

Judelee Settro and Joyce K. Dweh APPELLANTS VERSUS Republic of Liberia
APPELLEE

KIDNAPPING. JUDGMENT REVERSED

Heard: October 31, 2007 Decided: December 21, 2007

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

On December 24, 2005, an eleven-year old girl disappeared from the Gardnersville area of the suburb of Monrovia. The alarming event was announced on several radio stations in Monrovia while the relatives, friends, concerned neighbors and the Police searched for the adolescent girl. The search led to what appeared to be the first breakthrough in this missing child case. It was alleged that a little boy (age not reported) upon seeing the missing girl's photograph, allegedly informed the school authority in the presence of the girl's relatives that he knew the girl and that she was at first at his mother's house, that is, the house of the Co-Appellant Judelee Settro, but that his mother had taken the girl to the Co-Appellant Joyce Dweh's house located in the vicinity of the aluminum factory in Gardnersville. This alleged revelation by the boy was reported to the Police who called Appellants for questioning, and later detained them over night at the Zone Four Police facility in Gardnersville. They were subsequently released with the instruction that they join in the search for the missing girl.

On January 23, 2006, the alleged kidnapped girl was brought to her aunt's house in Gardnersville in the company of two women who refused to disclose their identity or the circumstances surrounding the discovery of the missing girl. They however left a cell phone number for information and reference.

Co-Appellant Judelee Settro upon hearing of the reappearance of the missing girl immediately informed the Police at the Central Police Station. She was cited to the [illegible] and upon arrival she was forwarded to Court along with the Co-Appellant Joyce Dweh.

During the February Term of Court 2006, the grand jury of Montserrado County sitting in Monrovia presented a true bill enabling the County attorney to draw up the following indictment against the Appellants:

INDICTMENT

"That in violation of chapter 14, section 14.50 of the New Penal Law of Liberia, which states:

KIDNAPPING: "A is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for substantial period in a place of isolation, with any of the following purposes:

- (a) To hold for ransom or reward;
- (b) To use him as a shield or hostage;
- (c) To hold him in a condition of involuntary servitude;
- (d) To facilitate commission of any felony or flight thereafter;
- (e) To inflict bodily injury on or to terrorize the victim or another; or
- (f) To interfere with the performance of any governmental or political function."

Kidnapping is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree.

Plaintiff complains and says that on the 24th day of December A. D. 2005, at J. J. Y., Gardnersville, City of Monrovia, Montserrado County, Republic of Liberia, the within and above named Defendants, without any color of right and also without the fear of the statutory Laws of the Republic of Liberia, with criminal and wicked intent to hold minor, Musu Sheriff, 11 years of age, in a condition of involuntary servitude and hostage, unlawfully, knowingly, criminally and purposely did remove the said minor, Musu Sheriff from her school by Co-Defendant, Judelee M. Settro and taken to Co-Defendant, Joyce K. Dweh's residence, or a substantial distance from the vicinity where she was residing and unlawfully confine the said minor for a substantial period in a place of isolation and to terrorize the' said minor child; thereby the crime of kidnapping the said

Defendants did do and commit at the above named place and on the above named date and time; contrary to the organic`Laws of the Republic of Liberia.

And the Grand Jurors aforesaid, upon their oath aforesaid, do present: That Judelee M. Settro and Joyce K. Dweh, Defendants aforesaid, do say that the crime of kidnapping the Defendants did do and commit, contrary to the form, force and effect of the Statutory Law of Liberia in such cases made_ and provided and against the peace and dignity of the Republic.

Republic of Liberia by and thru the Plaintiff Atty. Samuel K. Jacobs, Esq. County Attorney for Montserrado County

Witness:

Addresses:

1. Watta Sheriff
2. Hawa Saybah
3. Musu Sheriff
4. Fatu Dolley
5. Documentary Evidence, etc.

Gardnersville

Upon arraignment, the Appellants/Defendants pleaded not guilty of the crime charged in the indictment. The case was finally called for hearing on March 19, 2006 in Criminal Court "A" presided over by His Honour Judge James Zotaa who served as fact finder and judge, the Appellants/Defendants having waived their right to trial by jury.

As per the practice in our Criminal Procedure, the Republic has the burden to prove the allegations contained in the indictment beyond a reasonable doubt in order to obtain a conviction. The Defendant is innocent until the prosecution has successfully established his or her guilt. It was pursuant to that practice that the prosecution in this case had qualified four witnesses including the victim of the alleged crime, to testify in support of the indictment, quoted supra. The testimony of the first witness is summarized below:

Prosecution's first witness: Hawah Saybah testified and said that a little girl named Musu Sheriff, while living with her aunt, Watta Sheriff, in Gardunersville, got missing on December 24, 2005. The aunty had left Musu, eleven years of age, to mind her toddler while she, the aunt left early in the morning to sell rice porridge. She said further that when the aunt returned later in the day, Musu was no where to be found. The search intensified in the community to the extent that the relatives filed a missing person report with all the Police Deports in the area. Some time in January the relatives went to her school to request for her picture on the school identification card to use same in their search; but the teacher refused to give up the photograph

until he showed it to the classmates. Two days after, the teacher called them and said a little boy in the school (no name mentioned) had told the teacher that he knew Musu; that she was first at his mother's house and later transferred to Joyce's house in the aluminum factory area, and that the relatives and the school teacher, led by the little boy went to the boy mother's house and when the mother was queried as to whether she knew Musu, she at first answered, no But when confronted with her son's statement, she then said that she had seen the girl and her son playing together, but that she left them and went somewhere, and upon her return Musu had left, and that she did not know where she went later. She said further that in a police line up of women along with Appellant Judelee, the girl did not identify Judelee when was face to face with the appellant, then Musu began to cry, but that behind closed doors she identified Judelee Settro, her kidnapper; that one day in the same month of January, two unknown women showed up bringing Musu in her aunt's yard; that the two women refused to identify themselves. They only left cell phone numbers, and told them to call the number when they go to central. At the Police Station the numbers were given to the Police Officer Isatu Bah who called and was told by a woman on the phone that they got the girl from Zone Five. Col. Isatu Bah then called the Zone Five Police Station, but the Zone Five Police Station denied knowing anything about the child. The Police woman then asked Musu where she had been, and she said at her classmate's mother's house who later took her to another house where she had been kept in doors at night. The Police at central again sent for Judelee. When she came, the Police had other children mingled with the boy and the Police asked Musu to identify the classmate and she pointed to the boy."

On the direct examination the prosecuting attorney posed the following question to the witness: Question: Madam witness, please refresh your memory and say, if you know, where

the Police brought little Musu from? Answer: The day they brought Musu we asked the women, where did you bring Musu from? They said, "We can't tell you nothing. We will give our cell phone number. Then you can contact the Police." So we got in a car and came straight to the Child Protection Unit and showed their cell phone number. The Police called and they said that they got the girl from Team Home. Then the Police asked and they said they got the girl from Zone Five. Then they called Zone Five commander. He said "I know nothing about it."

The prosecutor forthwith requested court for issuance of a subpoena to be served on the director/supervisor of the agency referred to as Team Home to testify on behalf of the prosecution. The Court granted the request and ordered the Clerk. to issue the subpoena. There is, however, no showing from a careful perusal of the records in the

case that the said director/supervisor of Team Home appeared and testified in this case.

On the cross examination the defense counsel propounded the following questions to the witness:

Question: On the day that little Musu was reported found and brought home, please say whether family members were there and if so, say which ones were present?

Answer: Watta Sheriff was present. But after Musu was brought by the two women, we called some relatives from the community.

Question: By that answer, madam witness, I would assume then that there were many persons present at the time. Please say madam witness, since indeed you have told this Honorable Court that you reported the fate of little Musu to the Zone Four Police which is just few yards from where the child is living, as to whether you contacted the Police Station upon seeing strange people bringing your little second cousin who had been missing for a prolonged period of time?

Answer: We did not report to the Police Station in our area, but there is a Police man in the area whose attention was called.

When queried further as to what the Police Officer whose attention was called did, the witness said that at the time the officer arrived on the scene the two women had left. The defense counsel asked further why the relatives and neighbors present allowed the two women to leave. The witness answered and said "We did not want to physically fight with the women. We called the attention of not only one relative, but other neighbors and when they came the ladies were walking away."

The second prosecution witness who testified in this kidnapping case was madam Watta Sheriff, Aunty, and guardian of the victim. We quote portions of her testimony below:

"On December 24, 2005, left my little walking child with Musu (meaning the victim) at the house to go sell soft rice. This was in the morning. When I came from selling, I only met the little (child). I did not see Musu. Also my room was open. Not seeing Musu I decided to ask my neighbors whether they sent Musu out, but they said no. I then started to look for Musu. We then went from deport to deport (meaning Police Deport) in and around Monrovia, registering the case of the missing child. All during

this time school was closed. Then in January when school opened I went to the school...

The rest of the testimony in chief is a repeat of the testimony given by the first witness. It is understandable because the witnesses were together at the school in search of Musu's I D card and from that point on they worked together in every aspect of the case. On cross examination the defense counsel posed the following question to the witness.

Question: Madam Witness, after being told that your child was turned over by people from Team Home, did you visit said Team Home to inquire as to how they got custody of little Musu?

Ans: No, I did not visit the Team Home.

The prosecution's next witness was the alleged victim, Musu Sheriff. Musu testified that she was at first in the Appellant's house then she was taken to Joyce Dweh's house, where she was kept in confinement, ate once a day, never took a bath and used buckets to urinate and stool. She was told by Joyce not to open her mouth or else she would put something in there to close it, that Joyce took her to the redlight and abandoned her there. A Police man gave her to the two women to take her home. On the cross examination the witness was asked several questions, whether Joyce the Co-Appellant had other children living in her house. The victim answered that she did not notice anybody at Joyce's house, whether she heard voices other than the voice of Joyce. She answered yes; why didn't she call out for help, she said because Joyce had threatened that if she cried out she would put something in her mouth; whether Joyce carried out her threat, she answered no, because she never disobeyed the order. How often she ate, she answered once a day and only at night; that she never took bath. What was her assignment on the morning her aunt left to go to sell soft rice, she said she was to wash dirty dishes and some clothes; that her aunty had a little baby boy and when she [illegible]victim left to go play she left the baby with no one on the porch and that she asked no one in the yard to mind the baby. When asked to state the name of her classmate she went out to play with, she said she did not know his name; asked whether she was taken to any other place or places other than her aunt's place when she left the appellants' homes, she answered no, whether from the time of her release she had seen her classmate again, she said no. The prosecution at that stage rested with the witness and made a request for the Judge to issue a date for the appearance, of the subpoenaed witnesses. The request was granted.

The trial resumed on June 8, 2006. The fourth witness for the prosecution, Detective K. Leo Pouseh, took the witness stand to testify in support of the allegations contained in the indictment. We quote his testimony in chief:

"On December 20, 2005, UNMIL Officers from the container site of Red Light brought Juvenile Musu Sheriff at the Women and Children Protection Unit, Zone Five in Paynesville, stating that she was missing. The child was then sent to the Team Home for safe keeping and re-unification. We were informed by the Team Home that Juvenile Musu Sheriff spent 26 days at the home and was later re-unified with her parents. This is all."

On the direct examination the prosecution asked its own witness to refresh his memory and say whether the UNMIL Officers who took Musu to zone five told him where they brought the child from. He answered that the UNMIL Police informed him that the child was seen in the Red Light community. Prosecution then rested with the witness. The defense decided to cross examine the witness lengthily, but we shall restrict this opinion to only a few of the points we consider noteworthy.

Question: Mr. Witness, as a professional Police Officer what is the procedure employed by the Police in making records of missing persons or child that is turned over to such unit?

Ans.: Whenever a child is reported at our office as missing, lost and found or runaway, we usually record the particulars of said child in our occurrence book.

Question: Mr. Witness, do you in that instant record the particular of the person who turns the child to the police? If so, did you do that in the instant case, and what is the name of the person who may have turned said child to the police?

Ans.: Yes, Sir. We always record the full particular of the person turning over the child at our office including their contact number, if possible. But the UNMIL personnel were two, one white and the other black, who only dropped the child at the office.

Question: Mr. Witness, you are telling this Court that because those people who turned the child at the police, particulars could not be obtained because they were UNMIL Officers?

Ans.: These UNMIL counterpart officers can be reached, if the need arises.

Question: Mr. Witness, by that answer, the need had just arisen, please tell this Honourable Court the names and particulars of those UNMIL Officers who turned over the missing child to the Child Protection Unit?

Ans.: Like I said, their names and particulars were not recorded.

Question: Mr. Witness, you told this Honourable Court that upon receiving this missing child, you turned the child over to Team Home. Please tell this Court what is the role of the police after turning over a missing child to a child home such as that of the Team Home?

The prosecution objected to this question on grounds that the question was irrelevant, immaterial, not the best evidence, the Team Home would be. The Judge in his wisdom overruled the objection thereby allowing the witness to answer.

Ans.: For us at the Women and Children Protection Session at Zone Five, we turned over the child to Team Home for reunification since indeed they informed us that she could identify her residence and parent. And we were informed by the Team Home that such a child was re-unified. The witness testified further and said that because the Women and Children Unit at Zone Five lacks living and sheltering facilities, they usually send missing children to their partners, the Team Home, from there they are reunified. The Witness said further by way of informing the Court that most of the little children usually give misleading information to the police as to where they live and the reasons why they leave their home; that the Team Home has workers that are able to convince the little children to give full information to them. He said also in an answer to a question that when the Child Protection sends a child to a team home for reunification with the parents, reports are made to the Children and Women Protection Unit informing them of the reunification. When asked whether a report was sent to the police about the reunification of Musu, the victim herein, and if so, when? He answered yes; that it was late this week; that is, late in the week of June 8, 2006, as recorded in the minutes of Thursday, June 8, 2006. The detective Witness was discharged without a redirect examination. The Prosecution then made the following submission:

"At this stage, prosecution begs to inform Your Honour that the Pastor/PTA President of James Chelley School has notified prosecution that he is bereaved. In other words, that authorities of said school did not refuse the subpoena earlier sent

to said school, but because of the absence of the subpoenaed person due to his bereavement. Even though the prosecution seems to be very much satisfied with the evidence adduced thus far by the witnesses, yet prosecution say she believes that the testimony of said PTA President is material and vital to the consummation of final production of oral evidence in the instant case. Therefore, prosecution prays Your Honour to at least grant to prosecution the opportunity to have said Pastor/PTA President James Chelly School to come to Court to close prosecution's side of the case. This request is not intended to further delay a speedy conclusion of this prosecution, but that prosecution is of the view that said testimony of the pastor is material and germane to this case. Hence, prosecution prays Your Honour for a re-summon of the subpoenaed witness in person of the Pastor of James Chelly School. This is the prayer of the prosecution. And submits."

According to the minutes of June 8, 2006, the Judge suspended the trial till June 12, 2006. When the trial resumed, the prosecution made yet another submission. We quote: "At this stage, prosecution begs to inform this Honourable Court that its subpoenaed witness in person of the pastor of James Chelly School will not be able to be in court to testify in the instant case. Therefore, prosecution prays that she rest with further production of evidence and witnesses and submit."

It is amazing that the Police made no effort to search the house or home of Joyce K. Dweh when Musu was allegedly held in involuntary servitude. If a search was made, neither of the parties made a record to that effect. When the Police were told that the child was at the house of Joyce K. Dweh, they sent for her and asked if the information was true that Musu was at her house. She answered no, and that was it until on January 23, 2006. The Police asked the accused persons questions but made no effort to look for evidence that would link the accused to the crime. The state cannot depend on an accused person to provide evidence necessary to prove an indictment. In law this is called self-incrimination which is not allowed. There was yet another aspect of this case that amazed us. One of the prosecution's errors examination as to when the Team Home informed the Police that Musu had been reunited with her family. He answered and said "late this week" meaning late in the week of June 8, 2006, in other words, it took the Team Home five months, from January 23, 2006 when Musu was reunited to June 8, 2006 when the question was asked, to file a report informing the Women and Children Protection Unit of the Police Department that a child in their custody had been reunited with her family. What took the Team Home so long? It is our hope that the welfare of today's children who will be tomorrow's people will better claim the attention of the Liberia Police and agencies that work with children than was demonstrated' n this case.

The prosecution having waived the testimony of a material witness and rested the production of evidence, the defense took the stand and had qualified the Appellants, Judelee Settro and Joyce Dewh. The first witness Judelee Settro, testified that she first got to know about the missing child on January 9, 2006 when three men visited her home and took her to the Zone Four Police Station. Upon her arrival there she was told that the Sheriff family was suspecting her of kidnapping their child called Musu Sheriff. She denied having anything to do with the child's disappearance. She admitted knowing the Co-Appellant Joyce Dweh. She provided the Police Joyce's phone number. Joyce was called and told to proceed to the . Zone Four Police Station. When Joyce arrived, she was asked if she had seen Judelee Settro since the Christmas season. She answered no. She was then confronted with the missing child episode and her own alleged involvement. She denied any knowledge or involvement. Joyce Dweh was told to go home, but she, Judelee Settro, was to have been detained. When she begged to call someone to come to her rescue, the person appeared and informed the police that the accused had a baby at home. She begged to take the suspect home and produce her early the next day. The police granted the request. When she showed up early in the morning of the following day, the accusers, the Sheriff family did not show up. The police officer then went to the victim's home and upon returning told the accused to go home, that the accusers said they had no case against her. She further stated that when the victim was found, Musu, failed to identify her in a police line up and also to point out the houses, Judelee's and Joyce's where she allegedly had been detained. The victim failed to identify the four children of Joyce that were brought out to her, children who lived in Joyce's house at the time when Musu said in her testimony she had been detained for weeks. The police asked the victim to take them to her school and she did: The police then told the accused to go home and that they will be called back. On January 26, 2006 the police called the Appellants and forwarded them. to Court for ;prosecution.

On the cross examination the witness was asked whether she had a child attending James Chelly School. She answered that she had two children in the school. She testified on the cross examination that Musu was not crying as alleged by the prosecution when she was asked to point Judelee out in the police line up, she was calm, the witness said.

The second defense witness testimony was not too different from that of the first witness. This is what she said, on January 9, 2006 she received a call to go to the police station and upon arrival she was made to identify the first witness, which she did and then she was told to leave.

On January 17, 2006, she was again called to report to the police, but at this time she was to report to central police station, the Women and Children Protection unit. It was during this visit to the police that Joyce Dweh was asked whether she knew a child called Musu sheriff who was missing and if she knew anything about the incident. When she said no, the police officer told her to follow him to another office. When they got there the officer ordered her to take off her shoes, give up her cell phone, earrings, and handbag after which the officer told her she was going to jail for kidnapping a child. She there and then again declared her innocence. When she entered in the cell, the other accused was already in and there the both of them spent the night. The complainants did not go to the station the following morning. At about 5:00 P.M. Judelee Settro contacted a lawyer who signed for their release to appear on the next day. The police officer asked them to help look for the child, but Joyce K. Dweh said she would not look for a child that she did not know; she did not know where the child lives and did not know the parents, and on that note they left the police station for home.

On January 23, 2006, the police phoned and informed Joyce Dweh that the missing child had been found. The witness asked where was the child found. They told her to go to the central station, and there she and other women including Judelee Settro were lined up for Musu to identify her school mate's mother, but she did not or could not. The police took all of them to Joyce's house where Musu had been allegedly detained and asked her to show the house. She could not. When asked if she knew the area she shook her head and said no. The police asked Joyce if she had other children living in her house she answered that she had her niece and her sons. But when they brought them out and asked Musu if she knew the children, she said no. The group then proceeded to Judelee's house and there too Musu failed to identify the house of her classmate. Just as the first witness had said, Musu knew her school and her aunt's house but not the two houses where she had been detained. The witness was told to report .to central the next day and upon arrival there she along with Judelee Settro were taken to Court.

On the cross examination the prosecution asked among several questions that were overruled, the following:

Question: Madam Witness, the witnesses on behalf of the state including little Musu herself, her mother and aunt told this Court that you were the one who kept little Musu at your house over a period of time until the matter came to the knowledge of the police. You were in fact, cited by the police and you were told at a certain point to

help and join Musu's partents to fmd little Musu. You still maintain your statement that you have never kept Musu at your house?

Answer: Yes, I did not keep Musu at my house.

Question: Madam Witness, do you confirm and affirm your testimony before this Court to be true and correct .

Answer: Yes, I confirm and testimony. The witness was discharged from the witness stand.

Although there were other witnesses for the defense, we shall stop at this stage in this opinion and state the issues that are determinative of this case. The first issue is whether the prosecution proved the allegations in the indictment beyond a reasonable doubt thereby establishing the guilt of the Defendants in this kidnapping case.

It must be noted here and now that there is no recorded case, that is, no precedent in our 'appellate jurisprudence of a kidnapping case. In other words, the case at bar is one of first impression. It must therefore stand on its own feet. First of all the grand jurors presented a true bill on the basis of which the Republic drew up an indictment alleging that the Appellants/Defendants kidnapped the victim from her school on December 24, 2005. From testimonies given by the several witnesses, it was established by prosecutions' own witnesses including the victim that the alleged victim left her aunt's house when the aunt had gone out to sell soft rice. Even the school authority told the police that the child did not disappear while on the school grounds, but rather from [illegible] aunt's home. It is baffling to this Court why the prosecution would put on the stand witnesses that contradicted the allegations in the indictment, such as the place of the crime? In addition, the detective-witness said in fact that the victim was taken to the Zone Five Station on December 20, 2005, quite four days prior to the date stated in the indictment as the date of the abduction. The same detective-witness' testimony was in fact at variance with the other testimonies in other ways besides the date of the kidnapping. He said that the missing child was taken to Zone Five by two UNMIL Police and that it was they at the zone Five Police Deport who turned the victim over to Team Home for save keeping until she was re-unified with her family by authorities of the Team Home. The indictment averred that the child was taken away from the school by Judelee Settro, and taken to Co-Defendant Joyce K. Dweh's residence, a substantial distance from her home. The Appellant Judelee Settro denied taken the victim from the school or her home to the home of the other Appellant, Joyce K. Dweh. Is it not clear that those who listened

to these accounts were left wondering about the actual date and place of the commission of the crime, whether it was December 24, or December 20, 2005 or earlier? Did the prosecution establish how the two women came in contact with the child? No. One prosecution witness said the child was brought to Zone Five by UNMIL Police. Zone Five Police then sent her to Team Home. Two strange women took the child to her home but refused to state where they found the child and to disclose their identity. However, they left their cell phone number and when the number was called and the question posed it was learned that the child was sent to the Team Home from Zone Five. But Zone Five had no record of the incident. Then should we then conclude that the two women came from the Team Home? But a vital break in the chain of evidence is the absence of any testimony establishing whether the child came from the Team Home or from the Red Light. Up to this point in the establishment of the facts of the prosecution's case there seems to be more questions than answers. Up to now we have not yet heard it established where the missing child had been, whether with Joyce K. Dweh, one of Appellants or with the authorities of the Team Home or else where. There is no clear evidence to lead us to a definite conclusion as to where Musu spent the days when she disappeared. In criminal procedure these kinds of unknowns are referred to as reasonable doubts and they normally operate in favor of the accused.

It is obvious that the prosecution relied heavily on the testimony of the victim and did not pay much attention to the other circumstances of this case. For example, the prosecution could have made all efforts to ascertain whether the child was ever at the Team Home and how she got there. But in fact when the defense counsel tried to prevail on the Judge, even though wrongly, to talk on the phone to the Team Home authorities, the prosecution objected, arguing that the defense was trying to delay justice; that time was fleeting. Should the prosecution itself not have wanted to know whether the child was at the Team Home or not? Should the prosecution also not have cared to know who these women were that brought home the missing child so as to hold them as suspects or as accessories to the crime of kidnapping? We further would like to know whether the prosecution should not have investigated the allegation by its own witness, the detective, that two UNMIL Police officers left the child at the station On 'December 20, 2006 while the indictment states that the Appellant Judelee Settro kidnapped the child on December 24, 2005. The prosecution made no effort to have the witness set the record straight if he had made an error with the date. The prosecution allowed damaging testimony given by its own witness remain as is. It was in fact after that testimony that the prosecution declared that it was satisfied with the evidence adduced thus far. In the opinion of this Court it was in fact that particular evidence that turned the indictment on its head. It is

already recorded in this opinion that the detective gave a date earlier than the December 24, 2005. The detective stated that the child was sent to the Team Home to be re-unified with the family and that after the child had stayed at the Team Home for 26 days she was re-unified (reunited) with her family by authorized personnel from that facility. In other words, the witness was saying that the child was at the Team Home all along and not at the home of Joyce K. Dweh as alleged in the indictment. Whether these allegations were true or false, we will never know in the absence of records to that effect in the case file. No witness corroborated or refuted the testimony. Usually when a counsel's own witness testifies adversely as did the detective in this case, counsel makes application to declare the witness a hostile witness and sets out to rigorously cross examine the witness. The prosecuting attorney in this case did not seize the moment to do so. By implication or acquiescence he accepted the testimony. Similarly the prosecution had made application for the appearance of the Pastor or P.T.A President of James Chelly School alleging that the witness' testimony was material and vital to the consummation of final production of oral evidence in the case. The Judge suspended the case. When trial resumed four days subsequently, the prosecution made the following submission:

"Prosecution begs to inform this Honourable Court that its subpoenaed witness in person of the Pastor of James Chelly School will not be able to be in Court to testify in the instant case. Therefore, prosecution says that she rest with further production of evidence and witnesses and submits."

We will never know what was that material and vital testimony the Pastor of James Chelly School should have given in this missing child case, because the prosecution threw up its hands and waived the material' testimony and then in fact rested evidence without making record of what that witness would have testified to had he taken the witness stand.

At the close of the prosecutions case, the following questions remained to be answered:

(1) When was the offense of kidnapping committed, on December 20, 2005, or earlier 2005 as testified to by the prosecution witness, the detective, or December 24, as alleged in the indictment and testified to by the other prosecution witnesses?

(2) Where was the offense Committed, at the school as alleged in the indictment or at the victim's home as testified to by the victim, her aunt, and others?

(3) Who took away Musu? The prosecution says Judelee and Joyce but do we have any convincing evidence after all that have been narrated by the various witnesses? In other words, is there any testimony factual or circumstantial clearly linking the Appellants to the offense other than the testimony of the lone victim who did not even know the name of her classmate? Who failed to identify her kidnappers and could not recognize the place she had allegedly spent nearly four weeks?

(4) The little boy who allegedly said the victim was at his mother's house at first and then transferred to Joyce's house. The said boy was taken to the police and allegedly repeated his story. Why was he not brought to Court to testify and if because of age or family connection constraints, then to be interviewed by the Judge in Chambers for the sole purpose of ascertaining as to whether he had in fact made the statements that were attributed to him? As it stands, all the testimonies attributed to the boy outside of the court were nothing but hearsay evidence especially in the absence of the sworn testimony of the teacher or Pastor of James chelley School. We have no factual or legal basis to consider this evidence especially in view of the fact that the prosecution itself had waived it.

(5). The final unanswered question is this: If the two UNMIL Officers found Musu at the redlight and took her to Zone Five on December 20, 2005 as a missing child and the Zone Five Police sent her to Team Home for safe keeping and was unified with her family on January 23, 2005, how was it possible for Judelee Settro to have kidnapped the child from her school or home on December 24, four days after she had been sent to the Team Home?

The above five unanswered questions have created reasonable doubts which must operate in favor of the Appellants. It is a maxim and in fact the premise on which criminal prosecutions are based "that it is better that 99 criminals go free than that one innocent person be punished.",

We have no doubt that little Musu was missing from home. But we are not sure as to when she got missing, was it December 20, or earlier, 2005? Was it December 24, 2005? Was Musu a kidnapped victim, a runaway, or 'a lost child?

We have taken this case to appeal to parents or guardians of little children to treat them as children and not as adults, giving them responsibilities to perform that are far above their capabilities, physical as well as mental. An eleven years old girl is a child herself She ought not to be entrusted with a baby to mind from 6:30 AM while the

aunt is away selling her goods in the market place. In fact according to Musu's own testimony, in addition to minding the baby, her aunt also instructed her to do the laundry and the dirty dishes. We have good reasons to conjecture that Musu ran away from home and somehow managed to put together, with or without assistance, a fantastic narrative. It is possible to speculate also that perhaps the child was actually kidnapped and held against her will. But we are not allowed to speculate or conjecture, and then decide. In our penal code, kidnapping is a criminal offense conviction for which must be by proof beyond a reasonable doubt. The prosecution in this case failed to bear the burden of producing proof either by direct evidence or circumstantial evidence. The disappearance and reappearance of the child, both been tainted with doubts do not meet the proof beyond a reasonable doubt standard. Also, we are of the opinion that the lone testimony of the child victim without any corroborating evidence linking the Appellants to the crime is insufficient to sustain the indictment.

We observe and wish to comment in passing that the defense proceeded with lightening speed to put up a defense immediately the prosecution waived any further production of evidence and rested its case. The practice in this jurisdiction which would have been quite in place in this particular case, is for the defense to pray for judgment of acquittal after the prosecution rested evidence and submitted its case, on grounds that the prosecution failed to establish a prima facie case. In most instances trial judges deny the motion and then the defense proceeds to present its side of the case or waive the right to do so. In the case at bar if a motion for acquittal had been made, the Judge would not have been in error to grant seem; for clearly, the prosecution's evidence was insufficient to support the indictment. There is a long line of cases in which the Supreme Court has so held, that when the evidence is insufficient, conflicting, or inconsistent to sustain the charge, the accused must be acquitted on the principle of reasonable doubt, *Dunnetal Vs. Republic of Liberia*, 1 LLR 401, 405 (1903), and *Wahab Vs. Republic* 10 LLR 236 (1949), *Swaray Vs. Republic of Liberia*, 28 LLR 194, 199 (1979).

The prosecution had the burden of proving that the Appellants committed the crime of kidnapping as provided for in our penal code. Sub chapter, C. section 14.50. The indictment alleged that the Appellants held the victim in a condition of involuntary servitude, one of the elements of the crime of kidnapping. In order that the prosecution may establish that Musu was held in a condition of involuntary servitude it must first be established by preponderance of the evidence beyond a reasonable doubt that the Appellants did in fact remove the victim from one place to another. There was no evidence produced substantiating that the Appellants removed the

victim from her school or house other than the lone uncorroborated testimony of the child, the alleged victim. The said prosecution also relied on hearsay and waived the testimony of its alleged material witness from James Chelly School and failed to produce any evidence to support the averments made in the indictment. The prosecution having failed to connect the Appellants to the crime by proof that the disappearance of the child was the Appellants' doing, the said Appellants should have been granted an acquittal. 1LCLR section 20.10, Thompson vs. Republic 14 LLR 133, 139 (1960)

We are thankful to God for the safe return of little Musu Sheriff, but in the absence of convincing proof beyond a reasonable doubt we are by law prohibited from confirming the conviction of the Appellants. In view of all we have painstakingly gathered from the records, it is our considered opinion that the prosecution did not provide the quantum of evidence necessary to overcome the presumption of the innocence of the Appellants. The judgment of conviction in the Court below is therefore hereby reversed with instruction to the Judge presiding over the Court below to resume jurisdiction and discharge the appellants without day. The Clerk is hereby mandated to send an order to the Court below to this effect. AND IT IS HEREBY SO ORDERED.

JUDGMENT REVERSED.

Counsellor J. Daku Mulbah and Theophilus C. Gould of the Liberty Law Firm and the Kemp & Associates Legal consultancy Chambers represented the Appellants.

Counsellor Tiawan S. Gongloe, Solicitor General of the Republic of represented the Appellee.