circumstances as he believes them to be. The emotional disturbance is excusable within the minutes of this section if it is occasioned by provocation, event or situation for which the offender was not culpably reasonable."

Count 1 of the appellant's bill of exception states that the court erred when it denied the defendant's motion to dismiss the indictment as there was a variance between the coroner's report and that of the police charge sheet. The coroner's report refers to the incident as an accident; whereas, the police report refers to the incident as manslaughter.

The judge denied the motion to dismiss the indictment, stating that it is the police report charging the defendant of a crime on which a defendant is prosecuted.

Chapter 7 of our Criminal Procedure Law provides that, "it shall be the duty of the Registrar or Assistant Registrar of Births, Deaths, and Burials, the medical practitioner attendant at or after death, or any government official or other person who learns of a death to report it to coroner for the county, territory, or district in which the body is found, if he has reason to believe that the deceased:

a) Died violently, that is, by homicide, suicide, or accident;

b) Died as the result of an abortion or attempted abortion;

c) Was formerly healthy and died suddenly;

d) Was discovered dead.

Upon being notified of a death of the type described in the preceding section, the coroner shall go to the place where the body is, take charge of and examine it, record all material facts and circumstances surrounding the death, and take the names and addresses of all witnesses. He shall convene at that place a formal inquest with a jury of fifteen persons in the course of which inquest the coroner and jury may hear the testimony of witnesses. Any such testimony shall be reduced to writing by the coroner or a clerk appointed by him and shall be included in the report which shall be filed with the prosecuting attorney and with the magistrate or justice of the peace in whose jurisdiction the body was found a report stating the time and circumstances of the death as nearly as these have been ascertained, the conclusion of the coroner and the jury as to its cause, and any other pertinent information, including the name of any person who in the opinion of the coroner and the jury may have caused the death."

Our Executive Law, Chapter 22, states it shall be the duty of the Minister of Justice to procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the courts in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested, institute all legal proceedings necessary for law enforcement. §22.2. a. & b.

In our jurisdiction, generally the coroners are ordinary people with no legal or medical background; their reports are based upon visible evidence and testimonies gathered from those around the victim. They report what they are told and what they see upon physical examination. On the other hand, modern criminal prosecution is based mostly on police investigation, by personnel who are trained and have the expertise, working along with medical personnel to conduct an in-depth examination leading to the charge in an indictment. Since all criminal acts are prosecuted by the state, it is the prosecution that ultimately levy the charge based on the evidence gathered and which supports its case. Thereafter, upon presentation to the grand jury, and there being probable cause to believe the person committed of such an offense, the grand jury charges the person therewith by an indictment.1LCLR, Criminal Procedure Law, §15.2.

More besides, the prosecution is legally cloth with the knowledge of knowing what evidence constitutes a particular crime as charged. An incident resulting into injury or death could have occurred as a result of the recklessness of the accused or his gross negligence, and the prosecution with its legal knowledge of what facts and evidence distinguish the two offenses is in a better position to state what crime has been committed.

Most importantly, the conclusion reached by the trial court in reaching its verdict would

depend on the evidence presented during trial. It is the total evidence presented by the parties on which the court base its findings of the crime committed.

We therefore hold that the judge did not err but ruled rightly when he did not uphold the motion to dismiss the indictment for cause stated by the appellant.

The second count of appellant's bill of exceptions states that the judge erred when he disallowed defendant's question requesting the prosecution lead witness to explain the difference between manslaughter and negligent homicide.

On the cross examination of the prosecution's first witness, Detective Maxwell K, Tarwilly, the appellant put this question to him:

Ques: Mr. Witness, thank you for your testimony. There is a difference between Manslaughter and Negligent homicide, am I correct?

Ans: Yes.

Ques: By that answer can you explain to the jury"

Court: Such question is disallowed on the ground that the witness in this case is only to testify to facts that he knows in this case and he not being a lawyer can not say anything about the statutory law of the Republic.

Again we agree with the trial Judge that interpretation of the law is made by the court. In the Judge's charge to the jury, the appellant should have requested the Judge to include in his charge to the jury the difference between manslaughter and negligent homicide. Our 1 CPLR §20.8 requires that prior to the retirement of the jury, at the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court shall instruct the jury on the laws as set forth in the request.

Count 3 of the appellant's bill of exceptions says that the judge erred when he refused to issue a subpoena to have pastors Chegbe and Allison appear to testify on his behalf; and to have the court issue a subpoena duces tecum to police officer Shelton who appellant said had conducted the preliminary investigation of the shooting incident which charged the offense as negligent homicide and which charged was later changed to manslaughter.

The prosecution resisted the application stating that it was an attempt by the appellant to delay the trial since the appellant has previously asked for a continuance so as to give him time for adequate preparation to take the stand in his defense. At that time of its request, appellant, the prosecution said, should have asked for the subpoena. Since appellant had ample time to interact with his client to come to court but had failed to do so, his request was merely to delay the trial. As to the officer which report appellant sought to subpoena, the prosecution said that the police officer was a part of the LNP team who worked with the prosecution in coming up with charge.

The judge noted that the appellant had the right to bring as many witnesses to testify on his behalf; however, he denied the appellant's application stating that there was no need to subpoena the pastors since their testimony would only be to confirm the facts which the appellant had already testify to and was not in dispute.

Agreeing with the Judge, we must add that since the appellant was the one who narrated the story to the pastors when he ran into the town after the incident, their testimonies in court would have been hearsay as they were not at the scene when the incident occurred and their testimony could neither confirm nor verify the fact of the incident. More beside, this Court has said, "Witnesses may testify only to facts within their knowledge and not otherwise, except expert witnesses who are allowed to give their opinions on given facts. Ammons vs. Republic of Liberia, 12 LLR 360, 368 (1956).

Regarding the supeona of the police who initially wrote a report on the incident, as stated previously, it is the prosecution who says what is to be charged based on the evidence gathered. Even if the police who conducted the preliminary investigation initially wrote that the appellant committed negligent homicide, the prosecution and the grand jury had the authority to augment the charge based upon a review of the facts and evidence gathered and the law relating thereto.

The main issue raised in the bill of exception and argued strenuously before us by the appellant is that the judgment confirming the verdict was contrary to the evidence adduced by the prosecution at trial. Appellant argued that the detail of the indictment and the testimonies produced by the appellant and prosecution witnesses all established negligent homicide and not manslaughter.

Our jurisdiction like many other jurisdictions draws a distinction between murder and the killing of another without malice based on the reckless or negligent conduct of an individual.

A review of our Penal Law, §14.2 states that a person is guilty of manslaughter if he:

a. "Recklessly causes the death of another human being; or

b. Causes the death of another human being under circumstances which would be murder except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An emotional disturbance is excusable, within the meaning of this section, if it is occasioned by provocation, event or situation for which the offender was not culpably responsible."

Manslaughter is a felony of the second degree with a prison term of not more than five years.

Section 14.3, Negligent Homicide, states, "A person is guilty of negligent homicide if he causes the death of another human being negligently." Negligent homicide is a felony of the third degree with a prison sentence of not more then three years.

Obviously the facts in this matter does not relate to paragraph (b) of §14.2 quoted above as there is no showing that the appellant was under the influence of extreme emotional disturbance. To substantiate the charge of manslaughter and uphold the judgment of the court below, this Court must ask whether the undisputed facts in this case did prove recklessness under §14,2(a) which resulted to the death of Boy Charles Collins, or gross negligence under §14.3 which lead to the death of the deceased.

Confirming the verdict of guilty of manslaughter, the judge ruled that the evidence adduced confirmed the charge of manslaughter. The court based its judgment on two given facts which were admitted by the defendant himself: (1) that the incident though close to night did not occur at night but between 5:30 to 6:30 p.m. (2) that the distance of 15 feet is enough for any prudent man, duly exercising caution, to distinguish a human from an animal.

The court said, it is a policy that hunters who shoot in the day and do not have to rely on the eyes of animals should be sure that the animal in the bush are identified by the ears and tail. This is why even hunters who are professional hunters blow horns to call the animals where they sit, and after calling for a while, would wait and see if there is any thing coming as an animal; unlike night hunting when the animal usually stands still and the eyes come in contact with the light.

Both manslaughter and negligent homicide are grades of homicide under our jurisdiction which acts are without malice but occur as a result of recklessness, or the omission on the part of the person to do some act which an ordinary careful and prudent person would, do under like circumstances, or the doing of something which a reasonable man would not do; a gross deviation from the standard of care that a reasonable person would observe in the situation.

The catch in distinguishing the two is so thin the determination of conducts which constitute manslaughter or negligence homicide is often left to the trial of facts.

The undisputed facts in this case reveal that the incidence occurred in the evening and not in the night. Adducing that the appellant acted prudently, he would have seen that the object before him was not that of an animal, and therefore would not have shot at the image. Secondly, fifteen feet, as the judge stated, is a short distance that any man duly exercising caution would have been able to distinguished a human being from an animal, especially when the normal tradition of hunters in the area who go to hunt in the day, before shooting, ensure that the animal is identified by its ears and tail.

The appellant himself testified that he and the deceased agreed to go hunting and that when they approached the forest the defendant took a separate route leading into the forest. Aware that his friend was also in the forest hunting, the appellant before firing his gun should have made all efforts to ascertain that he was firing at an animal. The appellant said that he whistle three times before he fired, but did he call out his friend's name since he knew they were both out hunting? If he had taken the necessary precaution, realizing that it was late evening, he would have identified the silhouette of the object before him and realized that it was not that of an animal but a man. This Court believes that fifteen feet was not so far a distance that one at 5:30 or 6:p.m. could not have been able to see the contour of an object before firing at it, especially when the contour of a man standing or walking is upright, while that of animals are crunched. To have fired the face and shoulders of the deceased, the appellant must have shown that the defendant was in a squatting position when the shots were fired. Otherwise, the deceased should have been shot in the lower extremities like his legs. Besides, as the Judge stated, the appellant should have followed the tradition and identified the animal by the ears and tail. Reckless conduct is much more than mere negligence which is a gross deviation from what a reasonable person would do.

In the case, Koffa vs. R.L., 34 LLR 489, 500 (1988), which is analogous to this matter before us, this Court held, where it is established at the trial that the decedent died and

his death was caused by the wrongful conduct of the defendant, and there being no evidence to show that the shooting and killing of the decedent was malicious, intentional, deliberate and willfully done, the proper verdict should be manslaughter.

We have concluded that the appellant acted recklessly when he killed Boy Charles and thereby committed the crime of manslaughter. However, we note from the evidence that the degree of recklessness exhibited by the defendant was neither wanton nor willful.

We therefore affirm the judgment of the trial court; however, with modification that the appellant serves a prison sentence for three years instead of five years as adjudged by the trial court. The time the appellant has already spent in prison shall be deducted from the three years sentence we have imposed.

WHEREFORE AND IN VIEW OF THE FOREGOING facts and circumstances, this Court affirms the ruling of the Court below. And it is hereby so ordered.

THE APPELLANT WAS REPRESENTED BY COUNSELORS J.D. BARYOGAR JUNIUS AND ELIJAH Y. CHEAPOE, SR. OF THE PUBLIC DEFENDER OFFICE. THE APPELLEE WAS REPRESENTED BY THE SOLICITOR GENERAL, M. WILKINS WRIGHT, AND COUNSELOR YAMIE QUIQUI GBEISAY, SR.