

THOEPHILUS E. WOTORSON, Appellant, *v.* **REPUBLIC OF LIBERIA**,

Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE TENTH JUDICIAL
CIRCUIT, LOFA COUNTY.

Heard: June 9, 1982. Decided: July 8, 1982.

1. A witness may be cross-examined as to all matters touching a cause or likely to discredit the witness.
2. The term 'hearsay', in its legal sense, denotes that kind of evidence which does not derive its value solely from the credit to be given to the witness himself, but rest also in part on the veracity and competency of some other person. Thus, hearsay evidence is uniformly held to be incompetent to establish any specific fact which, in its nature, is susceptible of being proved by witnesses who can speak from their own knowledge.
3. Hearsay testimony supposes something better, which might be adduced in a particular case; its extrinsic weakness, its incompetency to satisfy the mind as to the existence of the fact, and the frauds which may be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible.

Appellant, Theophilus E. Wotorson, was arrested, charged, indicted, tried and convicted by the Circuit Court for the Tenth Judicial Circuit, Lofa County, of the crime of theft of property. The indictment charged that the appellant, an accountant, had stolen from the Liberia Produce Marketing Corporation (LPMC), the amount of \$4,100.00. A motion for new trial having been filed, argued and denied, and final judgment having been rendered confirming the verdict and sentencing the appellant, the latter noted exceptions thereto and announced an appeal therefrom to the Supreme Court.

On review of the case, the Supreme Court reversed the judgment, holding that the trial judge should have granted the appellant's motion for a new trial since the entire evidence adduced at the trial and upon which the appellant was convicted was hearsay evidence. Hearsay evidence, the Court said, was inadmissible and could not therefore form the basis for a conviction. The Court accordingly concluded that as there was no credible evidence upon which the appellant was convicted, he should be discharged without day.

S. Raymond Horace appeared for the appellant. The Acting Solicitor General of the Republic of Liberia, *Richard McFarland*, appeared for the appellee.

MR JUSTICE MORRIS delivered the opinion of the Court.

A review of the genesis of this case reveals that appellant was an employee of the Liberia Produce Marketing Corporation (LPMC) in Voinjama, Lofa County, in the capacity of an accountant. The records show that allegations were made to the effect that on November 11, 1980, the office of the cashier of LPMC was burglarized and that the appellant, who had assisted the cashier to check the money on that day, was arrested by the Criminal Investigation Division and forwarded to the magisterial court; that he was later indicted during the November 1980 Term of the Tenth Judicial Circuit Court, Lofa County, by the grand jury for the crime of theft of property. Thereafter, appellant was tried and convicted during the February Term of the Tenth Judicial Circuit Court, presided over by His Honour A. Wallace Octavius Obey. A motion for new trial was filed, resisted, argued and denied, and final judgment was rendered affirming and confirming the verdict of the empanelled jury. Appellant then appealed to this Court of last resort. Hence, this case is now before us for final determination.

In their brief, counsel for appellee admitted by implication that the trial judge had erred, but they contended that the errors were not reversible. We quote hereunder count 3 of the brief where in the contention is raised.

"3. With respect to count one through count sixteen of the appellant's bill of exceptions, appellee contends here that the exceptions noted therein are immaterial and irrelevant to the theft of property charge at bar and contain no relevant legal basis for Your Honours' consideration and review. Further, appellee hereby contends that the alleged errors mentioned by the appellant in these counts do not constitute reversible errors to warrant a reversal of the judgment rendered against the appellant in the lower court."

We shall consider only counts 10 and 16 in the determination of this case, as the other counts are all objections to questions put to witnesses and overruled, and which we feel are not pertinent to the determination of the case. Count ten of the bill of exceptions states:

"That Your Honour committed a reversible error when you sustained the prosecution's objection to a question put to the State's witness on the cross-examination. 'Ques: Oh then, Mr. witness, are you telling the court and jury that your earlier testimony in which you stated that on the 12th of November, when you arrived on the crime scene and in conducting your criminal investigation, Mr. Jeffy told you that he discovered that an amount of \$4,180.00 was allegedly stolen which, according to you, necessitated your team to arrest Defendant Wotorson is not true, but Jeffy wrote to their head office and the said head office dispatched a team of auditors who came and conducted their auditing and arrived at this figure, the \$4,180.00, at which time he, Jeffy, wrote to inform your team for appropriate action, not so? Objection: Grounds: 1. Hypothetical; 2. Assuming a fact not proven by the witness on the stand; 3. Asked for the mere purpose of entrapping the witness. The court: Sustained. To which defendant excepts. See sheets 4 and 5 of 13th day's jury session, February 24, 1981."

We hold that the trial judge erred in sustaining the objection of the prosecution because the witness had testified that when they arrived at the crime scene on November 12, 1980, Manager Jeffy told the police that an amount of \$4,180,00 was stolen and defendant was arrested and carried to the police head office for further questioning. Besides, a witness may be cross-examined as to all matters touching the

cause or likely to discredit him. Civil Procedure Law, Rev. Code 1: 25.23, under *Scope of cross-examination*. Count 10 of the bill of exceptions is therefore sustained.

Count 16 of the bill of exceptions states:

"And that Your Honour committed the most serious reversible error when Your Honour, considering the entire trial, rendered a final judgment against the defendant herein named, to which final judgment defendant excepted and prayed for an appeal." *See court's final judgment.*

We shall refer to the testimonies of the prosecution witnesses to ascertain if the State did prove the allegations laid in the indictment.

During the trial, the prosecution produced six witnesses, the first of whom was Alexander Jeffy, Manager of LPMC, who deposed, as follows:

" On the 11th day of November, 1980, all my staff members, including Mr. Wotorson were to work that day. After the day's work, one of our power plants was damaged, so my attention was on the workshop. I assumed that every worker and every staff member should leave office after work, except for some work that he has to do which has to be approved by the manager. About 4:30 to 5:00 p.m., I decided to come to Voinjama Town. While getting in the pick-up to come to Voinjama, Mr. Daniel Goe called me from Boakai's residence, at which time Mr. Theophilus E. Wotorson came out of the office with papers in his hands and spoke to Mr. Daniel Goe. He later went back in the office. I walked to Boakai's residence with Mr. Goe and had a brief talk with the family. So at about 5:30 to 6:00 p.m., I decided to go to Voinjama, at which time I saw Mr. Wotorson right behind me. He told me that he also wanted to go to Voinjama Town. I assigned one of our jeeps to Mr. Wotorson, then I took off for Voinjama City. Upon my arrival in the City, I met Madam Maimai Karmo and Miss Esther Cooper in a taxi about to go to V.C.M. These two ladies stopped me and asked if I could take them to V.C.M. I told them I was not able, but rather Mr. Wotorson was on his way to Voinjama. Before I got

through talking with them, Mr. Wotorson arrived with the jeep. I then stopped him and told him about the women. I am not quite certain about the time, but I think it was about five minutes that Mr. Wotorson stayed in Voinjama City before going back to V.C.M. I stayed in Voinjama until about 9 o'clock p.m., then I went to V.C.M. and went to bed. On the morning of the 12th, being concerned about the power plant, I decided to visit the workshop that morning. Upon my arrival at the workshop, I met the office boy, Moses Kollie, who told me that Mr. Wotorson wanted me at the office. I rushed to the office and noticed that the bathroom attached to the office door could not open. The key could not be found. I entered the office and noticed that there were two holes in the ceiling and I also found out that the door to the safe room could not open after trying all the keys. I then ordered the carpenters to burst the bathroom door and also the safe room door. We then noticed, after bursting the safe room door, that somebody had broken into the safe room by way of the rest room, the bathroom. I then asked Mr. Wotorson, the accountant, to check how much money was stolen. Mr. Wotorson did check and reported to me that \$2,777.08 was stolen. He and I called all the watchmen and the two office boys to ask them if any of them knew about the burglary. We asked all of them but no one could give any account of the money. I left Mr. Wotorson at the office to seek my interest while I came to town to seek the advice of the local authority. Captain Morris, being a good friend, assigned some CID officers to go with me and find out what had happened. The police did a brief investigation in my office, at which time they found out that all of the watchmen and the two office boys were involved and were to go to the station. Going to the station, I took Mr. Wotorson along with me. I was asked to make a statement concerning the theft case. Mr. Wotorson was also asked to make a statement at the CID. Then I was asked to leave. I came back to V.C.M. with Mr. Wotorson. Because my interest was involved, I made frequent visits to the station that day. On the night of the 12th, the army man assigned to V.C.M. told me that a girl had something to tell me. So we went to this girl. This girl is Nancy Outland. She is the girlfriend of one of our contractors (White man). She told me that on the night of the 11th, at about 7:30 to 8 o'clock, she did see Mr. Wotorson opening the rest room door from which the rogue entered. I went to Mr. Wotorson's house and asked him if what the girl told me of seeing him at the rest

room door was true. Mr. Wotorson told me that he had no connection whatsoever, and furthermore, he was not the person. The same night I reported the matter to the police. On the morning of the 13th, Mr. Wotorson was arrested by the CID. Because of any interest and my character, which was involved, I visited the station every morning and everyday. On the afternoon of the 13th, witness Govego Kpaba confessed at the station by saying that he did see Mr. Wotorson on the night of the 11th around the office but was afraid to ask Mr. Wotorson because of him being a staff member. That same afternoon, the police interrogated Madam Esther Cooper. In my presence, Miss Cooper said that on the 11th her boyfriend, Mr. Wotorson, entered her room with a short trouser with a bunch of money in his left pocket. When the police asked her whether she knew the amount, she said no. On the morning of the 14th, Madam Maimai Karmo confessed in my presence that on the night of the 11th, Mr. Wotorson, after returning from Voinjama City, did change his clothes to go out. Where, she did not know. She further stated that she was in her room preparing some kool aid. When she got through with the kool aid, this was about 8 o'clock, she decided to go and waste the water outside. Coming out of her room, she and Mr. Wotorson met at her room door. This is the room that Mr. Wotorson stays in. She further stated that Mr. Wotorson had his shirt off when they passed one another while she was going to waste the water. She also stated that Mr. Wotorson changed his clothes and went in his girl friend's room that is in the same house. He never went back to his room until about 12:00 midnight. This is what I know about the case, as far as I am concerned."

The next witness was Esther Cooper who testified that on the 11th of November, 1980, they met Alexander Jeffy in Voinjama City and asked him to give them a lift to their camp, but he told them to wait for the defendant; that the defendant came and carried them to camp and then carried the car to LPMC yard; that when they went to work the next day, they were informed that some money was missing; that her uncle was arrested and jailed; that her uncle had sent a message to her mother to send food for him and she had sent coca cola and money; that the police arrested and jailed her mother for sending something to someone in jail; that after work that day, she went to the police head office to ascertain the cause of her mother's detention; that at the

station, she was asked whether the defendant had given her money and she had replied in the negative; that the CID officers then handcuffed her to number one to get her to confess; that Jeffy, the acting manager of LPMC (Liberia Produce Marketing Corporation) then told the CID to press her to confess because the defendant loved her too much; that when the handcuffs were hurting her, she intimated to the CID to take the handcuffs from her hand, promising that if they did, she would talk; that they took the handcuffs off and carried her in a room where she started crying; that the officers then told her that if she did not say anything, they would handcuff her again and send her to Monrovia; that it was at this time she told them that she saw money with the defendant; that she told the grand jury that she did not see defendant with any money, but that she was forced to say that she saw defendant with money. The witness also testified that the manager tried several times to influence her to implicate the defendant but that she had refused; and that she had remained in jail four days without bathing.

Govego Kpaba, a watchman was the third witness for the prosecution. He said at the police station that at about 7:30 p. m. he saw Defendant Wotorson standing between the office and the fence while he, Govego Kpaba, was walking around the fence about.

Lt. Stephen Kawala and Captain Thomas Foday of the CID also testified regarding the confessions made by Esther Cooper and the defendant to Lt. Stephen Kawala at the police station. Captain Thomas Foday mentioned in his testimony that \$661.86 was collected from the defendant's house as F.O.C., and that this amount was sent to court.

Thomas Foday also testified that the records were presented to him upon his return from Monrovia and that he had signed them after Ms. Cooper and the defendant had admitted making the statements that were reduced into writing.

The last witness for the prosecution was Auditor A. B. Kamara, who was sent for after the burglary. According to the auditor, \$2,827.44 was discovered to be short

from the LPMC's funds. He stated that he was informed that \$300.00 was given to the cashier by Dogba for safe keeping, and that there was an envelop containing \$1,052.56, the said amount being funds that were wrongfully deducted from Voinjama Coffee Mill employees' salaries. The auditor further testified that when these three amounts were added together, they totaled \$4,180.00, which he reported to Manager Jeffy as the amount allegedly stolen, and for which defendant was indicted.

Nancy Outland, who was said to have given the information that she saw the defendant by the door of the toilet, never testified at the trial; neither did the soldier whom Nancy Outland allegedly first gave the information to.

The appellant took the stand and denied ever being connected with or involved in the burglary which occurred at LPMC. He admitted taking the jeep to Voinjama that day but maintained that one Jallah took the jeep back to the LPMC yard. He also testified that he never went back to the LPMC yard, as was alleged against him. As for the \$661.80 that was taken from his house, he explained that \$41.35 was his own money found in his shirt pocket, that \$33.00 was for his wife found in one of the valises, and that \$529.45 was the LPMC staff members club money which he himself directed the police to where it was. He said that the \$661.80 was returned to him and that the LPMC staff club members divided the \$529.45. Therefore, he said, there is no longer any fruit of crime in the court. Mr. Wotorson further explained that after the burglary was discovered on November 12, 1980, Mr. Jeffy instructed him to check the money in the cash box to ascertain the amount which had been stolen. He revealed that he and Mr. Cooper Magbolleh, the cashier, did the checking in Mr. Jeffy's office; that they had found only \$150.00 in the cash box, all in coins, out of the \$1,575.38 that was left in said cash box the day previous to the burglary; that they subtracted the \$150.00 which they had discovered in the cash box from the \$1,575.38 that was left there on the previous day; that the difference was \$1,425.38; that they added the \$1,952.00 which was wrongfully deducted from the employees' salaries for medical benefit to the \$300.00 which their estate supervisor, Mr. Daniel Dogba, had given to Mr. Cooper Magbolleh for safekeeping; and that the total

amount which they determined was shot was \$2,777.38. This is the amount he and Cooper Magbolleh reported to Mr. Jeffy as having been stolen or which was missing. This was the evidence presented at the trial.

Having summarized the evidence, it is our candid opinion that the evidence adduced at the trial was not sufficient to support a verdict of guilty against the defendant. Therefore, the trial judge should have granted defendant's motion for a new trial, since he did not file motion for judgment of acquittal. The testimonies of witnesses Alexander Jeffy, Lt. Stephen Kawala, and Captain Thomas Foday, as they relate to Nancy Outland seeing the defendant by the toilet door between 7:30 to 8:00 o'clock that night were all hearsay. Nancy Outland should have testified since the prosecution intended to use circumstantial evidence. Witness Esther Cooper plainly stated that she was tortured by the investigating officers, by her being handcuffed to number one. Therefore, she was forced to confess at the police head office, when in reality, she had never seen the defendant with money. Witness A. B. Kamara testified that according to his audit, \$2,827.44 was the discovered shortage of the Liberia Produce Marketing Corporation's funds. In his testimony, the auditor said that he was informed that one Dogba had given the cashier \$300.00 for safekeeping, and that there was also an alleged amount of \$1,052.56, representing the amount wrong-fully deducted from the salaries of employees of the V.C.M. (Voinjama Coffee Mill). The auditor did not state, however, how he arrived at the shortage. The indictment charged the defendant with deceitfully, unlawfully, intentionally, purposely, fraudulently and feloniously breaking into the safe room of LPMC and stealing the sum of \$4,180.00, the same being the property of the Liberia Produce Marketing Corporation. Witness Govego deposed that he saw the defendant between the office and the fence. But there was no evidence that the defendant was seen by the door of the toilet except for the hearsay testimonies.

The circumstances under which hearsay evidence can be admissible into evidence under our statute are not applicable to the instant case. Civil procedure Law, Rev. Code 1: 25.7. Hence, count sixteen of the bill of exceptions is sustained. This Court, in the case *Witherspoon v. Republic*, 6 LLR 211, 216 (1938), held:

“The term ‘hearsay’ is used with reference to that which is written as well as to that which is spoken; and, in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit to be given to the witness himself, but rests also, in part, on the veracity and competency of some other person. Hearsay evidence, as thus described, is uniformly held incompetent to establish any specific fact which, in its nature, is susceptible of being proved by witnesses who can speak from their own know-ledge. That this species of testimony supposes something better, which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness is incompetency to satisfy the mind as to the existence of the fact, and the frauds which may be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible ”

We have not seen from the records before us where any of the evidence adduced at the trial connected the defendant to the crime charged in the indictment. The evidence just did not support the verdict. Therefore, this Court cannot, in the name of justice, affirm such judgment.

In view of the foregoing circumstances, we are left with no other alternative but to reverse the judgment. The judgment of the lower court is therefore reversed and the defendant is ordered discharged without day. And it is hereby so ordered.

Judgment reversed.