JOHN WELLINGTON WILLIAMS, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 25, 29, 30, 1948. Decided January 6, 1949.

1. Evidence tending to show that defendant had no money before a larceny and considerable money after is admissible.

2. Where an involuntary confession discloses incriminating evidence which subsequently on investigation is found to be true, or where the confession leads to the discovery of facts which in themselves are incriminating, so much of the confession disclosing the incriminating evidence and relating directly thereto, but not the whole confession, is admissible in evidence.

On appeal from conviction of grand larceny, *judgment affirmed.*

O. Natty B. Davis for appellant. *The County Attorney* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

In February, 1945, and up to that time John Wellington Williams, appellant, was a resident of Owensgrove in the County of Grand Bassa, where one Robert Lee Tolbert, Collector of Internal Revenue of the Republic, was located. Government funds were stolen from the said Collector of Internal Revenue in a manner and under circumstances that pointed the finger of suspicion at the said appellant. Upon development of facts and proof which the prosecution regarded as sufficient to place said appellant upon trial, he was indicted for the offense of grand larceny before the Circuit Court for the Second Judicial Circuit, Grand Bassa County; but since a change of venue was secured, said appellant was brought to trial before the Circuit Court for the First Judicial Circuit, Montserrado County, which trial resulted in his conviction with sentence of restitution and imprisonment for a period of three calendar years.

The testimony of sundry persons, including appellant's own paramour, tended to show conclusively that up to the date of the theft of the money as charged in the indictment defendant, now appellant, was so destitute that he was unable to meet a debt of eight dollars and to pay for a straight meal for himself and his dependents ;

but, after a planned meeting on the same day of the U.B.F. at the residence of Collector Tolbert, which was not held because of some irregularity, appellant returned home with a bulk of money sufficiently large that it aroused the curiosity of his paramour, Sarah Duncan, so that she inquired where such money had come from.

The following day the appellant came to Monrovia, retained Counsellor Freeman in an action of divorce, and paid him a twenty dollar bill, and went to Gemayel Brothers and deposited the sum of two hundred sixty-four dollars, representing himself as a prospector from Gibi.

Added to the above facts, which were testified to and were not denied by the appellant, there was also a number of witnesses who further testified that both at Bondiway and at Owensgrove said appellant confessed having stolen the money, that he had already spent some of it, that the portion in government checks he had thrown into the river, and that the balance was still with Gemayel Brothers, for the release of which he had given the Solicitor General an order. It is useful to state that with respect to this confession the appellant did not deny having made it but insisted that it was made under duress.

Appellant's own witnesses produced in rebuttal of the evidence given against him failed to substantiate his claim that the confession was made whilst he was under duress. Each of them testified that it was free, voluntary, uninduced, and not coerced. However true this may be, the Court is, nevertheless, almost influenced to believe the contrary, although its conclusions might have been otherwise in the absence of other strong corroborating facts and circumstances tending to show the unquestioned culpability of the appellant. Unfortunately, we are of the opinion that there is sufficiently cogent proof of the appellant's culpability which obviates the necessity of passing upon the question of whether or not his confession made at two different times was voluntary and free.

Among the circumstances given in evidence which connect the appellant with the commission of the crime as charged we name the following:

(1) The appellant at the trial made an effort to prove an alibi claiming that he was not at Owensgrove at the time of the alleged commission of the crime, on February 19 and February 20, 1945, but could not say exactly where he was. Both the witnesses for the prosecution and for the defense testified that appellant was in Owensgrove. Failure to establish an alibi when it is relied upon always carries an unfavorable conclusion against the accused.

(2) Testimony that on the day of the alleged commission of the crime appellant was without money to settle a debt for eight dollars or to purchase a meal for himself and his dependents. Possession of a large sum of money that night after the frustrated meeting of the U.B.F. creates a presumption of guilt which it is incumbent upon the appellant to explain away.

"While there is some doubt whether evidence of the wealth or poverty of the defendant is admissible as a general proposition in a prosecution for larceny, there is no doubt that evidence tending to show that the defendant had no money before a larceny and considerable money after is admissible, since evidence of a sudden and unexplained possession of means about the time the larceny was committed has the tendency to connect the defendant with the crime where there are other circumstances to support it." 17 R.C.L. 68 (1917) ; 25 Cyc. III (1907) .

It was therefore incumbent upon the appellant to have conclusively and satisfactorily shown how he came into sudden possession of this large sum of money. This, of course, he did not do.

(3) There was a marked absence of an effort on the part of the appellant, under the circumstances, to show how he came into possession of this money as was testified to even by his paramour, Sarah Duncan, who reminded him of some of his previous criminal escapades, particularly mentioning the escapade in connection with former President King, the nature of which was not given in evidence. Nevertheless the prosecution sought to help him by putting to him questions on the crossexamination to fill in this gap, some of which we quote :

"Q. Tell the court two months before the deposit of that amount what gainful profession or trade were you engaged in?

"A. I was selling planks and pieces all the time; I had boys working at Cheeseman's prospecting area in No. r Chiefdom, Grand Bassa County, where I was getting from. I was at the time selling bananas and oranges at the airport, at the hospital, and was getting from these sources.

"Q. If you don't mind, tell the court your approximate income from the gold prospecting, plank market, and sale of fruits.

"A. From my plank including expenses from No. 10 to Monrovia, $200.00; from

fruits, $20.00 and $25.00 for every two weeks; gold area was giving me from 4 to 3 ounces for every three weeks, valued at $28.00 per ounce. I sold about two ounces to the value of $56.00 around about that time. I also made 56 U.B.F. aprons at $1.75 each."

We have been somehow impressed with the apparently versatile mind of the appellant but he seemed to have been off his guard when he allowed himself to give this evidence without realizing that as the accused for this testimony to have had weight it should have been corroborated by the testimony of other witnesses. This corroboration is absent from the records in this case.

(4) Whilst it may be argued that the way and manner in which the confession was obtained was irregular, nevertheless there is also a principle of law which makes admissible involuntary confessions disclosing other incriminating evidence.

"Where an involuntary confession discloses incriminating evidence which subsequently on investigation is proved to be true, or where the confession leads to the discovery of facts which in themselves are incriminating, so much of the confession as discloses the incriminating evidence and relates directly thereto, but not the confession in toto, is admissible; and the facts discovered in consequence of such involuntary confession may be proved. . . . And in a prosecution for burglary or larceny that portion of the involuntary confession of accused disclosing the hiding place of the stolen property, and all that he says or does in conveying the information which is directly connected with the discovery, is admissible, although his statement that he stole such property may be inadmissible. " 16 C.J. *Criminal Law* ∫ 1506 (1918).

It can be seen from the above that even though it were possible to admit that the confession was involuntarily made, yet the fact that it disclosed other incriminating evidence, such as the place whereat was concealed a portion of the property, made that portion of the confession, even though possibly involuntary, admissible. And what gives strong color to this conclusion is the fact that the appellant never subsequently took a position to indicate that he was unduly influenced to issue the order on Gemayel Brothers for the release of one hundred and eighteen dollars as part of the amount alleged stolen even though he may have been induced and influenced unduly to write same. His own order of release characterizes the one hundred and eighteen dollars as "part of the amount I am charged with having unlawfully taken from the Collector of Internal Revenues for Marshall and for which I am criminally charged."

It is our opinion that in view of the above there is not apparently a scintilla of evidence of the appellant's innocence, or a rational doubt of his guilt, and consequently the judgment of the lower court is hereby affirmed ; and it is hereby so ordered.

Affirmed.