

Hans Capehart Williams and Mardia P. Williams, Appellants v **Republic of Liberia**, by
and thru the Ministry of Justice, Appellee

APPEAL

LRSC 45

HEARD: May 7, 2014 DECIDED: August 15, 2014

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT.

Hans Capehart Williams and Mardia P. Williams, (the Appellants), appealed from a judgment entered by a judge who also sat as jury. They claimed that the evidence adduced at their trial was insufficient to support their convictions for murder. The case raises a question which goes to the fundamental principles of our criminal jurisprudence: the presumption of innocence, the burden of proof, and the requirement of proof beyond a reasonable doubt. Here, we are called upon to address the question what quantum of evidence is necessary or required to convict persons who are charged with the heinous crime of murder and whether or not the Prosecution in this case discharged its duty regarding the burden of proof in a criminal case such as this case, and was therefore entitled to a conviction against the Appellants. Here are the facts:

At approximately 7:00 P.M. on November 30, 2007, thirteen-year-old Meideh Angel Togbah was found hanging by rope in the bathroom of the Old Road, Sinkor residence of the Appellants. The Appellants subsequently rushed her to the John F. Kennedy Memorial Hospital (JFK Hospital), where she was pronounced dead upon arrival. A medical report issued by Dr. Williamina Jallah OB/GYN of the JFK Hospital on November 30, 2007, states, among other things, that Meideh Angel Togbah's hymen was not intact; that bruises were seen on the left and right side of the neck and under the chin; that there was slight bruise around the rectal area and that there was evidence of past sexual intercourse or trauma to the vagina and neck. The medical report, however, failed to state how these conditions occurred or by whom.

On February 12, 2008, the Appellants were arrested and charged with the crime of murder for the death of Meideh Angel Togbah. The writ of arrest was issued out of the Monrovia City Court.

On August 13, 2008, the Appellants filed, in the First Judicial Circuit, Criminal Assizes A, a motion to dismiss the charge of murder levied against them for failure of the prosecution to proceed with the case. It appears that the motion was resisted by the prosecution, argued and denied by the trial court.

Following two investigations by the Liberia National Police, one investigation by a team of Crime Scene Investigators from the Ghana Police Service, two autopsy reports and the JFK Hospital Medical Report by Dr. Jallah referenced above, all of which alleged variously that Meideh Angel Togbah died as a result of asphyxia, asphyxiation by hanging, sexual abuse, asphyxiation by strangulation, unlawful harm or homicide, the Republic of Liberia, (the Appellee), requested the Grand Jury for Montserrado County to inquire into the matter and to return an indictment against the Appellants. Following its inquiry and findings of true bill, the Grand Jury, on August 22, 2008, indicted the Appellants in the First Judicial Circuit, Criminal Assizes A for Montserrado County, for the crime of murder. The indictment upon which the Appellants were tried and convicted alleged as follows:

INDICTMENT

We the Grand Jurors for Montserrado County, Republic of Liberia, upon oath do hereby find, more probably than not, that the defendants Hans Capehart Williams and Mardia Paykue Williams, committed the crime of Murder, a felony of the first degree and a capital offense, to wit:

That on the 30th day of November A.D. 2007, at about 7:00p.m. in the Old Road community, Sinkor, Monrovia, Montserrado County and Republic of Liberia, the defendants hereinabove named did cause the death of another human being, to wit: Juvenile Little Angel Togbah, aged (13) under circumstances manifesting extreme indifference to the value of human life, to wit: by choking her to death and hanging her lifeless body in one of two bathrooms in the defendants' house.

And that the Grand Jurors aforesaid upon their oath aforesaid, do hereby say that co-defendant Mardia P. Williams, out of malice aforethought and of the conviction that co-defendant Hans C. Williams, Sr. had sexual intercourse (rape) with decedent, she co-defendant Mardia P. Williams jumped-on, strangled and choked decedent little Angel Togbah to death. And that after accomplishing her wicked act; they, defendants herein, together clandestinely took the lifeless body of decedent Little Angel Togbah to one of two bathrooms in the defendants' house and tied a cloth/belt around her (decedent's) neck and did hang her lifeless body to the bathroom rod, under the pretense that decedent had hanged herself.

And that the Grand Jurors aforesaid upon their oath aforesaid, do hereby say that defendants aforesaid, upon going through the above, they the defendants, went and sat outside; and sent their little son, Hans C. Williams, Jr. to the bathroom where the defendants had earlier hanged the lifeless body of Angel Togbah. And that, upon entering the bathroom, he, Hans C. Williams, Jr. blew

an alarm calling his parents' attention to what he had seen (the body of Little Angel Togbah) with rope around her neck, hanging in the bathroom.

And that the Grand Jurors aforesaid upon their oath aforesaid, do further say that prior to sending Little Hans C. Williams, Jr. to where the body of Little Angel Togbah was, to discover the wicked act already perpetrated by his parents, the defendants had earlier called on other persons to be on the stand-by so that after the alarm blew, they will resort to the next course of action. Those that were invited by the defendants were Henrietta Paykue, Oscar Paykue, Angie Gargar, Musu Williams, Little Conwelee Williams and Patrick Williams, all closed associates and/or family members/relatives of the defendants.

And that the Grand Jurors aforesaid upon their oath aforesaid, do hereby further say that Hans C. Williams, Jr. having gone to the bathroom and seen the wicked act perpetrated by his parents hereinabove named, he came back running; and informed the already by-standers. And that they, the above named by-standers under the command of the defendants, and in an attempt to erase, conceal and destroy evidence, removed the body of little Angel Togbah from where she was hanged and took her lifeless body to the J.F.K. Hospital, where she was pronounced DEAD ON ARRIVAL (DOA) by the medical authorities at said JFK Medical Hospital.

And that at the time of the commission of the wicked act, the defendants had no other affirmative defense for their action; but to conceal said wicked act, by attributing same to the decedent-Angel Togbah, hanging herself.

Wherefore, the Grand Jurors aforesaid, upon their oath aforesaid, do hereby say that the defendants aforesaid, and in the form and manner aforesaid did criminally, recklessly and purposely cause the death of little Angel Togbah and the crime of MURDER, the defendants aforesaid, did do and commit, contrary to the Statutory laws of the Republic of Liberia and against the peace and dignity of the state in such cases made and provided; contrary to: 4 LCLR, Title 26, Sec. 14.1(b) and 4 LCLR, Title 26, Sec. 14.1 and 4 LCLR, Title 26, Sec. 50.5 and 51.3 of the statutory laws of the Republic of Liberia.

RESPECTFULLY SUBMITTED BY:
REPUBLIC OF LIBERIA PLAINTIFF
BY AND THRU THE MINISTRY OF JUSTICE

SAMUEL K. JACOBS, ESQ.
COUNTY ATTORNEY, MONT. CO.R.L.

WITNESSES:

ADDRESS:

- | | |
|---------------------------|------|
| 1. Joseph Flomo | LNP |
| 2. Col. Wilfred Singbe | NBI |
| 3. Col. James Karneh | NSA |
| 4. Col. Morris Zayzay | MINS |
| 5. Officer Prince Mulbah | LNP |
| 6. Autopsy Report | |
| 7. F.O.C. Cloth/Belt | |
| 8. Police Charging Sheet | |
| 9. Crime Scene Photograph | |

On October 14, 2008, the Appellants moved the trial court to dismiss the indictment against them, arguing, among other things, that the indictment was defective in that it failed to strictly comply with the requirements of Sections 7.1, 7.4 and 7.5 of the Criminal Procedure Law.

Section 7.1. Report of certain deaths to coroner provides:

It shall be the duty of the Registrar or Assistant Registrar of Births, Deaths, and Burials, the medical practitioner attendant at or after death, or any government official or other person who learns of a death to report it to the coroner for the county, territory, or district in which the body is found, if he has reason to believe that the deceased:

- (a) Died violently, that is, by homicide, suicide, or accident;
- (b) Died as the result of an abortion or attempted abortion;
- (c) Was formerly healthy and died suddenly;
- (d) Was discovered dead.

Section 7.4. Authority to perform autopsy; witnesses.

The coroner may, if he is unable to ascertain the cause of death by preliminary examination, perform, if he is a competent medical practitioner, or authorize to be performed by a competent medical practitioner, an autopsy on the body of the deceased for the purpose of determining the cause and circumstances of death. Every such autopsy must be witnessed by two credible

and discreet residents of the county, territory, or district in which it is performed and the coroner shall have the power to compel their attendance by subpoena.

Section § 7.5. Report to prosecuting attorney and magistrate or justice of the peace provides:

The coroner shall file with the prosecuting attorney and with the magistrate or justice of the peace in whose jurisdiction the body was found a report stating the time and circumstances of the death as nearly as these have been ascertained, the conclusion of the coroner and the jury as to its cause; and any other pertinent information, including the name of any person who in the opinion of the coroner and the jury may have caused the death. The report of the coroner shall be accompanied by a copy of the report of the medical practitioner, if any, and a certified copy of all the testimony taken under section 7.2.

The Appellee resisted the motion and entertaining arguments on both sides, His Honor J. Boima Kontoe, Assigned Circuit Judge presiding over Criminal Assizes A denied the motion. The Judge considered two issues in determining the motion:

1. Whether or not there is defect in the indictment to warrant the dismissal of same.
2. Whether or not an indictment charging defendants with murder may be dismissed merely because of the absence of an autopsy or medical report on the case file?

On the first issue, Judge Kontoe concluded that the indictment gives sufficient notice to the Movants/Defendants with particularities and specificities to afford the Movants/Defendants the opportunity to build their defense as it concisely states the date, time, place and manner of commission of the crime as well as the statutory definition of the crime charged. With respect to the second issue, he ruled that "[t]he failure to attach a bill of particulars to an indictment is not ground for the dismissal of the indictment, because the law provides that the defendant may demand the bill of particulars within ten days after arraignment, and the court itself may order the filing of a bill of particulars at any time after arraignment.

On December 4, 2008, the Appellants moved the trial court to admit them to bail. Relying on Section 13.1 of the Criminal Procedure Law, the Appellants contended that there was no showing that proof is evident or the presumption great that the Appellants were guilty of the crime of murder.

Resisting the motion for admission to bail, the Appellee argued, among other things, that the Appellants could not be admitted to bail, because murder is a capital offense under Liberian law and is therefore not an offense for which the Appellants can be admitted to bail. The Appellee relied on Article 21(d) (i) of the Liberian Constitution (1986), which provides that: All

accused persons shall be bailable upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge, unless charged for capital offenses or grave offenses as defined by law.

On January 14, 2009, Judge Kontoe granted the Appellants' motion for admission to bail. The Appellee noted exception and notified the court that it will take advantage of the laws and the statutes controlling.

On January 15, 2009, the Appellee filed a petition for the issuance of the Writ of Certiorari before our Colleague, Madam Justice Jamesetta H. Wolokollie, then presiding in Chambers. Justice Wolokollie issued the Alternative Writ of Certiorari on the same day, ordered the trial court to stay all proceedings in the case pending the disposition of the petition for the Writ of Certiorari and further ordered the parties to appear in her Chambers on January 27, 2009, for conference. Having determined that the petition for the Writ of Certiorari raised constitutional issues, Justice Wolokollie ordered that the petition be forwarded to the Full Bench of the Supreme Court for hearing and determination. Accordingly, the order was carried out and the case was forwarded to the Full Bench of the Supreme Court.

The Appellants filed Returns to the petition for the Writ of Certiorari in which they stated: "As to the entire Petition, Co-Respondents concede the legal soundness of same and request that the matter be returned to the Criminal Court "A", First Judicial Circuit, Criminal Assizes A for Montserrat County, for trial during the February Term A.D. 2009." After entertaining arguments on the petition for the Writ of Certiorari on January 21, 2009, the Supreme Court reserved ruling and suspended the matter.

Notwithstanding the Appellants' concession, as stated above and the fact that hearing into the petition was had, the Appellants, on February 2, 2009, filed in the Office of the Clerk of the Honorable Supreme Court, what they termed "Co-Respondents' Amended Returns" in which they argued, among other things, that the petition for the Writ of Certiorari is a fit and proper subject for dismissal, in that the law and practice hoary with age in our Jurisdiction stipulate that to enable the Supreme Court to pass on a matter, issue and/or point of law, same must first be raised in the Trial Court below and the Trial Court below afforded the opportunity to pass on same. And that nowhere in the Resistance [to the Motion to Admit Defendants to Bail] was any constitutional issue raised as to the right(s) of the Defendants to be admitted to bail.

The Amended Returns was resisted by the Appellee in a Motion to Strike Respondents' Amended Returns, filed on February 3, 2009, in which the Appellee argued that not only are such acts a

novelty in this jurisdiction, but they are illegal and void, and have the apparent design to ridicule this Honourable Supreme Court and put it in disrepute.

On February 9, 2009, the Supreme Court rendered judgment in the petition for the Writ of Certiorari without opinion, granted the petition for the issuance of the Peremptory Writ of Certiorari and ordered the Clerk to send a mandate to the trial court ordering the judge presiding therein to resume jurisdiction over the case and give this matter precedence over causes during the February A.D. 2009 Term of Court.

On February 23, 2009, jury selection began for the trial of the case at Criminal Assizes A presided over by His Honor S. Geevon Smith by assignment. However, trial could not proceed forthwith due to several motions and petitions for the issuance of remedial writs filed by the Appellee.

On March 5, 2009, the Appellee filed a motion requesting the trial court to disqualify one of the petit jurors selected arguing among other things, that the said juror had tampered with other jurors and that he had knowingly provided false information on the jury form he filled out and should therefore be prosecuted for perjury. Because the trial court had earlier relieved that juror from jury duty for cause, His Honor S. Geevon Smith, Assigned Circuit Judge then presiding over Criminal Assizes A denied the motion for disqualification of the juror, holding that: "Selected juror Aaron Fallah has already [been] excused from jury service by court for cause. To again grant a motion for his disqualification would be the resurrection of the same [controversy] that has already been settled." The Appellee noted exception to the trial judge's ruling and gave "notice that they will utilize the appropriate statutory provision as made and provided for by law.

The Appellee filed with the Supreme Court, before His Honor Associate Justice Francis S. Korkpor, Sr. then presiding in Chambers, a petition for issuance of the Writ of Certiorari, alleging among other things, that juror Aaron Fallah knew and was in contact with co-Appellant Hans Capehart Williams and additionally, that the said juror was directed by former Senator Roland Kaine to recruit jurors for Hans Williams. That petition led to a stay order issued by Korkpor. At a conference with the Justice, the parties agreed that the matter be sent back to the trial court to resume jurisdiction and investigate the allegation of jury tampering.

Investigation of the allegation of jury tampering began on March 25, 2009, and ended on March 30, 2009. During the investigation, the Appellee produced one witness, who claimed to have known three persons who were planted to serve as jurors in this case. But when the witness was directed to identify one of the jurors who were allegedly "planted" he pointed at a different juror. On the other hand, all the accused jurors denied knowing the individual who was accused of

planting them prior to their selection as jurors, and that they had only seen and therefore known the person who allegedly planted them during their selection and sequestration as jurors. Finally, the individual who was accused of jury tampering denied that he ever engaged in such act and the trial court found no evidence to substantiate the allegation of jury tampering. Judge Smith therefore ruled that: "The failure of the Prosecution to prove the allegation (of) jury tampering by corroborated evidence and the doubt created by its witness by calling the name of one juror and pointing to another, leaves this court with many questions [than] answers.

WHEREFORE AND IN VIEW OF THE FOREGOING FACTUAL AND LEGAL CIRCUMSTANCES, THE PROSECUTION'S MOTION AND THE ALLEGATIONS THEREIN CONTAINED MUST BE AND IS HEREBY DENIED AND DISMISSED AND THE TRIAL OF THIS CASE IS HEREBY ORDERED PROCEEDED WITH. AND IT IS HEREBY SO ORDERED.

Notwithstanding Judge Smith's ruling that the trial of the case should be proceeded with, the Appellee filed yet another motion this time, a motion demanding the recusal of Judge Smith from the case. The motion alleged, among other things, that Judge Smith had shown bias, partiality, and a complete lack of objectivity in the trial of the case, both in [his] Rulings and in remarks made by [him] tending to influence the jurors on the case, and that Judge Smith "served in various capacities with Co-defendant Hans Williams with the National Patriotic Front of Liberia (NPFL) and its so-called NPRAG Government. Judge Smith denied the motion. We quote relevant portions of his ruling as follows:

COURT'S RULING ON MOTION FOR RECUSAL OF PRESIDING JUDGE

On the 3rd day's jury sitting, this court received a mandate from the Honourable Supreme Court, ordering this court to resume jurisdiction and give this matter precedence over causes during the February A.D. 2009 term of court. The said mandate was read in open court on February 16, 2009, being the 6th day's jury sitting. On February 17, 2009, when the case was called for trial, the indictment was read to the defendants who pleaded not guilty. Upon joining issues, the Prosecution submitted and requested court for a week of continuance so as to bring its material witnesses into the country. The said request for continuance was granted by this court with a clear caution to the parties on the instruction of the Supreme Court of Liberia to give this case precedence over all other trials during this term of court.

About a week later, the trial process started on the 12th day's jury sitting, following which the court observed the delay in coming to court on the part of the Prosecution which compelled this court to impose a fine of 1,000.00LD on the Prosecution with warning to desist from further delay on

the 18th day's jury sitting. On the 19th day's jury sitting, the Prosecution again did not come to court until 10:30 A.M. when in fact the case was assigned for 9:A.M. On the 20th day's jury sitting, the Prosecution again came to court very late, which caused the judge to inquire from the prosecuting attorney if there is any good reason for coming to court late. Out of emotions the Prosecution decided to [impugn] the integrity of the judge and moved the court for the presiding judge to recuse himself, grossly misrepresenting the inquiry of the judge regarding the habitual [tardiness] on the part of the Prosecution. When the said motion was made and resisted, the prosecuting attorney again requested the court for continuance for ample time for the presence of the Minister of Justice in court before argument on the said motion. The court, again, in total neutrality and objectivity, granted the Prosecution's request for continuance on the presence of the Minister of Justice when the motion to recuse was argued and denied on the ground that it lacked any legal or factual basis.

"While it is true/a fact that this judge sometimes worked with the National Patriotic Assembly Government, NPRAG some ten or more years prior to his elevation as judge, this judge cannot say with certainty that co- defendant Hans Williams did work for the said NPRAG. But, granted, that the defendant worked for the NPRAG, this does not in any way disqualify this judge for merely working for the same organization and knowing each other causally with no intimacy.

As to the third question, whether or not a judge has authority to accede to an application for the disqualification when the basis therefor is not thoroughly established as provided by law, this court must also answer the said question in the negative. It was long since established in our jurisdiction that an application to a judge for his disqualification in a case is in effect, asking him to surrender his jurisdiction. But unless and until the basis for his disqualification is thoroughly established in a manner and form [as] provided by law, he is without authority to accede.

The opinion or sentiment expressed by the Prosecution that the judge is bias because he worked [for] NPRAG with Defendant Hans Williams has no legal basis. This court says that we are here in this court to do law and justice and that this is what we must do. The grounds for the movant's motion being found[ed] on frivolous allegation without legal justification is sufficient for the dismissal of said motion.

WHEREFORE and in view of the foregoing factual and legal reasons, the movant's motion must be and the same is hereby denied. And the case is ordered proceeded with, with immediate effect. And so ordered.

One week after the judge denied its motion for his recusal from the case, the Appellee, on April 9, 2009, filed a motion requesting the judge to rescind his ruling on the motion for recusal. The

motion to rescind stated, albeit differently, the same arguments made in the motion for recusal. On April 13, 2009, His Honor S. Geevon Smith denied the motion to rescind. He relied on the same grounds upon which he denied the Appellee's earlier motion for recusal. He said:

"The grounds for the movant's motion for recusal are founded only on frivolous allegations intended purposely and merely to [besmirch] the character of the judge.

"This court has no interest in any party and will never be an agent for any party.

"To rescind the ruling made on the motion for recusal is to quash justice and truth, and exalt falsehood and fallacy. Come what may, this court will never do so on its own.

WHEREFORE and in view of the foregoing factual and legal reasons, the motion to rescind the ruling on the motion for recusal must be and is hereby overruled and denied. This case is hereby ordered proceeded with, with immediate effect. AND IT IS HEREBY SO ORDERED.

On April 3, 2009, the Appellee filed yet another petition with the Honorable Supreme Court, for issuance of the Writ of Certiorari, requesting the Supreme Court to reverse the Ruling of the Co-respondent Judge and order that he should recuse himself from presiding over the case, and to grant unto Petitioner any and all other and further relief as would be just, legal and equitable.

Our review of the records reveals that the Supreme Court did not act on this latest petition for the Writ of Certiorari. However, we see in the records that on April 14, 2009, Judge Smith, in an abrupt reversal of his denial of the Appellee's motion to rescind, recused himself from the case, stating as follows:

We read and also heard some history about our country. We do not want to believe those who say that our country is [an] anti-intellectual society and so, when we became or assumed the position of a Judge, our ardent prayer had been for the courage to change those things that we can change and wisdom to know the difference between those things that we can change and the [ones] we cannot change.

Having said this, I would as the presiding Judge of this trial recuse MYSELF FROM THESE PROCEEDINGS. I know that there may be many questions than answers for the reason [why] I must recuse myself. However, the reasons will be left with the greater society of Liberia to know whether this Judge [has] ever been bias or has demonstrated any prejudicial attitude toward any party in these proceedings. It brings us to the saying of a great Liberian Philosopher Edward Wilmot Blyden that truth crushed to the ground will rise the eternal years of God are hers, but falsehood will die with its worshippers. Hence, we must recuse our self and the Clerk of this Court is hereby ordered to send a communication to His Honor Johnnie N. Lewis, Chief Justice,

Supreme Court, Republic of Liberia informing him of our decision to recuse our self and requesting His Honour to assign another Judge who shall sit over these proceedings. AND IT IS HEREBY SO ORDERED.

The Appellants noted an exception to Judge Smith's decision to recuse himself from the case and gave notice that at the appropriate time they shall evoke section 3.1 page 313 1LCL Revise[d], Criminal Procedure Law, as it relates to double jeopardy, should the trial not be heard during this term. And respectfully submits. This exception was noted by the court.

On May 19, 2009, the Appellants moved the trial court, then presided over by His Honor Emmanuel M. Kollie, Assigned Circuit Judge, to discharge them from further prosecution on the ground that jeopardy had attached as a result of the trial which was begun but which was aborted by the recusal of His Honor S. Geevon Smith. The motion was resisted, argued and on May 28, 2009, His Honor Emmanuel M. Kollie delivered a two-page ruling in which he denied the motion. Judge Kollie stated: The Judge before recusing himself clearly indicated 'after an unusual judicial situation, during these proceedings, this Court must come to a decision though not strange, but however peculiar. The statement by the Judge is self-explanatory and implies that upon manifest necessity he recuse[d] himself and that cannot bar re-trial of the defendants.

Counsel for the Appellants noted exception to this ruling and gave "notice that [he] will take advantage of the statute made and provided for as in such cases..." Although the Appellants noted an exception to Judge Kollie's ruling, the records are devoid of any appeal or request for remedial writ filed by the Appellants. So, we will not belabor this point.

On an unspecified date, the case was transferred from the First Judicial Circuit, Criminal Assizes "A" to the First Judicial Circuit, Criminal Assizes B for trial. Following the conclusion of pre-trial conference which began on November 23, 2009, and lasted until December 8, 2009, a de novo trial of the case began in Criminal Assizes "B" on Monday, December 14, 2009, with His Honor A. Blamo Dixon, Assigned Circuit Judge presiding. In exercise of their constitutional rights pursuant to Chapter 21(h) of the Liberian Constitution (1986), the Appellants waived trial by jury and His Honor A. Blamo Dixon heard the case as judge and jury.

In its case-in-chief, the Prosecution called ten witnesses to the stand and introduced nine exhibits into evidence. The Prosecution also called five rebuttal witnesses to the stand at the completion of the Appellants' case-in-chief.

After entertaining testimonies from five of Prosecution's witnesses and sensing that the November 2009 Term of Court was about to expire, His Honor A. Blamo Dixon wrote His Honor Johnnie N. Lewis, to extend the mandate of Criminal Assizes B from January 13, 2010

to February 13, 2010, so as to enable the court to conclude the case. By letter dated January 5, 2010, His Honor Johnnie N. Lewis, former Chief Justice of the Supreme Court of Liberia, assigned and commanded His Honor A. Blamo Dixon to hold and preside over the February 2010 Term of the First Judicial Circuit, Criminal Court B Montserrado County thus, extending Judge Dixon's mandate and enabling him to complete the trial of the case. The trial of the case resumed and testimonies were received from the Appellee's five remaining witnesses.

On March 16, 2010, the court entertained final arguments in the case.

On March 19, 2010, His Honor A. Blamo Dixon adjudged the Appellants guilty of the murder of Meideh Angel Togbah, and sentenced them to "DEATH BY HANGING ON FRIDAY, MARCH 26, 2010, AT CENTER STREET, SOUTH BEACH FROM SIX A.M. TO SIX P.M. UNTIL DEATH.

The Appellants noted exception to the final judgment rendered by Judge Dixon, announced an appeal to the Honourable Supreme Court, and have filed a bill of exceptions containing 45 Counts. We deem Counts 1, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39 and 45 of the bill of exceptions relevant in the disposition of this case. We quote them:

1. Appellants say and aver that Your Honour erred when you declared in your final Verdict/Judgment that the Prosecution proved its case beyond a reasonable doubt; though from the records of the Trial, it is abundantly clear that Your Honor's final Verdict/Judgment is contrary to the weight of the evidence produced.

4. Appellants say and aver that Your Honour erred when in your final Verdict/Judgment, Your Honour ignored and dismissed the Autopsy Report conducted by Dr. Thomas L. Bennett, M.D., Mathias I. Okoye, MD, JD, and Kalu U. Ogbureke, DDS, FDSRCS, Msc, JD, DMSc, all of the Nebraska Institute of Forensic Sciences, Inc., which Report clearly stipulates that this manner of death, to a reasonable degree of medical certainty, should be ruled as a suicide.

5. Appellants say and aver that Your Honour erred when you ignored and declared irrelevant the Autopsy Report conducted by Dr. Thomas L. Bennett, Mathias I. Okoye, MD, JD, and Kalu U.E. Ogbureke, DDS, FDSRCS, Msc, JD, DMSc, all of the Nebraska Institute of Forensic Sciences, Inc., which Report clearly stipulates, regarding the most important evidence of the neck organs that 'the intact tongue, larynx, hyoid and upper trachea, following x-ray studies, were placed in a labeled formalin-filled plastic container and were given to Eva Mappy-Morgan, Esquire, of the Ministry of Justice, following the third autopsy, to be maintained in her possession and custody.

6. Appellants say and aver that Your Honour erred when Your Honour ignored the testimony of Dr. Thomas L. Bennett, during his power point presentation, as found on the Minutes of Court, sheet 7, 5th Day's Chambers Session, February Term, A.D. 2010, Tuesday, February 2, 2010, thus 'this Your Honor, is a photograph of [Meideh Angel] Togbah's neck structure. Of most importance, this u-shaped structure right here is in the middle. It is in the middle of this picture and it is the hyoid bone. This bone is in each of us about a half inch above the Adam Apple. Your larynx can become broken with manual strangulation, but not with hanging or ligature strangulation. Dr. Quayle described it as broken, but he did not examine it. Dr. Hernandez, the second pathologist, could not find it. We examined it, we removed it, we looked closely to see if there was any bruising and there was none. We x-rayed, as you see-before you, right now. To the left, this is her tongue to the right is the trachea which is uninjured. The three white curve bones in the middle are the hyoid bones of a 13-year old girl, and they are not injured at all. ·

7. Appellants say and aver that Your Honour erred when Your Honour ignored the testimony of Dr. Thomas L. Bennett, during his power point presentation, as found on the Minutes of Court, sheet 8, 5th Day's Chambers Session, February Term, A.D. 2010, Tuesday, February 2, 2010, thus, of additional importance was that there were no bruising in her neck, no broken bones and only the faintest remnants of the angle mark on the neck.

8. Appellants say and aver that Your Honour erred when Your Honour ignored the testimony of Dr. Thomas L. Bennett, during his power point presentation, as found on the Minutes of Court, sheet 13, 5th Day's Chambers Session, February Term, A.D. 2010, Tuesday, February 2, 2010, thus, in response to a question during Cross Examination, whether 'it is likely that one who has been killed could also be placed in a hanging position to suggest that life was taken by hanging, said 'of course you can hang a lifeless body. However, Meideh had findings at the autopsy indicating that she was alive when there was pressure around her neck. She had the pin point hemorrhage of her eyes and a pin point hemorrhage of her face, which indicate that the pressure on her neck blocked the blood flow from her neck while she was alive because of the veins being blocked. But we have 4 arteries to pump blood into our head. Two of them are on the front that you can feel with your pulse. Two more travel up through the bones of the neck and take much more pressure to block up. We therefore know that [Meideh Angel Togbah] was alive when that pressure was put on her neck. We further know from the marked angle and cathetic (sic) of the high neck indentation that is from hanging and not from manual strangulation and not from ligature strangulation.

9. Appellants say and aver that Your Honour erred when Your Honour ignored the testimony of Dr. Thomas L. Bennett, during his power point presentation, as found on the Minutes of Court, sheet 13, 5th Day's Chambers Session, February Term, A.D. 2010, Tuesday, February 2, 2010, thus, "The manner of death which relates to the circumstances of how this hanging occurred is a simple choice of natural which is not accident; which is not homicide which we found no evidence of; or suicide. Our committee, with reviewed of all we have and consultation and seeing the scene concluded this is a suicide.

11. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'a careful review of Dr. Quaye's P/4-In-Bulk revealed that the Cause of Death of the deceased is ASPHYXIA SECONDARY TO STRANGULATION', thereby ignoring Dr. Quaye's Autopsy Report, introduced by the Prosecution/Appellee, marked by Your Honour P/7-In-Bulk, in which Dr. Quaye stated that the Cause of Death is ASPHYXIA SECONDARY TO HANGING.

12. Appellants say and aver that Your Honour erred When, in your final Verdict/Judgment, you elected to give credence to Dr. Quaye's purported Voluntary Statement, executed at the National Police Headquarters, marked by Court P/4-In-Bulk, which attempted to change the cause of death of the deceased, as stipulated in his original Autopsy Report, marked Court P/4-In-Bulk, from Asphyxia Secondary to Hanging to Asphyxia Secondary to Strangulation.

14. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you attributed responsibility to the Defendants for 'missing parts from the deceased's body, prior to the conduct of the second Autopsy by the Cuban Pathologist'; though in the 'Report of Investigation into the Unnatural Death of Deceased Meideh Togbah', compiled by the Team of Ghanaian Investigators, Prosecution/Appellee's Witnesses, marked by Your Honour P/9-In-Bulk, specifically under sub-title 'Recommendation', it is stipulated 'Dr. Anthony Quaye and Mr. Samuel Stryker should both be held responsible for the missing parts [of Meideh Angel Togbah's body]. It is suspected that the two conspired to remove the missing parts. Since the body was in their custody they cannot be exempted from liability.

15. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you elected to attribute to the Defendants responsibility for 'tampering with the evidence in the case and also the missing of torn panties of the deceased's body, prior to Investigative Report', marked by Court P/2-In-Bulk, specifically under the sub-titles 'Findings', 'Conclusion' and 'Recommendations', it is stipulated, '(15) that attempt by Dr. Quaye to conceal the actual cause of death of victim intentionally is not only tantamount to crime, but brings in disrepute his ethics of the medical field'; (16) that during the course of the second autopsy, Dr. Quaye was present, and

acknowledged that the organs herein were missing, but denied knowledge of it and asked that the matter be referred to the management of the Stryker Funeral Home; (19) that neither Dr. Quaye nor the Management of the Stryker Funeral Home could account for the panties seen on the victim before the autopsy'; in conclusion, 'the Investigation has also resolved to have suspects Dr. Anthony S. Quaye and Samuel A. Stryker and Earl Townsend charged with tampering with evidence'; the Investigation recommends that the above named suspects be forwarded to court for prosecution. It is further recommended that the investigation continue in view of suspect Stryker's discovery of missing organs.

16. That Your Honour erred when, in your final Verdict/Judgment, you declared that 'the missing of the piece of the rope/belt allegedly used for the alleged hanging from the other piece marked by Court as P/1-In-Bulk, the missing of parts from the deceased's body prior to the conduct of the second Autopsy by the Cuban Pathologist; the finding of the said parts before the conduct of the third Autopsy by the American Pathologists on behalf of the Defendants; tampering with the evidence in the case and also the missing of the torn panties of the deceased; coupled with the secret attempt by the Defendants to bury the deceased before the conduct of the first Autopsy and hanging of her lifeless body after the death, constituted elements of malice aforethought and premeditation', though none of the elements of malice was established at the Trial, and definitely could not constitute malice aforethought and premeditation.

18. That Your Honour erred when, in your final Verdict/Judgment, you declared that Defendants Hans C. Williams, Sr. and Mardia Paykue Williams' relationship with the deceased was characterized by malice aforethought and premeditation, despite the fact that Co-Defendant Hans C. Williams, Sr., while on the stand, testified to the cordial relationship which existed between his family and the parents of the deceased; as attested to by Statements written by the parents of the deceased, marked '0/7', to the effect that they (Defendants) showered the deceased with parental love; that on that fateful day, November 30, 2007, shortly before the incident, the mother of the deceased, Sue Togbah, called and quarreled with the deceased for allegedly engaging in gossip; that the mother of the deceased said Co-Defendant Mardia Paykue Williams was lenient with the deceased; that the (Co-Defendant Mardia Paykue Williams should deal with the deceased as she (the deceased) was becoming uncontrollable; and that following the incident, the father of the deceased attested to the parental love with which the Defendants treated their daughter as though she (the deceased) was their own.

19. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the

best Autopsy Report among the rest', despite the fact that in the 'Second Investigative Report', produced by the Prosecution, marked by Court P/2- In-Bulk, specifically under the sub-title 'Findings' number 13, it is stipulated 'that during the conduct of the second autopsy performed by Prof. Dr. Josefa Hernandez, a Cuban Pathologist on 16th January 2008, observed that a number of vital organs essential for determining the actual cause of death were missing from the body of the victim. These included: the upper respiratory system (hyoid bone, larynx, the trachea, and the bronchi), the uterus and the entire perineum (vagina cavity). Dr. Josefa Jimenez Hernandez is a Cuban Pathologist with 27 years to her practice record as Pathologist as well as with 36 years' experience as a medical doctor.

20. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest', despite the fact that the said Report could not have conclusively determined the cause of death and sexual violation as it stipulated that the examination of the embalmed body revealed the disappearance of the epidermis. Again, the vestibular and the minora labia tissues and the vaginal wall components of the external genital were not found. The external examination of the body revealed the disappearance of parts of the respiratory system including laryngeal structure, trachea and bronchial (airways).

21. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest, despite the fact that Dr. Bennett, testifying for the Defense said regarding the Report of Dr. Hernandez, 'The Pathologist from Cuba opined there was violence in the neck even though she could not even find the larynx. She opined there was violence in the respiratory system even though did not identify the upper trachea and she did not dissect the tongues, which were intact for our autopsy. She opined that there was sexual violence in the young girl that was not a virgin and that demonstrated at our autopsy no abrasions or bruises or increased decomposition. I do not blame her for not signing that atrocity of the Report. A diagnosis in medicine must obey accepted criteria applied to the fact. She did not.

25. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest', especially since Dr. Hernandez did not conduct an

Autopsy, but elected to review the work of Dr. Quaye who was decried as a non-Pathologist following the conclusion of the First Investigation, based upon which Dr. Hernandez was invited to Liberia.

26. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest', thereby completely ignoring the testimony of Criminal Investigation Officer Nyepan O. Nyepan who, during testimony, said of Dr. Hernandez's work, thus, Dr. Quaye was asked to open the body the second time which he did. He removed all the body parts. The heart, the liver, kidney, large and small intestines and the large intestine, etc. the Cuban Pathologist only picked up the heart and looked at it and took a little instrument and look at it and put it down and told Dr. Quaye that her work was over. We all left.

27. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest', thereby completely ignoring the conclusion of the Autopsy Report conducted by Dr. Thomas L. Bennett, Dr. Mathias I. Okoye and Kalu U.E. Ogbureke which stipulates in its final paragraph "While not a complete autopsy, the first autopsy on Angel was adequate to confirm the scene and history impressions of death by hanging. The second autopsy, done to further investigate the cause of death and manner of death, was substandard, however, in fully examining the tissues and organs of the body, both grossly and microscopically, and especially in not dissecting the neck structures.

28. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest', despite the fact that Co-Defendant Hans C. Williams, Sr. indicated, during his testimony, that the Defense asked for the Curriculum Vitae of the said Dr. Hernandez and was not given it; and up to the moment of the filing of this Bill of Exceptions, it has never been made available to the Court or the Defense; therefore not only did no member of the Defense Team, including the Defendants, see the said Dr. Hernandez in person, they have not been furnished any document(s) disclosing her education, experience and qualification.

29. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that 'the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest', especially since Dr. Hernandez did not conduct an Autopsy, but elected to review the work of Dr. Quaye who was decried as a non-Pathologist following the conclusion of the First Investigation, based upon which Dr. Hernandez was invited to Liberia; and despite the testimony of Dr. Servillano B. Ritualo that 'Dr. Hernandez did not specify what type of strangulation she witnessed.

30. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared, relying on the testimonies of Dr. Williamina Jallah and the Cuban Pathologist that the deceased did not hang herself and did not commit suicide, despite the fact that Dr. Jallah is not a pathologist and could not competently, professionally and conclusively determine the cause of death; and despite the clear, cogent and germane testimony of Dr. James N. Lewis, the primary doctor who pronounced the deceased dead at 9:30 p.m. on November 30, 2007, and ordered her remains transferred to the mortuary, when he spread on records of Court that when one is pronounced dead and the remains ordered transferred to the mortuary, any further examination becomes the subject of pathological findings.

33. Appellants say and aver that Your Honour erred when you declared in your final Verdict/Judgment that Appellants are responsible for the death of Meideh Angel Togbah when Court's mark P/8-In-Bulk, same being 'Report of Investigations into the Unnatural Death of the Deceased', compiled by the Team of Ghanaian Investigators, clearly stipulates in its Conclusion that 'However, no concrete evidence has so far emerged to connect any particular suspect to the crime..

34. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that Appellant Hans C. Williams raped the deceased and Mardia Paykue Williams choked her to death, despite the fact that all of the State Witnesses could not produce evidence in substantiation of the allegations, to the extent that they could not state what part(s) the Appellants played in the death of the deceased; that Witness Peter Zaizay testifying for the State, when asked what part Mardia Paykue Williams played in the death of the deceased, answered: it would be fair to enough for the Co-Defendant to speak to her conscience to state clearly her role perhaps ask the State for pardon.

35. Appellants say and aver that Your Honour erred when, in your final Verdict/Judgment, you declared that Appellant Hans C. Williams raped the deceased despite the fact that when Witness Peter Zaizay was asked about statements he made that Hans had sexual intercourse with the

deceased, he said, 'I am sure the records the counsel is alluding to are available. It would [not] be prudent and fair to me to exhibit statement attributed to me for my viewing. For at no point in time did I ever make such definitive statement.

36. Appellants say and aver that Your Honour erred when you declared, in your final Verdict/Judgment, that the Prosecution rebutted Witness Angie Gargar's testimony despite the fact that Prosecution Witness Peter Zaizay, testifying on behalf of the Prosecution, was asked 'Mr. Witness, you having said that you believe sincerely what Angie Gargar told you, let me quote her in your Report, but that when she went in the bathroom she saw the victim with a belt tied on the curtain rail and that the victim asked her to tie her neck but refused and went out of the bathroom without saying anything about the victim's request to anyone because she did not think the victim was serious', do you believe this statement of Angie Gargar, which is in the same paragraph the previous statement contained, answered: we have said that we believe whatever statement that was made by little Angie Gargar.

38. Appellants say and aver that Your Honour erred when you declared that Co-Defendant Hans C. Williams, Sr. was charged with both rape and murder, though a perusal of the indictment confirms that the indictment only charged murder, and that your declaration thus, 'regrettably, the Americans failed, refused and neglected to conduct the said DNA test or analysis knowing fully well that Co-Defendant Hans C. Williams, Sr. is charged with both Statutory Rape and Murder, unlike the other Co-Defendant who is only charged with Murder', places the burden of proof on Co-Defendant Hans C. Williams and not on the Prosecution.

39. Appellants say and aver that Your Honour erred when you declared that Co-Defendant Hans C. Williams, Sr. was charged with both rape and murder and that 'regrettably, the Americans failed, refused and neglected to conduct the said DNA test or analysis despite the fact that Co-Defendant Hans C. Williams, Sr. testified, while on the witness stand, that following the 3rd Autopsy, the American Pathologists obtained blood samples from he and Mardia Paykue Williams and forwarded same to the National Medical Services Laboratories in Willow Grove, Pennsylvania, U.S.A. and the Government of Liberia, by and through Dr. Quaye, neglected to send the vagina swabs and smears obtained from the first Autopsy to the said Laboratories, but it was the Prosecution which failed and neglected refused and failed to do so.

45. That Your Honour erred when you sentenced Appellant to death by hanging despite the fact that they are not GUILTY of Murder and have not committed any criminal offense; and despite the fact that Article 21[d](ii) of the Constitution of Liberia (1986) clearly stipulates as regard cruel and inhumane punishment not be inflicted, and despite the fact that on the 31st day of August,

A.D. 2005, Liberia acceded to the Second Optional Protocol to the International Convention on Civil and Political Rights, Aiming at the Abolition of the Death Penalty.

We must note at this point, that the Government's case against the Appellants was based on circumstantial evidence as, from the review of the Government's evidence, we see no testimony by a witness or any document that directly links the Appellants to the commission of the crime with which they were charged. Thus, it was necessary in order to convict the Appellants on circumstantial evidence that the chain of events as presented by the Government be so connected as to lead logically and reasonably to the conclusion that the Appellants in fact murdered Meideh Angel Togbah. Bearing this in mind, we shall now review the evidence adduced by the Government at the trial upon which the trial court relied to convict the Appellants of murder.

The Government conducted three police investigations into the cause of the death of Meideh Angel Togbah and performed two autopsy examinations on her body.

The first police investigation which was conducted by a team of Liberia National Police investigators, concluded, among other things, as follows:

[T]here has been no further information to suggest the active involvement of another party in the death of the victim. There has been a preponderance of evidential information which suggests that the victim had shown extraordinary abilities and that on a number of occasions, [the] victim had confided in a few of her peers about being able to take away her own life. That the victim was an introvert, she did not discuss in detail any issue with her biological parents, neither her close associate(s) at school. However, and for all practical purposes, it was quite regrettable that [the] victim did not leave behind any dying declaration as a clue to determine why. It became quite evident that the investigation has been able to establish how the victim died, i.e. (Suicide by hanging), but why did the victim choose to take away her life, remains a puzzling reality.

Following the report by the first team of LNP investigators, the Acting Inspector General of the LNP, on December 3, 2007, requested the Medical Examiner of the LNP, Dr. Anthony S. Quaye, to conduct an autopsy on the remains of Meideh Angel Togbah. That autopsy was conducted by Dr. Quaye on December 6, 2007, and on December 8, 2007, Dr. Quaye submitted to the LNP a report he titled, Postmortem Report #009". In the report, Dr. Quaye concluded that the cause of Meideh Angel Togbah's death was Asphyxia Secondary to Hanging.

The Report states in part:

In conclusion, with the evidence of a ligature mark at the level of the hyoid bone and thyroid cartilage involving their injuries, it is suggested that the upper airway system and the neurovascular

structures in the neck region were compressed leading to blockage of air and blood to vital organ of the body (ASPHYXIA) as a result of a compressive ligature. Also, with evidence of torn panties, perineum discoloration erythromatous, presence of vestibular abrasion, and absence of spermatozoa during laboratory investigation, the evidence of sexual abuse cannot be established because of duration elapsed before the postmortem examination was performed. Specimens are available for DNA analysis, if required.

However, the records show that Dr. Quaye was invited at the Headquarters of the Liberian National Police where he issued a second report wherein he changed the conclusion reached in his first report that Meideh Angel Togbah died by Asphyxia Secondary to Hanging. In the second report, he stated the cause of Meideh Angel Togbah's death as Asphyxia Secondary to Strangulation.

Following the autopsy performed by Dr. Quaye and his two different conclusions, the Government sought to perform another autopsy examination on the body of Meideh Angel Togbah, this time by a Cuban Pathologist, Prof. Dr. Josefa Jimenez Hernandez. In a report titled Report of Review of Postmortem Conducted on Deceased Meideh Togbah, dated January 18, 2008, and submitted to the Minister of Justice, Prof. Dr. Josefa Jimenez Hernandez concluded that Meideh Angel Togbah was sexually violated and strangled before she was hung. The report states in part:

The review of the postmortem report and the examination of the photographs in the process of the re-examination demonstrated evidence of violence. This case describes morphological changes in the neck, respiratory system and the external genital. In conclusion she was sexually violated and strangled before the hanging.

We must not here that the Appellants have questioned the medical basis for this conclusion by Prof. Dr. Josefa Jimenez Hernandez on the ground that at the time she reviewed Dr. Quaye's work, she did not have available to her all essential parts of Meideh Angel Togbah's body, necessary to reach the conclusion that she ultimately reached. We shall revisit this point later in this Opinion.

As a result of Dr. Quaye's initial conclusion that the cause of death was Asphyxia Secondary to Hanging and the additional conclusion of the first team of Liberia National Police investigators that the cause of Meideh Angel Togbah's death was suicide by hanging, the then Solicitor General of Liberia, Counsellor Tiawan S. Gongloe, announced that there was no foul play in the death of Meideh Angel Togbah. That pronouncement led to a negative public reaction and thus prompted the Ministry of Justice to constitute a second team of police investigators, comprising of members

from the LNP, the Ministry of National Security, the National Security Agency, the Bureau of Immigration and Naturalization and the National Bureau of Investigation. We should say, in passing, that the composition of this second team of investigators is puzzling because, we wonder what, if anything, the National Security Agency and the Ministry of National Security, both of which by statute are charged with national security matters including intelligence gathering and espionage prevention, have to do with homicide investigation. Also, what expertise do officers of the Bureau of Immigration and Naturalization have in homicide investigation?

Notwithstanding, on February 8, 2008, this second team of police investigators submitted, to the Minister of Justice, a Special Investigative Report Covering the Alleged Suicide Case Involving Little Meideh Angel Togbah. The Report which contains excerpts of statements obtained from various individuals, including the Appellants, Dr. Anthony Quaye, Mr. Samuel Stryker and household members of the Appellants, concluded that "the investigation is convinced [that] all explanations provided by [the] suspects regarding [the] circumstances surrounding the death of Meideh Angel Togbah were fabricated and fictitious, [and] intended to disguise the actual cause of death; which the investigation established to have been caused by Homicide as a result of strangulation. It then recommended that the Appellants should be charged with the crime of murder and forwarded to court for prosecution.

For reasons we have been unable to discern from the records of this case and despite two investigations by the Liberia National Police, one autopsy examination by the Government's Medical Examiner, Dr. Quaye and a review of that autopsy examination by a Cuban Pathologist Prof. Dr. Josefa Jimenez Hernandez, the Government sought yet another police investigation into the death of Meideh Angel Togbah, this time by a Team of Crime Scene Investigators from the Ghana Police Service, led by ASP Mr. Alex Asamoah-Frimpong. In their report titled Investigations into the Unnatural Death of Deceased Meideh Togbah, the Ghanaian Team concluded that there was evidence that an unlawful harm caused the death of Meideh Angel Togbah but failed to state the specific unlawful harm that caused her death. The report states in relevant part:

In my opinion based on the foregoing findings, there is evidence to suggest that an unlawful harm was caused to the deceased culminating to her death. However, no concrete evidence has so far emerged to connect any particular suspect to the crime.

In addition to the Government's medical and police investigative evidence discussed supra, the Government produced ten regular witnesses and five rebuttal witnesses during the trial of this case. We now briefly review relevant portions of the testimonies provided by some of the Government's witnesses at trial.

The Government's first witness was Col. Joseph B. Flomo, a Liberia National Police Investigator of Special Cases" who was also a member of the second team of Liberian Police investigators. He testified in relevant part that after the release of the first team's investigation to the public and the subsequent outcry of the public, including demonstration, the Justice Minister, through the Director of Police, constituted a new team to determine whether or not the first team of investigators overlooked or left out certain things, including evidence that they might overlook. He said that those things that were overlooked by the first team included the measurement of the bathroom in the Appellants' home, from the point of the floor to the curtain rail where Meideh Angel Togbah is said to have hung herself, her height, the medical report from J.F.K. and the statement of one Jarwah at the Christ the King School on the Old Road. He then stated that:

The bathroom from the point of the floor to the point of the curtain [rail] is 4 feet 9 inches. The little girl [Meideh Angel] Togbah is 4 feet 10 inches. In [order] for one to hang herself, there [has] to be a level, a space of elevation. Unlike that, what I just explained to you means then that [Meideh Angel Togbah] was an inch taller from the floor to the [rail] in itself meaning she was taller an inch than the [rail] itself.

On cross examination the following questions were put to Col. Flomo and he answered:

Q. Mr. Witness, you stated that the deceased was four feet ten inches while the distance from the rail to the floor was 4 feet, 9 inches, a difference of 1 inch; and that on the basis of that you concluded that the deceased could not have hung herself. Mr. Witness, as an expert, did you measure the distance from the neck to the top of the head since in fact one hangs from the neck to the top of the head?"

A. I do not really know what the Counsellor is talking about of measuring the neck to the rail when I have told you already that this girl is one inch taller than the rail and the rope she allegedly hung herself [with] is 3 feet, 3 inches so the measurement from the neck to the rail became irrelevant to the investigators since indeed there was no possibility of hanging.

Q. Mr. Witness, probably you did not understand my question. Did you measure from the neck to the top of the head?

The Prosecution objected to this question and the court sustained the objection on the ground that it constituted invading the province of the court. We see that the witness testified lengthily to various measurements. We hold, therefore that the judge should have allowed the witness to answer the question, as it was material and relevant to the issue of whether or not given the distance from the floor to the rail, Meideh Angel Togbah could have hung herself.

Next, the Government called Dr. Williamina Jallah to the witness stand. Dr. Jallah had examined the body of Meideh Angel Togbah in the emergency room at the JFK Hospital. On direct examination the following questions were put to Dr. Jallah and she answered as follows:

Q. Madam Witness, following your examination, what did you find?

A. It was a body of a 13 year old Liberian girl that the intern told me she was dead upon arrival. Physical findings: her eyes were closed; she had rice mixed with something else coming out of her mouth and nose. The neck had striking features. On the right side of the neck, in the middle, there was an elliptical shaped bruise, almost like a lip mark. On the left side of the neck, there were three longitudinal bruises. And under the neck, there were another three circular bruises. The neck was freely movable; there were no other significant findings on the trunk of the body. In the pelvis region, there was a lot of fluid that look[ed] like urine draining from the [urethral] which is the opening to the bladder and from the vagina.. On inspection of the vagina, the external [genitalia] had no significant findings but the internal lip which is the labia [minora] had bruises that [were] circular around the opening. And on inspection of the rectum, there were bruises around the rectum. No hymen [was] present and you could admit two fingers into the vagina.

Q. Madam Witness, what do your explanations as to your medical findings speak to the condition leading to the death of the deceased?

A. The mark on the neck; the elliptical mark on the right side from what I have seen look[ed] like somebody's lip mark. And the other marks were like they did not look like hands marks like somebody struggling. And the fact that she had something like food coming out of her mouth and nose is like somebody forcing pressure on her. The vagina bruises [are] stretch bruises that we see in most sexually active patient[s].

Q. Madam Witness, for the sake of the records, tell this court, from your medical experience whether the features established by your examination constitute features that are seen on victims of hanging?

A. Even though I am not an expert on the hanging versus strangulation victims but from my knowledge, strangulation and hanging produce amongst [similar] type [of] injury. But because hanging is based on the neck of the individual's head, versus the body weight, the rope used will move up to (anterior] or upper part of the neck. Therefore, most of the bruises will be in the upper part of the neck. And there will be a bigger bruise where the knot was. But most of my findings were in the middle and the lower part of the body.

On cross-examination, the following question was put to Dr. Jallah:

Q. Thank Dr. You honestly told this court that you are not a pathologist to determine death by strangulation or a suicide death by ligation (rope hanging). By that am I to infer that you do not know to the certainty of professional knowledge the actual cause of the death of the deceased who you referred to as Angel. Am I correct?

The Prosecution objected to this question, stating:

1. Asked merely to entrap the witness;
2. An abrogation of the principle of self-incrimination; and
3. Misinterpretation of the witness's testimony.

The court sustained the objection, noting:

Since the court is sitting as both judge and jury, and there [being] about three pathology reports in this case, the objection is sustained on ground one.

We are taken aback by the judge's ruling; there is nothing entrapping about this question. Having presented herself as an expert, it was proper for the defense to enquire of Dr. Jallah's ability to determine to a degree of medical certainty, the cause of the death of Meideh Angel Togbah. It was therefore a reversible error for the judge to have sustained the Prosecution's objection.

The Prosecution's third and fourth witnesses were Col. Peter F. Zaizay, Deputy Minister for Administration, Ministry of National Security and Col. Wilson Garpeh. On direct examination, both testified to the findings and conclusions of the second team of Liberia National Police investigators.

On cross-examination, the following questions were put to Col. Garpeh and he answered as follows:

Q. Mr. Witness, your Team recommended in the report which you signed that the two defendants should be charged and prosecuted for murder as regards the death of [Meideh Angel] Togbah. Could you please give us a specific reason why your team concluded that they were the perpetrators of the crime of Murder?

A. The reasons are there. As seen by marked evidence on the photograph of the body of little Angel Togbah, bruises and tampering of the vagina parts and the same at which it said that little [Meideh Angel] Togbah hung herself. It is a clear indication that after taking the measurement which is indicated in our report hanging to death was not possible. This gave us reason that little [Meideh Angel] Togbah was strangled to death.

Q. Since your conclusion that the defendants perpetrated the crime is primarily based on the photographs and some statements you referred to, I pass you the first photograph of the deceased. Look at it and tell me what is that on her neck and who put it there?

The Prosecution objected to this question on the following grounds:

1. Misinterpretation of the witness testimony; 2. Asked merely to entrap the witness; 3. Assuming facts not established as to the positioning of the photograph whether first or last; 4. An attempt to assume and invade the province of the court, sitting as jury.

In ruling on the objection, the court said:

While it is true that the cross examiner has a wider scope to test motives of the witness, he is excluded by law not to ask questions that have the tendency to entrap the witness or that are hypothetical. Therefore, the objection is sustained on grounds 2 and 3.

We disagree with this ruling of the trial court. The witness having concluded that the Appellants perpetrated the crime of murder and having based his conclusion on the photographs, the cross-examiner should have been allowed to discredit the conclusion by attacking what is depicted by the photographs.

The Prosecution's fifth witness was Sam Saryon, Deputy Commissioner of Police, Crime Services Department. On cross-examination, the following questions were put to Deputy Commissioner Saryon and he answered:

Mr. Witness, in your testimony of March 12, 2009, the 26th day's jury sitting, you indicated 'from observations in the bathroom, it is impossible for any investigator, especially crime scene investigator, to believe that the rope was tied without any elevation and this 13-year old could play a magic, pull her neck by herself, that her hands will not reach this bar and place her neck into that rope.' On today, you have placed on [the] records that 'from the measurement of the little girl's height which is 4 feet 10 inches and the height of the rail, 4 feet 9 inches she was 1 inch taller than the rail. Please reconcile the two conflicting statements?

A. Sir, my bathroom observation as mentioned by the counsellor was basically saying the impossibility of a suicide as alleged by the Williams was committed by the little girl. I indicated on that same testimony that it was staged and the scene created could not cover the Murder.

Q. Mr. Witness, you stated under oath that you left the investigation because the residents were sent home, thereby fearing contamination of the crime scene. Please tell us the month and date on which you left the investigation?

A. I left the investigation on Dec. 1, 2007. On the 30th of November 2007, the date of the murder, the following day, on Dec. 1st, I withdrew from the investigation because it was not proceeding well.

Q. Mr. Witness, please say on what day you returned to the crime scene and who were the members of your team?

A. We returned on the crime scene after a public outcry, people noticed that the murder is being committed and is not being investigated. Somebody was being allowed to walk free with murder. The composition of the team included the Agents from the Ministry of National Security, Liberia National Police, Bureau of Immigration (and Naturalization), the National Bureau of Investigation and Agents from Ghana.

Q. Mr. Witness, please tell this Hon. Court the exact role co-defendant Mardea P. Williams played in the murder of the deceased?

A. Sir, the police investigation was not identifying a specific role played by either of these individuals. We first investigated with the purpose to see if they will be eliminated as witnesses. But instead, the Williams misled the police when they came up with a cover up with a murder that these people in the court one of them can just rise up and say God we did it and the whole thing will be over. So they know exactly who did what.

Prosecution's seventh witness was Dr. Anthony S. Quaye. He testified to his examination of Meideh Angel Togbah's body and his findings and conclusions relative to the examination. He also said that he is a general medical practitioner performing both medical and surgical interventions and [has] served the Liberian Government as a Medical Examiner for the Liberia National Police Force since the inception of UNMIL in the Republic of Liberia and that he is a pathologist and not a forensic expert and has practiced with professors that taught him in this country. He then stated in pertinent part: The ovary, the fallopian tube, the urinal bladder [of Meideh Angel Togbah] showed no pathology. The skeleton system [showed]no pathology; vagina secretion [which] was taken for spermatozoa analysis showed no sperm cell presence; and that Supra pubic head, vagina secretion, vagina tissues were taken for DNA analysis.

Dr. Quaye also testified to the second report he prepared in which they concluded that the cause of death was Asphyxia Secondary to Strangulation, which contradicted his first conclusion that the cause of death was Asphyxia Secondary to Hanging. At the close of his testimony on direct examination, Dr. Quaye stated: My people, during this process of the investigations, this is the first investigation that I ever performed that I was accused of being bribed and [that] I was trying to hide evidences which, our Lord, if I was bribed, do not bless me and [if I tried] to hide any

evidence do not bless me. I am a professional man. I lived by my profession. So help me God. Dr. Quaye did not say who accused him of bribery.

On cross-examination, the following questions were put to Dr. Quaye and he answered:

A. Mr. Witness, please tell this court how many reports you officially made in the case concerning the late [Meideh Angel] Togbah?

A. Officially, one report was made which was being followed by a subsequent report.

Q. Mr. Witness, by your answer, I put to you that the subsequent report you made reference to are not official or were not formally made. Am I correct?

A. The subsequent report from my professional experience with the intervention of the counterparts that were involved that is, the international counterparts, I strongly believe that report was official.

Q. Mr. Witness, could you please tell us where you made this report; was it made at your office, at the Police Station or where, sir?

A. This report came about when the President of the Republic of Liberia, H.E. Ellen Johnson-Sirleaf, established a committee to probe into the death of [Meideh Angel] Togbah.

"Q. Mr. Witness, perhaps you did not understand my question as to where you made this statement. Reference to your first report marked by this Court P/7 it is captioned 'Postmortem Report Number 009.' In your second alleged official report, marked by court P/4 it is captioned 'Voluntary Statement.' Please tell this court upon the oath you have taken why the type written report bears the caption Postmortem Report and the second alleged official report bears the caption 'Voluntary Statement.' Please explain.

A. When my first Autopsy report was submitted and was published to have international pathologist and our report was reviewed the presidential committee was established where I was invited to explain my official report stating what I said yesterday, I voluntarily with no intention of pressure to make that voluntary statement to support my initial report.

Q. Mr. Witness, you are now making it patently clear that your first report the typewritten report coexists with the second voluntary statement. From what you have just said I put it to you that you were indeed invited by the police to the police headquarters, and while at the police headquarters you made this handwritten statement which you now refer to as the report. Do you deny this sir?

The Prosecution objected to this question and the judge sustained the objection on the grounds that it was vague and indistinct and entrapping. We disagree with this ruling of the trial judge, because this was a legitimate question intended to show that Dr. Quaye made the Voluntary Statement under duress and therefore to question the credibility of Dr. Quaye and the validity of the statement. The judge's ruling therefore constitutes reversible error.

Q. Mr. Witness, I put to you that by the heading [or] caption of P/4 you wrote the same at the police station. Am I correct?

A. Yes, I did.

Q. Mr. Witness, why did you write your professional report at the Police Headquarters?

The Prosecution objected to this question and the judge sustained the objection on the ground that it was opinionative. Here again, we disagree with the ruling of the trial judge because this was a legitimate question intended to show that Dr. Quaye made the Voluntary Statement" under duress and therefore to question his credibility and the validity of the statement. This question was also intended to show Dr. Quaye's bias, motive and interest in preparing the second report. The judge's ruling therefore constitutes reversible error.

Q. Mr. Witness, this instrument you have admitted being the one to establish the cause of death is countersigned by one Wilfred W. Samgbah. Kindly explain to this court whether that Wilfred W. Samgbah is an employee of your office or who is he?

A. I see N.B.I.

Q. Mr. Witness, oh, and so it was at the office of the N.B.I. that you prepared and signed this report or how come for this Wilfred Samgbah of the N.B.I. to countersign your professional report Sir?

A. My professional report was signed by me. I signed the report when the presidential committee was set up with my voluntary statement, he wrote his name but I signed the document.

Q. Mr. Witness, the subsequent report that was made by the Special Investigative Team made reference to the missing of certain vital organs of the deceased which I quote under findings at page 15 section 13 thus:

That during the conduct of the second autopsy performed by Dr. Josefa, a Cuban Pathologist on 16th January, A.D. 2008, observed that a number of vital organs essential for determining the actual cause of death were missing from the body of the victim. Those included the upper

Respiratory system (Hard Bones) Thrathea and the Bronanch [sic]. Professor Dr. Josefa Jimenez is a Cuban pathologist with 27 years to her practice records as pathologist [and] has 36 years' experience as a medical doctor.' The investigative team referred to having said that it was impossible to determine and establish the actual cause of death in the absence of these vital organs as named supra. How come then, that you and your counterpart concluded in the absence of these organs that the cause of death was strangulation?

A. Hon. Court if you have an eye of a pathologist you are a pathologist. When the initial post [mortem] examination was concluded I took photos; every part of the body was photographed and I knew this day was going to come with the failure of the cooperation of the local police and investigators with the arrival of the pathologist, I completely [and] fully delivered all artifacts, documents to her. She saw them the next day we moved to Striker funeral home. These are just some. When my initial dissection was done around the neck and the entire body part was photographed that you could put on the lab type and read clearly and after the dissection the body was un-embalmed. What is normally done at all funeral homes it is the responsibility of the funeral home to reconstruct the body after the postmortem examination. I Doctor Quaye never took anybody organ with me. What will I do with body parts to get rich?

Q. Mr. Witness, tell me then, what is your work and specific function of [a] Pathologist?

A. Pathology is the medical science that deals with identifying a deceased cause [of death]. They have various types of pathologists based on their area of specialty. They have forensic pathologist, laboratory pathologist, system pathologist, mobile pathologist and it continues.

Q. And what is the function of the forensic pathologist?

A. The function of a forensic pathologist is to identify the cause, the manner and the mechanism in which one dies.

Q. And you are not a forensic pathologist. Am I correct?

A. Let me make one thing clear. I have served this country in this particular area for the past 10 years. Initially, without salary, serving my country and I believe I have done well. And I believe I have served everyone well. I am a Licensed Medical Dr., not [a] forensic pathologist.

The Prosecution's eighth witness was Detective Chief Inspector Charles Appiah of the Homicide Unit, Criminal Investigation Department, Ghana Police Service. On direct examination, and after setting forth his training and experience as a Violent Crime Investigator, he was asked the following questions on the cross-examination which he answered:

Q. Mr. Witness, Detective Chief Inspector of Homicide, Criminal Investigation Department, Ghanaian Police Department, we want to say thank you for coming to participate in this murder trial after two years, Feb. 13th 2008, when you responded to the call of the Liberian Government. Based on your expertise of 16 years of death/homicide investigation in Ghana, I go to your conclusion in your report court marked P/9 you stated to court. However, no concrete evidence has so far emerged to connect any particular suspect to the crime. Am I correct?

A. You are correct, my Lord.

Q. Mr. Witness, according to court's marked P/9 you also said that Dr. Anthony Quaye and Mr. Samuel Striker should both be held responsible for the missing parts since the body was in their custody they cannot be exempted from liability. Am I correct?

A. Yes.

When the Government rested with the production of evidence, the Appellants took the witness stand and also produced ten (10) witnesses. Appellants' first witness was Hans C. Williams, Sr. On direct examination, he testified about his arrest while trying to leave Liberia on a Kenya Airlines flight; various communications between his legal counsel and the then Minister of Justice; his family's relationship with Meideh Angel Togbah and her family; his and Co-Appellant Mardia Paykue's presence at a funeral prior to the time of the incident involving Meideh Angel Togbah; the various autopsy examinations performed in the case and the fact that DNA specimens were taken from him but that the Government failed to produce DNA specimens from Meideh Angel Togbah for testing, which raises a question as to why the Government failed to order DNA test after extracting DNA sample from him and especially since he was willing to undergo such test?

The Appellants' second witness was John T. Richardson, is a self-employed Architect. On direct examination, and after setting forth his training and experience as an Architect, he testified in relevant part as follows:

I visited the home of Mr. and Mrs. Williams to take measurement of a bathroom, specifically, its layout and certain height measurement. I prepared a report, a floor layout and a cross section of the bathroom with the relevant diameter and submitted them to the defense team. The measurement from the floor to the rail is 6 feet.

When asked to give his observation on the measurements performed by the Government's investigators, he stated: "There are discrepancies in the measurements between the two documents that were just given to me. On the last page of the document marked P/9, I see a

not-to scale sketch indicating that the height from the floor to the galvanized pipe is 182 centimeters. On page 14, of the document marked P/2, the last paragraph-paragraph 5, states that the height from the floor to the pipe is 4 feet 9 inches. Converting 182 centimeters into the imperial measurement of feet and inches will give us 5 feet and 11 and a half inches. Other measurements yet unclear is the height of the wall from the floor to the rail of [the] shower; the drawing shows it as .39 centimeter which would make it a little less than one inch.

As regards the conclusion by the Government investigators that based on their measurements, it was impossible for Meideh Angel Togbah to have hung herself Mr. Richardson stated: having visited the site myself and looking at the other two reports, I observed a certain degree of callous incompetence in the accuracy and comparison of these documents. For example, total figures given are inaccurate when the individual units are added together and inability to convert metric measurement to imperial measurement compounded by not understanding decimals in measurement, I believe has led to fallacious conclusion as spelled out on page 14 of P/2, paragraph 5 and unable to discern what conclusions based on measurement were drawn in P/9. Our inspection further indicates that the shower pipe is 1 inch galvanized pipe and not a half inch as referred to in P/2.

With respect to the measurement of the belt and the conclusion by the Government's investigators that the deceased could not have hung herself with the belt, Mr. Richardson states: "The height of the wall is indicated as 1 foot 3 inches above the floor. If one were to mount this wall the possibility strongly exists that an individual could hang themselves by attaching either section of the belt as indicated in the measurement around their neck to the bar and by simply moving their feet they will hang themselves.

The Appellants' third witness was Gladys C. Allison. She testified on direct examination that her "mother was buried November on 30, 2007" and that "[t]he funeral was held at St. Stephens Church, 10th Street." She also testified that the Appellants attended the funeral service and the burial; that she "got in [Appellant, Hans Williams'] car after the funeral to the grave with his wife, the little boy, his son and [her] cousin, Oretha Nelson and [they]...led the convoy to the cemetery; that [a]fter the burial [she] joined his jeep for the second time along with [her] cousin, Oretha and two other persons joined [them], Sis. Martha Witfield along with Gabriel Williams, and [they] drove to 11th Street where the repast was held;" that she saw the Appellants before they left the repast; and that the Appellants left after 6:00.

We should say at this juncture, that following the Government's medical and police investigations and in an effort to counter the divergent conclusions reached by the Government medical and police investigators, the Appellants sought the expertise of forensic experts from the Nebraska

Institute of Forensic Sciences. In a report titled Report of Postmortem Examination, based on autopsy performed on the body of Meideh Angel Togbah on May 24, 2008, by Doctors Thomas L. Bennett, Mathias I. Okoye and Kalu U.E. Ogbureke of the Nebraska Institute of Forensic Sciences, which references the medical report of JFK Hospital, Dr. Quaye's report and the report of Prof. Dr. Josefa Jimenez Hernandez, the doctors from the Nebraska Institute of Forensic Sciences concluded that the cause of Meideh Angel Togba's death was Asphyxiation by Hanging and that this manner of death, to a reasonable degree of medical certainty, should be ruled as a suicide.

The Appellants' fourth witness was Dr. Thomas L. Bennett, a Forensic Pathologist and Associate State Medical Examiner for the State of Montana United States of America and Associate Professor of pathology and medicine at Lagos State University College of Medicine, Federal Republic of Nigeria. He was one of three forensic pathologists who performed autopsy on the body of Meideh Angel Togbah. On direct examination, and after setting forth his training and experience as a Forensic Pathologist, he testified, among other things, as follows:

Asphyxiation by hanging is where a noose or object around the neck is tightened by the force of gravity. As such, there is a suspending point and then the point of weight bearing. So you get an angle or oblique indentation or group that is prominent. That is, the neck is and most prominent opposite there. It has either finding such as pin point hemorrhage above that indentation such as in the eyes and on the face. It tends not to crush but rather compress the neck. Strangulation is where something is tied around the neck by a force other than gravity. You get horizontal mark lower on the neck blocker whilst there are pin point hemorrhages that are still seen. The mark goes completely around the neck, not just angle uneven. Manual strangulation, the third kind, is caused by hand or full arms putting pressure on the neck. It therefore is not all the way around and is associated with crushing and struggle and marks on the front of the neck, neck just a line but more irregular mashing the hand or full arm. It is associated with more prominent bruising than the other two I mentioned because there is a struggle.

Following the testimony set forth above, the following questions were put to Dr. Bennett during a power-point demonstration and he answered as follows:

Q. Mr. Witness, in the course of your working experience have you (had] the opportunity to perform any autopsy in Liberia, and if so, on whose remains?

A. I performed an autopsy on a 13 year old girl identified to me as [Meideh Angel] Togbah.

Q. Mr. Witness, during the course of the said autopsy did you take photograph of the deceased?

A. Yes, Sir I did.

Q. Mr. Witness, please say where these photographs were taken?

A. All these photographs were taken in the morgue at the JFK Memorial Hospital or in the radiology suite where we got x-rays of [Meideh Angel Togbah] prior to starting the autopsy.

Q. Mr. Witness, please explain orally and demonstratively how your team performed the autopsy on [Meideh Angel] Togbah?

A. This is how we started the autopsy. After going to the cemetery we accompanied her unopened casket to JFK Morgue. We went directly to the x-ray department which this picture depicts. We got upon opening her casket, x-rays of [Meideh Angel Togbah's] head, chest and abdomen. This is how we saw her first. Upon getting the x-rays, we then started our examinations. [Meideh Angel] Togbah was clothed; so we removed her clothing and her jewelry to preserve them and returned them with her after our examinations.

The discoloration that you see, which looks like a white powder on her forehead or brown powder on her cheek is mold growth which we expect. The darker discoloration on the front of her shoulder is an artifact of the first and second autopsies. I [have] performed many second and even 3rd autopsies, and I expect the mold and other artifacts. The same in this photograph which is the left side of her face, which except for the artifacts, she is very well preserved.

Of major importance to our autopsy and these findings were that the organs of her neck were in place undissected. Dr. Quaye had opened the front of her neck and looked at the surface of the organs, but had not removed them. The second autopsy done by the Cuban Pathologist could not find them [but] they were there. What is most important and absolutely essential to distinguish hanging from ligature strangulation and manual strangulation, as I discussed earlier, is the neck. All three of these forms of asphyxiation involve the neck. The deficiencies of the first 2 autopsies provided us the opportunity to be clear and definitive. This, Your Honour, is a photograph of [Meideh Angel] Togbah's neck structure. Of most importance, this u-shaped structure right here is in the middle. It is in the middle of this picture and it is the hyoid bone. This bone is in each of us about a half inch above the Adam Apple. Your larynx can become broken with manual strangulation, but not with hanging or ligature strangulation. Dr. Quaye described it as broken, but he did not examine it. Dr. Hernandez, the second pathologist, could not find it. We examined it, we removed it, we looked closely to see if there was any bruising and there was none. We x-rayed, as you see before you, right now. To the left, this is her tongue to the right is the trachea which is uninjured.

Q. Mr. Witness, from what you have stated and demonstrated, did you reach a conclusion and if so please tell us [to] a reasonable degree of medical certainty the manner and mechanism of death of the late [Meideh Angel] Togbah?

A. The mechanism of death of [Meideh Angel Togbah] is Asphyxiation though the cause of death is hanging. The manner of death which relates to the circumstances of how this hanging occurred is a simple choice of natural which is not accident; which is not homicide which we found no evidence of; or suicide. Our committee, with [the] review of all we have and consultation and seeing the scene, concluded [that] this is a suicide.

On cross-examination, the following questions were put to Dr. Bennett and he answered as follows:

Q. Mr. Witness, as a pathologist what is hanging?

A. Hanging is when an object around the neck is turning by force of gravity, pulling the body down to put pressure sufficient to block air or blood flow to the brain.

Q. So then, Mr. Witness, the finding that the hyoid bone was broken clearly suggests manual strangulation as opposed to hanging. Not so?

A. To answer that, you want me to assume [that] the bone was broken which was not. But in the hypothetical if it was broken it would be indicative of a force like manual strangulation.

Q. Mr. Witness, speaking of the belt and your reference to a noose in the case of hanging, what did you observe given the fact that you have stated that the body and 'ligature' has long been removed before your arrival?

A. From the scene, I do not know. But from the body we know the indentation on her neck was high at the level of the hyoid bone, came off the side of the neck at an oblique angle and did not leave [any] mark on the back of the neck. The belt was about 1 and 3/8 inches wide. As such, it was suspending her from behind her head. It did not tightly encircle her neck. The body tells us this. The pressure was from the belt [being] tightly under her chin. So even though there are no pictures of her hanging and even though I do not know the type of knot used, her body tells what happened.

Q. Mr. Witness, you have stated, [and] you tried to demonstrate that you are a professional forensic pathologist with long years of practice to your credit. Mr. Witness, during your long years of experience, tell us is it likely that one who has been killed could also be placed in a hanging position to suggest that life was taken by hanging?

A. Of course you can hang a lifeless body. However, [Meideh Angel Togbah] had findings at the autopsy indicating that she was alive when there was pressure around her neck. She had the pin point hemorrhage of her eyes and a pin point hemorrhage of her face, which indicate that the pressure on her neck blocked the blood flow from her neck while she was alive because of the veins being blocked. But we have 4 arteries to pump blood into our head. Two of them are on the front that you can feel with your pulse. Two more travel up thru the bones of the neck and take much more pressure to block up. We therefore know that [Meideh Angel Togbah] was alive when that pressure was put on her neck. We further know from the marked angle and catheistic [sic] of the high neck indentation that is from hanging and not from manual strangulation and not from ligature strangulation.

The Appellants' fifth, sixth and seventh witnesses were Eric N. Hneh, Jr., Chief Investigator, General Crime Services, Crime Services Department, Liberia National Police, Nyenpan O. Nyenpan, Inspector Liberia National Police and Atty. Stephen J.H. Zargo, former Assistant Director of Police for CID, CIU and Interpol Affairs, all of whom served on the first team of Liberian Police investigators. Their testimonies essentially buttressed the testimonies of Appellant, Hans Williams, Sam Saryon, Deputy Commissioner of Police and Dr. Thomas L. Bennett.

The Appellants ninth witness was Angie Gargar, a minor. When questioned on direct examination as to whether or not she was at the Appellants residence at the time of the death of Meideh Angel Togbah's death, she testified as follows:

In the morning, I went to school. I was sent home because I was late. Only Meideh was about to go to school. Aunty Madea told her not to forget about the L\$300.00. She went to school and she came back and went in the palava hut and we ate. After eating, we went in front of the house and we were singing. In the evening, Aunty Madea and Uncle Hans came from burial. We took the things from the car. And we took the things and carried them in the house. Uncle Hans called Conwlee to take off his shoes. Aunty Madea told [Meideh Angel] Togbah to put the food on the table. She put the food on the table and Aunty Madea came and cut some of the food and Uncle Hans was lying down in the living room chair. Grandma asked [Meideh Angel Togbah] whether she had taken her bath. She said no. She asked grandma for the flashlight. She went into the room and later left from in the room and entered into the bathroom. Then grandpa sent me for his torchlight. [When] I went for the torchlight, she asked me to tie the rope on her neck. I told her that I was not able to tie the rope. I came out of the bathroom and gave the torchlight back to grandpa. Then Aunty Madea sent Hans williams Jr. to the bathroom for bucket and soap for him to take bath. When he went for the bucket, the place was dark; and Hans, Jr. left from the bathroom

and came to grandpa and asked him for the flashlight and grandpa gave him the flashlight and he went into the bathroom [again]. When he flashed the light in the bathroom, he saw foam coming from in her mouth. He ran outside and he was yelling. Uncle Hans called Patrick and Patrick called grandpa.

The Appellants' tenth and final witness was Corvage Farkollie, a 9th Grade student at David Lomel Memorial School. When questioned on direct examination as to whether or not she ever had a conversation with Meideh Angel Togbah and if so, to state the substance of the conversation and what happened regarding a particular African movie, she testified as follows:

She [Meideh Angel Togbah] went to my house when I was platting my hair and asked me whether I [was watching] the show called blood sister and I said yes. She said but Jenevee was brave to kill herself. I said but Jenevee was very wicked on herself. Then she said I can do that same thing to kill myself. Then I said but you [are] really wicked on yourself. I then said let us forget about dying because for me I am not ready to die.

Based on the facts and circumstances of this case, we have determined that the single legal issue presented by this case which must be passed upon by this Court is whether or not the Prosecution established the guilt of the Appellants beyond a reasonable doubt to warrant the conviction of the Appellants. This issue requires a review of pertinent provisions of our Constitution and Criminal Procedure Law, as well as relevant opinions of this Court which have previously addressed this issue.

Article 21(h) of the Liberian Constitution (1986) provides: "In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. And Chapter 2 Section 2.1 of our Criminal Procedure Law provides that [a] defendant in a criminal action is presumed to be innocent until the contrary is proved; and in cases of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

In construing these constitutional and statutory provisions, this Court has held that in order for the Republic of Liberia to convict a criminal defendant, the prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence; that material facts essential to constitute the crime charged must be proven beyond a reasonable doubt; otherwise the accused will be entitled to discharge. *Madam Elizabeth Davis v.*

Republic of Liberia, 40 LLR 659, 675-676 (2001), citing *John B. Dyson v. Republic of Liberia*, 1 LLR 481, 483 (1906).

This Court has also held that "[t]o warrant a conviction in a criminal case, the State must prove its case beyond a reasonable doubt; and the burden of proof remains with the prosecution throughout the trial." *Davis*, 40 LLR at 676, citing *J. Kamara Burphy v. The Bureau of Traffic*, 25 LLR 12, 23 (1976).

Further, we have held that the evidence in a criminal case against an accused must be conclusive; and if it be circumstantial, it should be so connected as to positively connect one element within another for a chain of evidence sufficient to lead the mind irresistibly to the conclusion that the accused is the guilty party *Davis*, 40 LLR at 681, citing *Nimley Koffe v. Republic of Liberia*, 20 LLR 18, 20 (1970).

In the case: *Tody Heith v. Republic*, 39 LLR 50, 64-65(1998), we held that in case of reasonable doubt, a defendant in a criminal case is entitled to an acquittal and that judgment in criminal cases must be supported by proof of all elements of the crime beyond a reasonable doubt.

Having reviewed the medical and police investigative evidence as well as the testimonial evidence adduced at the trial of this case, we now weigh that evidence against the standards set forth above to determine whether or not the Appellants' conviction is supported by said evidence. As noted previously, in order to have convicted the Appellants, the Government was required to prove the Appellant's guilt beyond a reasonable doubt. Hence, where there was any reasonable doubt as to the Appellants' guilt, they were entitled to an acquittal. In the instant case, we see that there was no agreement between the Government's medical experts as to the exact cause of Meideh Angel Togbah's death, how it was caused or who might have caused her death. Instead, the Government's own medical examiners could not agree on the proximate cause of her death. Dr. Quaye who had, until Meideh Angel Togbah's death, performed several autopsies on behalf of the Government, some of which were used to convict accused persons, initially concluded that the cause of Meideh Angel Togbah's death was Asphyxia Secondary to Hanging. Although he was later invited to the Headquarters of the Liberian National Police where he changed his conclusion to Asphyxia Secondary to Strangulation, this Court finds his second conclusion unpersuasive and questionable.

Dr. Quaye's initial conclusion, which in our opinion, is more credible than his second conclusion because it was independently reached, based on his examination of Meideh Angel Togbah's body, was contradicted by the findings and conclusions of Prof. Dr. Josefa Jimenez Hernandez, a Cuban Pathologist contracted by the Government to perform autopsy on the body of Meideh Angel

Togbah, but who instead only reviewed the examination performed on the body of Meideh Angel Togbah by Dr. Quaye. In her report, Prof. Dr. Josefa Jimenez Hernandez concluded that Meideh Angel Togbah "was sexually violated and strangled before the hanging.

We see two main problems with the findings and conclusions reached by Dr. Josefa Jimenez Hernandez. First of all, the Appellants argued consistently that she proceeded to do an autopsy investigation in order to establish a cause of death in a case in which the Appellants are accused without any notice to them. This contention by the Appellants was never refuted.

Section 2.2(1), Criminal Procedure Law, Right to representation by counsel at every stage of proceedings provides:

In all criminal prosecutions, the accused shall enjoy the right to be represented by counsel at every stage of the proceedings from the time of arrest or where no arrest has been made, from the initial appearance and submission of the accused to the jurisdiction of the court. This right continues through appeal and post-conviction proceedings, in any.

Article 21 (c) of the Liberian Constitution grants right to the accused person to have legal representation at every stage of the investigation". This is what is contemplated under the principle of impartial trial to which the accused is constitutionally entitled. The standard of impartial trial was articulated in the case: Sackor v. Republic, 21 LLR 394 (1973). Chief Justice Pierre speaking for this Court in the Sackor case said: "There are three important rights guaranteed to every accused under this requirement of the Constitution: 1) a public trial 2) an impartial trial and 3) a trial by a jury of the vicinity. Upon each of these three constitutional provisions rest certain vital rights of the accused. This requirement forbids that a criminal trial be held in secret, lest the right of the accused be trampled upon behind closed doors. It was therefore a violation of the Appellants' right to impartial trial when they were not notified so that they would be represented at the time Dr. Josefa Jimenez Hernandez performed autopsy on the body of Meideh Angel Togbah.

Secondly, we are constrained to say that Prof. Dr. Josefa Jimenez Hernandez did not provide medical basis to support her findings and conclusions that Meideh Angel Togbah "was sexually violated and strangled before the hanging." Lest we forget, in their report titled "Special Investigative Report Covering the Alleged Suicide Case Involving Little Meideh Angel Togbah," the second team of Liberian Police investigators stated in pertinent part that "during the conduct of the second autopsy performed by Prof. Dr. Josefa Hernandez, a Cuban Pathologist on 16th January 2008, [she] observed that a number of vital organs essential for determining the actual cause of death were missing from the body of the victim. These included: the upper respiratory system (hyoid bone, larynx, the trachea, and the bronchi) [as well as] the uterus and the entire perineum (vagina cavity)." This being the case, how could Prof. Dr. Josefa Jimenez

Hernandez have definitively determined and thus concluded that Meideh Angel Togbah "was sexually violated and strangled before the hanging?" In the opinion of this Court, such a definitive conclusion could have only been reached if and only if those body parts were available to Prof. Dr. Josefa Jimenez Hernandez for examination and were actually examined by her. Therefore, in the absence of those essential body parts, her conclusion that Meideh Angel Togbah "was sexually violated and strangled before the hanging, is unsupported by the medical evidence and should have been discounted by the trial judge.

In addition to the absence of the essential body parts referenced above the report issued by Prof. Dr. Josefa Jimenez Hernandez in her capacity as a forensic pathologist leaves much to be desired. In our opinion, she did not follow established procedures in pathological examination. Our research to know about the work of a forensic pathologist and what he/she does took us to an article written by the Office of the Medical Examiner, University of New Mexico, MSC07 4040, 1 University of New Mexico Albuquerque, NM87131-0001. The article which we find very persuasive and in line with other authoritative sources on forensic sciences, is titled What is a forensic pathologist? and published on omi.unm.edu/faq/forensic-pathologist.html: It states in part:

As a physician who specializes in the investigation of sudden, unexpected and violent deaths the forensic pathologist attempts to determine the identification of the deceased, the time of death, the manner of death (natural, accident, suicide or homicide) the cause of death and if the death was by injury, the nature of the instrument used to cause the death.

First, the forensic pathologist gathers a history as to how the death occurred and often obtains the past medical history of the deceased as well. Next, the forensic pathologist examines the body externally and then internally taking small samples of tissues to examine under the microscope for abnormal changes not visible to the naked eye. This postmortem examination is known as an autopsy.

During the course of the autopsy, various laboratory tests may be undertaken, including x-rays, retention of body fluids such as blood and urine and small samples of tissues such as liver or brain for toxicological analysis and cultures of body fluids and organs for evidence of infection.

When all of the information including the history, the results of the autopsy and the laboratory tests are completed, the forensic pathologist correlates all the information and draws conclusions as to the cause and manner of death. A report is then prepared summarizing these findings. The forensic pathologist can expect to be subpoenaed to testify before courts and other tribunals about the pathologic findings and conclusions. Coroners, medical examiners and pathologists provide

copies of their official reports to parties, such as insurers or public agencies, having a legitimate interest in the cause and manner of death of citizens.

During the course of the forensic autopsy, blood and other body fluids are routinely obtained in order to check for alcohol and other drugs. The forensic autopsy should be complete (including the head, chest, abdomen and other parts of the body as indicated).

In the instant case, Prof. Dr. Josefa Jimenez Hernandez elected to review the work of Dr. Quaye who is admittedly not a forensic pathologist, and for which reason she was brought into the country to perform a forensic examination on the body of Meideh Angel Togbah in order to determine the exact cause of her death and how it was caused. But instead of following accepted procedures she did not personally gather the history of how Meideh Angel Togbah's death occurred; did not obtain the past medical history of Meideh Angel Togbah; did not examine Meideh Angel Togbah's body externally or internally; did not take any samples of tissues from the body to examine under microscope for abnormal changes not visible to the naked eye; and did not undertake any laboratory tests to determine the cause of death. A proper and professional pathological examination would have included examination of all of Meideh Angel Togbah's relevant body parts necessary to determine as nearly as possible the exact cause of her death, including Meideh Angel Togbah's upper respiratory system (hyoid bone, larynx, the trachea, and the bronchi) [as well as] her uterus and her entire perineum (vagina cavity), so as to conclude to a degree of medical certainty the exact cause of her death, especially since Prof. Dr. Josefa Jimenez Hernandez concluded that she was sexually violated and strangled before she was hung. Under these circumstances, it cannot be said that Prof. Dr. Josefa Jimenez Hernandez's findings and conclusions should have been accepted by a court of justice as proof of the Appellants' culpability for the murder of Meideh Angel Togbah.

Like the Government's medical experts, there was no agreement amongst the Government's Liberian and foreign police investigators as to the cause of Meideh Angel Togbah's death, how it was caused or who might have caused her death. In their report titled Investigative Report of Special Investigative Team/Homicide Squad/CSD of the LNP, dated December 29, 2007, the first team of Liberia National Police investigators of the death of Meideh Angel Togbah concluded, among other things, thatthere has been no further information to suggest the active involvement of another party in the death of the victim.

On the other hand, there has been a preponderance of confidential information which suggests that the victim had shown extraordinary abilities and that on a number of occasions, [the] victim had confided in a few of her peers about being able to take away her own life. That the victim was an introvert, she did not discuss in detail any issue with her biological parents, neither her close

associate(s) at school. However, and for all practical purposes, it was quite regrettable that [the] victim did not leave behind any dying declaration as a clue to determine why. It became quite evident that the investigation has been able to establish how the victim died, .i.e. (Suicide by hanging), but why did the victim choose to take away her life, remains a puzzling reality." This conclusion was contradicted by a second team of Liberia National Police investigators five weeks later. In their report titled "Special Investigative Report Covering the Alleged Suicide Case Involving Little Meideh Angel Togbah" dated February 8, 2008, which contains excerpts of statements obtained from various individuals, including the Appellants Dr. Anthony Quaye, Mr. Samuel Stryker and household members of the Appellants, the Government's second team of Liberia National Police investigators stated:

The investigation is convinced [that] all explanations provided by [the] suspects regarding [the] circumstances surrounding the death of Meideh Angel Togbah were fabricated and fictitious, [and] intended to disguise the actual cause of death; which the investigation established to have been caused by Homicide as a result of strangulation.

These conclusions by the second team of Liberia National Police investigators, based on investigations conducted by them more than two months after the death of Meideh Angel Togbah, but which contradicts the conclusions of another team of Liberia National Police investigators, based on their investigations conducted one month after the death of Meideh Angel Togbah, is astounding; for how could two teams of investigators from the same police department, with presumably the same levels of training, experience and expertise, have reached such diametrically opposed conclusions in the same criminal case? Which of the two divergent conclusions should a court of justice believe as being credible and which should the court disbelieve as not being credible and why?

We note, also, that the second team of Liberian Police investigators did not indicate in their report how they arrived at the conclusion that Meideh Angel Togbah's death was caused by Homicide as a result of strangulation" or that all explanations provided by [the] suspects regarding [the] circumstances surrounding the death of Meideh Angel Togbah were fabricated and fictitious, [and] intended to disguise the actual cause of death. Our review of the records in this case shows no statement by any of the interviewees which attributes or tends to attribute culpability for the murder of Meideh Angel Togbah, to the Appellants; and the second team of Liberian Police investigators did not subject the interviewees to lie detector tests so as to determine the truth or falsity of their statements and did not seek the services of any experts such as psychologists and psychoanalysts during their interviews of the Appellants and members of the Appellants' household. We hold, therefore, that the conclusion by the second team of Liberia National Police

investigators that the Appellants are responsible for the death of Meideh Angel Togbah is not supported by the records of this case and is thus unfounded.

But the drama does not end with the battle for supremacy between the two teams of Liberia National Police investigators referenced above. As stated previously, the Government not apparently being satisfied with the conclusions reached by its teams of Liberia National Police investigators, sought and obtained assistance from the Ghana Police Service; and a Team of Crime Scene Investigators from the Ghana Police Service, led by ASP Mr. Alex Asamoah-Frimpong, was dispatched to Liberia to conduct investigations into the death of Meideh Angel Togbah, which they did. In their report titled "Investigations into the Unnatural Death of Deceased Meideh Togbah, the Ghanaian Team concluded that there was evidence that an unlawful harm caused the death of Meideh Angel Togbah but failed to state the specific unlawful harm that caused her death. The report states:

In my opinion based on the foregoing findings, there is evidence to suggest that an unlawful harm was caused to the deceased culminating to her death. However, no concrete evidence has so far emerged to connect any particular suspect to the crime.

Of importance in the conclusions reached by the Ghanaian Team is the fact that they were unable to connect any particular person or persons to the death of Meideh Angel Togbah. Also of importance is the fact that this conclusion by the Ghanaian Team corroborates the conclusion reached by the first team of Liberia National Police investigators that "there has been no further information to suggest the active involvement of another party in the death of the victim." Thus, of the three teams of police investigators, it is only the second team of Liberia National Police investigators who claimed the victim died as a result of homicide and that the Appellants are the responsible parties. We note here also, that the second team of Liberian Police investigators was assembled subsequent to the public outrage which followed the publication of Dr. Quaye's initial findings and conclusions as well as the publication of the findings and conclusions of the first team of Liberian Police investigators. Therefore, the second team of Liberian Police investigators was expected to reach contrary conclusions as they did and hence, we hold that their findings and conclusions are suspect at best.

In countering the divergent conclusions reached by the Government medical and police investigators, the Appellants sought the expertise of forensic experts from the Nebraska Institute of Forensic Sciences. In a report titled "Report of Postmortem Examination, based on autopsy performed on the body of Meideh Angel Togbah on May 24, 2008 by Doctors Thomas L. Bennett, Mathias I. Okoye and Kalu U.E. Ogbureke of the Nebraska Institute of Forensic Sciences, the doctors from the Nebraska Institute of Forensic Sciences concluded that the cause

of Meideh Angel Togba's death was Asphyxiation by Hanging and that this manner of death, to a reasonable degree of medical certainty, should be ruled as a suicide. This conclusion by the doctors from the Nebraska Institute of Forensic Sciences corroborates the initial findings and conclusions of Dr. Quaye that the cause of Meideh Angel Togbah's death is Asphyxia Secondary to Hanging. Thus, of the three groups of medical examiners, it is only Prof. Dr. Josefa Jimenez Hernandez who concluded that the victim died as a result of sexual violence and strangulation. However, as noted previously, she did not have available to her all essential parts of Meideh Angel Togbah's body, necessary to reach the conclusion that she ultimately reached.

When weighed against the constitutional and statutory standards set forth above and the opinions of this Court, we find that the Government's medical and police investigative evidence adduced at trial were insufficient to overcome the presumption of the Appellants' innocence and to prove the Appellants' guilt beyond a reasonable doubt. Moreover the, chain of events necessary to link the Appellants to the crime did not exist at trial; there were several missing links in the chain of events, which should have inured to the benefit of the Appellants. There were no DNA tests performed to determine the involvement, if any, of one or both of the Appellants in the death of Meideh Angel Togbah; there was no eyewitness testimony or other direct evidence which links one or both of the Appellants to the crime; and the Government's medical and police experts did not agree as to the exact or proximate cause and manner of her death, resulting in several unanswered questions such as: (1) Did Meideh Angel Togbah die as a result of sexual violence and strangulation, as concluded by -'Prof. Dr. Josefa Jimenez Hernandez and if so, who strangled her to death? (2) Did she die as a result of Asphyxia Secondary to Hanging, as concluded by Dr. Quaye and the doctors from the Nebraska Institution of Forensic Sciences? (3) Did she commit suicide by hanging as concluded by the first team of Liberia National Police investigators? (4) Was her death a homicide as concluded by the second team of Liberia National Police investigators? Or (5) was her death caused by an unspecified unlawful harm, as concluded by the team of Ghanaian investigators? These unanswered questions, in the opinion of this Court, raise reasonable doubt as to the Appellants guilt. Hence, the Appellants were entitled to an acquittal.

In a litany of cases, this Court has held that an accused in a criminal case is presumed to be innocent until the contrary is proved. *Keller v. Republic*, 28 LLR 49 (1979). In the case: *J. Kamara Burphy v. The Bureau of Traffic*, supra, we held that: One of the most important legal presumptions is that of innocence. This presumption, which in legal phraseology, gives the benefit of a doubt to the accused, is so cogent, that it cannot be repelled by any evidence short of what is sufficient to establish the fact of the criminality with moral certainty. *Id.* at 20.

We have also held that in order to overcome this presumption of innocence, proof of a defendant's guilt must be established beyond a reasonable doubt. *Jamal Eldine v. Republic of Liberia*, 27LLR 133, 147 (1978).

In the instant case and as demonstrated supra, there is no agreement amongst the Government's medical and police experts as to the cause of Meideh Angel Togbah's death or who was responsible for her death. There is, however, evidence that she might have committed suicide by hanging herself. This evidence which is supported by the findings of the first team of police investigators, Dr. Quaye and the doctors from the Nebraska Institute of Forensic Sciences, was corroborated by Angie Gargar, a minor at the time and ward of the Appellants' when in her statement to the first team of Liberia National Police investigators she stated that "from time to time, Meideh Angel Togbah would play dead by falling to the floor and pretended to be dead while foaming from the mouth; that she "never mentioned this to their guardians due to the thought that it was all childish jokes; and that on the date of the incident, [Meideh Angel Togbah] had requested her to put a rope around her [Meideh Angel Togbah's] neck, but she refused and did not regard the request as serious until the sad incident [occurred]. This statement by Angie Gargar, which was never rebutted by the Prosecution either during their investigation of the crime or at trial, operates in favor of the Appellants and creates reasonable doubt as to the Appellants' culpability for the death of Meideh Angel Togbah.

That Meideh Angel Togbah was capable of committing suicide is also evidenced by her statement to 9th grader, Corvage Farkollie, at like the character in an African movie, she could kill herself. In addition to this statement by Angie Gargar and the testimony of Corvage Farkollie, the different conclusions reached by the Government medical and police experts also create reasonable doubt as to the culpability of the Appellants, since the presumption of innocence remained in favor of the Appellants until their guilt was established beyond a reasonable doubt.

In this circumstantial evidence case, the statement of Angie Gargar, the initial findings and conclusions of Dr. Quaye, the findings and conclusions of the first team of Liberia National Police investigators, the findings and conclusions of the team of Ghanaian investigators and the findings and conclusions of the doctors from the Nebraska Institute of Forensic Sciences point to the innocence of the Appellants; while the findings of Prof. Dr. Josefa Jimenez Hernandez and those of the second team of Liberia National Police investigators point to the guilt of the Appellants.

However, if a trier of fact in a circumstantial evidence case can draw two or more reasonable conclusions from circumstantial evidence such as in the instant case, and one of those reasonable conclusions points to innocence and another point to guilt, the trier of fact must accept that which points to innocence. A defendant in a criminal case is entitled to any reasonable inference from

circumstantial evidence adduced at his trial. Thus, we have held that: In order to convict a person upon circumstantial evidence, it is necessary not only that the circumstances all concur to show that the prisoner committed the crime and be consistent with all the facts proved, but that they be consistent with any other rational inclusion and exclude every other reasonable theory or hypothesis of guilt. And that: The facts proved at trial must be consistent with each other and with the main fact sought to be proved. *Samuel Otto v. Republic of Liberia*, 17 LLR 186, 191 (1966).

In *Nimley et al. v. Republic*, 21 LLR 348, 359-360 (1972), we held as follow:

In homicide cases, when proof of the corpus delicti rests upon circumstances, and not upon direct proof, it must be established by the most convincing, satisfactory, and unequivocal proof compatible with the nature of the case, excluding all uncertainty or doubt. In other words, as previously stated, the corpus delicti, like every other essential element of the offense must be proved, beyond a reasonable doubt by satisfactory evidence, or by cogent and irresistible ground of presumption. To establish the element of death in the corpus delicti the circumstantial evidence must be strong and cogent. It is not sufficiently established by ill usage, and injuries inflicted on the party alleged to have been killed. To sustain a conviction, proof of the criminal agency is as indispensable as the proof of death. The fact of death is not sufficient. It is essential in all criminal prosecutions to prove the element that constitutes the crime and this burden is on the Prosecution as a primary requisite. The in this case do not; in our opinion, form a complete chain nor do they point directly and unerringly to the Defendants' guilt, establish the guilt, nor justify their conviction for the murder. In other words, they have not been conclusive in character to establish the guilt of the Defendants beyond a reasonable doubt. The circumstances tend toward suspicious probabilities or suppositions, which do not warrant a conviction for murder. The pathologist who was introduced to establish the cause of death, there being no other evidence on this point, was contradictory and uncertain in his conclusions on this essential element of the case, and announced various hypotheses or theories as to the probable cause of the death of the decedent. It is, we continue to hold, necessary for the State to prove conclusively that the deceased died from a beating, being tied, his wounding, his torture, and maltreatment, before endeavoring to connect the defendants with the murder by a chain of circumstantial evidence, for if the decedent had come to his death by any cause other than that alleged, the appellants are entitled to an acquittal.

In this case, like *Nimely et al.*, supra, there were several circumstantial evidence which point to the innocence of the Appellants. Moreover, there was adduced at trial no fact or set of facts which prove directly or circumstantially, the crime of murder or that the Appellants were the perpetrators of the crime of murder. We hold therefore, that given the fact that several circumstances in this case

point to the innocence of the Appellants while some point to their guilt, the trial judge should have adopted those which point to the Appellants' innocence. It is therefore incredible that the trial judge completely ignored these critical pieces of evidence which point to the Appellants' innocence but chose to convict the Appellants on the basis of those which point to their guilt.

The indictment in this case alleges that: "That on the 30th day of November A.D. 2007, at about 7:00 p.m. in the Old Road community, Sinkor, Monrovia, Montserrado County and Republic of Liberia, the defendants hereinabove named did cause the death of another human being, to wit: Juvenile Little Angel Togbah, aged (13) under circumstances manifesting extreme indifference to the value of human life, to wit: by choking her to death and hanging her lifeless body in one of two bathrooms in the defendants' house; and "that co-defendant Mardia P. Williams, out of malice aforethought and of the conviction that co-defendant Hans C. Williams, Sr. had sexual intercourse (Rape) with decedent, she co-defendant Mardia P. Williams jumped on, strangulated and choked decedent little Angel Togbah to death. And that after accomplishing her wicked act; they, defendants herein, together clandestinely took the lifeless body of decedent Little Angel Togbah to one of two bathrooms in the defendants' house and tied a cloth/belt around her (decedent's) neck and did hang her lifeless body to the bathroom rod, under the pretense that decedent had hanged herself. Therefore in order for the Appellants to have been convicted for the crime of murder, the Government was required to prove each of these allegations beyond a reasonable doubt as to each defendant separately. This then means that the Government was required to prove beyond a reasonable doubt that: (a) each of the Appellants choked Meideh Angel Togbah to death; (b) each of the Appellants hanged her lifeless body in one of the bathrooms (c) each of the appellants tied a cloth/belt around her neck and did hang her lifeless body to the bathroom rod, under the pretense that decedent had hanged herself.

The phrase proof beyond a reasonable doubt is fundamental to our criminal jurisprudence and requires us, the people, through our Government, to prove with legal precision to the point of certainty the guilt of one or more of our fellow citizens who are alleged to have committed a crime. This requirement is necessary to ensure that an innocent person is not convicted of a crime that he or she did not commit. It is also necessary because among many, or in a case of millions, one or a few persons can do nothing. The requirement therefore, of proof beyond a reasonable doubt inures not only to the benefit of particular defendants such as the Appellants in this case, but it inures to the benefit of every citizen and resident of this country. It is a rule that is applied in every criminal case and cannot be changed, modified or disregarded in the middle of a criminal trial; it must therefore be strictly adhered to during every criminal trial.

The question is, what does our law expect mean when it requires proof of guilt beyond a reasonable doubt? In other words, what does guilt beyond a reasonable doubt mean? The law uses the term, proof beyond a reasonable doubt, to state how convincing the evidence of guilt must be to permit a verdict of guilty. The law recognizes that, in dealing with human affairs, there are very few things in this world that we know with absolute certainty. The law also recognizes that crimes are shrouded in secrecy and usually committed under the cover of darkness. Therefore, the law does not require the Republic of Liberia to prove a defendant guilty beyond all possible doubt. On the other hand, it is not sufficient to prove that a defendant is probably guilty. In a criminal case, the proof of guilt must be beyond a reasonable doubt. A reasonable doubt is an honest doubt of a defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. Reasonable doubt" is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence is, open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the truth of the charge. B.T. Collins v. Republic of Liberia, 22 LLR 365 (1974), citing Black's Law Dictionary.

Black's Law Dictionary's definition of reasonable doubt and our adoption of same in Collins v. Republic, supra, mandate that a defendant in a criminal case such as this case cannot be convicted based on the mere possibility that he or she may have committed the crime with which he or she was charged. Nor can such defendant be convicted based on conjectures and speculations as to his or her guilt or because he or she has been indicted or charged with a crime. In the case under review, the Government did not produce any coherent evidence, direct or circumstantial, which points to the guilt of the Appellants.

Similarly, the Government did not articulate any coherent theory as to how Meideh Angel Togbah's death occurred. What was instead produced by the Government was a set of disjointed conjectures and speculations as to the guilt of the Appellants simply because the death of Meideh Angel Togbah occurred at the Appellants' residence and because she was a ward of the Appellants' at the time of her death. Such evidence is, however, insufficient to sustain the Government's burden of proving beyond a reasonable doubt that the Appellants were responsible for the death of Meideh Angel Togbah.

In *Roose v. Republic*, 28 LLR 237 (1979), we held that a charge against an accused must be proved as laid in the indictment. Thus, this Court has consistently refused to uphold a murder conviction

where the averment laid in the indictment was not established. *Tendi v. Republic*, 12 LLR 109 (1952); *Abraham Sealon Flomo v. Republic*, 26 LLR 51 (1977).

We have also held that where evidence produced by the Prosecution at trial is flimsy and unconvincing, judgment entered on the verdict must be reversed. *John Kono Tye Smith et al. v. Republic*, 28 LLR 219, 22 (1979).

In the instant case, the Government's medical evidence, police investigative evidence and testimonial evidence, woefully failed to establish each element of the crime of murder as charged in the indictment. There was no documentary or testimonial evidence, direct or circumstantial, adduced at trial, which established that: (a) each of the Appellants choked Meideh Angel Togbah to death; (b) each of the Appellants hanged her lifeless body in one of two bathrooms in their house; and (c) each of the Appellants tied a cloth/belt around her neck and hanged her lifeless body to the bathroom rod, under the pretense that she had hung herself. In fact, and as stated elsewhere in this opinion, there was no credible evidence adduced at trial which in any way, shape or form linked the Appellants to the murder of Meideh Angel other than the fact that her death occurred at the Appellants' residence. In the absence of such evidence, the Appellants' conviction was contrary to the weight of the evidence adduced at trial, as the evidence adduced at trial was insufficient to support the Appellants' conviction.

We next address the Appellants' Bill of Exceptions. In Count 1 of their Bill of Exceptions, the Appellants argue that the trial judge erred when he declared in his final Verdict/Judgment that the Prosecution proved its case beyond a reasonable doubt. As this argument is supported by the records of this case, we agree with the Appellants and therefore sustain Count 1 of the Bill of Exceptions.

Count 4 of the Appellants' Bill of Exceptions argues that the trial judge committed reversible error because he ignored the report of the autopsy conducted by the doctors from the Nebraska Institute of Forensic Sciences because according to the Appellants, the doctors' report clearly stipulates that "we agree that this manner of death, to a reasonable degree of medical certainty, should be ruled as a suicide..." We are of the opinion, however, that the judge, sitting as the fact finder, may choose which evidence to believe and which to disbelieve. Thus, although one may question the soundness of his conclusions on factual matters that is not a reversible error. Therefore Count 4 of the Bill of Exceptions is overruled.

Count 5 of the Bill of Exceptions argues that the trial judge committed reversible error because he ignored and declared irrelevant the report of the autopsy conducted by doctors from the Nebraska Institute of Forensic Sciences. This argument carries some weight. As part of the

overall medical evidence in this case, the report of the autopsy conducted by the doctors from the Nebraska Institute of Forensic Sciences was material and relevant to a determination of the Appellants' culpability in this case or the lack thereof. Hence, its declaration as irrelevant by the trial judge was prejudicial to the interests of the Appellants and was therefore a reversible error. Hence, Count 5 of the Bill of Exceptions is sustained.

In Counts 6, 7, 8 and 9 of their Bill of Exceptions, the Appellants argue essentially that the trial judge committed reversible error because he ignored the testimony of Dr. Thomas L. Bennett on various points during his power point presentation. Here, also, we are of the opinion that as the finder of fact, the trial judge was the sole judge of the facts and hence had the right to decide on which testimonies to believe and which to disbelieve. He could have believed all of a witness' testimony, some of a witness' testimony or none of a witness' testimony. Such exercise of his discretion as a fact finder is not a reversible error. Hence, Counts 6, 7, 8 and 9 of the Bill of Exceptions are overruled.

In Counts 11 and 12 of their Bill of Exceptions, the Appellants argue that the trial judge committed reversible error when he declared that a careful review of Dr. Quaye's P/4-In-Bulk revealed that the Cause of Death of the deceased is ASPHYXIA SECONDARY TO STRANGULATION', thereby ignoring Dr. Quaye's Autopsy Report, introduced by the Prosecution/Appellee, marked by Your Honour P/7-In-Bulk, in which Dr. Quaye stated that the Cause of Death is ASPHYXIA SECONDARY TO HANGING and you elected to give credence to Dr. Quaye's purported Voluntary Statement, executed at the National Police Headquarters. We agree with this argument of the Appellants. It is clear from the records of this case that when Dr. Quaye initially conducted an autopsy on the body of Meideh Angel Togbah, he concluded that the cause of her death was Asphyxia Secondary to Hanging. This conclusion was unacceptable to the Government and as a result, the Government, through the Ministry of Justice and the Liberia National Police caused Dr. Quaye to retract his initial conclusion and to change it to Asphyxia Secondary to Strangulation, a conclusion that was not only acceptable to the Government, but which was also in line with the Government's argument that the Appellants strangled Meideh Angel Togbah to death and then hung her lifeless body to indicate that she hung herself. Therefore, this declaration constituted reversible error. Hence, Counts 11 and 12 of the Bill of Exceptions are sustained.

In Counts 14, 15 and 16 of their Bill of Exceptions, the Appellants argue that the trial judge committed reversible error when he attributed responsibility for the missing parts from the deceased's body, prior to the conduct of the second Autopsy by the Cuban Pathologist; for tampering with the evidence in the case and also the missing of torn panties of the deceased's body; and for the missing of the piece of the rope/belt it allegedly used for the alleged hanging to the

Appellants. We agree with these contentions of the Appellants. As clearly revealed by our review of the records in this case, there was adduced at trial no evidence which showed that the Appellants were responsible for the missing body parts, the torn panties or the missing belt. To the contrary, the evidence, as recorded by the Government's second team of Liberian Police investigators, show that Dr. Quaye and the Stryker Funeral Home were responsible for the missing body parts. In their report, the second team of Liberian Police investigators state:

(x) during the conduct of the second autopsy performed by Prof. Dr. Josefa Hernandez, a Cuban Pathologist on 16th January 2008, [she] observed that a number of vital organs essential for determining the actual cause of death were missing from the body of the victim. These included: the upper respiratory system (hyoid bone, larynx, the trachea, and the bronchi) [as well as] the uterus and the entire perineum (vagina cavity); (xi) attempt by Dr. Quaye to conceal the actual cause of death of [the] victim intentionally is not only tantamount to crime, but brings in disrepute his ethics of the medical field; during the course of the second autopsy, Dr. Quaye was present, and acknowledged that the organs herein listed were missing, but denied knowledge of it and asked that [the] matter be referred to the Management of the Stryker Funeral Home; (xii) Mr. Samuel Stryker and Earl Townsend also denied knowledge of the missing organs; (xiii) after the 6 December 2007 postmortem examination, Dr. Quaye returned at the Samuel Stryker Funeral Service and in the presence of the proprietor and Director Mr. Samuel A. Stryker and extracted the vagina cavity of the victim but claimed to have only taken labia tissue and supra pubic hair for further investigation; and (xiv) neither Dr. Quaye nor the Management of the SASFS [Samuel A. Stryker Funeral Service] could account for the pantie[s] seen on the victim before the autopsy.

Therefore the trial judge committed a reversible error when he held the Appellants responsible for the missing parts and the panties as well as for the missing belt since, no evidence linked the Appellant to the missing belt. We therefore sustain Counts 14, 15 and 16 of the Bill of Exceptions.

Count 18 of the Bill of Exceptions states: 'That Your Honour erred when, in your final Verdict/Judgment, you declared that Defendants Hans C. Williams, Sr. and Mardia Paykue Williams' relationship with the deceased was characterized by malice aforethought and premeditation, despite the fact that Co-Defendant Hans C. Williams, Sr., while on the stand, testified to the cordial relationship which existed between his family and the parents of the deceased; as attested to by Statements written by the parents of the deceased, marked 'D/7', to the effect that they (Defendants) showered the deceased with parental love; that on that fateful day, November 30, 2007, shortly before the incident, the Mother of the deceased, Sue Togbah, called and quarreled with the deceased for allegedly engaging in gossip; that the

mother of the deceased said Co-Defendant Mardia Paykue Williams was lenient with the deceased; that the (Co-Defendant Mardia Paykue Williams should deal with the deceased as she (the deceased) was becoming uncontrollable; and that following the incident, the father of the deceased² attested to the parental love with which the Defendants treated the¹r daughter as though she (the deceased) was their own.

We wish to state here that we are taken aback by the trial judge's declaration that the Appellants relationship with the deceased was characterized by malice aforethought and premeditation, because our review of the records in this case reveals no evidence of malice aforethought on the part of the Appellants towards Meideh Angel Togbah. What the records show is the fact that the Appellants took Meideh Angel Togbah into their home, provided her with food, shelter and sent her to school at their own expense. Such conduct cannot fairly be described as malice aforethought. Therefore Count 18 of the Bill of Exceptions is sustained.

In Counts 19, 20, 21, 25, 26, 27, 28 and 29 of their Bill of Exceptions, the Appellants argue that the trial judge committed a reversible error when he "declared that the Autopsy Report of the Cuban Pathologist, Dr. Prof. Josefa Jimenez Hernandez, marked by Court as P/2-In-Bulk, which reviewed the work of Dr. Anthony S. Quaye, is the best Autopsy Report among the rest." The Appellants' argument that the trial judge's declaration that for various reasons, Prof. Dr. Josefa Jimenez Hernandez's report was the best among the three autopsy reports filed in this case constitutes reversible error is supported by the records. It is noteworthy that Prof. Dr. Josefa Jimenez Hernandez who was brought into the country to perform autopsy on the body of Meideh Angel Togbah did not perform an autopsy. Instead, she elected to review the autopsy performed by Dr. Quaye and in so doing, failed to follow established procedures in pathological examination. Furthermore and as stated elsewhere in this Opinion, she did not have available to her Meideh Angel Togbah's essential body parts which were necessary to determine the cause of her death. This being the case, this Court wonders how the trial judge concluded that her report was "the best among the rest." The trial judge's declaration therefore constitutes a reversible error, since he relied on her report in finding the Appellants guilty of the murder of Meideh Angel Togbah. Hence, Counts 19, 20, 21, 25, 26, 27, 28 and 29 of the Bill of Exceptions are sustained.

Count 30 of the Appellants Bill of Exceptions argues that the trial judge erred when he declared, relying on the testimonies of Dr. Williamina Jallah and the Cuban Pathologist that the deceased did not hang herself and did not commit suicide." We agree with the Appellants that this declaration constituted a reversible error by the trial judge, because the records show that Dr. Quaye and the doctors from the Nebraska Institute of Forensic Sciences who performed an

autopsy on the body of Meideh Angel Togbah determined the cause of her death to be Asphyxia by Hanging, which the doctors from the Nebraska Institute of Forensic Sciences described as suicide. Additionally, the first team of Liberian Police investigators concluded that Meideh Angel Togbah's death was caused by suicide. While it is true that Dr. Quayee changed his initial findings and conclusions to comport with the Government's argument that the Appellants murdered Meideh Angel Togbah and hanged her lifeless body; and while it is true that the second team of Liberian Police investigators concluded that the Appellants murdered Meideh Angel Togbah, those conclusions are doubtful because they were preconceived in order to hold the Appellants liable for the death of Meideh Angel Togbah. We hold therefore that the trial judge's definitive declaration that "the deceased did not hang herself and did not commit suicide is unsupported by the records of this case. Hence, Count 30 of the Bill of Exceptions is sustained.

Count 33 of the Appellants' Bill of Exceptions argues that the trial judge committed reversible error when he "declared in his final Verdict/Judgment that Appellants are responsible for the death of Meideh Angel Togbah." Again, we agree with this argument of the Appellants, as there is no evidence, direct or circumstantial, which established at trial that the Appellants were the ones who killed Meideh Angel Togbah. To the contrary, there was evidence that Meideh Angel Togbah may have taken her own life for reasons yet to be established. But assuming that she did not take her own life, there was no evidence as to who killed her. In their reports which were based on their investigations of Meideh Angel Togbah's death, the first team of Liberian Police investigators concluded that there has been no further information to suggest the active involvement of another party in the death of the victim; while in their report of the investigations conducted into the death of Meideh Angel Togbah, the team of Ghanaian investigators concluded that there is evidence to suggest that an unlawful harm was caused to the deceased culminating to her death. However, no concrete evidence has so far emerged to connect any particular suspect to the crime. These reports were introduced into evidence on the side of the Government. This being the case, coupled with the fact that the Government's medical examiners, Dr. Quayee and Prof. Dr. Josefa Jimenez Hernandez reached diametrical conclusions based on Dr. Quayee's autopsy, we wonder how the trial judge concluded that the Appellants were responsible for the death of Meideh Angel Togbah. What conclusive evidence was available to the trial judge, upon which he relied to reach such conclusion? We hold, therefore, that the trial judge's declaration that the Appellants are responsible for the death of Meideh Angel Togbah is not supported by any evidence adduced at the trial of this case and thus constitutes a reversible error. Hence, Count 33 of the Bill of Exceptions is sustained.

In Counts 34 and 35 of their Bill of Exceptions, the Appellants argue that the trial judge committed a reversible error when he "declared that Appellant Hans C. Williams raped the deceased

and Mardia Paykue Williams choked her to death, despite the fact that all of the State witnesses could not produce evidence in substantiation of the allegations, to the extent that they could not state what part(s) the Appellants played in the death of the deceased" and also that the trial judge committed reversible error when he declared that Appellant Hans C. Williams raped the deceased despite the fact that when Witness Peter Zaizay was asked about statements he made that Hans had sexual intercourse with the deceased, he said, 'I am sure the records the counsel is alluding to are available. It would be prudent and fair to me to exhibit statement attributed to me for my viewing. For at no point in time did I ever make such definitive statement. Here, as with other declarations and conclusions by the trial Judge, there was adduced at the trial of this case no evidence to support the Judge's claim that Appellant Hans C. Williams, Sr. raped Meideh Angel Togbah. Similarly, no evidence was adduced at trial to support the judge's claim that Appellant Mardia Paykue Williams choked Meideh Angel Togbah to death as claimed by the trial judge. Therefore, we concur with the Appellants that these twin declarations of the trial judge upon which he relied to convict the Appellants of murder constitute reversible error and hence sustain Counts 34 and 35 of the Bill of Exceptions.

Count 36 of the Appellants' Bill of Exceptions argues that the trial judge committed a reversible error when he declared, in his final Verdict/Judgment, that the Prosecution rebutted witness Angie Gargar's testimony despite the fact that Prosecution Witness Peter Zaizay, testifying on behalf of the Prosecution, was asked Mr. Witness, you having said that you believe sincerely what Angie Gargar told you, let me quote her in your Report, but that when she went in the bathroom she saw the victim with a belt tied on the curtain rail and that the victim asked her to tie her neck but refused and went out of the bathroom without saying anything about the victim's request to anyone because she did not think the victim was serious, do you believe this statement of Angie Gargar, which is in the same paragraph as the previous statement contained, answered: we have said that we believe whatever statement that was made by little Angie Gargar." Given this answer by Prosecution witness, Peter Zaizay, how was it then conceivable that the trial judge concluded that the Prosecution rebutted the testimony of Appellants witness, Angie Gargar? Further, our review of the records of this case reveals that the Prosecution produced no evidence, documentary or testimonial, to rebuttal or refute Angie Gargar's testimony set forth herein. Therefore, Count 36 of the Bill of Exceptions is sustained.

In Count 38 of the Bill of Exceptions, the Appellants argue: Appellants say and aver that Your Honour erred when you declared that Co-Defendant Hans C. Williams, Sr. was charged with both rape and murder, though a perusal of the Indictment confirms that the Indictment only charged murder, and that your declaration thus, regrettably, the Americans failed, refused and neglected to conduct the said DNA test or analysis knowing fully well that Co-Defendant Hans

C. Williams, Sr. is charged with both Statutory Rape and Murder, unlike the other Co-Defendant who is only charged with Murder', places the burden of proof on Co-Defendant Hans C. Williams and not on the Prosecution. We note, initially, that the Appellants' erroneous argument that the trial judge's declaration that "Co-Defendant Hans C. Williams, Sr. is charged with both Statutory Rape and Murder, unlike the other Co-Defendant who is only charged with Murder, places the burden of proof on Co-Defendant Hans C. Williams and not on the Prosecution" has no foundation in law and is therefore baseless. Assuming arguendo, that Appellant Hans C. Williams, Sr. was charged with statutory rape, as claimed by the trial judge, that fact would not, under our law, shift the burden of proof to him; the Prosecution would have had to prove beyond a reasonable doubt Appellant Hans Williams in fact committed and was therefore guilty of statutory rape. Notwithstanding the foregoing, this declaration by the trial judge constitutes a reversible error because the indictment upon which the Appellants were tried only charged the Appellants with murder. While there is reference in the indictment to rape being committed by Appellant Hans C. Williams, Sr., such reference was inserted as an attempt to indicate the motivating factor for the Appellants' alleged commission of the crime of murder as charged in the indictment; it does not form any part of the crime with which the Appellants were charged. That rape is not charged in the indictment is evidenced by the fact that under our law, one who is charged with rape of any kind is normally charged with violation of Chapter 14, Section 14.70 of the Penal Law and not Chapter 14.1, which is charged in the indictment. Therefore, Count 38 of the Bill of Exceptions is sustained.

In Count 39 of the Bill of Exceptions, the Appellants argue: Appellants say and aver that Your Honour erred when you declared that Co-Defendant Hans C. Williams, Sr. was charged with both rape and murder and that 'regrettably, the Americans failed, refused and neglected to conduct the said DNA test or analysis despite the fact that Co-Defendant Hans C. Williams, Sr. testified, while on the witness stand, that following the 3rd Autopsy the American Pathologists obtained blood samples from him and Mardia Paykue Williams and forwarded same to the National Medical Services Laboratories in Willow Grove, Pennsylvania, U.S.A. and the Government of Liberia, by and thru Dr. Quaye, neglected to send the vagina swabs and smears obtained from the first autopsy to the said Laboratories, but it was the Prosecution which failed and neglected refused and failed to do so." As we have stated previously, the indictment upon which the Appellants were tried did not charge Appellant Hans C. Williams, Sr. with rape; it charged both Appellants with murder only. With respect to the issue of DNA tests not being performed by the Americans, we agree with the Appellants and the records show that Appellant Hans C. Williams was willing to have his DNA specimen tested along with those of Meideh Angel Togbah, but the Government failed to transmit Meideh Angel Togbah's DNA specimen to the National

Medical Services Laboratories in Willow Grove, Pennsylvania, U.S.A., which had agreed to test both specimens. In fact, the records show that during the trial of this case, Appellant Hans C. Williams pleaded with the Court for the testing of his DNA but to no avail, when while on the witness stand, he stated: Your Honour, we have the Almighty God looking at us. I think only this court can do us justice. I am prepared today now to undergo DNA test because the relationship we had with the Togbahs has gone down because of lies. Why do we want to take our daughter's life? Therefore, Count 39 of the Bill of Exceptions is sustained.

In Count 45 of the Bill of Exceptions, the Appellants argue: That Your Honour erred when you sentenced the Appellants to death by hanging despite the fact that they are not GUILTY of Murder and have not committed any criminal offense; and despite the fact that Article 21(d)(ii) of the Constitution of Liberia (1986) clearly stipulates as regard cruel and inhumane punishment not [to] be inflicted, and despite the fact that on the 31st day of August, A.D. 2005, Liberia acceded to the 'Second Optional Protocol to the International Convention on Civil and Political Rights, Aiming at the Abolition of the Death Penalty. It is true that Liberia acceded to the Second Optional Protocol to the International Convention on Civil and Political Rights, Aiming at the Abolition of the Death Penalty," We take note, however, that the Convention has not been ratified by the Liberian Legislature. Therefore, the death penalty is still the law in this Republic. Notwithstanding, we agree with the Appellants that the trial judge committed a reversible error when he sentenced the Appellants to death by hanging given the fact that the Government failed to establish the Appellants' guilt beyond a reasonable doubt during the trial of this case. Therefore, Count 45 of the Bill of Exceptions is sustained.

Let us now we address the Government's arguments in support of the Appellants' conviction. In its brief and during arguments before this Court, the Government argued forcefully that this Court should affirm and confirm the Appellants' conviction for the murder of Meideh Angel Togbah. The Government sets forth five arguments in support of its contention in this regard: (1) that the Government established a prima facie case against the Appellants for the murder of Meideh Angel Togbah; (2) that circumstantial evidence is sufficient and competent to support a conviction in the absence of eyewitnesses to the commission of a crime; (3) that the uncorroborated testimony of one of the Appellants was not sufficient to acquit the Appellants; (4) that the death penalty is applicable to the Appellants once they were found guilty of the crime with which they were charged; and (5) His Honour A. Blamo Dixon did not commit any reversible error. We shall address each of the Government's arguments in turn.

The Government first argues that this Court should affirm and confirm the Appellants' conviction because it established a prima facie case of murder against the Appellants at trial. We are of the

opinion, however, that assuming that the Government established a prima facie case against the Appellants as it claims, that is not a per se ground for this Court to affirm and confirm the Appellants' conviction. Prima Facie case, according to Black's Law Dictionary, is: (1) "The establishment of a legally required rebuttable presumption; and (2) A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. Black's Law Dictionary, Eighth Edition, page 1228 (2007).

This Court has held that the establishment of a prima facie case against an accused does not necessarily imply conviction; it means only sufficient evidence to warrant a trial. *Nimley et al. v. Republic of Liberia*, 30 LLR676 (1982).

Here, a trial was had, at which the Government was required, but failed to prove the Appellants' guilt beyond a reasonable doubt, which means that the Government failed to present sufficient admissible evidence at trial to convict the Appellants. In this case, therefore, assuming that the Government established a prima facie case against the Appellants, and we do not believe that the Government did, its prima facie was rebutted by the Appellants' medical and testimonial evidence and also by the Government's own medical and police investigative evidence, which failed miserably to present any coherent theory as to how Meideh Angel Togbah's death was caused and who caused her death. At no time during the trial of this case did the Government present any evidence, direct or circumstantial, which established the Appellants' guilt for the murder of Meideh Angel Togbah beyond a reasonable doubt as required by our Constitution and our Criminal Procedure Law. We hold that whatever prima facie case that may have been established by the Government was rebutted by its own evidence and the evidence adduced by the Appellants.

The Government next argues that this Court should affirm and confirm the Appellants' conviction because its circumstantial evidence adduced at trial was sufficient and competent to support the Appellants' conviction. We disagree and hold that the evidence adduced by the Government was insufficient to support the Appellants' conviction. The Government's allegations contained in the indictment state:

[t]hat on the 30th day of November A.D. 2007, at about 7:00 p.m. in the Old Road community, Sinkor, Monrovia, Montserrado County and Republic of Liberia, the defendants hereinabove named did cause the death of another human being, to wit: Juvenile Little Angel Togbah, aged (13) under circumstances manifesting extreme indifference to the value of human life, to wit: by choking her to death and hanging her lifeless body in one of two bathrooms in the defendants' house; and "that co-defendant Mardia P. Williams, out of malice aforethought and of the conviction that co-defendant Hans C. Williams, Sr. had sexual intercourse (Rape) with decedent, she co-defendant Mardia P. Williams jumped-on, strangulated and choked decedent little Angel Togbah to death.

And that after accomplishing her wicked act; they, defendants herein, together clandestinely took the lifeless body of decedent Little Angel Togbah to one of two bathrooms in the defendants' house and tied a cloth/belt around her (decedent's) neck and did hang her lifeless body to the bathroom rod, under the pretense that decedent had hanged herself.

The Government adduced no evidence at trial, which established that either or both of the Appellants engaged in the acts attributed to them by the allegations of the indictment. When taken to its logical conclusion, the Government's case against the Appellants is glaringly absurd.

According to the Government's own police investigators, at the time of the death of Meideh Angel Togbah, Patrick Kollie, the Appellants' security, Mr. and Mrs. Oscar Paykue, father and mother-in-law of Appellant Hans C. Williams, the Appellants themselves, Hans Williams, Jr. and Angie Gargar were all in the house. This then means that with the presence of five people in the house, including his wife, Appellant Hans C. Williams, Sr. decided to have sexual intercourse with Meideh Angel Togbah in their bedroom while his wife was in the living room with five other individuals, including their son. According to the Government's case also, while sitting in the living room with five other individuals, Appellant Mardia Paykue Williams left the living room, went into their bedroom, saw her husband having sex with Meideh Angel Togbah and choked Meideh Angel Togbah to death. This is the theory of the case the Government wants us to believe. This scenario, in our opinion, is quite preposterous, and defies common sense and logic.

The Government next argues that we should affirm and confirm the Appellants' conviction because the uncorroborated testimony of Hans C. Williams, Sr., one the Appellants in this case, was not sufficient to acquit the Appellants. We agree that "[t]he uncorroborated testimony of a person accused of a crime is insufficient to acquit..." This is especially so when the evidence against him is clear and cogent. *Johns v. Republic of Liberia*, 13 LLR 143, 151 (1958). But in the case before us, not only did Appellant Hans C. Williams Sr. deny that he and Co-Appellant Mardia Paykue Williams were not responsible for the death of Meideh Angel Togbah but that the Government failed to produce any cogent evidence which established their guilt beyond a reasonable doubt.

We note that in order for the holding of *Johns v. Republic of Liberia* to apply in a particular case to benefit the Government, the Government must have first established beyond a reasonable doubt the guilt of a defendant who attempts to rebut the Government's evidence by testifying in his own behalf.

We note further, that where, as in the instant case, the Government fails to establish the guilt of a defendant beyond a reasonable doubt by the production of clear and convincing evidence, the Government is estopped from relying on this holding of *Johns v. Republic of Liberia* to attack the

uncorroborated testimony of an accused. We note also that the burden of proving the guilt of a defendant in a criminal case beyond a reasonable doubt does not shift to the defendant at any point during a criminal trial and that the burden remains with the Government until the trier of fact determines otherwise.

The Government next argues that this Court should affirm and confirm the Appellants' conviction because the death penalty is applicable to the Appellants once they were found guilty of the crime with which they were charged. We agree that the death penalty is still the law in this Republic, since the Liberian Legislature has not ratified the Second Optional Protocol to the International Convention on Civil and Political Rights, Aiming at the Abolition of the Death Penalty. However, in order for the death penalty to be administered, a defendant in a capital offense case must have first been convicted based on cogent evidence which proves his guilt beyond a reasonable doubt.

As we have said several times in this opinion, the Government failed to prove the Appellants' guilt beyond a reasonable doubt; therefore their conviction and sentence constitute a reversible error by the trial judge.

Finally, the Government argues that this Court should affirm and confirm the Appellants' conviction because, according to the Government, the trial Judge, His Honour A. Blame Dixon did not commit any reversible error. We disagree and hold that for all the reasons stated supra, His Honour A. Blamo Dixon committed a litany of reversible errors in this case.

WHEREFORE, AND IN VIEW OF THE FOREGOING, it is the considered opinion of this Court that the trial court's Verdict/Judgment was contrary to the weight of the evidence adduced at the trial of this case. Accordingly, the said judgment is hereby reversed and the Appellants are ordered immediately released from further detention at the Monrovia Central Prison and their civil rights, liberties and all other constitutional and statutory rights are hereby immediately restored.

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 this Judgment. IT IS SO ORDERED.

Judgment reversed.

When this case was called for hearing, Counsellors F. Musa Dean, Jr. and Necular Y. Edwards of the Dean and Associates Law Offices, in association with Counsellor Pearl Brown Bull of the Bull Law Firm, appeared for the appellants. Counsellors Augustine C. Fayiah, Assistant Minister of Justice for Litigation, J. Daku Mulbah, County Attorney for Montserrado County, in association

with Counsellors M. Wilkins Wright of the Wright and Associates Law Firm and Theophilus C. Gould of the Kemp and Associates Law Firm appeared for the appellee.