IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.……..CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE…...ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH……..ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE……..…..ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA……...ASSOCIATE JUSTICE

Jonathan K. Williams of the City of Monrovia ……. Appellant	)	
	)	APPEAL
Versus	)	
The Republic of Liberia …… Appellee	)	
GROWING OUT OF THE CASE:	)	
Republic of Liberia …… Plaintiff	)	
	)	**CRIME**:
Versus	)	MURDER AND
	)	HINDERING LAW
Jonathan K. Williams, Ceasar Kenney, Ernest Kermue, Alice M.K. Youti Massa, Kennedy and Juan Barcell of the City of Monrova, Liberia ……. Defendants	)	ENFORCEMENT

Heard: March 30, 2022. Decided: September 5, 2022

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT.

On April 16, 2018, residents of the Kingdom Care Community in Paynesville, Montserrado County, woke up to a ghastly scene of an unconscious body with multiple wounds lying on the roadside a few feet from the Kingdom Care Hospital. The body, identified as that of Tyron Brown, a journalist, was taken by the Liberia National Police to the Benson Hospital in Paynesville where doctors pronounced him dead upon arrival. A police investigation into the suspicious death of Tyron Brown led to the arrest of several persons including the appellant herein, Jonathan K. Williams, on April 20, 2018. At the conclusion of the preliminary investigation, the police charged appellant and Ceasar Bill Kennedy with the commission of the crime of murder, a felony of first degree; and Alice M. K. Youti, Edwina Promise Youti, Ernest Kermon, Massa Kennedy, and Joana Bracewell with the crime of

hindering law enforcement, a misdemeanor of the first degree. The police forwarded the appellant and other defendants to the Monrovia City Magisterial Court. Defendants Alice M. K. Youti, Edwina Promise Youti, Massa Kennedy and Joana Bracewell were admitted to bail while Ernest Kermon remain at large. The appellant and Ceasar Bill Kennedy were remanded to the Monrovia Central Prison.

The Grand Jury for Montserrado County sitting in its May Term, A.D. 2018, after inquiring into the police charges, returned a true bill against the appellant and the other defendants as follows:

> "The Grand Jury for Montserrado County, Republic of Liberia, upon oath, do hereby find more probable than not that the defendants Jonathan K. Williams and Caesar Kennedy committed the crime of Murder a capital offense and felony of the first degree, to wit:

1. That on the night of 15 April, 2018, between the hours of 10:00 and 12:30pm in the Kingdom Care Community, Duport Road, Paynesville City, Montserrado County, Liberia the defendants, Jonathan K. Williams and Caesar Kennedy with criminal intent and without eh fear of God, purposely, recklessly, knowingly and willfully committed the crime of Murder by killing Tyron Brown, a journalist by profession in the Kingdom Care Community, Paynesville City, Montserrado County, Liberia.

2. That on the above mentioned date and time when the late Tyro Brown had gone to pay a visit to Ms. Edwina Promise Youti, as he did on many occasions defendant Jonathan K. Williams without any color of right purposely, willfully, recklessly and intentionally moved on the deceased and inflicted grievous bodily injuries on diverse parts of his unarmed and peaceful body with a knife.

3. That as defendant Jonathan K. Williams rendered the deceased unconscious by stabbing him several times on diverse parts of his body, defendant Caesar Kennedy being extremely indifferent to human life conspired with defendant Jonathan K. Williams and transported the injured body of the deceased in said Jonathan K. Williams' Infiniti Jeep bearing license plate number A63505 to the Kingdom Care Community in Paynesville and dumped him at the road side where he remained until he expired; and that the body of the late Tyron Brown was only discovered later by passers-by in the Kingdom Care Community.

4. That after the dumping of the injured body of the Tyron Brown the defendants later washed said vehicle and burned the plastic that they/defendants had wrapped Tyron Brown in with the sole purpose of concealing and destroying all traces of evidence.

5. A person is guilty of murder if he/she:

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

(b) Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life. A rebuttable presumption that such indifference exists arises if the defendant is engaged in or is an accomplice in the commission of or an attempt to commit, or flight after committing or attempting to commit treason or offenses as defined in Section 11:2 or 11.3 of this title, such as espionage, sabotage, robbery, burglary, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, escape, piracy or other felonies involving force or danger to life.

6. That the act of the defendants is contrary to 4LCLR, Title 26, Chapter 12, Section 12.4 (a) and Section 2.2 (a) (b) (c) and (e) and Chapter 1, Section1.7 (a) of the New Penal Law of the Republic of Liberia and the peace and dignity of the Republic.

COUNT 2

The Grand Jury for Montserrado County, Republic of Liberia, upon oath, do hereby find more probable than not that the Defendants Alice M.K. Youti, Edwina Promise Youti, Massa Kennedy, Juana Bracewell and Ernest Kermue committed the crime of Hindering Law Enforcement a misdemeanor of the first degree, to wit:

1. That on the night of 15 April, 2018, between the hours of 10:00 and 12:30pm in the Kingdom Care Community, Duport Road, Paynesville City, Montserrado County, Liberia the defendants, Alice M.K. Youti, Edwina Promise Youti, Massa Kennedy, Juana Bracewell and Ernest Kermue with criminal intent and without the fear of God, purposely, knowingly, recklessly, willfully and intentionally committed the crime of hindering law enforcement.

2. That on said supra mentioned date, time and place the defendants, all of whom live in the same compound with Jonathan K. Williams and Caesar Kennedy the murders of the Deceased journalist, Tyron Brown being in full knowledge of the murder of the deceased, concealed said information thereby preventing the discovery of the

crime of murder committed by Jonathan K. Williams and Caesar Kennedy. That and Caesar Kennedy conspired and killed the deceased, defendants Alice M.K. Youti, Edwina Promise Youti, Massa Kennedy and Juana Bracewell all of whom watched and were in full knowledge of the brutal murder of the deceased, remained mute and concealed the murder from the police and all law enforcement personnel, thereby depriving the State and its apparatus of the opportunity to expeditiously arrest and investigate the murder of the deceased.

3. A person is guilty of hindering law enforcement if he purposely interferes with, hinders delays, or prevents the discovering apprehension, prosecution, conviction, or punishment of another for an offense by:

   a. Harboring or concealing the other;

   b. Providing the other with a weapon, money, transportation, disguise, or other means of avoiding discovery or apprehension;

   c. Concealing, altering, mutilating, or destroying a document or thing, regardless of its admissibility in evidence or

   d. Warning the other of impending discovery or apprehension

   4. That the act of the defendants is contrary to 4LCLR, Title 26, Chapter 12, Section 12.4(a), and Section 2.2 (a) (b) (c) and € and Chapter 1, Section 1.7(a) of the New Penal Law of the Republic of Liberia and the peace and dignity of the Republic.

TRUE BILL OF IGNORAMUS

WITNESSES		ADDRESSES
1.	James Thomas Myers…….	Monrovia
2.	Felicitta Abraham Saar……..	Monrovia
3.	Det. Havin Page…….	LNP
4.	Sengbe Dolobah……	LNP

Samuel F. Nyenpan — Foreman of the Grand Jury

Cllr. Deddeh J. Wilson — Acting County Attorney/Mont. Co.

Filed this fifth day of June A.D. 2018

Clerk of Court
Criminal Court "A"

Thereafter, the State dropped charges against Ceasar Bill Kennedy, Massa Kennedy and Joana Bracewell who later testified for the prosecution during the trial of the appellant. The First Judicial Circuit, Criminal Assizes "A" then issued a writ of arrest bringing the appellant and defendants Alice M. K. Youti and Edwina Promise Youti under its authority. Subsequently, the appellant filed a motion for change of venue while defendants Alice Youti and Edwina Youti filed a motion for severance. Both motions were consolidated, heard, and denied by the presiding judge. The appellant and the other defendants filed a separate petition for a writ of certiorari to review and correct the errors allegedly committed by the trial judge. The Chambers Justice heard the two petitions and reversed the ruling of the trial court denying the motions. On appeal, the Supreme Court *en banc* affirmed the Chambers Justice's ruling and mandated the lower court to grant the appellant's motion for change of venue to Bomi County. *Republic of Liberia v. Jonathan K. Williams et al, Supreme Court Opinion, March Term, A.D. 2019. (August 22, 2019).* Consequently, the trial judge severed the trial of appellant from the other defendants charged in the indictment and transferred the appellant trial to the Eleventh Judicial Circuit Court for Bomi County.

When the case was called for hearing in the Eleventh Judicial Circuit Court for Bomi County on February 24, 2020, the trial judge, Her Honor Nancy Finda Sammy presiding by assignment, ascertained the plea of the appellant, and he entered a plea of not guilty. The appellant waived his right to a trial by jury. The judge commenced the trial with the State producing six witnesses as follows: Joana Bracewell, Massa Kennedy, Caesar Bill Kennedy, Police Officer Abu B. Daramy, Police Forensic Investigator Vally M. Sheriff, and the Coroner for Montserrado County, Abraham B. Ricks. The defense also produced three witnesses as follows: Jonathan K. Williams, the appellant, Alice M. K. Youti, and Edwina P. Youti.

After the parties rested with the production of both oral and documentary evidence, the court entertained final arguments and, on March 17, 2020, entered final ruling adjudging the appellant guilty of murder. Because this ruling is central to the contentions in the appellant's bill of exceptions, we hereunder quote the relevant portion of the said ruling verbatim:

" COURT'S FINAL JUDGMENT

SUMMARY OF THE FACTS:

"… Thereafter, the defendant through his Legal Counsel waived jury trial and requested a bench trial. The Court granted the defendant's request relying on Article 21(h) of the 1986 Constitution of Liberia**,** which provides that "no person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petit offences, unless upon indictment by a Grand Jury, and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, "unless such person shall, with appropriate understanding, expressly waive the right to a jury"……

In keeping with Section 14.1 of the Penal Law, P. 794, murder is a Felony of the First Degree, and a person is guilty of murder if he/she:

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

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

Manslaughter is a felony of the second degree and is defined thus: Any person who:

1. Without legal justification or excuse unlawfully kills any human, malice pretense not appearing from the circumstances; or

2. While engaged in any lawful pursuit without intent to hurt, negligently kills any human being; or

3. Being the aggressor in any sudden affray, unlawfully kills any human being, is guilty of a felony and punishable by imprisonment not exceeding five years."

At trial, six (6) witnesses testified for the state for the purpose of establishing proof of the charges laid in the indictment; namely, Jonna Bracewell, Massa Kennedy, Caesar Bill Kennedy, Abu B. Daramy, Varlee M. Sheriff and Abraham B. Ricks. The defendant also produced three witnesses in person of the defendant himself plus his two nieces, namely, Alice M. Youti and Edwina Youti.

During argument, counsel for the plaintiff argued and requested the court to convict the defendant for murder on the basis that the defendant's conduct of stabbing Tyron Brown, who was unarmed, on diverse parts of his body which rendered him unconscious, and thereafter dumped him by a roadside where he remained until he died, instead of taking him to a hospital which would have saved his life; manifested gross and extreme indifference to the value of human life. As such, his conduct was intentional, willful and deliberate.

On the other hand, counsel for defendant argued with emphasis on the following points: 1. That the crime of murder should be reduced to manslaughter on grounds that the defendant acted in self-defense because the late Tyron Brown attacked him when he requested him to leave his premises on the night of the incident but he refused and instead jumped on the defendant with a fight and banged his head on the wall several times. In the process, he stabbed Tyron with a knife to save himself; 2. That during the fray, the defendant suffered from temporary insanity, and, as the result of said temporary insanity, he was unable to think rationally.

Hence, from the facts and circumstances of his case, there are <u>two (2) key</u> issues that have presented themselves for consideration.

ISSUES: definition

1. Whether or not the pleas of self-defense and temporary insanity pleaded and argued by the defendant, are tenable to warrant the reduction of the crime of murder to manslaughter in this case?

2. Whether or not the State established a prima facie evidence beyond a reasonable doubt to warrant the conviction of the defendant on the charge of murder?

With these two issues raised by the trial court, the trial judge discuss as follows:

Discussion

In resolving the first issue as to whether or not the pleas of self-defense and temporary insanity pleaded and argued by the defendant are tenable to warrant the reduction of the crime of murder to manslaughter in this case, the Court will now consider at this time the merits and demerits of the evidence produced by the parties to determine whether or not the defendant was justified in using force, or whether he suffered from temporary insanity during the fray for which this court should reduce the crime of murder of which the defendant was charged to manslaughter.

Black's Law Dictionary, seventh Edition, P. 797, defines temporary insanity as "insanity that exists only at the time of a criminal act".

When the defendant was crossed examined as to whether he made a statement to the police, he answered in the affirmative. However, during his testimony both on the direct and cross examination, the defendant never informed this Court that he told the police upon being arrested that he was temporarily insane during the events of the night of April 15, 2018, neither did he raise the issue of when he testified during this trial. Instead, said issue was only raised for the first time by his legal counsel during final argument, being two (2) years after the arrest and incarceration of the defendant.

Under the best evidence rule, it is required that, "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. Civil procedure Law, Rev. Code 1:25.6(1)"

More so, the Honorable Supreme Court of Liberia also held in the case: Watta Joillia, Appellant, v. Republic of Liberia, Appellee, 29LLR, P. 540, Syl. 3 & 4 text at pages 542-546 (1982), that "the testimony of an ordinary witness that a defendant had shown signs of insanity is not sufficient to prove insanity, but must be corroborated by the evidence of a material expert".

The Supreme Court further went on to say that "the defense of insanity can only be settled by the report of a psychiatrist, who alone is competent to testify as regards the mental fitness of the accused to stand trial.

In all actions or proceedings, the burden of proving insanity is on the party who alleges it, as where it is set up as an affirmative defense, the burden of providing it rests on the defendant. Moreover, if a party asserts insanity, which has been shown to be only occasioned or intermittent in its nature, the burden is on him of proving its existence at the time alleged.

Further, assuming without admitting that the defendant suffered from temporary insanity, the question is, when did the insanity occur? Was it during the time he stabbed Tyron Brown, or was it at the time he dumped him at the roadside?

The witness in the docket testified before this court on the direct examination that upon being informed by his niece Alice that someone was knocking at their window, he went in their room to ascertain the fact. However, when he asked who was at the window, there was no response. So, he went back in his room and took his knife and went outside to see whether the gate was locked. While outside, he saw Ernest sitting on the well while an individual was standing near his vehicle and when he greeted him and asked him who he came to, the guy refused to answer. Predicated on that, he decided to usher the guy out but the guy held his shirt and fighting ensued and the guy attempted to take his knife but did not succeed. As they were fighting, his niece Alice was standing beside him and Ernest was still sitting at the well. In the process, he took the knife and stabbed the victim because the victim started banging his head on the wall. He explained the episode to Ceasar Bill Kennedy upon his arrival at home and later asked him for assistance so they could take the guy to the hospital. He the defendant brought his vehicle outside, laid the back seat down, sent in the house to get gloves and a plastic to cover the seat for preventive measures. Later, he, Bill and Ernest put the guy in the vehicle and headed towards the Kingdom Care Hospital. However, he dumped the victim along the road due to fear because Bill told him that he would get in trouble if the man was taken to the hospital in such a condition. Thereafter, they returned home and had the plastic and gloves burnt.

During cross examination, he told the court in the response to a question that wearing gloves are preventive measures because there are blood borne diseases that could be contracted and that was why I wore the glove.

Hence, the Court sees the defendant's testimony as a "novelty" because, how could someone whose attorney said, had suffered from temporary insanity could have given such succinct, clear and concise narrative regarding the events of the night of April 15, 2018 and still be considered as being insane.

In the mind of the court, the issue raised by the defense lawyer for the first time during final argument, was merely intended to seek sympathy from this Court in favor of the defendant. However, in the practice of law in our jurisdiction and in the spirit of the conduct of an impartial trial by a court in every case, a court's decision can never be based on sympathy but rather on evidence. Therefore, the evidence in this case has not established whether the defendant suffered from temporary insanity as asserted by his legal counsel. As such, the court hereby categorically rejects said argument and sees it as being baseless.

Regarding the issue with respect to the plea of self-defense raised by the defendant that he stabbed the victim in order to rescues himself from his attach, the court would like to mention here that in keeping with Black's Law Dictionary, seventh Edition, p. 1364, self-defense is defined as "the use of force to protect oneself, one's family, or one's

property from a real or threatened attack. General, a person is justified in using a reasonable amount of force in self-defense if he or she believes that the danger or bodily harm is imminent and that force is necessary to avoid this danger."

Considering this definition, was the force used by the defendant in stabbing the victim amount to reasonable force as contemplated by law?

To answer this question, the court will again revert to the evidence produced by the parties.

The defendant testified before this court on direct examination that as he tried to usher the guy out, the guy held his shirt and a fight ensued between them. In the process, the guy started banging his head against the wall and they fell on the ground and got up. Then, the fellow attempted to take his knife but was unsuccessful. After that, he took the knife and stabbed the man on his back for him to flee and he fled.

During cross examination, the following questions and answers were exchanged between the prosecution's counsel and the defendant which are quoted below:

Ques. Mr. Witness, in you voluntary statement, you mentioned "I approached the gentleman and asked him who he came to see? There was no answer. I repeated the question again, no answer. Then, I told him, my young man, please leave my fence. His reply was, "make me to do that if you call yourself man". I proceeded to push him outside the fence and we got into a fight. My question to you is, did you make this statement to the police I just read when you were interviewed?

Ans. Yes,

Ques. Mr. Witness, you are on record for just having told the Court that you proceeded to push the decedent out of your compound after excerpts of your voluntary statement to the police was read to you. My next question is, did you see the deceased with any kind of deadly weapon during your interaction with him?

Ans. No.

Ques. Mr. Witness, so by that answer, it means that in protecting or defending yourself against someone who you did not see with any weapon, you used a knife to stab the deceased?

Ans. Your honor, I had an intruder in my compound at about 11:00pm, in a crime infested environment, which his own witnesses attested to. And I came outside and the intruder engaged me in a face fight, banged my head on the wall several times and we made it on the ground and attempted to take my knife from my side, at which time I took my knife to use it to safe my life and the intruder left.

Ques. Mr. Witness, in using your knife to fend off the intruder, you inflicted several posterior wounds. That is to say, wounds inflicted at the back of the deceased. Am I correct to say that at the time of the infliction of those wounds, the deceased was either fleeing from you or you both were not engaged into any physical interaction?

Ans. Your Honor, when I juked the person, we were standing face to face. He was banging my head against my concrete wall. I [took] out the knife with no intention to kill him but to cause him to flee to rescue me from his attack.

Ques. Mr. Witness, you did not sustain any injury for which you had to be treated and to which any medical doctor will come to this court to testify. Is that so?

Ans. I have had several headaches from the pounding but yet, I did not go to seek medical attention.

Defense second witness Alice M. Youti testified in chief that on the night of April 15, 2018, while she was in her room, someone knocked at their window and when she asked who is that, the person told her to look through the window but she got afraid and went in the living-room and informed her sister. Her sister went in the room and asked the same question but the person did not answer. So, she and her sister returned to the living-room and she reported it to her uncle (Jonathan Williams). Her uncle followed her in their room and asked the same question but the person did not answer. The uncle went back into his room, came back in the living-room and she followed him outside. While standing on the stairs, they saw Ernest sitting at the well, and a man was standing by her uncle's car. The uncle greeted this person and asked "who did you come to but he did not respond. Predicated on that, he asked the guy to leave the compound but he refused. He then solicited assistance from Ernest to help him put the guy out but Ernest refused on grounds that he didn't know the intention the guy had. So, she went back in the living-room. While there, the person knocked her uncle's head on the wall beside the hand pump and she heard her uncle saying "you see you knocked by head on the wall".

Defense third witness Edwina Youti testified that she was doing her assignment, she heard her uncle screaming saying "oh! You knocked my head on the wall". When she heard that, she ran to the front porch and saw someone running through the gate, while Ernest was standing in the garage.

Prosecution's sixth witness Abraham B. Ricks/Coroner of Montserrado County testified that in the month of April 2018, he conducted a post molten examination of Tyron Brown in the presence of a 15-man Coroner juror. In the process, he saw three stab wounds on the said Tyron Brown. One wound was on his left arm and two major wounds were on the left back around the abdomen. The wounds were measured to know the degree of penetration. The length of the wounds was 1 inch and two inches in depth. That with the degree of

penetration, the wounds had the propensity of causing the death of Tyron Brown.

This Court says firstly that in evaluating the testimonies of the defendant and those of the defense's second witness, could the Late Tyron Brown be considered as a criminal as was being insinuated by the defendant in his testimony?

Secondly, assuming without admitting that the late Tyron Brown actually attacked the defendant, but, did the defendant have to stab him several times in order to rescue himself from such alleged attack, or to cause him to flee?

In answering the first question, this court says that the late Tyron Brown was not a criminal because he and Ernest were outside prior to the defendant's encounter with him. Had Tyron been a criminal, he would have first attacked Ernest which would have enabled him to have either had access to the defendant's vehicle or to have broken into the house.

More besides, when Tyron went in the compound, he went directly to a window of a room occupied by both Edwina and Alice. This suggests that he knew someone in that room and that is why he knocked at that particular window.

The Court's position is also strengthened by prosecution's exhibit P/4 in bulk containing a police sheet and a police report. The said Court's marked exhibit P/4 in bulk was also admitted evidence. Excerpts from the said exhibit P/4 in bulk states as follows: "police investigation further established that the late Tyron A. Brown was a friend of Edwina Promise Youti and that he had visited her at her house the (crime scene) several times both day and night prior to the incident and that Tyron A. Brown was not having on his person any weapon during his encounter with suspect Jonathan Williams".

In answering the second question whether the defendant was justified in using the amount force used to defend himself, the Courts says that, even though the defendant testified that the victim knocked his head several times on the wall and in order to rescue himself, he stabbed him with the hope that he would flee and he did flee, however, considering the witnesses' testimonies, especially the testimony of the Coroner who said that when he conducted a post mortem examination on the deceased, he saw three stab wounds on Tyron Brown, and upon measuring the wounds to ascertain the degree of penetration, he saw that the length of the wounds was 1 inch and two inches in depth, and that with the degree of such penetration, the wounds had the propensity of causing the death of Tyron Brown; hence, this Court is of the opinion that the defendant did not have to stab the victim more than once in order for him to have rescued himself from the alleged attack especially considering the fact that the victim was unarmed.

Further, the defense second witness Alice Youti's testimony in chief is also a novelty in that, she testified that while she was in the living room, the person knocked her uncles' head on the wall beside the hand pump and she heard her uncle saying "you see you knocked my head on the wall".

During cross examination, this question was posed to her.

Ques. Madam Witness, please tell us if you know the distance from where you were standing to where your uncle and the person were fighting?

Ans. The living room is not far from the stairs.

This court says that even assuming without admitting that she was in the living room and heard her uncle's head being banged against the wall, but the question is, how would she have known the exact spot where the defendant's head was allegedly knocked by the victim considering the fact that she was in the living room and not on the scene? Further, she did not testify whether the hand pump is near the stairs or not.

From her testimony, as well as that of the defense's third witness Edwina's testimony, one can easily deduce that their testimonies are a cover up but one can also understand the reason for which they endeavored to cover up for their uncle because prior to the incidence, and in keeping with the evidence produced by the parties, the defendant, who is their uncle, was their bread winner. Hence, they had to do that to safe him from getting into trouble. More than that, they were also implicated in the case for their refusal to have reported the events of the night of April 15, 2018. As such, they were charged with the Crime of hindering law enforcement.

Therefore, the pleas of self-defense and temporary insanity pleaded and argued by the defendant are not tenable to warrant the reduction of the crime of murder to manslaughter in this case.

In addressing the second key issue whether or not the State established a Prima Facie evidence beyond a reasonable doubt to warrant the conviction of the defendant on the charge of murder; the court says that Prosecution's fourth witness Officer Abu B. Daramy testified that upon their arrival on the scene, they saw a man lying down with his pants halfway down to his waist with several stabbed wounds who was later identified as Tyron Brown. Further, during police investigation, the defendant told them in the presence of his lawyer that when he saw the victim in his compound that night, he asked him to leave but he defiled him and told him to come and put him out. In the process, a tussle ensued and the cutlass fell from his hand. He and the fellow then started tussling over the knife but he over powered the fellow and stabbed him several times. After noticing that the fellow was bleeding profusely, he decided to take him to the hospital. With the assistance of one Caesar and another fellow who is presently at large, he placed the guy in a plastic and put him at the

back of his jeep and drove from the yard towards the hospital. However, when he noticed that the fellow was no longer breathing, out of fear, he dropped the body on the road and returned to the compound.

During cross examination, the defendant's lawyer posed this question to the witness.

Ques. Mr. Witness, do you confirm your statement that the defendant informed you that when it was noticed that the guy (deceased) was no longer breathing, out of fear, he dropped the body on the road?

Ans. Yes,

Further, during court's question, the court posed this question to the prosecution third witness Caesar Bill Kennedy.

Ques. Mr. Witness, you told this court that the defendant called you to assist him to take the person to the hospital. Upon your arrival on the scene, you saw the person lying down and you helped Mr. Williams put the person in the vehicle. My question to you is, at the time you were putting this person in the car, did you observed any sign of lie in him, that is to say, did you observe any movement in him?

Ans. No

Prosecution's fifth witness Varlee M. Sheriff/head of Forensic Unit of the Liberia National Police testified that when they arrived on the scene, they saw an unconscious person lying down on the Kingdom Care Road. After that, they took him to Benson Hospital for pronouncement and then to the funeral home. At the funeral home, they did an examination on the body and observed three deep wounds. Two wounds measuring 2 inches deep were found on the left side of the body, while the other containing one-inch deep was on the upper left arm.

Prosecutor's sixth witness Abraham B. Ricks/Coroner of Montserrado County testified that in the month of April 2018, he conducted a post molten examination of Tyron Brown in the presence of a 15-man Coroner juror. In the process, he saw three stab wounds on the said Tyron Brown.

Defendant's third witness Edwina Youti testified as follows:

That on Saturday night April 15, 2018, while she was in the living-room doing her assignment, her sister Alice ran to her in fear and told her that someone was knocking at their window and the person asked her to look through the window. She said to her sister, may be it could be Ernest but she said no because the person's voice didn't sound like Ernest's voice. Alice went and informed their uncle Jonathan and he came out and went in their room and asked [who's] there more than four times but there was no response. After that, her uncle went outside to check whether the gate was locked. As she was still doing

her assignment, she later heard her uncle screaming saying "oh! You knock my head on the wall". When she heard that, she ran to the front porch and saw someone running through the gate, while Ernest was standing in the garage. She asked Ernest why it was that he stood by and allowed someone to jump on her uncle? Ernest respondent that he didn't intervene because he didn't know what the stranger had in his hand, or may be, he had different intention! Following that, Massa and Joanna came out and inquired about what happened and her uncle told them that someone attacked him but the person might have gotten hurt. Massa replied, if he's hurt, and then take him to the hospital. Thereafter, her uncle sent for his light and he, Alice and herself walked down the road to see if the person was still around but they did not see him. On their way back, her uncle saw the person lying down on the ground. She and her uncle went closer to him and when she pointed her phone light in the person's face, she yelled and said "Tyron" and started crying. Her uncle asked if she knew him and she answered in the affirmative. After that, she ran in her room and never came out till the next day.

In the mind of this court, these testimonies were damning. As such, the defendant should have refuted them but he failed to do so.

The honorable Supreme Court of Liberia speaking through Madam Justice Youh in the case: Massaquoi v. R.L. (2014) LRSC 14 (17 January 2014 held that "where damning testimony has been placed on the records against a criminal defendant, unless rebutted, such will constitute a prima facie evidence of the fact". Davies v. Republic, Supreme Court Opinion, October Term A.D. 2008.

The Supreme Court further held that "the advantage the defendant derives from fact that the burden is on the prosecution to prove his guilt beyond a reasonable doubt, ceases when the prosecution has done this to such an effect as to sustain a verdict of guilty. At this point, should the case close and go the jury, it goes free from the presumptions arising from the imposition of the burden of proof. The rule requiring the actor to take on him the burden of proof is a rule of practice adopted for the proper development of the case, and ceases to operate when the evidence on the part of the prosecution establish the defendant's guilt beyond a reasonable doubt. Davies v. Republic, Supreme Court Opinion, October Term 2008.

The Supreme Court of Liberia also held in the case: Tom Nimiley et al appellants vs. Republic of liberal, 30 LLR, 676, Syl. 5, text at p. 683 that "is not necessary that one actually be seen committing a crime before he could be held guilty, but that it is sufficient for that person to be convicted whenever the logical deductions from the facts and circumstances lead conclusively to the fat that a crime was committed and that the accused is connected with the crime.

Hence, the court having considered all that has been elaborated hereinabove, the court is of the abiding belief that the evidence produced by the prosecution, formed a link to link chain needed to lead any reasonable mind to the conclusion that the defendant's

conduct in stabbing the defendant several times, and thereafter dumped him on the road without taking him to hospital, especially after his niece Edwina recognized the victim and called his name which should have suggested to defendant at that point that he had the responsibility and duty to have hurriedly taken the victim to hospital to safe his live, but failed to do so, until the victim was later seen dead; manifests an act of deliberation and a willful and gross disregard for the value of human life.

Wherefore and in view of the facts narrated above, and the evidence demonstrated as well as the citations of law, it is the opinion of this Court that the prosecution proved its case against defendant Jonathan K. Williams beyond all reasonable doubt. Hence, the said defendant is hereby adjudged guilty of the Crime of Murder, a Felony of the first degree, in keeping with Section 14.1 of the Penal Law, P. 794, Title 26. In view thereof, since a probation service has not been established in the Eleventh Judicial Circuit of Bomi County, and it is required by section 31.5 (1) of the Criminal Procedure Law, P. 402, that a pre-sentence investigation be conducted as well as a sentence hearing prior to the imposition of sentence; and Montserrado County, being the County from whence this case emanated and the defendant also being a resident of the said county; in order to conduct said investigation, the court hereby mandates the investigation of the defendant and to submit a report and filed same with the Clerk of this court on or before Friday, same being the 20th day of March, A.D. 2020 at 2:00pm. Further, sentence hearing is hereby assigned for Monday, serve as notice of assignment. And it is So ordered.

GIVEN UNDER MY HAND THIS 17TH DAY OF MARCH, A.D. 2020

NANCY FINDA SAMMY
ASSIGNED CIRCUIT JUDGE"

The Probation Services, in obedience to the judge's order, submitted its report as follows:

"1. That the defendant (appellant) is married with three children who all reside in the United States of America;

2. That prior to the incidence, the defendant (appellant) and the victim had a fist fight at a local bar on Duport Road called Freddie, and said information was confirmed by a community member;

3. That the defendant (appellant) did not express regret for his action during interview held by the probation officers via mobile phone, but only did so when he was later quizzed by the probation officers whether he is willing to talk to the deceased family;

4. That the defendant has anger issue, and this was confirmed by prison officers at the Monrovia Central Prison;
5. That there was no document to establish any prior criminal history;
6. That the victim is survived by his mom and two years old kid;
7. That the victim's mom refused to talk to probation officers on grounds that discussing her son's death brings back bad memories.

The court had a pre-sentence hearing on March 26, 2020, and thereafter sentenced the appellant to life imprisonment. The appellant noted exceptions to the final ruling adjudging him guilty of murder and the sentence of life imprisonment; he announced appeal to the Supreme Court for a review of the final ruling and the sentence.

In pursuant of the appeal announced, the appellant filed a fourteen-count bill of exceptions which reads as follows:

APPELLANT'S BILL OF EXCELPTIONS
JONATHAN K. WILLIAMS VS. REPUBLIC OF LIBERIA.

Appellant in the above entitled case most respectfully submits his Bill of Exceptions growing out of the trial and determination of said case, requesting Your Honor and this Honorable Court to approve said Appellant's Bill of Exceptions, consistent with the laws of this Republic, to enable Appellant to proceed with the remaining requirements controlling the taking of Appeals in the Republic, so that the errors made by Your Honor as Appellant herein showeth, can be reversed and corrected by the Honorable Supreme Court of the Republic of Liberia during its October Term, A.D. 2020, thereby affording Appellant a fair and just judgment, to wit:

1. Your Honor committed egregious reversible error in that Your Honor's entire Final Judgment received by Defendant's Legal Counsel from the clerk of Court on the 31st day of March, A.D. 2020 after several request to the Clerk, is predicated and literally grounded in misrepresentation, misinterpretation, misapplication and serious disregard of the laws of the statutory and judicial standards established by the Honorable Supreme Court of the Republic controlling the adjudication of the charge of Murder from which Your Honor's final judgment and sentence grow, as neither Your Honor's Final Judgment rendering the Defendant herein guilty of Murder or Sentence to Life Imprisonment is supported by the laws extant in this jurisdiction.

2. Your Honor committed reversible error when you disregarded the standards set in subsection (b) of Section 14.1 of the Penal Law of Liberia which in so many words, established the conditions for concluding the existence of a rebuttable presumption on a person causing the death of another human being "under circumstances manifesting extreme indifference to the value of human life."

3. Your Honor further committed reversible error for which Your Honor's Final Judgment and Sentence to Life Imprisonment ought to be reversed by providing on page 2 of said Final Judgment a definition of your own to Manslaughter [quite] contrary to and in extreme tension with the compelling definition and unambiguous definition of said charge in the Penal Law, thereby evading the framework and intent of the Legislature in such instances as that under which the Defendant found himself, and therefore erroneously rendering the Defendant guilty of the crime of Murder.

4. Your Honor erred and made reversible error to have introduced purported statement the police station which was never testified to by any of the witnesses in the trial, including especially, the introduction of a cutlass being used by Defendant as well as emphasized at pages 3 and 4 of Your Final Judgment that *"during his testimony both on the direct and cross examination, the defendant never informed this Court that he told the police upon being arrested that he was temporarily insane during the event of the night of April 15, 2018, neither did he raise the issue when he testified during the trial.* Instead, said issue was only raised for the first time by his legal counsel during final argument, being two (2) years after the arrest and incarceration of the defendant which assertion is contrary to the testimony of Defendant as indeed and in fact the Defendant was clear and cogent both during his entire testimony during the cross examination that he was not in a balanced state of mind. On the direct examination the Defendant said in his testimony on February 28, 2020, 15th Day Jury Sitting, page 46, *"Few feet away from the hospital, Bill told me Mr. William, if you reach this man to the hospital in this condition, you will get in trouble. At this time, fear took control of me and we put him few feet away from the hospital…. and also, "… I was home in a confused mood…*" Then on cross examination the Defendant responding to a question of the prosecution reiterated his poor state of mind when he said at page 47 *"Your Honor, during this time there was a lot of stress and duress;".* Finally, the Defendant clarified convincingly that he was mentally unbalanced, though temporarily while taking the victim to the hospital; he said at pages 50 and 51 in his response to another question on the cross examination: "…*On our way to the hospital, few feet away from the hospital, I was ill advised and fear got the best of me, to put the person down on the side of the road. For that you can't*

imagine how I feel, but if you experience fear, you know what it does. It paralyzes you into making wrong decision, but which is no way the composition of my being." Thus, Your Honor's findings on these two points are in contrast with the testimonies and certainly operate against the Defendant, which would have caused a different judgment had they been considered, thereby equating your decision to a reversible error for which the Supreme Court is prayed to so reverse.

5. Your Honor committed additional reversible error on the same point of unbalanced mental condition of Defendant when Your Honor, ignored the strong and damming testimony voluntarily made by Prosecution's own witness Caesar Bill Kennedy against the said Prosecution in this matter in favor of the Defendant that first, he witness Kennedy himself paralyzed with fear; he testifies at page 13 of the court's record, 11th Day Jury Session on Monday, February 24, 2020: *"I could not say anything because I have been involved already with the carrying of the boy and leaving him by the road side, fear took me. Being involved with the situation, I didn't say a word until I was arrested on the 20th day of April 2018."* Then on cross examination witness Kennedy responded to a question affirming the confused mood of the Defendant also found on page 15 of the minutes of the proceedings. Defendant therefore says that this finding of Your Honor is contrary to the testimonies regarding the state of confusion or temporary insanity of the Defendant and even the other actors, and thus such finding clearly fits the conditions of a reversible error, for which the Supreme Court is requested to overturn.

6. Your Honor committed manifest reversible error in not giving credence to, or even attempting to evaluate any of the legal authorities proffered by the defense team. Especially that Your Honor refused and neglected to consider the doctrine of extreme disturbance also relied upon by the defendant's counsel with respect to the time the body of victim was placed by the said of the road by not only the defendant as Your Honor has indicated, but along with other two persons in the vehicle as the defendant testified to.

7. A further reversible error that informed Your Honor's adverse decision against the defendant is your finding at page 4 of Your Final Judgment that *"However, he [the defendant] dumped the victim along the road due to fear…."* which is again contrary to the evidence adduced at trial. The defendant testified substantively and without any doubt that the three of them in the vehicle, that is, he, Mr. Kennedy and Ernest acted to lay the victim by the road side: *"at this time fear took control of me and <u>we</u> put him few feet away from the hospital…"* This is a material testimony relative to the fact that Your

Honor established by your question to witness Kennedy that the victim was lifeless and therefore to find later in Your Honor's ruling that the victim would have survived had he been taken to the hospital is an error that is quite unsupported by law and the evidence. Hence, Your Honor's decision should be reversed also on this issue; these pieces of relevant issues are found both at page 8 where Your Honor recites the testimony of the prosecution's fourth witness and page 10 where Your Honor presumes that but for the dropping of the victim by the road side, he would have been alive. Such contradictions cerate serious doubts that should operate in favor of the defendant on the one hand and on the other, suggest Your Honor's infusion of personal feelings short of evidence that supports such feelings, thus being a ground to reverse the decision made by you.

8. Your Honor also committed another reversible error when you concluded without giving consideration to any evaluation of the degree of the force used by the Defendant or the entire testimony of the defendant on the intent and the manner of piercing of the victim by the defendant, and also concluded that because the victim went to a particular window therefore he knew people in the room hosting said window, on that basis, went ahead to adjudge the defendant guilty for murder, holding page 7 of said judgment, *"Secondly, assuming without admitting that the late Tyron Brown actually attacked the defendant, but did the defendant have to stab him several times in order to rescue himself from such alleged attack, or to cause him to flee? And, More besides, when Tyron went in the compound, he went directly to a window of a room occupied by both Edwina and Alice. This suggests that he knew someone in that room and that is why he knocked at the particular window."*

9. Defendant asserts further that the position held by in count 9 of this Bill of Exceptions is a irreparable reversible error as it is a mere assumption especially as Your Honor relied emphatically on the *Police Investigation further established that the late Tyron A. Brown was a friend to Edwina Promise Youti and that he had visited her at her house the (crime scene) several times both day and night prior to the incident.*" As seen on the same page of your Judgment, contrary to the testimonies of prosecution witness Kennedy and Defense Witness Edwina Youti who said t page 69 of the minutes of the 18th day jury sitting on March 2, 20220 at page 69 that it is impossible to have been visited by Tyron at her home because*…" I could have never and ever allowed guest at my home without my uncle's permission* while Kennedy also confirmed that the victim had never been at the compound, found on page 15, 11th day's jury sitting on February 24, 20220. These are serious errors that if not made would have resulted in a decision quite different from a judgment of guilty of murder.

10. Your Honor made a reversible error to have said that the court had a position and this position was strengthen by the mentioned statement (he had visited her at her house the (crime scene) several times both day and night prior to the incident and that (Tyron A. Brown) which was refused by prosecution third witness, Caesar Kennedy responding to a question on the direct "Mr. Witness, please tell this court and the jury defacto whether Tyron Brown you spoke about ever visited the compound prior to the incident, Answer No." as found on page 15th day Jury Session, Friday, Monday, February 24, 2020, and defendant third witness, Edwina Youti answer to a question "that impossible, I could have never and ever allow guest at my home without my uncle's permission' as found on page 69, 18th Day's Jury Session, Monday, March 2, 2020. Same is found on page 7 of Your Honor Final Ruling.

11. Your Honor committed another reversible error when you failed to consider your question posed to, and the answer of prosecution third witness as found on page 26, Wednesday, February 26, 2020, 13th Day's Jury Session*: "Mr. Witness, you told court that the defendant called you to assist him to take the person to the hospital. Upon your arrival on the scene, you saw that person lying down and you helped Mr. Williams put the person in the car, did you observe any sign of life in him, that is to say, did you observe any movement in him?* Answer, No. However, you opined in Your Final Judgment that "the responsibility and duty to have hurriedly taken the victim to hospital to safe his live, but failed to do so, until the victim was later seen dead; manifests and act of deliberation and a willful and gross disregard for the value of human life" even though the question and its corresponding answer were for all intents and purposes to establish whether there was reason to believe the victim was alive; and by the answer, a logical conclusion could be reached that he was not. Yet, Your elected to find a decision of guilty of murder and not manslaughter despite the non-existence of any malice, and in fact, any extreme indifference to the value of human life. Hence, the reversal of Your Judgment by the Supreme Court is herein prayed for.

12. Further to the reversible error in count 12 above, Your Honor committed a serious reversible error on the same issue when, in the face of the testimony of prosecution's fourth witness, recited by you at page 8 of the Judgment, which inter alia stated "However, when he noticed that the fellow was no longer breathing out of fear, he dropped the body on the road and returned to the compound." That testimony on "no longer breathing" negates any suggestion or finding of extreme indifference to the value of human life. Hence, said Final Judgment should be reversed since there is a doubt as to whether or not the victim was still alive or dead. And that the answer weighs heavily on the matter.

13. Notwithstanding the several reversible errors in Your Honor's Final Judgment finding the defendant guilty of murder contrary to the evidence and the law extant in our jurisdiction, Your Honor acted properly by ordering the conduct of a pre-sentence investigation of the defendant and the submission of a pre-sentence report to inform the decision regarding his sentence; that report as clearly seen by Your Honor and admissions you made on it, presents no aggravating circumstance adverse to the conduct of the defendant, but yet, presents a clear false statement of bias and untruth simply to demonize the defendant, which by its very content should have been rejected by Your Honor. Specifically the report states that the defendant and the victim had at one time had a fight at the night club, which as Your Honor knows is a manufactured piece of devilish allegation only intended to establish malice and tie the defendant to the crime of murder despite any such evidence by any of the witness during trial or any record to that effect even during the police investigation. Such report therefore is proof of concoctions and twists of truths, as the defendant at page 54 of the minutes, 15th day jury sitting on February 28, 2020, with no basis in such trials and should have drawn Your Honor's attention to the doubts already asserted in this Bill of Exceptions which makes the entire Final Judgment fit for reversal by the Supreme Court.

14. Your Honor's refusal to consider any of the several legal authorities as contained in defendant's Legal Memorandum, all of which support a maximum finding of Manslaughter and no more if the defendant cannot be set free for the State's failure to prove the charge of murder, is a reversible error that seals the justification for a reversal of Your Honor's Ruling's, Final Judgment and Sentence.

WHEREFORE AND IN VIEW OF THE FOREGOING, Appellant/Defendant most respectfully prays Your Honor and this Honorable Court to approve Appellants' Bill of Exceptions so that the Honorable Supreme Court will review and correct the reversible errors that were committed by Your Honor in these proceedings and grant unto Appellant/Defendant all further relief in this proceeding.

Respectfully submitted
Defendant by and thru his counsel

Jimmy Saah Bombo
Counsellor-At-Law

Dr. Jallah A. Barbu
Counsellor-At-Law

APPROVED:

Her Honor Nancy Finda Sammy
ASSIGNED CIRCUIT JUDGE
11th Judicial Circuit Court
Tubmanburg, Bomi County
Republic of Liberia.

Dated this 4th day of April, A.D. 2020

Succinctly, the appellant, in the bill of exception, is alleging that the trial judge's final ruling is grounded in misrepresentation, misinterpretation, misapplication and serious disregard of the laws and the facts and of the standards established by the Supreme Court controlling the adjudication of a murder case. On the legal issues, the appellant claimed that the judge disregarded the standard set in Sec. 14.1(b) of the Penal code on the application of the principle of rebuttable presumption; that the trial judge defined manslaughter contrary to that which is giving by law; and that the trial judge relied on statements made at the police station which were not testify to during the trial. On the factual issues, the appellant claimed that the trial judge introduced statements at the police station which were not testify to by any of the witnesses during the trial; that the trial judge assertion that the issue of temporary insanity raised by the defendant was never testify to by the appellant during police investigation and during the trial, but that the issue was raised by the defense counsel for the first time during the final argument in the trial; that the trial judge disregarded the testimony of the state third witness, Ceasar Kennedy who testified that the victim was lifeless when he observed him, but yet held that the appellant manifested and acted deliberately and with willful and gross disregard of the value of human life when he dumped and abandoned the victim along the roadside, rather than convey him to a hospital; that the presentencing investigation report is laden with misinformation but yet the trial judge relied thereupon to sentence the appellant to life imprisonment.

Before we embark upon our inquiry into these challenges to the trial judge's final determination, we deem it necessary to give due consideration to the indisputable and disputable factual issues as can be discerned from the evidence adduced during the trial. The parties are not in dispute with respect to the fact that on the night of April 15, 2018, the deceased Tyron Brown visited the compound in which the appellant resides between 10:00 p.m. and midnight; that on that night, Tyron Brown approached the window of the room in which Alice and Edwina Youti occupied and rocked at the window; that the appellant came out of his apartment armed with a knife; that when the appellant came out of his apartment, he saw Ernest Kermon, now at-large, sitting on the septic tank and the deceased Tyron Brown standing beside the appellant's vehicle in the yard; that during a scuffle that ensued between the appellant and Tyron Brown, the appellant stabbed Tyron Brown with a knife

three times on that fateful night; that the appellant, Cesar Kennedy and Ernest Karmon placed the unconscious body of the deceased, Tyron Brown, body in the car of the appellant, transported the body toward the Kingdom Care hospital, and abandoned his lifeless body along the roadside; that two persons on the scene of the incident - that is Edwina Youti and Cesar Kennedy - recognized the deceased Tyron Brown as a person that they were familiar with; that the appellant and the other occupants of the house did not report themselves to the police, in spite of the discovery of the body the following day in an area that lie within the vicinity of the compound in which the appellant live, from April 15, 2018, the day of the stabbing to death of the deceased, to April 20, 2018, when the police through their investigation got information that the crime was committed in the compound in which the appellant lives and proceeded to execute the arrest of the appellant and others in the said compound.

On the other hand, the parties, by their evidence, are in dispute with respect to the following facts: While it is the position of the state that the deceased was a regular visitor to the compound of the appellant, it is the position of the appellant that the deceased had never been in the compound before; While it is the position of the state that the appellant stabbed the deceased with malice aforethought, it is the position of the appellant that he acted in self-defense and under extreme emotional disturbance; and while it is the position of the prosecution that the appellant acted with gross indifference to the value of human life when he placed the lifeless body of the deceased in the trunk of his vehicle and abandoned him along the road to the Kingdom Care Hospital, it is the position of the appellant that he acted to protect himself from attracting disease and out of fear of being apprehended for inflicting the fatal injury that resulted into the death of the deceased.

Having identified the indisputable and disputable facts in this matter, we shall now inquire into the challenges raise by the appellant in the bill of exception to the judge's final ruling. These challenges shall be examined in the order in which they are presented, and in light of the evidence adduced during the trial, the presentencing report, the judge's final ruling and sentencing and the briefs filed by the parties.

1. The appellant claimed that the judge disregarded the standard set in Section 14.1(b) of the Penal Code on the application of the principle of rebuttable presumption.

A review of the evidence does not show any reason to warrant the application of section 14.1(b) in the determination of this matter. On rebuttable presumption, this subsection provides as follows "… A rebuttable presumption that such indifference exist arises if the defendant is engage or is an accomplice in the commission of, or an attempt to commit, or flight after committing, attempting to commit treason, offenses defined in section 11.2 or 11.3 of this title, espionage, sabotage, robbery, burglary, kidnapping, felonious restrain, arson, rape, aggravated involuntary sodomy, escape, privacy, or other felonies involving force or danger to human life". The indictment in this matter did not aver that the appellant was engaged in the commission of any of the crimes enumerated herein above for which a rebuttable presumption that manifest extreme indifference to the value of human life may come into play. What the indictment accused the defendant of is that the defendant, "with criminal intent and without the fear of God, purposely, recklessly, knowingly and willfully committed the crime of murder by killing Tyron Brown…." The trial Judge therefore rightly did not consider sub-section 14.1(b). The charge against the defendant is properly covered under subsection 14.1(a) and therefore, the State had the burden to prove beyond a reasonable doubt the guilt of the defendant. The defendant is only required to produce rebuttable evidence to overcome the evidence provided by the State. There exists no presumption in this matter that the defendant acted except that which is established by the evidence adduced by the State. We shall later examine the evidence in other to determine whether or not the State met the threshold of evidence needed to support the conviction of the defendant. But for now, we hold that subsection 14.1(b) is not applicable in this matter.

2. The appellant claimed that the trial judge defined manslaughter contrary to that which is giving by law; and that the trial judge relied on statements made at the police station which were not testify to during the trial.

The appellant, at count 3 of the bill of exceptions, averred that the trial judge's mis-definition of the crime of manslaughter constitutes an evasion of the intent of the Legislature in the circumstances in which the appellant found himself and that this resulted in the erroneous judgment of guilty against the appellant. Recourse to the records shows that it is the appellant that raised the issue of manslaughter in support of his defense of self-defense and temporary insanity. The records also support the appellant assertion that the judge did not define manslaughter as provided for by our current Penal Code. As a matter of fact, the definition of manslaughter quoted in the judge's opinion is that of the repealed 1974 Penal

Code. However, in the context in which the issue of manslaughter was introduced in this matter, the judge correctly discussed the issue in light of the current Penal code. The crime of manslaughter is defined in the current penal code as follows:

> "A person is guilty of manslaughter if he: (a) recklessly causes the death of another human being; or causes the death of another human being under circumstances which would be murder except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believe them to be. An emotional disturbance is excusable, within the meaning of this section if it is occasioned by provocation, event, or situation for which the offender was not culpably responsible".

The trial judge, in her discussion of whether manslaughter rather than murder will lie in this case, explores the issues of temporary insanity and self defense in light of the evidence and concluded that these defenses were not available to the appellant. We shall later examine the trial judge's conclusion on the evidence to determine whether those defenses were not available to the appellant. We however do not see how the erroneous definition of manslaughter in this matter can change the outcome as determined by the trial judge in her ruling. We therefore give no credence to this issue in the bill of exceptions.

We shall now explore the trial judge's ruling and the evidence adduced during the trial to determine whether or not the trial Judge's final ruling is grounded in misrepresentation, misinterpretation, misapplication and serious disregard of the laws and the facts and of the standards established by the Supreme Court controlling the adjudication of a murder case, the appellant averred in his bill of exceptions.

The certified records reveal that the trial judge held in her final ruling that although the appellant made statement while undergoing police investigation after his arrest, but he elected to withhold the fact before and during trial that he was temporarily insane on that fateful night; and that the defense of temporary insanity can only be settled by a psychiatrist who is qualified to testify in respect of the appellant's mental fitness to stand trial. Assuming that the appellant suffered temporary insanity, the judge further inquired at what stage during that fateful night did he suffer temporary insanity? Was it at the time of striking the victim three fatal blows on the back, or when Ceasar Bill Kennedy allegedly said to him that taking the body to a hospital would land him in trouble? The judge, in her analysis of the appellant's testimony, disagreed with the defense of temporary insanity considering that the

appellant did not raise this issue prior to the trial so as to accord the court the opportunity to inquire there into. This position of the trial judge finds support in the serenity of the appellant during trial when he gave clear and detail narratives of the events on the night of April 15, 2018. These facts, in the determination of the trial judge, are suggestive of his mental soundness at the time of the commission of the crime of murder.

Regarding the act of the appellant to have abandoned the victim on the roadside to die without taking him to the hospital, it is the contention of the appellant that rebuttable presumption of the existence of the extreme indifference to the value of human being did not manifest itself because he acted out of fear. He argues that fear is the product of extreme emotional disturbance which occasioned after Ceasar Kennedy advised him against taking the victim to the hospital so as to avoid getting into trouble. Notwithstanding his state of mind, the trial judge concluded that the appellant demonstrated extreme indifference to the value of human life. The appellant assigns error to the trial judge's alleged misinterpretation of section 14.1(b) to the facts of this case. We have already determined that rebuttable presumption did not manifest itself under the facts and circumstances of this case.

A rebuttable presumption is an inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. *Black's Law Dictionary, Ninth Edition, Page 1334.* It should be noted that ordinarily, the burden of proof that a fact exists rests on the party making the allegation. However, in certain cases as enumerated under section 14.1(b) of the statute, *ibid*, the law presumed that the defendant's conduct was extremely indifferent to the value of human life until and unless the defendant overcomes such presumption by a clear and convincing evidence. We note that the said statute provides that the commission of any felony other than those enumerated which involve the use of force or danger to human life raises a rebuttable presumption that the actor was indifferent to value of human life.

The appellant, in order to overcome the presumption of extreme indifference to the value of human life, argues that the condition of extreme emotional disturbance occurred after the fatal stabbing of the victim by him. Can it be said that the appellant's conduct on the night April 15, 2018, is excusable due to extreme emotional disturbance? We are unable to reach that conclusion because an

examination of the statute clearly places the excuse or defense **before** and not **after** the occurrence of the relevant act, in this case, the stabbing of the victim.

> "A person is guilty of manslaughter if he:
>
> (b) Causes the death of another human being under circumstance which would be murder except that *he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse.* The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An emotional disturbance is excusable, within the meaning of this section, if it is occasioned by provocation, event, or situation for which the offender was not culpably responsible." *Italic supplied, Penal Law Revised Code:26: 14.2(b)*

Relying on *Toeday v. R. L. 31 LLR194 (1983)*, the trial judge held that "manslaughter, a second degree felony, is committed by a person who without legal justification or excuse unlawfully kills any human, malice prepense not appearing from the circumstances; or while engaged in any lawful pursuit without intent to hurt, negligently kills any human being; or being the aggressor in any sudden affray, unlawfully kills any human being, is guilty of a felony and punishable by imprisonment not exceeding five years". As we have determined, *infra,* that an intentional killing of another person is malicious. We do not see how *Toeday* interpretation of manslaughter is different from those provided under *Penal Law Revised Code:26:14.2*, therefore it is our considered opinion that the judge did not err when she recited the *Toeday* case in her final ruling.

The appellant also argued that the judge imputed facts contrary to the State's star witness, Ceasar Bill Kennedy's testimony to the effect that the victim was not alive when the appellant along with him and Ernest dropped the body on the roadside. This Court says that the law requires that a person wounded under a circumstance such as in the case of the victim must be pronounced dead or alive by competent physician. *Pewue v. R. L. 35 LLR 167 (1988)* Ceasar Bill Kennedy, being a lay witness in this case, testified to his certain knowledge of what he knows to have occurred on the night of April 15, 2018. His testimony that the victim was not alive

when they abandoned him on the roadside was an opinion based on his rational perception of the body, *Evidence Law, Civil Procedure Law Revised Code 1:25.21* Our evidence law also provides that "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." *Civil Procedure Law Revised Code: 1:25.6.* The fact that the deceased stopped breathing as purported by the witness in and of itself is not conclusive and the best evidence would have been based on an examination by a competent physician had appellant taken the deceased to the hospital. Therefore, the trial judge did not err when she held that the deceased could have lived had the appellant taken him to the hospital.

The appellant also charged in his bill of exceptions that the trial judge imputed that he told the police during investigation that he used cutlass at the time of the commission of the crime contrary to his testimony. This Court notes the judge inadvertently used "cutlass" to describe the weapon used by the appellant, but afterward she corrected the error by use of the word "knife". That said, we are unable to appreciate the relevance and materiality of the appellant's contention in the face of his own admission that he used a knife to pierce the victim. We hold that the appellant's contention in this regard serves no evidentiary purpose of establishing his argument for the crime of manslaughter rather than murder, which is his main contention in this case.

The trial judge held in her final ruling that the victim was a constant visitor to the compound where he encountered the appellant resulting to his death. The appellant assigns error to the court's conclusion on ground that the State's witness, Ceasar Bill Kennedy testified that it was his first time to have seen the victim on the premises; that the defense's witness, Edwina, who recognized the deceased also testified that "I could have never and ever allowed guest at my home without my uncle's permission". We note that on cross examination, Ceasar Bill Kennedy also testified that he had seen the face of the deceased prior, but did not say where. We also take keen note of the inconsistent responses to questions posed to appellant's counsel regarding the deceased's regular visit to the compound during hearing. This Court inquired whether: "was any occupant of the compound acquainted with the deceased? The counsel answered "yes, Your Honors, one of the appellant's daughters said that the deceased usually escorted her home whenever she leaves school". During his closing argument, the Court reiterated the inquiry from the

counsel: “is it true the deceased usually escorted one of the appellant’s daughters from school?” He answered: “that was denied by the referenced daughter.” However, the police investigation as found in the charge sheet, State’s Exhibit P/4, confirmed that the deceased was a regular visitor to Edwina Youti who is said to have recognized the deceased after the appellant’s deadly use of three knife blows on his back. More besides, the probation services pre-sentencing investigation report indicated that the appellant had had a previous fist fight with the deceased at a night club. Our law permits that “at a sentencing hearing, the court may consider and rely on hearsay evidence, whether included in the pre-sentence report or presented orally”. *Penal Law Revised Code: 26:51.1(4).*

Under the law, a matter may be proven by either direct evidence which is based on personal knowledge or observation and if true, proves a fact without inference or presumption; and circumstantial evidence on inference and not on personal knowledge or observation. *Black’s Dictionary, Abridged Eight Edition, pages 474 - 475* The law makes no distinction between the weight and probable value of direct evidence and circumstantial evidence. Both are treated equally. In the instant case, while there is no direct evidence the victim was a regular visitor to the compound, however, considering the circumstantial evidence, that is, that both Edwina and Ceasar recognized the victim, the state of shock Edwina exhibited when she saw the lifeless body of the victim lying on the ground, the appellant’s lawyer’s assertion during argument before this Court that the victim always accompanied Edwina Youti to the compound on her way from school, the fact that when the victim entered the compound, he went directly to the window of Edwina Youti who recognized him, and the pre-sentencing report which indicates that the victim and the appellant had had a prior scuffle at a local night club, all put together, support the inference that indeed the victim was a regular visitor to the compound and that the victim had some level of contact or connection with Edwina Youti and the appellant.

The appellant argues that the judge erred in her consideration of the degree of force used by him or his intent and manner of piercing the victim as a response to the victim’s attack in which case he had to rescue himself in defense. On the other hand, the State has argued that the evidence gathered from the post mortem examination of the deceased did not indicate that the deceased was attacking the appellant; rather,

the positions of the wounds at the back of the deceased showed that the deceased was fleeing from the appellant.

Our review of the records shows that the judge quoted the evidence of both the police and coroner examinations which indicated that the appellant stabbed the deceased three times at his back; and that the lengths of the wounds or degrees of the penetration have the propensity of causing death. This evidence culled from the postmortem examination of the body was not contradicted by the appellant. Based on the evidence, the trial judge concluded that the use of multiple knife attacks on the deceased purportedly to cause him abandon the fight and flee cannot be justified as acting in self-defense. In the judge's analysis, a single strike could have sufficed the appellant's intent to scare the deceased. We are in agreement with the position taken by the judge in the face of the appellant's testimony that the deceased was unarmed when he encountered him. More so, our Penal Law provides that the use of deadly force is justified only if "the person using the forces believes that such force is necessary to defend himself against death, serious bodily harm, kidnapping, rape or sodomy compelled by force or threat". The use of force is not justified "if the person using the force knows that he can avoid the necessity of using such force with a complete safety by retreating…" *Penal Law Revised Code:26:5.3(3)*. From the evidence adduced by both sides, it is convincingly clear beyond a reasonable doubt that the deceased posed no threat to the appellant and that use of three knife blows at the back of the deceased was unnecessary.

This Court has held that "it is the rule of law that every person has a right to defend himself against aggression and may even take a life in such defense where the surrounding facts and circumstances fall within the requirements of the law.... To justify the exercise of this right, it is imperative that the person defending himself, or the one being defended, be in imminent danger; for mere apprehension will not justify the taking of life in self-defense. Moreover, there must be no means of escape from the aggression. In order that the homicide may be excusable on the ground of being in defense…, the defendant must show, according to one view, that the killing was actually necessary, not merely he had reasonable ground to believe that the act was necessary, and that he had no other way to prevent the threatened acts of the deceased." *Kpeh-You v RL 11 LLR 108 (1952) Matadi v Holt et al, Supreme Court Opinion, March Term, A.D. 2009*

Now, the question that we must ask is whether considering the evidence adduced during the trial, the appellee established beyond a reasonable doubt that the appellant is guilty of the commission of the crime of murder?

The State argues that the conduct of the appellant to have delivered three knife blows at the back of the victim, later dumped the unconscious body on the road side where the victim remained until he expired; burned the plastic and groves used to transport the victim in the trunk of the appellant's vehicle, washed the trunk of his vehicle in order to conceal the evidence; and not reporting the crime until he was arrested five days later, put together, demonstrate malice and extreme indifference to the value of human life. Therefore, the appellant is guilty of murder, a felony of the first degree.

We note again that the substantive facts in respect of the circumstances surrounding the death of the victim are conceded or admitted by the appellant. But the appellant contends that he acted in self-defense and under extreme emotional disturbance when he stabbed the victim three times with deadly force, drove the victim to a distance and left him on the roadside to die. He argues that under the circumstances of this case, the maximum penalty of manslaughter will suffice as opposed to the penalty of murder because he harbored no malice or intention to kill the victim at the time of the relevant act.

Malice is defined as the intentional killing of a human being by another without legal justification or excuse. *Black's Law Dictionary Ninth Ed. page 1043* This Supreme Court has held that malice is not grudge or resentment, or vindictiveness against another alone, but is also the manifestation of a wicked, evil spirit, evoked upon the occasion of the act done. It is that malevolence which comes from a depraved heart, regardless of social duty and fatally bent on mischief…It is not necessary that this condition of the mind or heart be characteristic of the slayer, who may in fact be in general a man of good and not bad heart; but if any act or conduct of his, to the injury of another, is a wicked act, or act denoting depravity at the time, it is a malicious act in law. *Brown v. R.L. 21 LLR 65 (1972)* We affirm.

As the trial judge rightly held that "the advantage the defendant derives from [the] fact that the burden is on the prosecution to prove his guilt beyond a reasonable doubt ceases when the prosecution has done this to such an effect as to sustain a

verdict of guilty. At this point, should the case close and go the jury, it goes free from the presumptions arising from the imposition of the burden of proof. The rule requiring the actor to take on him the burden of proof is a rule of practice adopted for the proper development of the case and ceases to operate when the evidence on the part of the prosecution establish the defendant's guilt beyond a reasonable doubt. *Davies v. Republic, Supreme Court Opinion, October Term, A. D. 2008.*

WHEREFORE and in view of the foregoing, the final ruling of the trial court adjudging the appellant of the crime of murder and sentence to life imprisonment is affirmed. The Clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction over this case and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Supu H. W. Cole, Dr. Jallah Barbu and Jimmy Saah Bombo appeared for the appellant. Counsellor Wesseh A. Wesseh, Assistant Minister of Justice for Litigation appeared for the appellee.