Jerry Washington of Monrovia Central Prison, City of Monrovia, Liberia APPELLANT Versus His Honour, **Charles K. Williams** and the **Republic of Liberia** APPELLEES

APPEAL

HEARD: APRIL 8, 2009 DECIDED: JULY 23, 2009

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

During the May Term, 2006 of the First Judicial Circuit, Criminal Assizes "A", Montserrado County, the appellant, Jerry Washington, defendant in the trial court, was indicted for murder. The indictment against the appellant reads as follows:

"INDICTMENT
"The Grand Jurors for the County of Montserrado, Republic of Liberia, upon their oath do hereby present: Jerry Washington, (to be identified) defendant, of the City of Monrovia, County and Republic aforesaid, heretofore, to wit:

That in violation of Chapter 14, Section 14.1 (a & b) of the New Penal Law of Liberia, which states:-

MURDER — A person is guilty of murder if he:

(a) Purposely or knowingly causes the death of another human being; or

(b) Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life. A rebuttable presumption that such indifference exists arises if the defendant is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit, treason, offenses defined in Sections 11.2 or 11.3 of this title, espionage, sabotage, robbery, burglary, kidnapping, felonious restraint, arson,

rape, aggravated involuntary sodomy, escape, piracy, or other felony involving force or danger to human life.

Plaintiff complains and says that on the 1st day of June, A.D. 2006 at night on GSA Road, Paynesville City, Montserrado County, Republic of Liberia, the within and above named defendant, without any color of right and also without the fear of the statutory laws of the Republic of Liberia, with malice aforethought willfully, purposely, wickedly, unmercifully and criminally stabbed, gashed and killed Dorcas Y. Bulukpah with a kitchen knife after he requested the deceased mother to let her escort him up on the road and later returned home under the pretense of asking for the deceased, when he asked about the where about of the deceased; he told the mother of the deceased that some group of armed robbers attacked them and they all ran away from the armed robbers and while in a massive search, it was discovered that the deceased was murdered and stabbed in the right side of her stomach; thereby the crime of murder the defendant did do and commit on the above date and at the above named place and time; contrary to the organic laws of the Republic of Liberia.

And the Grand Jurors aforesaid, upon their Oath aforesaid, do present that: Jerry Washington, defendant aforesaid, at the time, place and dates aforesaid, in the manner and form aforesaid, do say that the Crime of Murder the defendant did do and commit; contrary to the form, force and effect of the statutory Laws of Liberia, in such cases made and provided and against the peace and dignity of this Republic."

Republic of Liberia .Plaintiff By & Thru:

Samuel K. Jacobs, Esq. County Attorney for Montserrado County, R.L."

"WITNESSES:
1.George Bulukpah
2.Musu

3.Ministry of Justice, et al.
4.F.O.C./Knife"

At the call of the case for trial on June 6, 2006 it was observed that the appellant did not have a legal counsel to represent him, whereupon the trial court inquired from him whether he had a retained counsel of his choice. The appellant answered that he wished not to be represented by a lawyer. He however informed the court that he had a grievance to express.

Notwithstanding the appellant's statement that he wished not to be represented by a lawyer, the trial court appointed the defense team of Montserrado County headed by Counselor Elijah Y. Cheapoo to represent him.

The trial court reasoned that the appellant was entitled to be represented by a counsel in order to fully guarantee his rights as an accused person under the law, so that even the grievance which he said he had to express could be properly channeled through his legal counsel. We fully agree with the trial court's position.

On June 8, 2006 the defense counsel made application requesting postponement for two weeks to study the case and prepare to represent the appellant. The trial court granted the request, but allowed postponement for only three days.

Under § 2.2(4) of the Criminal Procedure Law, where the county defense counsel is appointed to represent the accused, the accused shall be given reasonable time and opportunity to consult privately with such counsel before any further proceedings are had. We hold that the period of two weeks requested by the defense counsel to prepare the appellant's defense in this murder case was reasonable time and should have therefore been granted by the trial court; three days was certainly not adequate.

At the trial, the first witness who testified for the prosecution was Nyenpan O. Nyenpan, Deputy Chief of Crime Against Persons, Criminal Investigation

Division, Liberia National Police. His testimony is recorded on the minutes of court, Wednesday, June 20, 2007.

He testified that when he reported to work on Friday, June 2, 2006 at about 7:30 a.m, he received communication by radio to proceed to the crime scene on Zinah Hill, GSA Road; that he and his team proceeded there and saw a body of a lady lying in the middle of the road; that they sent for two medical doctors, Dr. Servillano B. Ritualo and Dr. Anthony Quaye who examined the body and pronounced that the lady was dead and that the body was identified as that of Dorcas Bulukpah. The witness further said that upon investigation conducted by them, it was revealed that the suspect was one Jerry Washington, male, age 32 who had already been arrested and taken to the hospital for treatment for wounds he allegedly inflicted upon himself.

According to the witness, after suspect Jerry Washington was discharged from the hospital and turned over to the police for further investigation, Jerry narrated that he and the late Dorcas had been lovers for eight (8) consecutive years during which time they were blessed with two boys, one of whom had passed away; that while the children were still young he went to Nimba in 2005, because he was ill; that when he returned after few months he was told by friends that Dorcas was in love with one man called Junior Mieh and on many occasions he confronted Dorcas but she denied. The witness also said that the appellant informed him that one day, he browsed through Dorcas' cell phone and saw Junior Mieh's number; that when he confronted her she again denied, so he decided to watch out. The witness also testified that the appellant told him that on June 1, 2006, Dorcas visited him at a church in their community and he walked her on the road to take a taxi cab back home, but Dorcas decided to walk instead of taking a car; that when he escorted her at a distance he bid her farewell and while returning to the church he saw some gentlemen having confusion amongst themselves and therefore he decided to stop; that while watching the gentlemen he saw Dorcas coming in the same direction, and then turned on the road to Junior Mieh's house; that at that point, he stopped her and this was when confusion between them

started; that he then decided to accompany Dorcas to her house where the confusion continued when he got angry and took a kitchen knife and walked away. A few hours later, he returned to the house and asked Dorcas to accompany him to obtain some herbs. As they walked almost to Zinah Hill grave yard, he again asked Dorcas about Junior Mieh and she became "very cheeky", therefore, he pulled out the knife and stabbed her in the stomach. After that he ran in the bush, took razor blade and attempted cutting off his own penis but could not continue due to pain.

It appears that it was after the prosecution's first witness had testified that a copy of the statement taken from the appellant by the police was obtained by the defense counsel. In both the statement taken from the appellant by the police as well as the testimony of the prosecution's first witness, the appellant had made statement to the effect that he "was not to himself' when he allegedly murdered the late Dorcas Bulukpah, implying that he had mental problem at the time he is said to have killed the deceased. Consequent upon these assertions, the defense counsel, on June 21, 2007, filed a motion for the determination of the appellant's mental competency. We quote the motion: ."And now comes movant in the above entitled cause of action, and most respectfully moves this Honourable Court to continue all proceedings in this matter in order that movant's competency to stand trial can be examined immediately:

"1. Movant avers that his counsel just received copies last night of the "voluntary" statement supposedly made by movant to the police. This statement coupled with counsel's own conversations with movant and the testimony of the State's first witness, raises substantial doubt as to movant's mental state at the time of the alleged crime and of his present competency to stand trial."

"2. Movant makes this motion pursuant to Chapter 6 of the Criminal Procedure Law of Liberia, attached is a copy of the voluntary statement for movant marked exhibit "A" to form part of this motion".

"3. Movant notes that he was unable to make this motion at an earlier stage in the proceedings because counsel was just appointed on June 8, 2007. Counsel at that time requested this Honourable Court to grant a continuance so that counsel could have sufficient time to prepare for trial which included receiving copies of statements allegedly made by defendant, copies of any police reports and any other evidence in the custody of the state, and time to investigate the existence of any possible defense witnesses. The request was denied by this Honourable Court."

"Wherefore and in view of the foregoing facts and circumstances, movant prays Your Honour and this Honourable Court to grant this motion for the determination of defendant's mental competency and immediately appoint at least one qualified mental health physician to examine him and write a report pursuant to Sec. 6.2 of the Criminal Procedure Code, to continue the trial in this matter until such examination has been made, and grant any further relief that justice may demand."

"Respectfully submitted, The above named Movant by &through their Counsel: Elijah Y. Cheapoo, Sr., esq. Counsellor-at-law & Defense Counsel of Liberia".

The prosecution made a four-count resistance to the motion on the minutes of court essentially contending that the appellant was not unfit to stand trial; that the appellant, being of sound mind had made a voluntary statement confessing to the police that he murdered the late Dorcas Bulukpah on June 1, 2006, and that there was no record before the court that the appellant has a mental problem.

The trial judge heard argument on the motion and the resistance thereto and denied the motion. We quote excerpt from the trial judge's ruling on the motion to determine the mental capacity of the appellant: "The records in this case from the day the defendant was arrested and detained in the common prison show no doubt as to the attitude and behavior of the defendant so as to claim the attention of the superintendent of prison whereby a psychiatrist would be invited to

examine said defendant. The absence of such report from the superintendent of prison, coupled with the plea of the defendant of not guilty entered when the indictment was read to him, makes this court to feel that the motion is a fabrication of the counsel of the defendant simply to baffle and delay the trial". The trial judge then ordered the matter proceeded with whereupon prosecution resumed production of witnesses.

Prosecution's second witness was George Bulukpah, father of the deceased.

He testified that about 11:30 P.M., Thursday, June 1, 2006, some people woke him up and told him that someone had killed his daughter; that when he went at the crime scene and saw his daughter's body, he asked Jerry Washington "what did my daughter do to you, but he did not answer. The witness said that at that point Jerry Washington sat down on the ground and began to cry; that he himself started to cry.

Prosecution's third witness, the mother of the deceased, who only identified herself as Musu, testified through an interpreter. She said that Jerry Washington asked her daughter to escort him and the both of them left, but "before the middle of the same night," one girl and her brother knocked on her door and told her "your brother -in-law told us that when they were going a heart man appeared in the midst of them at the middle of the road and he did not know which way your daughter went. They can't find her." The witness said that she opened the door and went outside, and followed the crowd. She said when the group reached the body and she heard that Jerry had killed her daughter she ran to her mother crying and did not see her daughter's body.

Prosecution's fourth witness, Rebecca Bleh, the sister of the deceased, testified that while in bed on the night of June 1, 2006, her cell phone rang and someone informed her that her sister had been killed by Jerry Washington.

Prosecution's fifth witness was an expert witness, Dr. Anthony Quaye, who

conducted post mortem examination on the body of the deceased. He testified in the following words: "Honorable Court, the certified cause of death of the late Dorcas Bulukpah was stabbed wounds to the abdominal wall causing hemorrhage and the manner of death was homicide."

Prosecution then rested with the production of oral and documentary evidence and submitted its side of the case for argument.

The appellant, Jerry Washington, took the witness stand and testified for himself. The summary of his testimony is as follows:

He said that in April 2005, his little son got sick and in the period of two months he died. On Friday, June 3, 2005 two women from his community, Ida and Elizabeth, went to his house and told him that one of them had a dream about him. It was Elizabeth who had the dream. She narrated that in her dream, the people of their community asked her to inform the appellant and his wife that the death of their son was just the beginning of their cry, the biggest cry was to come. The reason was that the appellant had money in the community, but he was not generous in sharing with the people in the community; that his wife did not know how to talk to people so they should have them informed that their son's death was the beginning of their sorrow, but the biggest sorrow was to come. Three weeks thereafter, he received a phone call from his business partner, asking him to prepare three loads of rocks to take them to Gbarnga, Bong County. He went in the field to prepare the rocks, but surprisingly his eyes started to turn. He took it to be low blood, but later it got serious. He began to feel pains on his heart like poison. At the same time he was not himself, he started crying. He said he did not know what was happening to him. According to the witness, his boys chartered a car and took him to a clinic at the ELWA Junction where the doctor checked him, but could not give any result. The next day, his wife took him to a certain prayer band behind the PCS Building, Paynesville, Joe Bar. In four months the sickness went out of hand, so his wife took him to Nimba County. In Nimba County, people advised him to go to the hospital, so he went to the G. W. Harley Hospital

in Sanniquellie, where he took operation but the sickness became worse after the operation. He spent about four months in Nimba County, going from one area to another, applying African medicine. He said according to what people told him he was sometime not himself, he would sometime pick up knife and burst bottle and do things like one who is crazy, and few days later he would come to himself.

The appellant said that while they were in Nimba, his wife accused his father of not making enough effort in finding someone to cure him, so she brought him back to Monrovia and again started going from place to place in search of cure for his sickness; that it was the same sickness that led him to kill his wife. He said that he did not plan to harm or kill his beloved wife; that he feels the pain of the death of his wife and that the same sickness continues to bother him while he is in jail.

The appellant was asked the following questions on the cross examination:

Ques: "Mr. witness, you want to impress this court and jury that you were not to yourself at the time you killed your wife. Is this correct?"

Ans: "Yes."

Ques: "If this is the case, please say what do you mean you were not to yourself?"

Ans: "I have a sickness that treats me like one that is crazy."

Ques: "Mr. witness, you were able to narrate the story and quote dates that you transacted with people in 2005 concerning your so-called ill-health up to the time you murdered your wife. For the benefit of the court and jury, please say since your incarceration by the court and the police have you experienced your so-called mental derangement up to and including today's date, if so, who knows that fact about your health condition?"

Ans: "Yes. Since I have been in jail the same thing usually happens to me and there are people in the prison who know that this has happened.

The jury asked the appellant the following questions:

Ques: "Mr. witness, you told this court and jury that you experienced illness which led you not being yourself prior to killing your wife. My question is after killing your wife, did the sickness go away from you."

Ans: "No. After the death of my wife, I still experience the sickness..."

Ques: "Mr. witness, according to you when you went to Nimba for treatment you were breaking bottles and you took knife in your hands, did you stab anybody?"

Ans: "What makes me to even know that I burst bottle was Mondamai Vencent, she was the one who told me after I came to myself. She said she and I were in the room and I burst bottle, so she jumped on me to take the bottle from me and at the same time she called people, and she got hurt under her foot."

Ques: "Mr. witness, how far did you take your wife away from the house before killing her?"

Ans: "I cannot remember."

The trial judge asked the appellant the following questions:

Ques: "Mr. witness, according to your testimony, you regret killing your wife. Am I correct?"

Ans: "Yes."

Ques: "Your answer is yes. Then tell this court when you came to yourself and

realized that you had killed your wife in cold blood, which you said you regret, did you afterward call people to talk to the family of your wife to inform them that you regretted?"

Ans: "When I was taken to the jail in August my father came to Monrovia and went at the prison to talk to me. He was angry with me for killing my late wife and said that he was so sorry why it happened. I asked him to go and meet her family people. I did not want a case in court, but he said that he was afraid. Up to this time, he escaped and is in Guinea. My father-in-law made me to understand that he has been calling my father, but he said my father is scared..."

On the lone testimony of the appellant, the defense rested evidence. After final argument on both sides, the jury brought a unanimous verdict of guilty against the appellant on July 16, 2006.

This case is before this Court on regular appeal for our review. Several issues were raised by the lawyers representing the State and the appellant. However, both sides raised a common issue which borders on the insanity of the appellant. The defense counsel's position is that there was sufficient evidence to doubt that the appellant was of sound mind at the time of his alleged commission of the crime of murder, therefore, the motion to determine the appellant's mental capacity should have been granted by the trial court. The defense counsel relied on this Court's holding in: Joe Weah v. Republic of Liberia, 35 LLR 567 (1988) which says that "Where the testimony of a witness given at trial tends to cast a doubt upon the sanity of the accused, it is error for the trial court to refuse an application of the defendant's attorney to have defendant examined by qualified physician".

The State on the other hand contented that the defense of insanity asserted by the appellant should not be sustained in the face of the facts and circumstances of this case. The facts and circumstances narrated by the State are that the appellant suspected the late Dorcas of having affairs with Junior Mieh; that on the night of the murder he saw Dorcas on the road leading to Junior Mieh's house; that when

he confronted her confusion ensued; that few hours after the confusion the appellant persuaded the deceased to accompany him to an isolated location where he successfully executed his plan to kill her as a penalty for her alleged love affairs with Junior Mieh.

The State further argued that when the appellant murdered the deceased, he cleverly designed an alibi to the effect that "heart men" attacked them and he ran for his life and did not know the where-about of the deceased; that the calculated plan of the appellant to commit murder secretly and the deliberate falsehood designed to 'escape liability cannot be an act of an insane mind. The State therefore concluded that the appellant had malice, was of sound mind at the time he killed the late Dorcas Bulukpah, and that he acted knowingly, intentionally and purposely, in reckless disregard for human life.

The crucial question which presents itself for our determination in this case is whether the appellant was in the state of sane mind at the time of his alleged commission of the crime of murder so that he can be held to answer?

Insanity is defined as "Any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility." Black's Law Dictionary, Eight Edition.

It is settled law accepted in our jurisdiction that a person who was insane at the time he or she committed an act that would otherwise be criminal cannot be criminally held.

In the early case: Gartargar v. Republic, 4 LLR, 70 (1934) this Court held that "Where the testimony of witnesses given at trial tends to throw a doubt upon the sanity of the accused, it is error for the trial court to refuse an application of defendant's attorney to send defendant to government's medical officer in order that he may pass upon his sanity."

This principle of law was upheld much later in: Saamoon v. Republic, 22LLR, 34, (1973) where this Supreme Court held that "When the circumstances under which a crime has been committed indicate the need, the failure of a court to allow an application for a psychiatrist to make an evaluation of the defendant's mental condition and to testify thereon, constitutes revisable error and cause for retrial."

The rules enunciated in these case laws are clearly intended not to hold an accused accountable for a criminal act when, at the time of the commission of said criminal act, the accused person was insane or temporarily insane, as the case may be, and therefore could not have comprehended the repercussion of his or her action. Insanity or temporary insanity takes away the important criminal elements of malice and intent. The rational is that since one who is afflicted with mental disorder at the time of a commission of crime cannot comprehend the consequence and repercussion of his or her action, there can be no intent and malice imputed to such action.

Our statute laws even go further in providing safeguards for the accused person with no manifest intent and malice by reason of insanity.

6.1, 1 LCLR, Civil Procedure Law provides:

"No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures. No person under sentence of death who as a result of mental disease or defect lacks capacity to understand the nature and purpose of such sentence shall be executed so long as such incapacity endures."

§ 6.2 1LCLR, Civil Procedure Law provides:

"If during a criminal prosecution there is reason to doubt the defendant's fitness to proceed, the court shall appoint at least one qualified physician to examine and

report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding five days and may direct that a qualified physician retained by the defendant be permitted to witness and participate in the examination. The report of the examination shall include an opinion as to the defendant's capacity to understand the proceedings against him and, unless the examination is to determine whether the execution shall proceed, a statement whether the defendant is capable of assisting in his own defense. The report shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant."

§ 6.3 1LCLR, Civil Procedure Law provides:

"The determination of the defendant's fitness to proceed shall be made by the court. If neither the prosecuting attorney nor the defendant contests the finding of the report filed pursuant to section 6.2, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing the party who contests the finding shall have the right to summon and to cross-examine the physician who made the report and to offer evidence upon the issue. If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended except as provided in section 6.4, and the court shall commit him to a mental institution for so long as such unfitness endures. When the court on its own initiative or upon the application of the prosecuting attorney or counsel for the defendant or the superintendent of the institution to which the defendant was examined determines, after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, as a result of the hearing, the court is of the opinion that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order that the defendant be discharged or, if his mental condition warrants, that he remain in the mental institution to which he

was committed. Any determination by the court under this section may be appealed by either party adversely affected."

In the case before us there are doubts concerning the sanity of the appellant. The appellant testified that he "was not himself' when he allegedly killed Dorcas; that he was suffering from a sickness that treated him like someone who is crazy; that it was because of this sickness that his wife, the late Dorcas Bulukpah, took him to Nimba County in search of medicine to cure him. The appellant said that at one time in Sanniquellie, Nimba County, he took knife, broke bottle etc., like a crazy man. He further testified that the same sickness continues to trouble him even while he is in prison and that there are people in the prison who can confirm this.

In the statement taken from the appellant at the police station marked by court as exhibit "PF-1" he also stated therein that he was "not himself' when he allegedly killed Dorcas. And when the prosecution's first witness, Nyepan O. Nyepan took the witness stand, he testified that the appellant told him that he was "not himself' at the time he is said to have killed his wife.

During argument the State contended, and we fully agree, that where the evidence in a criminal a case is clear and convincing, as in the case before us, the judgment of the lower court should be confirmed. We also agree with the State that the uncorroborated testimony of an accused, such as the lone testimony of the appellant in the instant case, is insufficient to rebut a prima facie case. But the appellant herein does not seek to rebut the clear and convincing evidence brought by the state through the production of witnesses. In fact, the appellant does not specifically deny killing the late Dorcas Bulukpah, whom he considered for all intents and purposes his wife. His basic contention is that he "was not himself' when he allegedly killed Dorcas. The crux of this case therefore, rests squarely on the issue of insanity which was raised by both parties.

We hold that the trial court erred when it denied the motion to determine the

mental capacity of the appellant/defendant. Had the trial court permitted the appellant to be examined by the requisite physician, evidence would have been provided as to whether the appellant was sane or insane at the time he allegedly killed Dorcas Bulukpah, and if he was not insane at the time of his alleged commission of the crime of murder, whether he was sane at the time of the trial and therefore fit to proceed with trial.

Article 21(h) of the Liberian Constitution (1986) provides that the accused shall have the right to have compulsory process for obtaining witnesses in his favor. We hold that the denial of the motion to have the appellant's mental capacity determined by a physician which would have provided crucial evidence concerning , doubt surrounding his mental condition at the time he allegedly committed the crime of murder was a denial of his fundamental right in the defense and protection of his very life, and we have no hesitancy in declaring that the court below committed a reversible error.

WHEREFORE, the ruling of the trial court is hereby reversed and the case remanded for a trial de novo. The Clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction over this case and give effect to this judgment. It is so ordered.
Case remanded.

COUNSELLORS TIAWON S. GONGLOE, SOLICITOR GENERAL, REPUBLIC OF LIBERIA; AUGUSTINE C. FAYIAH; AARON KPARKILLIN; AND YAMIE QUIQUI GBEISAY APPEARED FOR APPELLEE. COUNSELLOR ELIJAH Y. CHEAPOO, SR. FOR APPELLANT.