

Anthony Wright, Jr., Nyion Elliot, Josiah Manston, Fedesco Wilson, Edward Y. Harris, Nyema Woart & Victor Moore APPELLANTS VERSUS **Republic of Liberia**, by and through the Ministry of Justice APPELLEE

APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT, FOR GRAND GEDEH COUNTY. REVERSED AND REMANDED

LRSC 39

Heard: April 21, 2010 Decided: August 31, 2010.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

At the May Term, 2008 of the Circuit Court of the Fourth Judicial Court, Maryland County, Appellants, Anthony. Wright, Jr., Nyion Elliot, Josiah Manston, Fedesco Wilson, Edward Y. Harris, Nyema Woart and Victor Moore were indicted by the grand jury of Maryland County, Republic of Liberia, for the *murder* of Massaquoi Walker, Wah Namu and Godfrey Dweh.

Prosecution made application for change of venue pursuant to section 5.7 (1), ILCLR (Liberian Code of Laws Revised), title II (Criminal Procedure Law), (1973), which provides:

" 5.7. Change of place of prosecution: On motion of the prosecuting attorney or the defendant, the court may order the proceedings in a criminal prosecution transferred to a competent court in another county in any of the following cases:

(a) If the county in which the prosecution is pending is not one of the counties specified in sections 5.1 — 5.6;

(b) If there is reason to believe that an impartial trial cannot be had in the county in which it is pending;

(c) If all the parties agree and if the convenience of material witnesses and the ends of justice would be promoted thereby."

His Honor, Nelson T. Tokpa, Resident Circuit Judge presiding over the August 2008 Term of said court, granted the application; and thereupon, the murder case was transferred to the Seventh Judicial Circuit Court for Grand Gedeh County.

On November 16, within the November 2008 Term of the Circuit Court of Grand

Gedeh County, trial commenced upon appellants' entry of not guilty plea. Issue having been joined with the Republic, a petit jury was duly empanelled to try the appellants/criminal defendants on the charge of murder as set forth in the indictment.

Following a hearing lasting over forty days, the petit jury, on December 12, 2008, returned a unanimous guilty verdict against the appellants. Upon this verdict, His Honor, James W. Zotaa, Jr., trial judge presiding by assignment, on the 17th day of December, 2008, pronounced the following:

"Under the constitution of the Republic of Liberia and our criminal law, capital punishment such as murder and treason are punishable by life imprisonment or death. Either one of the two satisfies the law. [Also] the statute provides how to implement the death penalty or can be imposed; (and) that is by hanging by the neck.

"Wherefore and in view of the foregoing, the defendants [appellants] are hereby adjudged guilty and are hereby sentenced to death by hanging from 6'clock a.m. to 6'clock p.m., until their necks are broken" and prayed also that "the Almighty God will have mercy on their (appellants') pitiful souls "

It is in respect of this final judgment as well as other rulings of the trial court in the premises appellants excepted and addressed an eighteen count bill of exceptions before this Court of *dernier resort*.

For the just determination of this case, we have deemed counts 1, 2, 3, 7, 10 and 12 of the bill of exceptions as deserving our careful consideration. The relevant counts shall be recited in consideration of an appropriate question.

"1. That the verdict of the empanelled jury brought against defendants/appellants on the 12th day of December, A.D 2008, is contrary to, and against the weight of the evidence adduced at the trial. Notwithstanding, Your Honor confirmed the erroneous and prejudicial verdict of the empanelled jury and entered judgment thereon, sentencing defendants/appellants to death by hanging; for which erroneous and prejudicial judgment, defendants/appellants except."

"2. [That] the prosecution paraded five (5) regular witnesses and one (1) rebuttal witness. They include three police officers, namely: Amos Darpoh, Stanley Kambleh, and Anthony Sherman; the Town Chief of Wetchuken, Maryland County, in person of Nelson Neal; and Anthony Wright, Sr., Anthony Sherman later testified as a rebuttal witness.

"3. That further as to count two (2) above, while on the witness stand, plaintiff/appellee's witnesses

failed to establish that they personally saw the defendants/appellants commit the act; rather, their testimonies were based solely on hearsay. Furthermore, it is alleged that the seven (7) defendants used fourteen (14) cutlasses, three (3) guns, one (1) spear, and a trumpet as the criminal agency in the commission of the crime; but when the rebuttal witness (Anthony Sherman) was asked on the cross as to whether or not he identified each of the defendants/appellants by the weapon used, he answered in the negative, meaning that he did not know or see the weapon which each of the seven (7) defendants/appellants allegedly used in the commission of the crime. Not only did the testimony of this witness contradict the testimony of the other witnesses, but it created serious doubt, which doubt should have operated in favor of the defendants/appellants."

"4. Further as to count three (3) above defendants/appellants submit that plaintiff/appellee's second witness, in person of Anthony Wright, Sr., who is alleged to be an insider witness, told the court that the allegations made against the defendants/appellants were not true. Predicated upon this, the plaintiff/appellee declared him a hostile witness; and consequently, he was cross-examined by the plaintiff/appellee to the extent that he failed to say with specificity and particularity that any of the defendants/appellants was responsible for the commission of the crime. Defendants/Appellants submit that this testimony of witness Anthony Wright, Sr. confirms defendants' plea of "not guilty", and said testimony should have therefore operated in their favor.

"9. That the defendants/appellants say and submit that after the close of argument on both sides, Your Honor failed and refused to charge the jury on defendants/appellants' points of law governing the trial of the case, specifically as it relates to REASONABLE DOUBT and HEARSAY EVIDENCE. Defendants/Appellants submit that in all criminal prosecution, whenever reasonable doubt exists, it must operate in favor of the defendant. Further, under our law and practice hoary with age in this jurisdiction, hearsay evidence is inadmissible and cannot therefore be used to convict a defendant as all witnesses must testify as to what lies within their certain knowledge on matters being tried by the court."

"10. That based on the averments contained in counts two (2) through nine (9) above, defendants/appellants say that the verdict of the empanelled jury is contrary to, and against the weight of the evidence adduced at the trial. Accordingly, Your Honor erred when Your Honor confirmed the verdict of the empanelled jury and entered judgment thereon, sentencing defendants/appellants to death by hanging; for which erroneous and prejudicial judgment defendants/appellants except.

"12. That throughout the trial Your Honor, insulted, harassed and intimidated, belittled, and humiliated counsel for defendants/appellants to the extent that Your Honor on two separate occasions threatened to order the arrest and incarceration of one of defendants/appellants counsel, in person of Counselor Albert S. Sims, thereby bringing into question the cool neutrality of the trial judge."

"14. That after having declared Plaintiff/ Appellee's witness (Anthony Wright) a hostile witness and cross-examined him, plaintiff/ appellee proceeded to, and did arrest said Anthony Wright, Sr. and had him incarcerated in the common jail for alleged commission of perjury and kept said Anthony Wright, Sr. in jail until after the jury brought its verdict. To the best knowledge of the defendants/ appellants, said Anthony Wright continues to be in jail."

"15. That the arbitrary incarceration of Anthony Wright, Sr. without due process, intimidated the jury and instilled fear in the jury, to the extent that the jury could not be fair and impartial. The jury determined that if they had brought a verdict of acquittal, which would have been consistent with the evidence, they nevertheless would have been incarcerated just as Anthony Wright, Sr. was incarcerated."

The indictment upon which appellants were arrested and sent to prison on June 19, 2008 and subsequently charged and tried for murder reads thus:

"WE THE GRAND JURORS, GOOD AND LAWFUL CITIZENS of the Republic of Liberia and for the County of Maryland being duly selected, sworn, empanelled to inquire into all criminal matters brought before us, sitting in the May Term of court, A.D. 2008 of the Fourth Judicial Circuit Court for Maryland County, R.L. upon our OATH, do hereby present Anthony Wright, Jr., Nyion Elliot, Josiah Manston, Fedesco Wilson, Edward Y. Harris, Nyemah Woart and Victor Moore of Rock town, Maryland County, R.L. charged with the commission of the crime: "MURDER." A felony of the first degree, defined by the Penal Code as found in title 14, section 14.1 (a)."

"THE GRAND JURORS, aforesaid, sitting in the May Term of Court, A.D. 2008 of the Fourth Judicial Court, upon their OATH aforesaid, do present Anthony Wright, Jr., Nyion Elliott, Josiah Manston, Fedesco Wilson, Edward Y. Harris, Nyema Woart and Victor Moore of Rock Town, Maryland County, R.L. with the commission of the crime MURDER a felony of the first degree when they singularly and personally using cutlasses and dangerous weapons did inflict wounds on the bodies of Massaquoi Walker, Wab Namu and Godfrey Dweb between May 8th and 9th, 2008 resulting into their death, did brutally, physically and intentionally assault the victims Massaquoi Walker, Wab Namu and Godfrey Dweb rendering them unconscious and leaving their bodies with wounds on the sides of Massaquoi Walker, Wab Namu and Godfrey Dweb chopping off left hand of Godfrey Dweb and leaving them to bleed to death as will most fully appear from the photographs hereto attached to this indictment forming a cogent part thereof, marked Plaintiff's exhibit "1".

"AND THE GRAND JURORS AFORESAID on their OATH, aforesaid, say that in addition to the copies of the photographs, plaintiff's exhibit "1" the hand was Godfrey Dweb and Massaquoi Walker photo showed that his intestine came out. Coroner jury was summoned to examine the bodies and ascertain the cause of death. The coroner report showed that the descendents died as a

result of the wounds inflicted on the bodies. The bodies were also taken to the J.J. Dossen Memorial Hospital, report hereto attached [and] marked Plaintiff's exhibits two and three also forming a cogent part of this INDICTMENT."

"WHEREFORE, WE THE GRAND JURORS UPON OUR OATH, sitting in the said May Term, A.D. 2008 of said Fourth Judicial Circuit Court, Maryland County, R.L. do say and present the said defendants Anthony Wright, Jr., Nyion Elliot, Josiah Manston, Fedesco Wilson, Edward Y. Harris, Nyema Woart and Victor Moore of Rock Town, Maryland County, Liberia, with the commission of the crime of "MURDER" of the aforesaid decedents, the felony of the first degree, in manner aforesaid, against the PEACE and DIGNITY of the Republic of Liberia, and in contravention of the statutes made and provided."

REPUBLIC OF LIBERIA PLAINTIFF

BY AND THRU THE APPOINTED

SPECIAL INVESTIGATOR

AND PROSECUTOR OF THE MINISTRY OF JUSTICE

Counselor J. D. Baryogar Junius

Dated this 18th day of June, A.D. 2008.

WITNESSES:

Amos Darpoh, LNP Nyanti Bedell

Emmanuel Jlikan, Stanley Kambleh, Anthony Sherman,

Photographs

Coroner's Report

From the onset, it is well to indicate that the law in our jurisdiction directs that every criminal defendant be presumed innocent until the contrary is proven; the law equally imposes a duty on the state to prove all material allegations set out in the indictment, further stipulating that when the total evidence adduced at a trial is inconclusive thus creating reasonable doubt, the criminal defendant is entitled to acquittal: Section 2.1 I LCLR (Liberian Code of Laws Rev.), title II (Criminal Procedure Law); *Banioe v. Republic*, 26 LLR, 255, 273 (1930); *August Sneh v. Republic*, 35 LLR 136, 139 (1988). This Court has also said that to prosecute crime, establishment by the state of the guilt of the accused with that legal certainty which excludes every hypothesis of the defendant's innocence, is necessary: *Berrian v. Republic*, 2 LLR 258, 262-3(1916).

In our jurisdiction, in order to secure a conviction in murder prosecution, the state must establish the *corpus delicti* with corroborating evidence. *Corpus delicti*, according to the holding in the *Berrian* case, has two components, one or the other of which must

be proven: the death itself and the criminal agency used to effect the crime-*when there is direct evidence as to one given, circumstantial evidence may be accepted as to the other on condition however, that the circumstantial evidence must be consistent with guilt and inconsistent with innocence.*

Keeping this required standard in mind, inspection of the indictment upon which trial was had, in summary, accused appellants of personally and individually using cutlasses and dangerous weapons and therewith inflicted fatal wounds on three individual persons, Massaquoi Walker, Wah Namu and Godfrey Dewah; that infact the hand of victim Godfrey Dewah was cut off while Massaquoi Walker was severely wounded with his intestine protruding; that the injuries inflicted by appellants led to the victims bleeding to death.

But after their conviction by the trial court, it would appear appellants in the bill of exceptions have not disputed that prosecution established one component of the *corpus delicti*; that is, there was homicide under suspicious circumstances. However, appellants have strenuously argued that there exists a material variance between essential averments contained in the indictment on the one hand, and the testimonies offered by state witnesses on the other hand; that although the indictment averred that appellants' criminal conduct resulted to the death of three (3) persons whose dead bodies were identified as those of Massaquoi Walker, Wah Namu and Godfrey Dewah, prosecution nevertheless failed to prove this serious allegation as set forth in the indictment; that quite to the contrary, state witnesses testified that only two (2) bodies were discovered.

Notwithstanding this variance, according to appellants, and in reckless disregard to the laws controlling, the empanelled jury returned a guilty verdict against them. Specifically complaining as to the variance, appellants contend in count 7 (seven) of the bill of exceptions as follows:

"7. That defendants/ appellants submit and say that there exists serious material variance between the indictment and the testimonies of the witnesses for the plaintiff/ appellee. This was raised during the trial and argued before the jury; yet the empanelled jury, contrary to the argument so forcefully advanced by defendants/ appellants, brought a guilty verdict against them. The second paragraph of the indictment states that the defendants/ appellants, using cutlasses and dangerous weapons, did inflict wounds on the bodies of Massaquoi Walker, Wah Namu and Godfrey Dweh between May 8 and 9, 2008. Defendants/ Appellants submit that the testimony of Plaintiff/ Appellee's witnesses did not lead evidence during the trial to prove this portion of the indictment; in that, the indictment states that there were three (3) bodies (Massaquoi Walker, Wah Namu and Godfrey Dweh) were involved; but to the contrary, Plaintiff/ Appellee's witnesses testified that only two (2) bodies were discovered on the

scene of the incident."

As to this complaint, we have gathered from the records before us that the state witnesses did not establish that three persons were killed. In fact during direct examination, Police Officer Amos Darpoh as one of state witnesses told the court that their investigation discovered two bodies. Witness Darpoh also testified to photos taken of the two bodies, the crime scene as well as the coroner's report. These items, tending to establish the death of two persons, were also admitted into evidence, defense objection notwithstanding.

The records before us further indicate that defense counsel made further queries as to the number of bodies during cross examination when counsel posed the following questions to state witness, Police Officer Amos Darpoh:

Question: "Mr. Witness, finally, I put this to you that to the best of your Knowledge, you saw two bodies that were pronounced dead. I'm I correct?"

Answer: "Yes, they were pronounced dead."

Question: "Mr. Witness, I read portion of the indictment for you and for the benefit of this Honorable court and the trial jury, my question is the indictment suggests that there were three bodies, meaning three persons were allegedly killed by the defendants in the dock, you have told this court under oath that you saw two bodies. I'm I correct to think that there was no third body bearing the name Wah Namu discovered by you in your investigation?"

Answer: "The investigation discovered two bodies."

Prosecution third witness, investigating officer Stanley T. Kambleh was also cross examined as follows:

Question: *"Mr. Expert Witness, could you say for the benefit of this court and the jury, those you interviewed in Rock [Town] as well as Wetchuken as it relates to the incident since you have placed on records that you have visited the disputed area I guess for the purpose of establishing the truth leading to the death of the two (2) persons?"*

Answer: "Yes."

Clearly, the transcribed records before this Court support appellants' contention that

the state did not establish that three persons were wounded and bled to death as alleged in the indictment. The two bodies investigators discovered were those of Massaquoi Walker and Godfrey Dweh. With corroboration, state witnesses deposed that the stomach of Massaquoi Walker was discovered cut open with the deceased intestine gutting out while the left hand of decedent Godfrey Dweh was found cut off. Throughout the trial, no testimony was deposed in respect of the body the third alleged decedent set forth in the indictment.

We have delved into the records in this case but were unable to find any evidence tending to establish discovery of a third body which, it is apparent, should be that of Wah Namu. Appellants have forcefully urged this Court to believe that the state inability to prove its allegation of three (3) bodies constitutes variance of a material nature.

We are therefore in agreement with appellants on this question. This is because the law in this jurisdiction requires that all substantial allegations set forth in an indictment must be proven. This is a mandatory requirement in our jurisdiction. To mind of this Court, it would have been appropriate had the state moved the court, without prejudice to appellants, to amend the indictment consistent with practice and procedure.

However, this Court declines to support appellants' position that discovery of two bodies in contrast to three, as laid out in the indictment, can be said to constitute material variance, such as contemplated under our criminal law.

In the case *Stubblefield v. Republic*, reported in 35 LLR at page 275 (1988), a criminal case which, in respect to the question of variance, is analogous to the one at bar, the state arrested, indicted and tried Appellant Stubblefield on the charge of *theft of property*. The amount alleged by the state in the indictment was \$4,488,700.00 (four million, four hundred eighty-eight thousand, seven hundred dollars).

At the close of the trial however, the state succeeded in proving an amount much less than the figure set out in the indictment. Thereupon, Appellant Stubblefield mounted a vigorous challenge. His ground was that variance existed between the material allegation contained in the indictment and the evidence offered in proof. According to appellants, this variance ought to have operated in his favor such as to set aside the judgment of conviction entered by the trial court.

This Court disagreed with Appellant Stubberfield and held that a party in a theft case will be held for the proven portion of the stated amount in the indictment. The

Supreme Court took the view that the value or figure did not in any way depart from the offense charged in the indictment. Ibid. 286. Put differently, it was the opinion of the highest court that theft as an offense was proven notwithstanding the difference between the figure charged in the indictment and the figure sustained by evidence at the trial.

In our considered opinion, the principle enunciated in the Stubberfield case, appropriately applies to appellants' contention in relation to the number of bodies discovered in the case before us. In consonance with the aforementioned principle of law, we cannot accept that the state, having diligently established the existence of two bodies, and not three as set out in the indictment, the difference of one (1) obliterates elements and essence of the offense of murder, or that human lives were lost.

Clearly, what the state set out to prove was the crime of murder. Our position is also consistent with the venerated long standing holding of this Court; that one of the three elements to uphold *juridical conviction* is that the offense must be correctly charged in a valid indictment, *Blamo v. Republic*, 17 LLR 232, 235 (1966).

One salient question suggests itself to this Court when appellants' exceptions related herein above are put together: *whether the state made a prima facie case by meeting the standard of proof required in criminal cases to sustain a judgment of conviction?*

In, consideration of this question, we must keep in mind the second component of the *corpus delicti*, i. e., the criminal agency, the state having conclusively established homicide by positive evidence.

We have observed from the records that the State, in prosecuting its case, employed five regular witnesses. State's regular witnesses were Amos Darpoh, Anthony W. Wright, Stanley T. Kambleh, Anthony M. Sherman II, Nelson Neal. In addition, Witness Anthony M. Sherman II was recalled to testify as a rebuttal witness.

We have found the deposition made by prosecution first witness, Maryland County Police Detachment criminal investigator, Amos Darpoh, substantially the same as with other state witnesses. He deposed as stated as follows:

"On the 8th of May 2008, while quieting a strike action by the plantation workers, we received a call from the then Superintendent Hon. Sieh O. Brownell that he received a communication from Rock Town. [The communication indicated] that the people of Wetchuken have gone into their farmland [at] Kunklawen in a road brushing process and chopped off their crops. Based upon this information,

we firstly went to Wetchuken which is not far from Pleebo. On our arrival in Wetchuken, we met the Chief, [Mr.] Nelson Neal and other town men, and this was put before them. But according to him and the town men, there was nothing of such. So we returned to Pleebo."

"About 5:30 pm on the same day, that is May 8, 2008, we received a second communication from the Superintendent Hon. Sieh Teba Nueville stating that he had received a communication [this time] from Wetchuken that the inhabitants of Rock Town had entered into Wetchuken and attacked the citizens thereby leading them to flee into the bushes. Based upon this information, the then County Commander, Lyndon Johnson communicated with our UNPOL and the Ethiopian Battalion and we were able to proceed to Wetchuken: On arrival this time around, the town was completely quiet; the tree crops were all chopped down including livestock. The police mounted loudspeaker to call the people back to town. The then County Commander posed a question to the Chief; "why didn't you tell us this morning and you said everything was normal?"; who responded that he too was taken by surprise; that it was not to his knowledge."

It is therefore a mere formal gesture to argue that the number in a murder trial, whether one person or more was murdered is material in establishing the commission of the offense of murder. In our opinion, a variance in number of dead bodies alleged in the indictment in contrast to the number established during trial is immaterial to authorize vacating and setting aside a judgment of conviction. Count 7 (seven) recited in the bill of exceptions, wanting of any legal merits, is therefore dismissed.

In counts 2, 3 and 10 of the bill of exceptions, appellants have challenged the legal validity and sufficiency of state evidence upon which conviction was found.

Appellants' arguments are set forth as follows:

"2. [That] the prosecution paraded five (5) regular witnesses and one (1) rebuttal witness. They include three police officers, namely: Amos Darpob, Stanley Kambleh, and Anthony Sherman; the Town Chief of Wetchuken, Maryland County, in person of Nelson Neal; and Anthony Wright, Sr., Anthony Sherman later testified as a rebuttal witness.

"3. That further as to count two (2) above, while on the witness stand, plaintiff/appellee's witnesses failed to establish that they personally saw the defendants/appellants commit the act; rather, their testimonies were based solely on hearsay. Furthermore, it is alleged that the seven (7) defendants used fourteen (14) cutlasses, three (3) guns, one (1) spear, and a trumpet as the criminal agency in the commission of the crime; but when the rebuttal witness (Anthony Sherman) was asked on the cross as to whether or not he identified each of the defendants/appellants by the weapon used, he answered in the negative, meaning that he did not know or see the weapon which each of the seven (7)

defendants/appellants allegedly used in the commission of the crime. Not only did the testimony of this witness contradict the testimony of the other witnesses, but it created serious doubt, which doubt should have operated in favor of the defendants/appellants."

Also appellants said:

"10. That based on the averments contained in counts two (2) through nine (9) above, defendants/appellants say that the verdict of the empanelled jury is contrary to, and against the weight of the evidence adduced at the trial. Accordingly, Your Honor erred when Your Honor confirmed the verdict of the empanelled jury and entered judgment thereon, sentencing defendants/appellants to death by hanging; for which erroneous and prejudicial judgment defendants/appellants except."

"During the investigation, we found that there were two captives, Boniface Manneh and Obediah Nyensua, were taken away. It was already 8:45p.m. by that time, yet the residents of the town wanted us to pursue the perpetrators by the wayside of the country road which is a shortcut. But we told them that it was better to take the street because the shortcut was not safe for us. So the Chief of Wetchuken Nelson Neal was asked to go with us as we left four police officers on the ground in Wetchuken with a batch of the Ethiopian troops."

"On our way to Rock Town, we came across women and children with their belongings leaving the village of Nmeklainken to Rock Town. On arrival in Rock town by 9:00p.m., in the center of the town, we met women, children and elders of the town. While trying to inquire of the incident in Wetchuken, the youth mostly could not pay any heed. We managed to call on the Township commissioner Hon. Stephen Bedell along with Chief Abenego Elliot and we put before him what had occurred in Wetchuken. [We told them that the first business was to] turn over to us the captives; [thereafter] whatever [was] relating to the land dispute could be addressed by the proper authority. In return, the Chief and commissioner stated that their people were under tension from the people of Nmeklainken. We then asked that the Chief and Commissioner go with us to Harper to see how best the issue could be handled and we took off for Harper that night."

"On arrival [in Harper], we called on the Superintendent and told him our observation. We were informed that the Superintendent would like to meet with the heads the following morning being the 9th day of May, 2008. So everybody went expected to report at 8:00a.m."

"To our utmost surprise, by 3:00 am on the 9th day of May, 2008, we received communication that one Samuel Williams from Wetchuken had managed his way from Wetchuken and was undergoing treatment at the J.J. Dossen Hospital. The Senegalese battalion based in Harper along with UNPOL and LNP took off for Rock Town. But on reaching at the intersection of Rock Town and Nmeklainken, we met a village and inquired about the road leading to Nmeklainken. The town

people told us that a good number of men from Rock Town left that night for Nmeklainken. We took the road leading to Nmeklainken, about some ten minutes drive. We ended at the savannah and began to take the path road leading to Nmeklainken. There we met the first batch of men with cutlasses. We asked them where they were coming from and they told us that they came from the disputed land. We told them that they should walk along with us to the disputed site. This time, we came across the second batch. This time around, there was a single barrel taken from Arthur Elliott; the third batch was met with Fedesco Wilson spearheading the group. They were all disarmed. Some twenty kilometers away from the scene under a sugar cane plantation. We arrived at Jacob Moore's house, apparently where the men had slept because there we saw a campfire. At this site we were able to collect a spear, a trumpet and we decided to go further. This time some five or six feet away from the scene, Nyema Woart broke away from the group and decided to run away. Right there he was caught before us. As we turned, we saw two men into a pool of blood, one elderly man by the name of Massaquoi Walker and Godfrey Dweb. Because of the situation, we decided to barricade the crime scene but to no avail Iasi the suspects outnumbered us the investigators. Anthony Wright, one elderly man among the twenty men arrested, was asked to identify the two men lying in the pool of blood and he did mention Massaquoi Walker, as being the elderly man who got stabbed in the belly with his intestine coming out, as coming from Wetchuken and Godfrey Dweb who was lying flat on his back with his left hand amputated as also coming from Wetchuken. Right there, a Senegalese medical team came and pronounced the two dead. The left limb that was cut off could not be located. The bodies were taken to J.J. Dossen Memorial Hospital in Harper City and LNP central headquarters was contacted and we were told homicide was to join us in the investigation. Pending their arrival, and due to our statutory time, the team did not arrive in four days time; hence we had no other alternative but to charge them and send them to court; because we could not keep the suspects in police custody for more than fortyeight hours. This is all I know." [Emphasis ours].

This constitutes a gist of the testimony offered by state first witness, Officer Darpoh: that there was a violent fight between two town people, Rocktown and Wetchuken occasioned by land dispute; that under the cover of darkness, an unknown number of persons from Rocktown left and headed for Nmeklainken; security personnel including LNP and UNMIL officers met three different groups of people returning from the disputed land area; the first group carried cutlasses; in the second group Appellant Arthur Elliot was seen carrying a single barrel gun; the third batch of persons was met with Appellant Fedesco Wilson appearing to be the head; all three groups were disarmed by security personnel; investigators also visited a house believed to belong to Appellant Jacob Moore where a camp fire was found; here is believed to be the site where the men spent the night; investigators found a spear and trumpet at this site; while the men were under apparent arrest, Appellant Nyema Woart attempted to flee but was quickly rearrested; two bodies, those of Massaquoi Walker and Godfrey Dweb, were discovered at a very close-by vicinity; said two bodies were identified by an elderly

man by the name of Anthony Wright, who deposed at the trial as state second witness; the bodies were examined and pronounced dead by a medical team from the Senegalese United Nations Mission in Liberia (UNMIL) Military Battalion and thereafter deposited at the J.J. Dossen Memorial Hospital; that the left limb of deceased Godfrey Dweh was found amputated; the belly of deceased Massaquoi Walker was opened and his intestine observed protruding; the two deceased were also identified as inhabitants of Wetchuken; some twenty persons were initially arrested, all from Rock Town.

State second witness was Anthony W. Wright. He deposed that he returned home from fishing on May 8, 2008 and met his family crying. They told him that the people of Wetchuken had declared war on the people of Nmeklainken. He proceeded to finding out what had happened. He met women, men and children who had with them two men of Wetchuken, one of whom was called Mongee. The witness explained that he was told that the two men were captured from among the people of Wetchuken who were fighting; and that the captives will be reported to the Rock Town people who will in turn report them to the Government of Liberia. He also said that when he got to Nmeklainken, he was told that the people of Wetchuken crossed the boundary [which is Gwenneh] between Wetchuken and Nmeklainken, blowing horn, singing and challenging the Nmeklainken people and threatening to brush the property of the Nmeklainken people; that nothing will come out of their action. According to the witness, the Wetchuken people made good their threat by brushing cassava, sugar cane and rubber crops. It was as a result of this that the people of Rock Town prepared themselves and started to spread dust into the water and singing the name of the little creek Nmeklainken. When he observed such movement, the witness said he asked who was leading the group and was told that the leader was Dutoe Garley, the Chief of Wetchuken. He said he was told that they heard from their forefathers' time that the land they belong to Wetchuken people. According to the witness, he advised them to take the matter up with the government of Liberia. He said further and for the benefit of this opinion we quote thus:

"when the people of Nmeklainken called to Harper, the people they called also went to the superintendant and had him informed that this is what happened. The superintendent called the officers and the CID told them that they should go to the place called Nmeklainken they never went Nmeklainken; rather' they went to Wetchuken and asked Mr. Neal that we heard a complaint from the Rock town people; that's why the superintendent sent us. Mr. Neal told them nothing is going on. So they passed when they passed they went to Rock Town and they grabbed the Chief and Commissioner and carried and jailed them. Then the CID went back to Harper instead of Nmeklainken. When they told me all this, I told them okay, let day break so we will go in town. When day broke, I was hungry and I told them let us find some food. My little cousin told me "let us

go to the cassava farm". On our way from digging the cassava, I heard gun sound and people started to make noise and began to run there. I asked; "my people, what happened?" For the third time, I began to run there, I asked my people what happened for the third time? And they told me that the gun sound you heard was done by the Wetchuken people and they told me that they were here waiting for the other cassava you went for. Before we came to ourselves, the Wetchuken people came with cutlasses, guns, spears and bad weapons. When they got there, they halted everybody and that no one should move. They fired one of our men by the name of Fedesco Wilson and he dropped on the ground. Then another man went and hit the cutlass on Nyion Elliot's arm. That is how come our people said no; this one, you people will carry us. They jumped among them and started to fight. When they were running back, they met two of Wetchuken people on the ground, that's what they told me. I told them let us go; it is getting worst.

"The government cannot do anything, let's go and see whether the Wetchuken people will follow us. On our way going to Rock town, we met with the officers, the CID, and Senegalese Army who grabbed us. The Maryland officers started to beat us; they tied us and told us to go to the place the fight took place. When we got there, they started to beat us again; they told us to carry the two dead bodies in the town. On our way going to the place, they stopped the car and each of the Senegalese had sticks in their hands and started to beat us with the sticks. When you come from the other village, they will beat [you] and even when they hear the name Grebo. When we got under the tree, where they left their cars, they told us to lie on the ground facing the sun. When you want to drink, they will give you little water from their hands. After the officers left, they left us in the hands of the Senegalese officers. The Senegalese told us if it were left with them, they were going to cut these people throats. But one good man was among them who told them we should not do that. We were 28 in number who were put in one truck. And they stood on our heads in the truck. This is how they took us to Harper City, Maryland County. This is all I know."

This testimony being unfavorable on its face to the state, prosecution's application was granted declaring its second witness, Anthony W. Wright, a hostile witness and his immunity from prosecution thereby waived, paving the way for the State to cross examine the said witness. Seeking to impeach his entire testimony, the state quizzed the witness on the following question:

"Mr. Witness, from [your] statement [in chief] you said "when they were running back, I mean to say the Wetchuken people on the ground..." May I presume then that your entire statement given to this court and jury is a fallacy based upon hearsay which you want this court and the jury to believe about this case?" To which question Witness Anthony W. Wright answered: "Yes, my statement is based on hearsay."

With this answer, this Court considers it unnecessary to belabor or comment any further on the evidentiary value of the testimony offered by this witness. The witness has made it a matter of record that everything he testified and told the court especially that touching on the alleged criminal conduct of defendants was related to him. The witness having so admitted, his entire deposition, to the mind of this Court, falls in the category of hearsay excluded under said rule and principle. *Smith v. Republic*, 7 LLR 205, 210 (1941); *Blamo v. Republic* 17 LLR 232, 233(1966).

Prosecution third witness was police officer Stanley T. KaMbleh. He testified in chief as follows:

"On the 10th day of May, 2008, an information was received from Maryland County Police Detachment by the police authority that there was a land dispute between the people of Wetchuken and the people of Rock Town all of Maryland County, which resulted to the death of two persons. Predicated upon said information, a team of Liberia National Police (LNP) investigators was constituted and dispatched to Harper, Maryland County on the 15 of May 2008 to probe the circumstances surrounding the death of these two persons. However, prior to our arrival in Maryland County, the 28 persons that were arrested were sent to court. The special prosecuting Attorney Cllr. J. D. Baryogar Junius instructed the team to re-institute an investigation. Based on the instruction, the investigation began on the 17 th day of May 2008, the team visited the J.J. Dossen Hospital morgue to conduct physical observation on the bodies. There, the following were observed on the bodies. That the two male bodies seen laying in the morgue identified as William Massaquoi Walker 69 years of age, grebo by tribe and Godrey Dweh had multiple wounds all over the two bodies; the left hand of Godrey Dweh was cut off and the body of Massaquoi Walker was seen cut in the stomach and his intestine out. Based upon this, a team went to the Harper prison center where an interview was conducted with the inmates. There and then, Nyenati Bedell told the investigation that on the eh day of May A.D. 2008 during the morning hour, while he was in his village in Nmeklainken, he heard a sound of horn. According to him, he was wondering why he was not going to work, so he decided to follow the sound, he met the Wetchuken chief and other residents brushing the road from Wetchuken to Nmeklainken. He asked the chief what happened, the chief did not pay attention to him. He passed on to go inform the other villagers. While he was enroute, he met Nyema Woart and Arthur Elliot in Nyema Woart's house in Nmeklainken and he told them what was going on. They told him that they are aware. There the Nmeklainken villages assembled and they went to Wetchuken and they also destroyed their crops and their cooking utencils. While they were enroute back to Nmeklainken, they captured two of Wetchuken residents in persons of Boniface Neal and Obediah Nyenswua and sent them to Rock Town so they will be later sent to the authority in Harper. While they were there, it was getting dark, they dismissed and went to their various villages. On the 9 th day of May 2008, they, (all the Nmeklainken villagers) assembled so as to go to Rock Town, I mean they assembled in

Nyema Woart's house. According to Bedell, Nyema Woart advised them to eat cassava before going to Rock Town. According to him, while they were awaiting the cassava to eat, Wetchuken people came and surrounded them and shot one of their men, Fedesco Wilson, and fight ensued which resulted to the death of the two men. According to him, the left hand that was cut off was done by Josiah Manston and the hand was given to Anthony Wright, Sr., which he placed in a black plastic bag. When this allegation was confronted to Anthony Wright, Sr., he admitted having the hand. According to Anthony Wright, Sr., while they were leaving Nmeklainken that morning, they came in contact with the Liberia National Police along with UNMIL soldiers, Senegalese, at which time according to him, he threw the black plastic bag that contained the hand in a nearby bush in Nmeklainken. On the 24th day of May, 2008, we sought for a release from the Circuit Court to take Anthony Wright, Sr. to Nmeklainken. That morning the team left backed by UNPOL and proceeded to Nmeklainken and identified the plastic bag with the human hand but in a skeleton form. The skeleton was picked up professionally and taken to Harper. On the 25th of May, 2008, while I was in the bathroom, my colleague Anthony Sherman along with UNPOL took the skeleton hand to the J.J. Dossen Hospital for analysis, where it was analyzed and found to be that of) Godfred Dweb. THAT IS ALL I KNOW."

The testimony of State third witness, Officer Kambleh, in summary is as follows:

That he is one of the police officers who was part of a team of LNP Investigators; that they conducted investigation into the circumstances surrounding the death of two persons in Maryland County; that based on permission from the circuit exercising jurisdiction over the case, he and other investigators went to the central prison and conducted "interview" with the prisoners while in prison and in the absence of the prisoners' legal counsel, although according to the witness, the prisoners were informed of their Miranda rights by the investigating officers; that one Nyenati Bedell told the investigation the following:

"That they assembled in Nyema Woar's house waiting to eat cassava when Wetchuken people surrounded the house and fighting ensued and as a result two persons were killed. That Wetchuken people shot one Fedesco Wilson. That Nyanti Bedell told the investigation revealed that Josiah Mamston cut off the limbs of [deceased Dweb] and gave it to Anthony Wright, Sr., who placed same in a black plastic but throw it away when he saw security people. That Anthony Wright was confronted with this allegation and he admitted having the hand. Anthony told him that he threw the black plastic bag in a nearby bush. That the circuit court allowed a release of the prisoner Anthony Wright and the team left, visited Namliakein scene and found the plastic bag with a skeleton therein. That analysis was done on the skeleton hand and found to be that of deceased Dweb's."

Prosecution fourth witness was Anthony M. Sherman II, a CID homicide investigator, Liberia National Police. He explained that he arrived in Harper, Maryland County, in

May 15, 2008, for the purpose of investigating the death of two persons, Godfrey Dweh and Massaquoi Walker. Upon arrival, he met the suspects in prison; that on the instruction of Chief Prosecutor, Counselor J.D. Baryogar Junius, they [officers] investigated the prisoners, interacted with and took statements from each of them. He also told the court that the defendants' finger prints were placed on those statements. He maintains that the defendants were acquainted with their Miranda rights in keeping with law. We must observe that statements taken from the prisoners/criminal defendants were identified by the witness, marked by the court and admitted into evidence over defense objection.

During cross-examination, the witness confirmed that he met the defendants in prison where he took statements from them. He also said that the defendants were not represented by lawyer.

Prosecution fifth witness was Nelson Neal, General Town Chief for Wetchuken. The records of this case show that Witness Nelson Neal was earlier arrested in connection with the case at bar but later released. Following his testimony in chief, he was cross examined on the following question:

Question: *"Mr. Witness, you told the court that you were informed or that you got information that 60 men armed with guns, cutlasses and spears leaving from Rock Town for the singular purpose of attacking the people of Wetchuken. From whom Mr. Witness did you get said information?"*

The witness answered saying:

Answer: "I was informed by George Dutorh."

Following deposition by the fifth witness, the state rested with production of evidence reserving its right to rebuttal.

Defense then took the stand in support of appellants' plea of "Not Guilty". Eleven witnesses including the seven (7) appellants deposed in favor of the defense. Defense first witness was Arthur H. Elliot. He testified in chief as quoted below:

"It was on the 8th day of May, 2008 about 7:a.m. when we got up that morning, we began to hear sound from Wetchuken and sing just like people going for war. And I went to see where this sound was coming from and what was happening. When I got to the big road, I met the people of Wetchuken were destroying our crops. And the head person that was leading them was Dutoe Garley. The assistant chief of Wetchuken and their general town speaker by the name Dumele Kiah, they were leading the

people. We that were around were not plenty. When we asked them what is going on or which of you are cutting our crops and they answer, the land of Nmeklainken is belonging to them and so they were going to move us before they will be satisfied. And carried on destruction penetrated Nmeklainken and Gborwein, when the people heard the sound of the horn and singing, then people left their farms to find out what was going on. When the people were trying to come around, then we said, well this is the first time for Wetchuken people to come here to destroy our crops and so it is better to phone to Harper to let the superintendant know that the people of Wetchuken left there are and to Nmeklainken and destroying our crops. Then the people that came around said, let us go and find out from these people. And we went to ask them and they said the area was for them, which is Nmeklainken. And so they were getting back to Wetchuken where they came from. We got water there called Nmeklainken that we named after the village Nmeklainken. When they got to the water, they jumped in the water and started to dance in the water, singing and I further asked them why you people should get in the water singing and dancing. And what they told me was as we are leaving from here who called themselves man should drink this water and as we were leaving from there this area will not be called Nmeklainken again it will be called "when we leave from" so they proceeded back to Wetchuken, on their way back, they got the Edward's house area, they started to sing again and destroying the man crops, when they got among the rubber, they chopped the rubber burst the rubber crops that were there. They left and went Wetchuken. When the people returned from farming, they saw that food that were destroyed, they were angry and they asked who were those that did the destruction and we told them that Wetchuken people. But we told them that we have called to Harper about this. Then we sat for discussion. When the people of Wetchuken were leaving, they said to us who called himself man, they should follow us and do the same thing we have done (destruction). And so we were awaiting reply from Harper, we were there and we could not find anybody from there. And the people said this a big challenge to us for the people of Wetchuken to say that, they do not see any man to destroy their crops too. And so our people left and went to Wetchuken and carried on the same destruction too and they came back. When they came back, while, we were sitting, around 4 to 5 on the same May, 2008, the people of Wetchuken came back for the second time and on their way coming started to sing like people leaving from war. And when they got to Edward's house area, they started to brush the sugar cane and cassava of his wife and our people went to them and began to ask them, while they were asking them, they jumped among our men and started to fight physically, thru the fighting our people caught two people among the Wetchuken by the name: Boniface Manneh and Obediah Nyensua to Nmeklainken. Then we said well, these two persons that are caught, we need to sent them to Rock Town so they can be transferred to Harper tomorrow, when they were singing, our women left and went in the bushes. And so that Thursday night, we could not find food to eat. When day broke on Friday, May 9, 2008. We all decided to go to Rock Town that morning, some of our friends said let us find something to eat before we go to Town. While they were looking for the cassava, Victor Moore and I, we left our friends and went to look for coconut. While we were there that morning, I heard a gun sound, single barrel and noise and people were crying and we started to proceed there. On our way going Victor and I, we met with Fedesco Wilson, crying and bleeding and I asked him what was happening, and he told me

that, while we were sitting waiting for the cassava to get done. Unexpectedly, people came from Wetchuken and surrendered us with single barrel guns cutlasses, sticks and spears. And the person that was heading them, his name is Patrick, palm branches tied on his head and he was holding single barrel, surrounded the house that we were in and he said nobody should move, if anybody move, I will fire them, and he Fedesco wanted to escape and the man fired him and he said he dropped. And I told him that the way things are happening, it is better that we go to town. So I told him to go ahead to Rock Town, on our way going to Rock Town, almost 30 minutes walk from the accident scene. We were arrested by the Senegalese contingent and police and they carried us to the savannah land across Gbor creek, then two persons were arrested by the Senegalese. We were the first people to be arrested, they laid us on our back, when we were caught, other Senegalese carried us and others continue ahead, then they told us that we have to carry you people to Harper, while we were on the Savannah land, they brought the two bodies from Nmeklainken, the police people carried them and the Senegalese carried us to Harper in police custody, we were there for three days. Friday night, May 9, 2008, the chief of Wetchuken, Nelson Neal while we were detained went to the police and told them that two persons were missing from the people that went to fight the Rock Town people. Besides the two persons that were caught on May 8, 2008 and the people that were dead, the room that we were in when he told the police commander Johnson, he began to ask our chief while we were in the cells, that the people that he sent to fight, two were missing, not the people that were dead. When Johnson was asking the chief, the chief reply to Johnson the police commander that you went in my town yesterday with Nelson Neal, the chief of Wetchuken and arrested me with my commissioner and the other boy who was coming from the farm, Joseph Appleton and so that the people that you are talking about I do not see them. We that were in the cells were 33 then we were trying to search around as to whether strange faces were among us. And we came across them and we began to ask them, gentlemen, where do you come from, and the other man told us that he went to buy dog to Nmeklainken and the other one said to us Nyensua is his name, he said that say the truth and the truth shall set you free. And he said to us, yesterday, Thursday, May 8, 2008, the chief of Wetchuken, Nelson Neal and the town elders sent people to Sodoken yesterday to let the chief of Sodoken to know that they and Rock Town people were in conflict and so the chief gave them 12 persons and the 12 joined the Wetchuken people to attack Rock Town people at Nmeklainken, May 9, 2008.

And so we called the police commander that there are strange people here and when the commander went in the room, and the chief, which is our chief presented the people to him, then he called Nelson Neal, chief of Wetchuken, are these not the two persons that got missing from your side? And he said these are the two persons that got missing from my side. The chief went to explain to the police commander what these two persons explained to us but he said he did not want to hear anything from anybody. The two persons were then turned over to the General Town chief, Neal, May 12, 2008, we were taken to the prison compound, after two days, we got information that our houses were burnt that is to say, 8 houses and the balance were looted. These 8 houses that got burnt, police went there and UNMIL and took photos. This is what I know."

Defense second witness was appellant Thomas Harris.

He explained in substance the same story as defense first witness: that they were surrounded on May 9, 2008 at which time Co-appellant Fedesco Wilson was shot and wounded by one of the attackers from Wetchuken; that Co-appellant was also chopped and wounded by an attacker. He also said that two other persons from Wetchuken were arrested and subsequently released. He denied committing murder.

Gray Elliot, General Clan Chief of Nmakliwein was defense third witness. He testified the two persons captured on May 8, 2008 tussle were interviewed by him. The arrested persons told him that they were forced to join the fight. The two persons were later over to LNP. He denied having anything to do with the fight as he was home when he received a call that fighting took place in Nmakliwein and that two persons were killed in said fight.

The fourth witness for defense was Nyema Wesley, General Town Chief of Rock Town. He deposed that he was in Rock town on June 8, 2008 when the Police arrived and asked about the two persons arrested and brought to Rock Town. He reported saying to the officers that he was not aware. According to him, he was thereafter arrested, taken to Harper and jailed. He said he was in jail on May 9th 2008 when news was received that there was a fight between the people of the two towns in which two persons were killed. As he was in jail from May 8, 2008, maintain and insisted that he could not have participated in a fight that took place on May 9th 2008.

Victor Moore was defense fifth witness. He denied ever participating in any fight in the first place. He said that he and Arthur Elliot had gone out looking for dried coconut for to eat with the cassava that was being prepared when shooting and fighting started in their absence. According to the witness, he and Arthur Elliot got down from the coconut tree and on their way to finding out what was happening, they were arrested. He also said the Police along with Counselor Baryogar Junius asked them to make statement without having any lawyer.

Defense sixth witness was Nyion Elliot. He substantially told the court that he and his friends were preparing cassava on May 9th 2008 when they were attacked. He said that he got chopped and wounded by one of the attackers; so he escaped from the scene. He was later taken to Harper under the pretence of being taken for medical attention. But he surprisingly finally landed in prison.

Co- appellant Fedesco Wilson, defense seventh witness, told the court that they were preparing food on May 9th 2008 when they were surrounded. He told the court that he was shot in the process and wounded. It was when he was attempting to escape from the scene that he was arrested and sent to jail. He was also said that he is able to identify Panti, the head of the group and the man who actually shot him.

Defense eighth witness was Co-appellant Edward Wah Harris. Witness Harris denied committing murder. He said while he along with others were preparing cassava before proceeding to Rock Town, they were attacked by persons from Wetchuken. He claimed that one Panti from the Wetchuken people attacked and wounded Co-appellant Fedesco Wilson. He said that he was to the bushes where he was arrested and sent to prison.

Defense ninth witness was Co-appellant Anthony Wright, Jr. This witness testified that to be a businessman. He claimed to have been on his way to Nmekliwein for the purpose of getting some cane juice when UNMIL arrested him. He was under detention when he got the full story about the fight and the killing of two persons as consequence of said fight.

Co-appellant Nyema Woart was defense tenth witness. He told the court that on May 9th as he and others were preparing cassava to eat, they were surrounded by a group from Wetchuken whom he believed was led by one Panti. He told the court that they were ordered not to move; fighting ensued and Fedesco Wilson was shot and wounded with a single barrel gun. He said that he escaped the scene but was later arrested by security personnel.

The eleventh and last defense witness was Co-appellant Josiah Manston. He said that he was informed as to what had transpired on May 8, 2008 upon his return from his sugar cane farm. The story related to him was that the Wetchuken people came to Nmalikein and destroyed the crops belonging to the people there. He further said that as a result thereof, all the men of Nmalikein agreed to meet on the 9th the following day and go to Rock Town. He told the court that they were en-route to Rock Town when they heard gun sound. Shortly thereafter, the people fleeing from the scene told him about fight taking place occasioned by Wetchuken people coming over and attacking. He also said that it was these fleeing people who told him about Fedesco Wilson being shot and wounded. According to him, it was during that process Security people came and arrested him along with others. Defense then rested.

In the face of this stringent denial mounted by all seven (7) appellants, prosecution

introduced its rebuttal witness, Anthony. M. Sherman II. On direct examination, the witness was asked the following questions:

Ques: "Mr. witness, you said you investigated the murder of Massaquoi and Dweh; the seven defendants that you identified testified on behalf of themselves denying the killing of the decedents. What do you have to say about that?"

Ans: "From the beginning, they are all lying; they did commit murder. If I am oppoertuned by this court, I can point at each of these defendants and the role they played in this murder incident. Josiah Manston who denied the allegation was the one who cut off the hand of Godfrey Dweh and presented it to Anthony Wright, Sr., Victor Moore was one of those who murdered Massaquoi Walker; he Nyanti Bedell who was one of the defendants' witnesses, Nyion Elliot, Anthony Wright, Jr. and Fedesco Wilson were the ones who murdered Massaquoi Walker while the others were with Anthony Wright, Sr. that murdered Godfrey Dweh. After these two men were murdered, it was when they decided to leave Nmakliwein to go Rock Town and by so doing, Josiah Manston cut off the hand of Godfrey Dweh who has six living children and a pregnant lady, [and] presented this hand to Anthony Wright, Sr. and said that when we take this hand to Rock Town, we will tell them, inform our Chief, women and children that we have won the battle by presenting the hand as evidence. It was when Police ransacked them and arrested them and took to the police station. If they can come here to say that they do not know about the death of the two decedents, it's a lie. Just to rebut the other witnesses of the defense which is Arthur Elliot. He was present on the crime scene when the people of Wetchuken started coming to Nmaklienwen singing and coming, it was when he Arthur Elliot along with some other group spread up on the left of the crime scene and the people of Wetchuken got in the midst of other defendants who are now charged for murder of Massaquoi and Dweh. And this is how Police caught him. Thomas Harris was on the scene when the murder occurred but he did not physically take part in the murder. We released them and those who physically took part were forwarded to court.

During cross examination, the State rebuttal witness was asked as follows: "...You had placed on record that the defendants in the dock committed the act and you named the defendants and the role played by each during the commission of the crime. I take it that you were present and witnessed the entire happening leading to the death of the two individuals. Am I correct?"

He responded saying: "As homicide investigators, we conduct an investigation on crimes that were committed in our absence." The following questions and answers then

followed:

Ques: "Mr. witness, I take it that from your investigation, you were able to identify the weapons used by each of the defendants during the commission of the crime. Am I also correct to think so?"

Ans: "Yes. Your thinking is right."

Ques: "Mr. witness, by that answer I also take it that when each of the defendants was arrested you immediately identified the weapon carried by them by writing their names on said weapon. Am I correct to think so?"

Ans: "No."

State first witness, Officer Amos Darpoh also addressed the court on the number of weapons taken from suspects. He said: "The total amount of cutlasses was 32. As I stated, the 32 cutlasses were taken from the defendants but when they were screened, only 14 were brought to court."

To ascertain further from Witness Darpoh whether the individual conduct or role of appellants was established during investigation, state first witness was cross-examined further as follow:

Question: "Mr. Witness, in your investigation, were you able to establish the role played by each of the defendants in the commission of the crime?"

Answer: "Well, as I stated earlier, the final investigation that was conducted which had the 7 men charged for murder; [this] was done by the homicide squad and the CID, ... "they [meaning the homicide squad of the CID] can best give the details."

State third witness, Officer Stanley T. Kambleh, was specifically asked whether those he interviewed told the investigators who actually committed the murder. Witness Kambleh informed the court that those the investigation interviewed were not on the scene of the fight. The defense then asked the witness why he will give credence to information offered by persons who were not on the scene and could not have known exactly what transpired. The witness said: "I believe their explanation because I did an investigation with those that were on the scene when the incident occurred, in persons of Nyante Bedell and Anthony Wright, Sr.". "...Nyenati Bedell told the investigation that he and the 7 defendants on trial were the ones who chopped Walker Massaquoi to

death."

But appellants in count 9 (nine) have vehemently protested the aforementioned testimonies as herein recited in said count:

"9. That the defendants/appellants say and submit that after the close of argument on both sides, Your Honor failed and refused to charge the jury on defendants/appellants' points of law governing the trial of the case, specifically as it relates to REASONABLE DOUBT and HEARSAY EVIDENCE. Defendants/Appellants submit that in all criminal prosecution, whenever reasonable doubt exists, it must operate in favor of the defendant. Further, under our law and practice hoary with age in this jurisdiction, hearsay evidence is inadmissible and cannot therefore be used to convict a defendant as all witnesses must testify as to what lies within their certain knowledge on matters being tried by the court."

A survey of the testimonies introduced by the state points largely to one "Nyenati Bedell" as their source. Being supposedly the inside witness, Nyenati Bedell under this circumstance, was better placed to provide an independent corroboration to the testimonies offered by the investigating officers. Although Nyenati Bedell was listed on the indictment as one of state witnesses, prosecution failed, without providing any explanations, to produce Nyenati Bedell to testify for the state as anticipated.

In addition, General Town Chief for Wetchuken, Nelson Neal, as one of state witnesses testified that one George Dutorh told him that appellants committed the offense. The alleged relator, George Dutorh, was himself accused by prosecution's second but hostile witness, Anthony W. Wright, Sr., as a ring leader of the Wetchuken people in the very fight in which the decedents were said to have been murdered. Further hereto, Witness Darpoh testified during the trial that on May 9, 2008 at about 3:00 am, police received information that one Samuel Williams was at the J.J. Dossen Hospital, receiving treatment. According to Witness Darpoh (state first witness), Samuel Williams was reported to have arrived from Wetchuken with wounds believed to have been sustained from the same fight. As a potential witness, Samuel Williams was also never called to testify.

To the mind of this Court, the failure by the state to introduce such witnesses as Nyenati Bedell was fatal to prosecution. This lack of diligence deprives the entire prosecution from compliance with the law on best evidence, which in the language of section 25.6 (1), 1LCL Revised (Civil Procedure Law), directs thus: "The best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence." Speaking on the principle of best

evidence, Mr. Justice Russell speaking for this Court held:

Also in *Yancv v. Republic* 4 LLR 268, 279 (1935),

"..... No evidence is to be admitted, in a criminal issue, which does not bear on the question whether the defendant did a particular act specifically charged against him. And no evidence is to be received which is secondhand rendering of testimony not produced, though producible, by which a higher degree of certainty could be secured."

The failure to produce what could have been material witnesses also deprived the trial of corroborating testimonies required by law in this jurisdiction. In a criminal case of as murder, with statutory penalty of life imprisonment or death, the non production of those witnesses was fatal.

As held by the Supreme Court, there must be corroboration by evidence from an independent source both as to the role alleged to have been played by the criminal defendants as well as to fact of the commissioning of the criminal conduct. *Jappa v. Republic*, 21 LLR 339, 342 (1972).

We therefore sustain count 9 (nine) of the bill of exception and the contention raised therein that prosecution's witnesses failed to establish its case by producing the best evidence the case admits of.

Appellants further argue that although the indictment alleged that the seven (7) appellants personally used cutlasses and [other] dangerous weapons as the criminal agency in the commission of the crime, state rebuttal witness (Anthony Sherman II) when questioned on the cross as to whether he identified each of the appellants by the weapon/s used, answered in the negative.

There is only one conclusion to be rationally drawn from said answer, argued appellants in their bill of exceptions: that is, neither the rebuttal witness, nor any other state witnesses could substantiate by direct or positive evidence appellants' link to the weapons or the conduct of the individual appellant in the commission of the alleged murder as set forth in the indictment. In the absence of such independent testimony required by law to corroborate the depositions made by prosecution's rebuttal and regular witnesses, reasonable and serious doubt emerges especially in the face of strong denial by appellants. Appellants have therefore urged this Court to permit this doubt to operate in their favor as a matter of law.

The law in this jurisdiction requires that indictment has to aver "every material fact going to constitute the offense charged with precision and certainty"; it cannot be aided by intendment: *Sampson et al. v. Republic*, 11 LLR, 135, 137 (1952).

In this respect, the case: *Flomo v. Republic*, 26 LLR, 51 (1977), is quite instructive. In that case, Appellant Flomo was tried and convicted on the charge of murder of a nine year old girl, Alfreda Scott.

The indictment essentially charged Appellant Flomo of having sexual intercourse with a nine-year old girl; that violence had been visited on the little girl during the intercourse; that several wounds were inflicted on vital parts of the decedent's body; that combination of the wounds inflicted and the violent sexual intercourse visited on the decedent caused her death.

No doubt, little Alfreda Scott indeed died. However, evidence adduced during trial appeared to show strangulation as the cause of death.

This Court reversed the guilty judgment. In doing so, the Supreme Court reemphasized two venerated and long held principles in this jurisdiction:

(1). *"Crime must not only be proved as charged but it must be charged as proved"*;

(2). *"The prosecution must show that the crime was committed in the manner and by the means alleged in the indictment."* Ibid.

We gather from the records before this Court that the indictment specifically charges the appellants, all of *Rock Town, Maryland County, R.L.* with the crime MURDER, a felony of the first degree, for *"singularly and personally using cutlasses and dangerous weapons"* and therewith did *"inflict wounds on the bodies of Massaquoi Walker, Wah Namu and Godrey Dweb between May 8th and 9th, 2008 resulting into their death"*.

As already clearly detailed in this opinion, the state proceeded to prosecute appellants on the charge of murder, based on the averments contained in the indictment. To do this, the state imposed a duty on prosecution to show by conclusive evidence the conduct of each individual appellant in the commission of murder as set forth in said indictment.

It must be said here that there was a fight between two groups of people from the town of Wetchuken and Rock Town in which two person were killed. Police moved in

and arrested at least 28 (twenty eight) suspects, along with 32 (thirty two) cutlasses. After criminal investigation, the state proceeded to indict and tried 7 (seven) of the 28 suspects on the charge of murder. It gave notice to the criminal defendants through the indictment that it will, by conclusive evidence, show the individual criminal conduct of the appellants.

Producing all we have said in this case, we do not believe the state succeeded in producing such evidence as to exclude every hypothesis of the defendants' innocence.

Before concluding this opinion, we see it as a duty to remark on a few issues which came up during the trial. The first issue relates to custodial interrogation and taking statement from a suspect in the absence of legal counsel. The second issue relates to alleged bias by the judge against the interest of the criminal defendant.

During cross examination, Witness Officer Kambleh (State Third Witness) was asked on the following key issues relating to the conduct of the police investigation and circumstances under which statements were taken from the accused/ criminal defendants.

Question: "Mr. Expert Witness, when you came from Monrovia, 28 persons had already been charged and sent to court. But based on the instruction of the special prosecutor from the Ministry of Justice, you were instructed to do another investigation. In furtherance of that order, you went to the Harper prison to interrogate the inmates. Is that so?"

Answer: "Yes."

Question: "Mr. Expert Witness, by that answer, did you have the occasion to interrogate the inmates, if answer is in the affirmative, were they represented by a legal counsel?"

Answer: "No, but their rights were read to them and [they] voluntarily gave statements."

Question: "Mr. Expert Witness, you want this court and the trial jury to believe that in the prison cells, defendants voluntarily made statements with coercion?"

Answer: "Yes."

Question: "Mr. Expert Witness, as a trained investigator who inherited the findings of

a homicide investigation, did you go to the disputed area to find out the actual story?"

Answer: "Yes."

On the issue of taking statement from, or interrogating an accused in the absence of his/her lawyer, one of state witnesses, Anthony M. Sherman, II was quizzed in the manner as follows:

Question: "Mr. Expert Witness, from a perusal of P/10, it appears to me that the statements were not written by the defendants in their own penmanship. Could you say for the benefit of this court and trial jury who wrote these statements for and on behalf of the defendants?"

Answer: "As to Anthony Wright Sr., he can write his name but he is not lettered. *He was told his Miranda rights and he chose to have his statement by his own will.* We took his statement and we told him to sign because we know this case will end in court. He told us that he cannot read and write. He could deny his writing. And after the statement was read to him and he was satisfied, we asked him to give us his right thumb and he thumb printed his statement. And for the rest of the defendants, they freely thumb printed their statement after the statement were read to them by the police."

Question: "Mr. Witness, I take it then that you as a train investigator allow the defendants' statement to be written in the absence of their lawyer. Is that so?"

Answer: "It is stated by law before an accused person makes a statement, such accused must be informed about their Miranda rights. [Accordingly], *they were told their Miranda rights and they chose to give their statements in the absence of their lawyers.*"

The trial court at this stage also posed the following questions to one of the state witnesses:

Question: "*Mr. Witness, please tell the court and the jury whether any State prosecutor ever interviewed you and informed you that you could be a State witness after being sent to court?*"

Answer: "*Yes, it happened*".

Question: "*Mr. Witness, do you care to tell the name of the State Prosecutor to the court and jury?*"

Answer: "*Counselor J. D. Baryogar.*"

This Court frowns on interrogating an accused person without ensuring his/her constitutional granted right to legal counsel. Every accused person in this jurisdiction is not simply guaranteed his right to counsel at every stage of criminal; Article 21(c) of the Liberian Constitution (1986) prescribes same, "right to counsel" as an "entitlement". Said provision reads:

"Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible as evidence in a court of law."

Where a person is accused of a crime and cannot afford a lawyer, consistent with the principle of entitlement provided in the provision herein above quoted, *"...the Republic shall make available legal aid services to ensure the protection of his rights."* Article 21.

During the trial, investigators told the court that they proceeded to the central prison to interview the criminal defendants who were at the time in prison. According to them, the court granted them permission to proceed with what they called an interview and not interrogation. They admitted that the interviewees had no access to lawyers during their entire process of interview. Although most of the criminal defendants or interviewees were not literate and probably could not have made an informed decision on "voluntary statement", yet these investigators appear to have been satisfied that they were complying with the law in safeguarding the constitutional rights of the defendants including their right to be interviewed without legal counsel.

Waiver of constitutional rights including the right and entitlement to legal counsel, may be waived only with *"appropriate understanding"*. Article 21 (h).

But at the trial, some of the criminal defendants alleged that they were initially beaten and largely kept on conditions which appear not to be adequate compliance with the laws controlling.

Therefore, in the absence of law showing satisfactory to a court of that the criminal defendants understandingly waived their right to legal counsel, we are unable to consider the statements taken from them as legal and therefore admissible in the court of law against them.

In *Anderson et. al v. Republic* 27 LLR 67, 78-9 (1978), this Court speaking through Mr. Justice Henries held:

"Extrajudicial inquiry for the protection of crime is limited to probing for facts for the establishment of the corpus delicti and attaching criminal agencies. If, by some coincidence or spontaneous and voluntary act of anyone, be he or she detained on suspicion or not, a statement is made confessing association with, or commission of, the crime, this not only lessens the burden of the law enforcement agents but is evidence of the highest grade to convict for the crime committed. [But] conversely, where the methods are employed such as exacting confessions by forceful means, threats and torture, this class of confession must be considered as involuntary and therefore inconclusive to convicting."

On the alleged bias of the trial judge, the records in this case are replete with instances apparent where the conduct of the judge was demonstrated in a manner resembling a compromise of that cool neutrality which must at all times be maintained.

Few instances are worth mentioning:

The following question was posed to a witness by defense counsel.

Question: "Mr. Expert Witness, you brought to court 14 cutlasses believed to have been used by the defendants. Do you want this court and jury to believe that the 14 cutlasses were taken from the 7 defendants in the dock?"

Answer: "No."

Question: "Mr. Witness, from whom then did you take the other cutlasses and why are they not in the dock, if you know?"

Although there was no recorded objection made by prosecution to this question, the court *sua sponte* made the following record:

"The court: The court will disallow the witness to answer the first part of the question as to from whom were the cutlasses taken in reference to the defendants now on trial; as to whether the others are not on trial has been ruled upon earlier. It is the business of the special prosecutor."

One very important question posed to the witness was:

Question: "Mr. Expert Witness, you told the court and the trial jury that you took

cutlasses from 7 defendants. Please say if you know how many cutlasses were taken from each of the 7 defendants?"

Sustaining prosecution's objection to this question, the court recorded the following on the record: "The court: The witness has told the court that all 7 defendants had cutlasses and that there are 14 cutlasses meaning the other cutlasses were taken from other persons not on trial. The court says to allow the witness to answer this question will be entrapping; hence the question is overruled, not on the grounds presented by the prosecution but for the reasons stated by the court. AND IT IS HEREBY SO ORDERED."

Another instance of involvement of the judge was when the defense counsel sought to quiz the prosecution witness about observation 'if any made by the witness as to destruction of crops on both sides of the conflict. In sustaining prosecution's objection, the judge reacted and made record as stated hereunder:

"It will appear from this question that the defense counsel has clearly run out of questions, as the court has indicated. This court has said that the case before it is a murder case and not a criminal mischief case. Also the court says that even if the witness were to say who destroyed crops. That answer will not prove or disprove the crime of murder. The objection is therefore sustained."

In count 22 (twelve) of the bill of exceptions, appellants' sums up their complaint on the judge's conduct as herein recited:

"12. That throughout the trial Your Honor, insulted, harassed and intimidated, belittled, and humiliated counsel for defendants/appellants to the extent that Your Honor on two separate occasions threatened to order the arrest and incarceration of one of defendants/appellants counsel, in person of Counselor Albert S. Sims, thereby bringing into question the cool neutrality of the trial judge."

In our opinion, the cool neutrality required of a judge at all times was glaringly wanting.

The Supreme therefore held in *Sackor v. Republic*, 21 LLR 394, 393 (1973),

"This Court will reverse the judgment in, and remand for a new trial, any case in which the trial judge's acts and rulings are shown to be patently prejudicial to a party's rights and interests."

In conclusion, it is abundantly clear that the state failed and grossly neglected to produce light of the satisfaction of one of the two components of corpus delicti. The case, *Bing versus Republic* 18LLR 378, 382 (1968); has similarity in this respect to the

case at bar. In the Bing case, prosecution neglected to produce the person who allegedly arrested the defendant on murder charge. Said potential and material witness needed to testify as to the circumstances attending to the arrest of the criminal defendant at the murder trial. Mr. Chief Justice Wilson, in addressing said issue principally occasioned by prosecution's failure and neglect, said:

"While we feel that prosecution has failed to establish the guilt of the defendant by the witnesses produced at the trial, we must confess that there is nothing in the record to prove that the testimony of the soldier could not have been obtained. For this reason, it is our opinion that this case should be remanded so that all the facts and circumstances available can now be produced at the time of the trial, and that substantial justice may be done..."Ibid. 18 LLR, 377, 382 (1968).

It is our considered opinion that the principle enunciated in the *Bing* case, properly applies to the case at bar.

AFTER careful inspection of the records certified to us and convinced that the state did not meet the standard of proof conforming to the laws of the land, we reverse the judgment of conviction and remand the case for a new trial. It is directed that the hearing this murder case shall take precedence over all other matters on the lower court's docket.

The Clerk of this Court is hereby ordered to send a mandate to the court below to give effect to this judgment. AND IT IS HEREBY SO ORDERED.

Judgment reversed, case remanded.

Counselors H. Varney G. Sherman and Albert S. Sims of the Sherman & Sherman, Inc.,
appeared for appellants. Counselors M. Wilkins Wright and Yamie Quiqui Gbeisay, Sr.,
of
the Ministry of Justice appeared for appellee.