

KASIMU, Appellant, v. REPUBLIC OF LIBERIA,
Appellee.

APPEAL FROM THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT,
NIMBA COUNTY.

Argued April 1, 1976. Decided April 23, 1976.

1. A motion for a new trial should be denied where the evidence to support the verdict is clear and convincing.
2. A party requesting that the court charge the jury on the law must do so in writing.

Appellant was charged with having stabbed the private prosecutor herein with a knife. He was indicted for the crime of assault and battery with intent to kill; he was tried and convicted. He appealed to the Supreme Court after being denied a motion for a new trial on the ground of insufficiency of evidence.

The Supreme Court exhaustively reviewed the record and was of the opinion that the evidence presented by the prosecution was clearly sufficient to sustain the verdict of guilt. *Judgment affirmed.*

M. Kron Yangbe for appellant. *Solicitor General Roland Barnes* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Appellant was charged with the offense of assault and battery with intent to kill, was tried and convicted. Final judgment was rendered against him on August 29, 1974, from which final judgment appellant announced an appeal to this forum for final review and adjudication.

The indictment upon which the appellant was tried and convicted, we quote hereunder.

"The Grand Jurors, good and lawful citizens of Nimba County, do upon their oaths present defendant Kasimu for a crime, to wit: assault and battery with intent to kill.

"The defendant Kasimu aforesaid, previous to the finding of this indictment on the 7th day of June, 1974, at Unification Town, Nimba County, with intent to kill and murder private prosecutor Kafumba Konneh did with a deadly weapon known to the grand jurors as a knife, made of iron and wood, inflict several bodily injuries upon the private prosecutor aforesaid unlawfully and intentionally as follows:

"1. Several large and deep wounds on the right hand of private prosecutor.

"2. Rupture and total injury of the tendon of second finger of right hand.

"3. Cut wounds on right thigh, abdominal wall, nose, and skin lacerations on the left forearm.

"Then, thereby, at the time and place aforesaid and in manner and form aforesaid the crime of assault and battery with intent to kill, defendant did commit;

"Contrary to the form, force and effect of the statutory laws of Liberia in such cases made and provided, and against the peace and dignity of the state.

"And so the grand jurors aforesaid, upon their oaths aforesaid, do present and say that defendant aforesaid, at the time and place aforesaid and in the manner and form aforesaid, the aforesaid crime defendant Kasimu did do and commit.

"[Sgd.] A. W. OCTAVIUS OBEY,
County Attorney, Nimba County."

Appellant has submitted a bill of exceptions consisting of eight counts. In count 1 appellant complains of the judge having "made a serious and reversible error in the way and manner in which he charged the empanelled jury on the 21st day of August, 1974."

Having carefully perused the record in this case, we

find no written request submitted to the trial judge for instructions to the jury on any particular issue, as is required under our Civil Procedure Law: "At the close of the evidence or at any earlier time during the trial any party may request in writing that the court instruct the jury on the law as set forth in his request." Rev. Code 1:22.9. Therefore, we regard count 1 of the bill of exceptions as being unmeritorious, and it is consequently not sustained.

In count 2 of the bill of exceptions, appellant alleges that "His Honor erred in the way and manner he did not summarize the testimony of appellant and his four witnesses' testimony." Reverting to the charge to the trial jury, we observe that the testimony of the witnesses for the prosecution and the testimony of appellant and his witnesses were fully passed upon and summarized. We find this count of appellant's bill of exceptions also without legal merit, and it is, therefore, not sustained.

In count 3 of the bill of exceptions appellant complains: "And also because Your Honor erred in the way and manner you denied appellant's motion for a new trial and rendered final judgment and sentenced appellant to imprisonment in the common jail of Sanniquellie, Nimba County, for a period of one year and six months."

A careful study of the evidence in this case adduced at the trial, reveals it to be clear and positive, in that the motion was without a legal element that would constitute grounds for the granting of same. The jury arrived at the verdict which was supported by the evidence. Consequently, the trial judge's ruling denying appellant's motion for a new trial was correct. Therefore, count 3 of the bill of exceptions is not sustained.

In count 4 of appellant's bill of exceptions, it is alleged that "the trial judge erred in overruling appellant's application to deny the admissibility of a medical certificate marked by the court, 'E,' and weapon marked by the court 'A' and also a shirt and trousers marked by Court

'C' and 'D' respectively." Appellant's application referred to *supra* showing that the weapons and the other items were duly marked by the court, the court had no alternative but to admit them for the benefit of the trial jury, who are judges of the fact. This count of the bill of exceptions is also not sustained. We deem the other four counts of the bill of exceptions not worthy of consideration.

Summarizing the evidence which was fully passed upon in the charge of the trial judge to the jury, we find that according to the evidence presented by the prosecution, including the medical certificate, the guilt of appellant was established beyond a reasonable doubt.

For the benefit of this opinion we shall examine the evidence in this case with the view to determining whether or not the motion for a new trial, based on the jury's verdict alleged to be "contrary to the weight of evidence," was meritorious.

The first witness took the stand and testified.

"Q. Mr. Witness, what is your name and where do you live?

"A. My name is Kafumba Konneh, and I live at Yekepa, Nimba County.

"Q. Are you the private prosecutor in this case, and if so, are you acquainted with the defendant in the dock?

"A. Yes.

"Q. Predicated upon your oath and complaint, the defendant is charged by the Republic of Liberia with commission of the crime of assault and battery with intent to kill; you having taken the stand to testify in support of your said complaint; will you now please proceed to do so for the benefit of this trial?

"A. On the 7th of June, in the afternoon I visited Justice of the Peace William R. Martin's court in Unification Camp. Upon my arrival I real-

ized that there was a case pending before him in which the defendant in the dock was accused with the crime of breach of the peace by threatening of life. As a good citizen I took a seat as an ordinary observer. After the investigation, the defendant was then pronounced guilty to the charge; for which he prayed for an appeal and this was granted by the court. While he was requested by the justice of the peace to file his appeal or appearance bond, he left his position and sat nearby me. At this time, I sat relaxing with my head bent. Suddenly, I heard a noise, whereby I looked up and saw the defendant with a knife attempting to stab me on my neck with the knife. However, because of the intervention of the Justice of the Peace Joseph Weanquoi, the first strike of the knife did not reach me. While Justice Weanquoi advised him to desist the commission of that crime, he told him that he should go away from him because he was not after him but rather me. I, therefore, asked why? He said because you have taken my wife from me. This was surprise to me, there and then he started stabbing me, even though I applied all defenses to secure my life; thereafter I escaped from him and went outside. He followed me there too and continued stabbing me there again as will fully appear on my physical body and the medical report from Lamco Medical Department. After this incident I was taken to a hospital by a police officer and was hospitalized from the 7th to the 13th of June, 1974; and according to the medical report I need operation on the second finger of my right hand because of the defectiveness. The medical report was submitted to Judge James T. Harris, Magistrate to Lamco in whose

jurisdiction the crime was committed. This is all I know.”

The second witness gave his testimony.

“Q. Mr. Witness, what is your name and where do you live?

“A. My name is Joseph B. Weanquoi, and I live in Unification Camp 4.

“Q. Are you acquainted with Kafumba Konneh, the private prosecutor in this case and Kasimu, the defendant in the dock?

“A. Yes.

“Q. Said defendant has been charged by the Republic of Liberia for commission of the crime assault and battery with intent to kill and you have been cited by the prosecution to testify to the facts and circumstances within your certain knowledge in connection with the said crime; will you now proceed to do so for the benefit of this court and jury?

“A. On the 7th of June, 1974, I went to visit in the court of Justice of the Peace William R. Martin and while there, I saw defendant Kasimu and one lady by the name Big Ma before the said Justice William R. Martin trying a case involving breach of the peace and threatening of life. Where I was sitting in the same place Kafumba Konneh was sitting, and thereafter, the said justice of the peace gave a decision in favor of said Big Ma and then it was appealed by Kasimu; and not within a time or hour, I saw Kasimu taking a knife under the chairs that we both (Kafumba and myself) were sitting on; and having taken said knife, the said Kasimu passed his hand over my head to wound Kafumba Konneh, who at that time was having his head bent and in order to save said Konneh and myself, I then blocked the hand of Mr. Kasimu in

preventing said wound at that moment. Having prevented same at that moment, then the said Kasimu with that same vexation manner rushed to Kafumba Konneh, and at that time to prevent the knife, the said Kafumba, grabbed the knife and they both were fighting over it. And then Kasimu forceably hauled the said knife from Konneh which resulted to a wound or injury on the said Kafumba Konneh and on his hands. Therefore, by all means, Kafumba tried and went out and then defendant Kasimu followed him outside, but at that time I was then rushing to the police station to get police to have Kasimu arrested because we tried by all means to stop him and he did not stop. This is all I know."

The third witness thereafter testified.

"Q. Mr. Witness, what is your name and where do you live?

"A. My name is Vjell Buho Vergovist and I live in Yekepa, Nimba County.

"Q. Are you employed and if so by whom and in what capacity?

"A. I am employed by Lamco and I am a physician.

"Q. Please say for the benefit of this court and jury whether or not you recall that during the month of June 1974, you treated and/or examined the person of one Kafumba Konneh, the private prosecutor in this case, and if so, will you explain to the court and jury your findings?

"A. Yes, I remember, the private prosecutor Kafumba Konneh very well. He came to me on June 7, 1974, late in the afternoon, claiming that he has been stabbed by a knife. I will now read the chart I made up on examining Mr. Konneh. 'The following wounds seem to be made by a cutting instrument preferably a knife in the

right hand; the middle part of the inner part of the right thumb is a deep cut wound 4-½ centimeters; the underline structure is not damaged. In the right index finger just over to the joint to the hand there is a deep cut wound with heavy bleeding, and the extension tendon is totally cut through. The sensibility nerves are damaged. In the joint between the hand and the third finger there is a superficial cut wound three centimeters long. On the right thigh there is a six-centimeters-long deep cut wound. In the deep of the wound is a piece of muscle cut over. Besides these are several small superficial cut wounds on the right thigh and the abdominal wall, and a small cut wound on the face.' ”

The fourth witness then gave her testimony.

“Q. Madam Witness, will you please state your name and your place of residence?

“A. I am Mrs. Dolores Richards and I live in Yekepa, Nimba County.

“Q. Are you employed and if so, will you please state by whom, where, and what capacity?

“A. I am employed by the Lamco J. V. Operating Company as secretary to the chief medical officer of the Lamco Nimba Hospital, in Yekepa.

“Q. Refresh your memory and say whether or not you recall preparing a medical report on the case of Mr. Kafumba Konneh, who is the private prosecutor in this case, and if so were you to see the said medical report, would you be able to identify same?

“Objections: 1. No premise laid. 2. Leading and instructive.

“The Court: The court does not sustain the first point of the objection because it is crystal clear that a premise has been sufficiently laid to permit the question to be answered; on the other

hand, however, it is also clear that the question is instructive, and the objection is therefore sustained on that ground.

“Q. In your capacity as secretary to the Chief Medical Officer of the Lamco J. V. Operating Company hospital at Yekepa, do you recall at any time and upon the orders of your boss preparing a medical report of the case relating to one Kafumba Konneh, and if this be so, please say whether or not if you saw said certificate or report, would you be able to recognize same?

“A. Yes, I do remember having been asked to type up such a report and I am ready to identify it.

“Q. I pass you this document, please look at it, say what you know it to be, and whose genuine signature it bears?

“A. This is the medical certificate and it bears the signature of Doctor A. Barzagani.”

The fifth witness testified.

“Q. Mr. Witness, what is your name and where do you live?

“A. My name is William R. Martin, and I live in Unification Camp 4, Lamco, Yekepa, Nimba.

“Q. Are you acquainted with one Kafumba Konneh, the private prosecutor in this case and Kasimu, the defendant in the dock?

“A. Yes, I know Kafumba Konneh and Kasimu.

“Q. The defendant is charged by the Republic of Liberia for commission of the crime assault and battery with intent to kill, and you have been cited by the prosecution to testify to all facts within your certain knowledge relating therewith; will you now proceed to do so for the benefit of the Court and jury?

“A. Yes, it was on the 7th day of June 1974, at Unification Camp, defendant Kasimu was brought before me for the charge of breach of the

peace by threatening of life. After having a thorough investigation, defendant was brought down guilty. To which ruling he excepted and prayed for an appeal. Same was granted, and at which time, defendant Kasimu was requested by the court to either file a criminal appearance bond or an appeal bond. At that time, defendant Kasimu changed his position of standing and went near private prosecutor Kafumba; he took a knife and made an attempt to strike him at which time Joseph Weanquoi prevented the first strike; and later, defendant Kasimu began to stab Kafumba. After the first stab, Kafumba held the knife and defendant Kasimu hauled it from him with force. At which time I ran out for rescue and started calling people to come. This is all I know."

The prosecution in this case brought in as a witness Mrs. Adesafrafra to rebut testimony of one of defendant's witnesses, Brima, who had said that he was not related to the defendant. Said witness having taken the stand, was questioned.

"Q. Madam witness, please tell your name and place of residence?

"A. My name is Adesafrafra and I live in Camp 4.

"Q. Are you acquainted with Kasimu, the defendant in the dock?

"A. Yes.

"Q. Say also whether or not you are acquainted with one Brima Bamba, and if so what relationship does he sustain to the defendant in the dock if you know.

"A. I am acquainted with him and they are brothers from one mama and one papa.

"Prosecution at this stage, prays Court to take judicial cognizance of the answer just given by this witness which satisfies the notice given by the prose-

cution to the effect that this witness will be produced to rebut the answer given by Brima Bamba who testified for the defendant to the effect that he sustains no relationship to the defendant in the dock. The prosecution at this stage rests with the witness on the direct with the usual reservation."

Cross-examination:

"Q. Miss witness, you answered a question on the direct propounded by the prosecuting officer that Brima Bamba is related to the defendant in the dock, Kasimu; may we ask to know whether or not you are the mother of Brima Bamba to the defendant in the dock?"

"A. They are not my born children, but Kasimu is my son-in-law, and I know his brother.

"Q. Accepting your answer to be correct, we gather that you presume Brima Bamba and Kasimu, defendant in this case, to be related with your certain knowledge and not within your personal view, am I correct?"

"Objections: 1. Ambiguous. 2. Vague and indistinct. 3. Asked for the mere purpose of entrapping the witness.

"The Court: Objection not sustained.

"A. I know that they are brothers because when Kasimu first engaged my daughter he identified Brima to be his brother by mama, and introduced him to me as such."

Our Penal Law applies to this case: "*Assault and Battery with intent to kill*. Any person found guilty of committing an assault and battery with a deadly weapon, and cutting, stabbing or wounding with intent to murder, is punishable by imprisonment for not more than five years." 1956 Code 27:241.

Having carefully surveyed the evidence in this case, we are convinced that the trial judge did not err in deny-

ing the motion for a new trial. The unimpeachable evidence of the prosecution adduced at the trial of this case leaves no doubt of the guilt of the appellant.

In view of the foregoing, the final judgment in this case is hereby affirmed and the defendant is sentenced to serve a period of one year and six months in the common jail as adjudged by the trial judge. And it is hereby so ordered.

Affirmed.