Reagan Yeakula, Mack Yeakula et al., of the City of Monrovia, Liberia, APPELLANTS VERSUS **Republic of Liberia,** by and through Daniel Clarke, also of the City of Monrovia, Liberia, APPELLEE

APPEAL

LRSC 48

Heard: March 19, 2014 Decided: November 5, 2014

MR. JUSTICE BANKS delivered the Opinion of the Court.

This case is on appeal to the Supreme Court from a judgment entered on April 20, 2010, by the trial judge presiding at the First Judicial Circuit, Criminal Assizes "A", sitting in a Special Jury Session, at the February Term, A.D. 2010, against the appellants herein, Reagan Yeakula and Mack Yeakula for the crime of Criminal Attempt to Commit Murder and sentencing of the appellants, as a consequence of their conviction, to a term of imprisonment of six (6) years at the Monrovia Central Prison. The conviction and judgment handed down by His Honour Sikajipo Wolloh were the outgrowth of a trial based on an Indictment filed by the State with Clerk of Criminal Court "A", First Judicial Circuit, Montserrado County, on the 23rd day of December, A. D. 2009. In the Indictment, issued as a result of a True Bill brought by the Grand Jury for Montserrado County, to the effect that the State had sufficiently shown that the defendants named in the Indictment, the appellants herein and others, referred to as "et al.", did commit the crime with which they were charged. The defendants, appellants herein, and others, were accused of assaulting the private prosecutor, Daniel Clarke, and injuring him to the extent and in manner manifesting an attempt and intent to murder the said private prosecutor. The seven-count Indictment, duly signed by the foreman of the Grand Jury and the County Attorney for Montserrado County, recited the incident leading to the Grand Jury finding magnitude in the complaint of the State, as follows:

"The Grand Jurors for Montserrado County, Republic of Liberia ,upon their oath do hereby find, more probably than not, that the defendants, Regan Yeakula, Mark Yeakula,et al, committed the crime of Criminal Attempt To Commit Murder, a felony of the second degree, to wit:

1. That on the 4th day of December, A. D. 2009,in the Township of New Georgia, Montserrado County, Republic of Liberia, the defendants, Reagan Yeakula, Mark Yeakula, et al., purposely willfully and knowingly did commit the crime of Criminal Attempt To Commit Murder to wit:

2. That the defendants, Regan Yeakula, Mark Yeakula, et al., did purposely, knowingly, willfully and intentionally engage in the conduct of Criminal Attempt to Commit Murder to wit:

3. That on the 4th day of December, A. D. 2009,in the Township of New Georgia, Montserrado County, Republic of Liberia, at about 6:45 P.M., the within named defendants jumped on the private prosecutor, beat and battered him so badly with silent weapons such as sticks and knives, cut on the private prosecutor's right hand, with swelling under his left eye and with internal injury which led to profuse bleeding through his nose with serious cut on his head and with a swollen face.

4. That the defendants, without any color of right whatsoever, with criminal minds and intent, jumped on the private prosecutor, beat and battered his body with sticks and knives which produced serious

cuts on the private prosecutor's right hand and under his left eye, with internal injury and profuse bleeding which made the private prosecutor to experience excruciating pain and was rushed to the hospital for medical attention, Photographs and Medical documents are hereto attached.
5. That the defendants have no affirmative defense.
6. A person engages in conduct knowingly if when he engages in the conduct he knows or has a firm belief unaccompanied by substantial doubt that he is doing so whether or not it is his purpose to do so.

7. That the act of the defendants is contrary to Chapter 10, Section 10.1 of the New Penal Law of the Republic of Liberia and the peace and dignity of the Republic of Liberia."
Section 10.1 of Chapter 10 of the Penal Law referenced in the Indictment, states that a person is guilty of the offense of criminal attempt if:
acting with the kind of culpability otherwise required for commission of an offense, he purposely engages in conduct constituting a substantial step toward commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be." Penal Law, Rev. Code, 26:10.1.

Based on the above quoted law and the Indictment aforementioned, two of the defendants were arrested and having made an appearance before the trial court and duly arraigned, they entered a plea of not guilty, thereby joining issue with the State, preparatory to the commencement of a trial. The defendants opted for a bench trial rather than a jury trial, and a trial having thereafter been held before a judge without a jury, the court, being satisfied that the State had sufficiently proved that the defendants did commit the offense charged in the Indictment on April 20, 2010,entered judgment of guilty against the defendants and sentenced them to six (6) years imprisonment. The final judgment wherein the trial judge, His Honour Sikajipo Wolloh, reviewed the evidence presented by the parties, cited the laws relied upon and set out the rationale for the court's decision is recited below as follows:
"The case came before this court through the strength of an indictment issued by the Office of the County Attorney.[The] indictment read thus:

[The court then recited the seven-count Indictment verbatim in its entirety, already quoted herein before in this Opinion]
The Court says he who alleges must be able to prove. Prosecution in proving the case produced four {4) witnesses. The first to take the stand for prosecution is the private prosecutor in the person of Daniel Clarke who told the court that . he was on his way to buy gas to celebrate his birthday when Mack Reagan and another fellow to be identified jumped on him and brutalized him severely and through the beating he encountered internal bleeding. They used sticks, knives and a cutlass to inflict wounds on his body. Thereafter, prosecution rested with him and his sister in person of Dorothy Clarke took the stand who also told court that even though she was not there, she was home, when bystanders went to their house and told she and her mother Mabel that "oh Mabel your sitting in here the Yeakulas are killing your son Daniel Clarke."
When they got to the crime scene, they met Daniel Clarke with blood on him. Thereafter, they took him to the police station and the police advised them to take him to the hospital which they did. She

told court photos were also taken of Daniel Clarke. The third witness for the state was the police officer Jerbo who told court that yes indeed Daniel was carried to the police station by his mother Mabel and he saw the physical wounds on his face and advised them to carry him to the hospital for treatment and the defendants Mack and Reagan Yeakula were arrested and he also testified to the police charge sheet marked as P/2 in bulk.

Thereafter, prosecution rested and the fourth witness in person of the Physician Assistant from the Redemption Hospital who also told court that indeed and in fact he saw Mr. Daniel Clarke at the hospital, he was treated, thereafter the treatment, a medical certificate was issued appertaining to the treatment and said medical certificate was marked by court as P/3.After the testimonies of these four witnesses, prosecution rested with the production of oral and documentary evidence and prayed court for the admissibility of the evidence, court marked P/1 in bulk, P/2 and P/3. Based on the application, the court admitted those pieces of documents, and thereafter prosecution rested evidence in toto.

Defense counsel produced four (4) witnesses. The first witness who took the stand was Mack Yeakula who told court that he and Daniel Clarke fought because Daniel Clarke wanted to burn his father's house and he acted in self- defense. The second witness to take the stand was Reagan Yeakula, who also confirmed that yes indeed they fought. The other two witnesses who took the stand for the defendants told court that Daniel wanted to burn Mr.Yeakula's house and the Yeakula children tried to stop him and the fighting commenced right away. After the testimony of the four witnesses, counsel for defendants rested with the production of oral testimony and thereafter rested evidence in toto. In argument, counsel for the prosecution made the following law citations: 27 LLR p.762,Syl. 18,which is prima facie evidence,1LCL Revised, p. 197,Sec. 25.4,Relevance;the same book,198,Burden of Proof; 14 LLR p. 524, Syl. 3,Circumstantial Evidence;1LCL Revised,25.8, Admissions; 30LLR,Sly. 5, p.676;2 LLR,Syl.1,p 524,Syl.3,proof of guilt of crime; 30LLR, Syl. 5,p.676; 2LLR, Syl.1, Presumptive and Circumstantial Evidence;30 LLR ,p.71, Syl. 8; same book, same page; 14 LLR.

Defense counsel, in arguing his case, cited the following laws: 40 LLR,p.659, Syl.3;same book, Syl. 5; same book, Syl.6, Burden of Proof; same book,Syl.9, Circumstantial .Evidence; same book, Syl.10; and Nathaniel Massaquoi, heirs of the [late] Momolu Massaquoi, Appellants vs. RL, 38LLR, p. 385, Syl. 12, Indictment; same book, Syl.13; 2 LLR,p.319, Syl. Variance; same book, 313 Syl. 3, Reasonable doubt; same book, Syl. 4,reasonable doubt; 1LCL Revise 25.5 Burden of Proof; same book, 25.6, Best Evidence; same book, 25.7, Hearsay Evidence; same book, 25.8, sub-section 1, Admission; same book, p.309, sec. 21.1,Defendant Presumed Innocent; 7 LLR p. 205, Syl. 1; same book, Syl. 2, Assault and Battery, same book, Syl. 2.

Issue number one: whether or not the indictment that brought the defendants under the jurisdiction of this court was proven beyond all reasonable doubt.

Issue number two: whether or not the prima facie case was established beyond all reasonable doubt.

In addressing the first issue, the court says that under the doctrine of burden of proof, he who alleges must be able to prove beyond all reasonable doubt. Prosecution, in proving the case beyond all reasonable doubts thru the indictment, produced four witnesses: the first was Daniel Clarke, who told this court that on the 4th day of December 2009,the defendants jumped on him, beat him mercilessly about 6:45p.m.,under the cover of darkness and he was [rendered] unconscious. The second witness was Dorothy Clarke, who told the court that the defendants beat her brother with sticks and cutlass and when they saw the brother he was unconscious and they had to rush him to the police station and

thereafter to the hospital. The court says, the proof of a guilt of a crime will be determined sufficient where the evidence, even if circumstantial, is as of such nature as to convince any rational mind of a criminal responsibility of an accused. See 14 LLR, p. 524, Syl. 3. Also in 30 LLR, p. 676, Syl. 5, reads thus: "it is not necessary that one actually be seen committing a crime before he could be held guilty, but that it is sufficient for the person to be convicted whenever the logical deductions from the facts and circumstances lead conclusively to the fact that a crime was committed and that the accused is connected with the crime. Dorothy Clarke, when she took the stand, she said even though she was not there, she was home when the neighbors went to their house on the 4th of December 2009, at about 6:45 p.m. and the neighbor told Mabel you are sitting in here, your son Daniel is dying through the hands of the Yeakulas.

The court says the preponderance of evidence emanated from the witnesses produced by prosecuting attorney and the failure from defendants to deny the evidence leveled against them proves to this court that yes indeed the admission that they fought is sufficient to adjudge the defendants guilty. It is the ruling of this court that the two defendants are adjudged guilty by the court and should be sentenced to six (6) years. AND SO ORDERED."

It is this judgment, quoted above, along with other errors alleged by the appellants to have been committed by the trial court that formed the basis for the appeal taken to the Supreme Court. In assigning errors to the trial court in the conduct of the criminal proceedings against them and the judgment entered by the said court, the defendants/appellants filed an eleven-count bill of exceptions, which we herewith quote verbatim as follows:

1. That Your Honor reversibly erred when you adjudged the defendants guilty of the offense "Criminal Attempt to Commit Murder"; in that, the evidence adduced at the trial, besides being contradictory, did not establish any of the elements constituting an attempt to commit murder.

2. That, under the Criminal Procedure Law, in order for an attempt to commit any criminal offense to suffice, the culpable elements of the offense which the defendant attempts to commit must be patently and adequately established at the trial. In the instant case, the prosecution woefully failed to establish any of the elements of the crime which defendants allegedly attempted to commit, same being the crime of murder.

3. That notwithstanding the Indictment charges the defendants with having physically battered the private prosecutor, thus inflicting serious bodily injuries on various parts of his person with deadly weapon known and referred to as knives and sticks the said purported criminal agency and/or weapon was never produced at the trial. Hence, the prosecution never established any prima facie case; by which the final judgment of Your Honor is [rendered] of no legal force and effect or efficacy.

4. That Your Honor further erred when you opined in your final judgment that the defendants did do and commit the crime charged; in that the testimony of the private prosecutor to the effect that he was beaten and injured by the defendants was never corroborated by any witness or witnesses whomsoever. Hence, the uncorroborated testimony of the private prosecutor was insufficient to warrant the judgment of conviction.

5. That the testimony of the police officer, purporting to be the Investigator of the alleged offense was fraught with prejudice, falsehood and contradiction; in that, said officer who alleged visiting the purported scene of the crime, did not know the residence or house of the defendants where he claimed

the crime was allegedly committed. Thus, failure of the police officer to say with certainty in response to a question propounded to him on the cross, as to where the crime was allegedly committed, undermines not only his direct knowledge of the case but his credibility as a witness. Your Honor therefore erred when you gave credence to such testimony.

6. That Your Honor erred when you convicted the defendants of the serious offense "CRIMINAL ATTEMPT TO COMMIT MURDER"; in that assuming, without admitting, that defendants beat private prosecutor, the injury was not so serious as to cause immediate death, for reason that the so-called nurse who testified to the condition of the said private prosecutor clearly stated that he (private prosecutor) was received, treated and discharged on the same day. Hence, the alleged treatment and discharge of private prosecutor on the same day presupposes the absence of severity of any injury or wound he reportedly received.

7. That Your Honor did not take jurisprudential consideration or recourse to the testimonies of the defendants and their witnesses; in that, the corroborated testimonies of the defendants [were] to the effect that:

a. Private prosecutor, with premeditation, invaded defendants' dwelling house and attacked co-defendant Reagan Yeakula on allegation that said co- defendant earlier abused his (private prosecutor's) sister.

b. The co-defendant Mack Yeakula swiftly but with reasonable caution grasped the five-gallon container of gasoline from private prosecutor who was imminently on the verge of wasting same into the entrance (door) of said co- defendant's house, thus averting the burning of the said dwelling house.

c. In the process of stopping private prosecutor from wasting this inherently dangerous explosive device (gasoline), co-defendant was attacked by said private prosecutor, thus, a fighting between the two ensued.

d. After parting private prosecutor and co-defendant Reagan, said private prosecutor went to the road, bought gasoline and later returned with irresistible determination and malice to burn defendants' house with said gasoline; which act was aborted by the swift intervention of defendant Reagan.

e. Private prosecutor was the aggressor who deliberately attacked defendants at two different times at their (defendants') house on [the] mere allegation that his sister was insulted by the defendants.

8. That Your Honor reversibly erred when you ignored that very important fact that although the prosecution gave notice that it would produce a rebuttal witness to rebut defendants' testimony to the effect that there was an affray, but that the private prosecutor never sustained any injury.

9. That Your Honor was partial in your sustaining of several objections against several pertinent questions asked on the cross by counsel for defendants.

10.That Your Honor's judgment is against the weight of the evidence adduced by the prosecution; in that, even though the prosecution gave notice that it would rebut the very testimony of co-defendant Reagan to the effect that he was attacked and knocked down by the private prosecutor without any provocation, thus suggesting that private prosecutor was the aggressor.

11.That on sheet eight (8) of March 30, 2010,the prosecution gave notice that it would produce a witness to rebut the testimony of co-defendant aforesaid to the effect that the private prosecutor purposely took gasoline into their house and wasted same on him and wasted some at the entrance of the door of defendants' house with the intent to burn same by which the fighting ensued.

Wherefore and in view of the foregoing, defendants pray that Your Honor will approve of this bill of

exceptions so that Your Honor's numerous interlocutory rulings and final judgment will be reviewed and passed upon on appellate review by the Supreme Court of the Republic of Liberia and to further grant unto defendants such relief justice and right may demand in the premises."

From the several allegations made by the appellants in their bill of exceptions, our review of the evidence presented by the parties and the final judgment of the trial court coupled with the arguments made before this Court by the parties, we have culled out the following issues, deemed by us to be determinative of the case:

1. Whether the prosecution met the legal standard of proof beyond a reasonable doubt to warrant the conviction of the defendants/appellants for the crime charged in the indictment?
2. Whether the sentence imposed by the trial court on the defendants/ appellants was in excess of the imprisonment limit imposed by the Penal Law for the offense with which the defendants/appellants were charged?

The appellants also made the allegation that the trial judge sustained several objections of the prosecution to "pertinent" questions asked by the defendants' counsel of the prosecution witnesses whilst the witnesses were on the cross-examination. While ordinarily we would address the allegation and the contention, as advanced by the appellants, we do not believe that in the instant case the allegation warrants the attention of the Court for the fact that it makes absolutely no mention of any specific questions asked by the defendants' counsel and which the lower court overruled; it fails to set forth the objections interposed by the prosecution to any specific questions asked by counsel for the appellants; and it points to no specific rulings made by the trial judge to any specific objections interjected by the prosecution. Such lack of specificity as to the questions asked, the objections raised, and the rulings complained of makes it difficult if not impossible for this Court to make any determination as to the correctness or wrongness of the unspecified rulings of the trial judge without getting into the realm of speculation as to which questions reference is being made to or what rulings of the court the appellants believed to be in error. We note that this Court has on many occasions said that unless an appellant is very specific as to the errors which the trial judge is accused of committing, we will not belabor the Court's time and attention or indulge speculation or conjecture. Mim Timber Corporation v. Johnson, 31LLR 145 (1983); C. F. Wilhelm Jantzen v. Johnson et al., 31LLR 343 (1983); Heith v. Republic, 39 LLR 50 (1998);Constance et al. v. Ajavon et al., 40 LLR 295 (2000); Wiah v. Republic, 38 LLR 385 (1997).

Even more disturbing is that the appellants sought to interject into the case by way of their brief filed before this Court, an issue not raised in the trial court or even in the bill of exceptions. The issue begs the answer to the question as to whether a single conviction can be had of a defendant based on two separate provisions of the Penal Law and which provide for separate offenses and two separate criteria for conviction. The crux of the issue, belatedly advanced by the appellants is grounded in the appellants' contention that there is no provision in the law entitled "criminal attempt to commit murder" and that the provision of criminal attempt to commit a crime does not therefore apply to the crime of murder. In their brief filed with the Clerk of the Supreme Court, this is how the appellants framed the issue:"Whether or not [the] crime charged in the indictment," criminal attempt to commit murder' was proper in keeping with the facts and circumstances of the case?" And although the appellants only referenced the issue in a round-about way, their counsel, arguing before this Court, in an attempt to refute the prosecution's claim that they had every right to charge the appellants as the State did, noted

that the State could not under Section 10.1 of the Penal Law charge the appellants with having violated Section 14.1 of the said law. We reject this contention as baseless and without merit.

We should note that ordinarily we would have chosen not to deal with the issue raised for the first time at the appellate level. We have painstakingly reviewed the entire records of the trial proceedings in the lower court and we have seen nowhere in the said records any challenge raised by the defendants/appellants to the provisions of the statutes under which they were charged. No claim was made by the appellants that the offense with which they were charged was not provided for by the Penal Law or that even if provided for, that the law was unconstitutional or otherwise illegal; no claim was made that the indictment was defective or illegal on account of this issue and no motion was filed or submission made to dismiss the indictment on that account. Instead, the appellants allowed themselves to be charged and to be regularly tried under the indictment. Under the circumstances, as interesting as the issue is and needed attention of this Court, the appellants would be precluded from raising the issue at this level. Gemayal v. Cooper and Cooper, 38 LLR 518 (1998); Knuckles v. The Liberian Trading and Development Bank, 40 LLR 49 (2000);Lone Star Insurance Company v. Cooper and Abi Jaoudi and Azar Trading Corporation, 40 LLR 549 (2001).

We note further that to our surprise, not only did the prosecution not object to the issue being raised for the first time at the level of the Supreme Court but the prosecution also raised and argued the issue. This Court does not raise contentions or objections for the parties, for to do so would violate the principle that the Court should not do for parties that which the parties have a legal obligation to do for themselves. Liberia Agricultural Company v. Hage et al., 38 LLR 259 (1995).

Notwithstanding, and because we believe that the argument surrounding the issue should be laid to rest, we shall make some comments herein in passing. This is what the relevant portion of Section 10.1 of the Penal Law says: "A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for the commission of an offense, he purposely engages in conduct constituting a substantial step toward commission of the offense." We note that this specific provision of the statute does not state any particular offense. Indeed, the provision does not list, and was not intended to list, any specific offense. But it clearly references and recognizes that in order to have a person charged under section 10.1, another very specific offense, stated in other sections of the Penal Law, must be the goal of the accused. We believe that it would be most unreasonable for the section to exhaustively list or spell out every offense stated in the Penal Law in order for one to be charged under the section. To give such meaning to the provision advocated by the appellants, would irrationally and unjustly limit the coverage or application of the provision and prohibit the prosecution of attempts to commit offenses stated in other provisions of the law simply because the actual offense or criminal act which is attempted did not materialize. In the case of murder, for example, this would mean that unless an accused actually killed a person he could not be charged with an attempt to murder the person as if the attempt to murder the person could not in and of itself be an offense or a crime.

Moreover, any endorsement by this Court of such argument would automatically preclude prosecution for any number of offenses which may not have existed at the time the section was enacted but which subsequently by amendments to the Penal Law, were subsequently determined by the Legislature to be crimes. We do not believe that the Legislature intended such result, and we cannot conceive that any rational person could impute such intent to the Legislature. Instead, we perceive that the intent of the

Legislature was to bring under the ambit of the provision any attempt to commit any crime specified by the Penal Law, whether in existence at the time section 10.1was enacted or subsequently provided for by constitutional expansion or statutory amendments.

Thus, if for instance, the Penal Law contained a provision making burglary or armed robbery a crime, Section 10.1 ensured that any attempt to commit such a crime even though the crime itself was not actually committed would in and of itself constitute a crime and therefore be punishable under the law. The same would apply to cybercrimes if the Legislature sometime in the future declares by Act that such intrusion by a person to constitute a criminal offense. Section 10.1 makes the attempt to accomplish any of those crimes a criminal offense and therefore renders the doer of the attempt subject to a criminal charge and punishment.

In the instant case, the appellants were charged with attempting to violate section 14.1 of the Penal Law which relates to murder. The essence of the charge was that no murder was committed but that from the circumstances of the case, the conduct of the appellants and the severity of the injuries which they inflicted on the victim, the private prosecutor, and the weapons which they used in inflicting the injuries, amounted to a criminal attempt to commit the crime of murder. The prosecution therefore did not err in preferring such a charge and the trial court also did not err in entertaining such charge and conducting a trial of the appellants on the said charge. To preclude the element of "criminal attempt" would in effect exclude a tremendous range of crimes from prosecution and every person attempting the commission of a crime specified in the Penal Law would not being susceptible to punishment for the attempt, have to be set free. Again, we must emphasize that we cannot conceive that the Legislature intended such a result which, we believe, would clearly endanger the society and render it to a large degree lawless and unable to deal with a substantial number of crimes, and possibly render it even ungovernable.

Accordingly, because the issue was not raised in the lower court or the statute challenged therein but also because of the reasons stated above for our conclusion that the State can charge and seek conviction of a defendant under two separate statutory provisions, we are compelled to dismiss the contention of the appellants in challenging the statutory basis for the charges preferred against them. We therefore proceed to the more critical issue warranting our judicious attention. That issue is whether the prosecution met the legal standard of proof that is beyond a reasonable doubt to have warranted the conviction of the defendants/appellants for the crime charged in the indictment. The appellants assert that the State failed to show or establish beyond a reasonable doubt that they committed the crime of criminal attempt to commit murder. They highlight a number of factors upon which they premise the allegation, including: (a) that the testimony of the private prosecutor was not corroborated by other witnesses; rather, they said, the other witnesses testified only to what they were told and not what they had seen, which brought their testimonies within the realm of the hearsay rule, making same unreliable for purposes of conviction of the appellants;(b) that the prosecution failed to produce the weapons (knives, sticks, cutlasses, etc.), critical to the burden of proof imposed on the prosecution, and which the indictment alleged the appellants had used in assaulting the private prosecutor; (c) that the evidence produced by the State was at variance with the allegations set out in the indictment;(d) that the evidence produced by the appellants showed an act of self-defense by the appellants and further, that it created doubt in the prosecution's case since it showed that it was the private prosecutor who being the aggressor and with a premeditated mind, had fought the appellants and threatened to burn down their father's house with gasoline; (e) that the appellants' testimonies were corroborated by other

witnesses produced by the defense and were not rebutted by the prosecution even though the prosecution had promised to produce rebutting evidence; and (f) that the injury suffered by the private prosecutor was of a minor nature, not evidencing anything near an attempt to murder the private prosecutor since the facts, as revealed by the State's own evidence disclosed that the private prosecutor almost immediately following his treatment was discharged from the hospital indicating there were no severe injuries and that therefore no showing of an intent by the appellants to murder the private prosecutor.

For their part, the prosecution maintained that (a) the State established beyond a reasonable doubt that the appellants criminally attempted to murder the private prosecutor, not only by the types of weapons used (knives, sticks, cutlasses, etc.) which of themselves are characterized as deadly weapons, but also by the severity of the injuries sustained by the private prosecutor shown by the photographs taken immediately after the incident, as well as by the conduct of the appellants, which the prosecution said manifested extreme indifference for human life, a requirement for conviction under the statute with which the appellants were charged with violating, tried and convicted;(b) that the testimonies of the four witnesses produced by the State to substantiate the allegations set forth in the indictment not only corroborated each other but also clearly refuted the claim of the appellants that the prosecution had not met the "beyond a reasonable doubt" standard; and (c) that the testimonies of the witnesses produced by the prosecution not only established a prima facie case against the appellants but also clearly refuted the appellants' claim of self- defense and obviated the need for the production of any further rebuttal witnesses on the issue.

While the witnesses produced by the State and the defense differed or disagreed as to what really transpired and as to who provoked the incident, the court acting as judge and jury, had the responsibility to examine the evidence and determine whether under the circumstances, the prosecution had met the legally imposed burden of proof beyond a reasonable doubt to warrant the conviction of the appellants.

It is undisputed that on the night of December 4, 2009, an altercation took place between Daniel Clarke, the private prosecutor, and Reagan Yeakula and Mack Yeakula, the defendants/appellants. What is opened to debate though is what provoked the parties to engage in the skirmish that left Daniel Clarke severely injured, since the parties involved provided the trial court with distinctly different accounts as to what transpired. Daniel Clarke, the private prosecutor testified that the defendants attacked him twice ,once on his way to purchase gasoline for his generator and again on the return trip home. He testified that in the initial confrontation, one of the defendants hit him with a stick in the course of an argument relating to a pre-existing cell phone dispute that had occurred between one of the defendants and the private prosecutor's sister, Dorothy Clarke. The witness said that after he was hit, some persons intervened to put an end to the quarrel and that it was because of this intervention that he was able to continue on his journey for the gasoline. He stated further that following his purchase of the gasoline and while on his way home, the defendants/appellants, who had concealed themselves in the dark between some houses, descended on him and proceeded to pummel him with sticks, knives and cutlasses, which resulted in him being severely injured and losing consciousness.

The prosecution, in addition to the private prosecutor, produced three other witnesses. The second witness was Dorothy Clarke, sister of the private prosecutor. This witness testified that she was not present at the scene of the incident when it occurred but was informed of it by a third party, one Emily

Taylor, who had come to the home of the private prosecutor and informed his mother that the private prosecutor was dying from beatings inflicted by the Yeakulas. The witness further stated that upon receiving the information of the beating of her brother, she and her mother proceeded to the scene of the incident where they met the private prosecutor unconscious. She noted that they then took him to the hospital where he was treated and where photographs were taken to show the condition he was in following the incident. The witness acknowledged that she did not see any of the appellants beating the private prosecutor but informed the court that she had been told by Emily Taylor and others that it was the appellants that had beaten the private prosecutor.

The third witness for the State was Joseph Anthony Jarbo, an investigator of the Liberian National Police (LNP), assigned to the Zone 4 Police Station at Gardnersville. The witness testified that the matter was reported to the LNP by the mother of the private prosecutor, Ms. Mabel Clarke, and that based on the said complaint he conducted an investigation on behalf of the LNP, including making a visit to the scene of the incident where he met the suspects, the suspects' counsel, community dwellers and many other persons. The police officer further stated that at the conclusion of the investigation, a charge sheet was prepared charging the appellants with the crime of aggravated assault. He noted, however, that while the appellants were awaiting trial, the Magisterial Court for Gardnersville issued a writ of arrest against the appellants charging them with Criminal Attempt to Commit Murder. We did not see in the records any queries of the witness either by the prosecution or the defense, as to how the investigations were conducted or how the conclusion was reached to charge the appellants with aggravated assault. Notwithstanding, we did see the investigative report wherein the investigating officer stated that his background investigation revealed that the appellants had in fact attacked the private prosecutor in the presence of members of the community and that it was the community members who had taken the private prosecutor from the hands of the appellants.

The State's fourth. witness, in person of Alimamy Sannoh, a Physician Assistant, testified that he was a supervisor at the Redemption Hospital, serving in the Emergency room and the Out Patient Department. He stated that on December 4, 2009, the private prosecutor, Daniel Clarke, was taken to the Redemption Hospital for treatment of multiple wounds on his body, including bleeding from the nose, swelling of the left eye, and bleeding from the back. He said that he had treated the patient and discharged him but had directed that he be forwarded to the John F. Kennedy Medical Center for x-rays to be taken to ascertain if any bones had been broken.

The above concluded the oral testimonies of the prosecution witnesses, following which the State requested the court to admit into evidence documents identified by the witnesses, marked by the court and confirmed by the witnesses. The prosecution thereafter rested evidence in total.

The defendants, on the other hand painted an entirely different picture. The first witness for the defense, Reagan Yeakula, one of the defendants, testified that after returning home from school at 1:00 p.m. that afternoon, one Doris Clarke passed before their house and believing that they had insulted her, reported the matter to her husband ,who without conducting any investigation, approached him, Reagan Yeakula and slapped him. At that point, he said, he wanted to attack his assailant but that the latter pulled out a knife and chased him through his house and into a swamp. The witness stated further that even while he was in the swamp his attacker pursued him and jumped on him with the knife which resulted in the two of them fighting over the knife. He said that it was only with the intervention of people in the

community, including one James Thomas, who came to the scene in response to a call for help from his mother. Later on that day, while awaiting the return of his father, he said, the private prosecutor approached him and pushed his chest causing him and his mother to fall to the ground. A fight then ensued when the private prosecutor jumped on him but that the fight was stopped by other people who came on the scene. Reagan Yeakula stated further that around 7:00 p.m. that evening, the private prosecutor returned to the Yeakulas' residence, where he then shoved the co-defendant in the chest, causing him and his mother to fall. He said that he then began to fight the private prosecutor but that they were once again separated. Reagan Yeakula then claimed that as Daniel Clarke departed, he vowed to purchase some gasoline to burn down the Yeakulas' house. This co- defendant claimed that in an attempt to follow through on his threat, the private prosecutor returned once again later that evening, with gasoline and that he the private prosecutor began to sprinkle the gas on the house. This the witness said prompted h.im to "head butt" the private prosecutor which action by him caused the gasoline and matches to drop. It was supposedly then that the other co-defendant, Mack Yeakula,is said to have emerged to divide the two combatants. However, Reagan Yeakula alleged that the members of the Clarke family who were present were armed with cutlasses, knives and sticks. When the fight was over, he said, they, the co-defendants, retreated to their home for safety where they called their father who later appeared with a police officer.

Mack Yeakula, the other co-defendant, was the second defense witness to testify. He stated that when he returned from school around 2:00 p.m. he was informed that his brother had been involved in an altercation that then at 6:00 p.m., after returning home from walking around with friends, he was informed that that the private prosecutor was in the process of purchasing gasoline in order to attack his brother and burn down the Yeakulas residence; and that the private prosecutor later emerged with the gasoline and sprayed some on the house and his brother which led to a scuffle between the two. He recounted further that in order to prevent the burning down of his family's home he attempted to take the can of gas from the private prosecutor but that the latter then attacked him, which forced him to then protect himself by fighting back against the private prosecutor. During their fight, he further stated the gas fell to the floor and was picked up by James Thomas who turned it over to the defendants' father and who in turn later reported it to the police.

James Thomas, the defense's third witness, provided a detailed report about how he recalled the events of that day he key portion of which is quoted hereunder:

"On December 4, Friday at 1:30 p.m. I came from work and I was on my porch. I heard a loud sound in Mr. Yeakula's fence and behind the sound was a voice of a woman calling for help, "Your come the rogue will kill my son." On my way going into the fence, I saw two boys running from the fence, stoning each other and I decided to blow alarm rogue! rogue! Both of them ran into the swam people came outside and we ran after them. Getting closer to them, I recognized [co-defendant] Reagan Yeakula; he was in front and the person chasing him was behind him. He ran into the dump site and the boy ran behind him, lifted him in the air and brought him down. We were three men in number that were there.

After knocking him down he took the knife from his side the color of the knife is green. When he lifted his hand I yelled and rushed there and held his hand. I parted both of them with the help of Alfred Smith. After parting them I decided to ask the boy who had the knife what happened. He responded, "Papa this man insulted my girlfriend and fought her. My girlfriend went and told me and when I came to ask him he insulted me too. That is why I jumped him to fight.

In that time, Dorothy Clarke, the girlfriend, appeared and Reagan slapped her and Alfred went in between them. We talked to them; I took Dorothy Clarke and her boyfriend to my house and they sat down. So I asked Dorothy what happened. She said to me, "I was coming from the market, this boy and three of his friends surrounded me. He said to me,' You say I am a rogue, I stole your mother's phone.' Then he said, 'If you say I stole your ma phone, what will you do to me". Then the boy insulted her. She went home and told her boyfriend what happened and leaving her behind he came to Mr. Lawrence Yeakula's house to inquire. That is how the fight started. So I told them if someone steals your property carry the person to the station; both of them agreed with me and they left.

About 6:45 p.m., I went on the road, on my way back at 7:00 p.m., I met the entire yard crowded with people and I asked what happened. People said [that when] Daniel Clarke came from in town, his sister told him that Reagan insulted her. So he came and went into Reagan's yard and jumped him to fight and fought. Between 7:15 to 7:20, Daniel Clarke came from the road, on his way coming, he had a gallon of gas in his hand, and the nearby house stopped him with the gas and asked where are you carrying the gas and he said , "I am carrying the gas to burn the rogue and his house. The people said, "No, do not do that." He told the people, "We Kpelle people, when we say something, we got to do it. I will go there." He passed by my house and in a minutes time, we heard sounds in Mr. Yeakula's house again and we all ran there and saw Mack and Reagan Yeakula chasing him with the gas he carried to burn the house. I met them and told them to stop and took the gas from them and carried the gas to my house. In that moment, Mr. Habba called Mr. Yeakula and told him, "Hurry up and come home. If you do not come, your house will be on fire."

After a few minutes, the news reached the island where Daniel Clarke lives that Lawrence Yeakula's children wanted to kill him. The whole group came from the island. The mother came and passed by Mr. Yeakula's place and went where Daniel Clarke was lying down because they hit him on the head and he dropped. So, the mother went there. The balance people started throwing stones all on top of the house. When we went in and closed our doors, after thirty minutes, Mr. Lawrence Yeakula came and told the children to open the gate and they did so. Mr. Yeakula called the police from Zone Four, explaining what had happened to the police. The children told their father that I took gas from them that Daniel brought to burn the house down. He asked me for the gas and I brought it and gave it to him, and he presented the gas to the police. On Saturday morning, Mr. Yeakula called me saying, "I am going to the police. Please follow me." I asked him what I am going for, and he said you are going as witness to the station. When we went there, no one asked me any questions. Dorothy Clarke made a statement, Reagan Yeakula made a statement and they told us to leave."

The last witness who testified for the defense, a lady by the name of Yea Flomo, who allegedly witnessed the fight, corroborated the testimony of the other defense witnesses, to the effect that there was an altercation in the afternoon in which Reagan Yeakula was chased by someone with a knife and that in the evening Daniel Clarke, the private prosecutor, attempted to burn down the Yeakulas house. However, she stated that the person with the knife who allegedly pursued Reagan Yeakula in the afternoon was not Daniel Clarke. Rather, she said, it was Daniel Clarke's brother-in-law. She asserted that Daniel Clarke did not appear until the evening when he attempted to burn down the house.

Since the appellants elected to have a bench trial, thereby waiving the right to a trial by jury, the assigned Circuit Judge to Criminal Court "A", His Honour Sikajipo Wolloh, was charged with being the fact-finder in this case. After weighing the evidence presented by both parties, he ruled that "the preponderance of the evidence emanated from the witnesses produced by the prosecuting attorney and the failure from defendants to deny the evidence levied against them prove to this court that yet indeed the admission that they fought is sufficient to adjudge the defendants guilty. It is the ruling of this court that the two defendants are adjudged guilty by the court and should be sentenced for six (6) years".

The laws of this jurisdiction, from the Constitution to the statutes to the cases determined by the nation's highest Court, the Supreme Court, recognize liberty as one of the key pillars of human dignity, and therefore have enshrined as a principle, to be followed at all times, that in order to deprive a person of that essential aspect of humanity, there cannot be an iota of doubt or uncertainty in a court of law with regard to the guilt of a criminal defendant. This is why in all of those avenues the basic concept is espoused, and jealously guarded, that firstly, a defendant is presumed innocent until proved guilty of the offense with which he or she is charged, and secondly, that in order to convict a defendant of a crime, each element of a crime must be proved beyond a reasonable doubt. LIB.CONST.,ART 21(h)(1986);Criminal Procedure Law, Rev. Code 2:1; Matierzo v. Republic, 34 LLR 719 (1988); Williams and Mulbah v. Republic, 34 LLR 180 (1986); Bah v. Republic, 36 LLR 541(1989);Raynes et al. v. Republic, 36 LLR 203 (1989); Heith v. Republic, 39 LLR 5O (1998).

From the earliest years of Liberian jurisprudence, this has been the rule and the Supreme Court has consistently avowed to uphold it. In 1906,this Court declared, "In all trials upon indictments the State, to convict, must prove the guilt of the accused with such legal certainty as will exclude every reasonable hypothesis of his innocence; the material facts essential to constitute the crime charged, must be proved beyond a rational doubt or the accused will be entitled to a discharge." Dyson v. Republic of Liberia, 1LLR 481,483 (1906). Later, Chief Justice James Pierre, speaking on behalf of this Court wrote, "In a criminal case, the burden is on the prosecution to prove beyond a reasonable doubt the essential elements of the offense with which the accused is charged; and if this proof fails to establish any of the essential elements necessary to constitute a crime, the defendant is entitled to an acquittal." Kamara v. Republic of Liberia, 23 LLR 331, 332 (1974). This Court once again affirmed this principle quite recently when it proclaimed, "In this jurisdiction, a defendant is not even required to take the witness stand to produce evidence. The burden is on the accuser, the State, to prove the accused guilt, beyond a reasonable doubt." Zeegboe et al. v. Republic of Liberia, Supreme Court Opinion, October Term, 2008, decided December 18, 2008. Today, we re-echo our affirmance of that principle and this Court's continued stance to scrupulously guide and ensure that it is adhered to at all times by the triers of the facts in the lower courts of the Republic.

With the foregoing fully in our mind, we ask again did the State prove beyond any reasonable doubt that the appellants are guilty of the offense of criminal attempt to commit murder, charged in the indictment. In this case, the underlying offense is murder and in order to establish that the defendants took "substantial steps" to murder the private prosecutor, it must be proven that the defendants specifically intended to take the life of the private prosecutor or that they exhibited an extreme indifference towards his life that could have resulted in his death. Penal Law, Rev. Code 26:14.1. We are of the considered opinion, and hold consistent therewith, that both from the oral and documentary evidence, and the circumstances narrated in the case, the State did prove beyond a reasonable doubt that the appellants did attempt and did intend to murder the private prosecutor. The appellants did not

have to utter words that they would kill the prosecutor, although the utterance of such words would have been an added element in finding them guilty of the offense with which they were charged. The use of weapons which have the propensity to kill or take a life is clearly a factor that manifest an intent to kill; and the fact that the weapons may not have been produced in court did not detract from that conclusion, given the introduction of the photographs which clearly showed the condition of the private prosecutor and the severity of the injuries which he sustained at the hands of the appellants. One looking at the photographs is clearly left with the impression that the some sharp object or weapon was used in inflicting the injuries, and this was clearly supported by the medical records introduced into evidence by the prosecution.

Further, the private prosecutor testified that the defendants/appellants attacked him twice on the day of the incident, once on his way to purchase fuel and again on his way home after he had secured the gasoline. In the second attack, he claimed he was beaten with sticks, cut with knives and chopped with a cutlass and, after he was knocked unconscious, the defendants threw him into the swamp. The allegation of the use of deadly weapons during a fight should rightfully subject any assailant to an attempted murder charge because the utilization of a deadly weapon sufficiently constitutes a "Substantial step" to commit murder. In this case, does the evidence undeniably showed that the defendants/appellants employed such weapons as the private prosecutor claimed?

Indeed, the appellants did not deny that they inflicted the wounds on the private prosecutor shown by the photographs. Indeed, the appellants admitted that they fought with the private prosecutor. But they advanced the defense, firstly, and in an apparent justification for their action, that they acted in self-defense; and secondly, that the injury suffered by the private prosecutor failed to show any intent by them or on their part to murder the private prosecutor, in that, according to them, the private prosecutor was treated and released from the hospital the same day. Yet the photographs speak a lot of the injuries sustained by the private prosecutor. How else do the appellants explain how the wounds got onto the body of the private prosecutor following their encounter with him? We believe that they failed to overcome the clear evidence of the injuries shown in the photographs and the testimony by the prosecution witnesses to the effect that the private prosecutor was beaten to the extent that he was rendered unconscious.

Our review of the testimonies of the witnesses for the prosecution clearly showed, manifested or demonstrated intent by the appellants and a disregard by them for human life, as required by the statute under which the appellants were charged and convicted. The second witness for the prosecution, in person of Dorothy Clarke, testified that upon being informed that her brother had been beaten, she rushed to the scene of the incident where she met her brother unconscious. This allegation or testimony was never rebutted or refuted by the appellants. At no point did they or any of them testify that the altercation which they had with the private prosecutor or their injuring of him did not result into him becoming unconscious. When one combines this un-rebutted testimony with the testimony of the medical personnel and the medical report, one is clearly drawn to the conclusion that they demonstrate a manifestation of intent by the appellants to murder the private prosecutor, although the injuries inflicted on him did not result into his death and although they may not have desired such result. With this kind of evidence, it was incumbent upon the appellants to show either that the private prosecutor was never rendered unconscious or that his becoming unconscious was not due to the incident or to any acts of the appellants. This they failed to show in the entire defense of the charges.

Moreover, the testimony of Alimamy Sannoh, Supervisor of Redemption Hospital's Emergency Room,

who took the stand and testified on behalf of the State, although very brief, was also damaging to the defense. Mr. Sannoh testified that, along with nurses, he received the private prosecutor for treatment the night of the fight. The result of the medical report from the private prosecutor's visit was admitted into evidence and it supported his testimony that the private prosecutor suffered from a hematoma of the left eye, multiple lacerations, and bleeding from his nose. A laceration is the tearing of the skin that produces a wound with torn or rugged edges. The fact that the supervisor of the emergency room, trained to some extent, however minute, to medical exposures, identified multiple lacerations, supports the private prosecutor's claim that the defendants did use some sharp objects or weapons to attack him. The private prosecutor's claim is further supported by the photographs taken in the immediate aftermath of the squabble, and which were duly identified and admitted into evidence. The photographs show injuries indicative not only of blunt force trauma inflicted on the private prosecutor's head, but also of lacerations on the arm and other parts of the body inflicted by a blunt object or weapon. We believe that these clearly compensate for the prosecution's failure or inability to produce the objects or weapons which the appellants used in injuring the private prosecutor and hence, the absence of the weapons cannot therefore form a basis for the assertion of reasonable doubt by the appellants or for any claim that the case was not proved that the appellants committed the act with which they were charged.

Further, the investigator from the Liberia National Police, who led the probe in this case, reached a similar conclusion and testified that he interviewed eye witnesses and as well as observed lacerations on the private prosecutor's body. This testimony was never refuted. We reiterate that in the face of the evidence against them that seemingly proved they used life threatening objects during the fight, which would then support a guilty verdict for criminal attempt to commit murder, it was incumbent on the defendants to provide corroborated testimony in order to inject the reasonable doubt necessary to avoid a conviction because "the uncorroborated testimony of a person accused of a crime is insufficient to rebut proof of guilt", especially "where the evidence against him is clear and convincing." Johnson v. Republic of Liberia, 31LLR 280 (1983); Forleh v. Republic of Liberia, 42 LLR 23, 38 (2004). See also Davies v. Republic of Liberia40 LLR 659 (2001); Kpolleh v. Republic of Liberia36 LLR 623 (1990);Toe v Republic of Liberia, 30 LLR 491(1983).

The defense's evidence, produced solely by oral testimonies, is as follows: The private prosecutor came to the home of the defendants in the afternoon and, while armed with a knife, attacked one of the co-defendants; that after that initial attack was thwarted, the private prosecutor returned in the evening with a gallon of gasoline to burn down the defendants' house but that attack was foiled after the defendants were forced to use physical force against the private prosecutor, during which James Thomas, one of the defendants' witnesses, supposedly confiscated the gasoline, gave it to the father of the defendants, who then delivered it to the police as evidence.

However, unlike the private prosecutor, the factual assertions made by the defendants are not supported by any pictorial, documentary or even physical evidence. There was no statement from the police that the appellants or their father had lodged any complaint with the LNP that the private prosecutor had attempted to commit arson on the home of the appellants' father; there was no report from the LNP that the private prosecutor had committed any assault against any of the appellants; there was no medical report of any of the appellants suffering any form of injury inflicted upon them or any of them by the private prosecutor. Yet, it would seem that the appellants expected that the court would

simply have accepted that their version of the facts to be enough to create reasonable doubt.

We do not believe or accept that the evidence the defense presented was sufficient and adequate enough to create reasonable doubt in the mind of the court when paired against the testimony of the private prosecutor, the police investigator, and the supervisor of Redemption Hospital's emergency room, all of which were buttressed by either pictorial evidence in the form of the photos that captured the private prosecutor's injuries or documentary evidence in the form of the hospital's official medical report. We hold therefore that in light of the evidence produced by the prosecution, however more the prosecution could have produced to demonstrate greater knowledge and proficiency in the prosecution of criminal matters, the trial court correctly convicted the appellants of the crime of criminal attempt to commit murder. We reach the said conclusion in the face of the evidence presented notwithstanding our disappointment with the analysis made by the judge of the evidence and his summation of the law governing such matter. We note that the parties waived trial by jury and opted instead for a bench trial. The judge was therefore both trier of the facts and the law. It was he who witnessed the demeanor of the witnesses and had the opportunity to assess their credibility, not jurors. He was both juror and judge. This demanded greater analysis and better presentation of the facts and the law in his ruling. We are disappointed that he did not seem to grasp the importance or the significance of the role imposed upon him by law and which, because the parties had opted for a bench trial as opposed to a jury, he was charged to play under the circumstances.

We are particularly disturbed that the standard which Judge Sikajipo Wolloh used in convicting the appellants was "preponderance of the evidence" rather than "beyond a reasonable doubt", the latter being what the law requires in criminal cases. This is what Judge Wolloh said in finding the appellants guilty of the offense charged: "The court says the preponderance of the evidence emanated from the witnesses produced by the prosecuting attorney and the failure from defendants to deny the evidence leveled against them proves to this court that yet indeed the admission that they fought is sufficient to adjudge the defendants guilty." This gives the impression that the Judge was unable to distinguish between "preponderance of the evidence" and "beyond a reasonable doubt". We cannot see how in a criminal trial, the trial judge would or could choose to substitute the former principle for the latter principle.

As discussed earlier, the deprivation of a person's liberty requires the Government to prove without a scintilla of doubt that the accused is guilty of the crime charged. The preponderance of the evidence standard the trial judge employed is "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Jackley v. Siaffa, 42 LLR 39 (2004). The preponderance standard's reliance on probability rather than certainty renders it unacceptable to be used as a basis to convict a defendant, which is why we hold that the trial judge committed an egregious and, quite frankly, immoral error when he found the defendants guilty because he felt that it was more likely than not that they attempted to murder the private prosecutor. However, in spite of the error of the judge in respect of the standard required by the law, we have concluded and hold that applying the required higher standard of "proof beyond a reasonable doubt", the prosecution did present evidence sufficient to prove that the appellants are guilty of the crime of criminal attempt to commit murder.

Having determined that the defendants are guilty of the crime of which they were charged, this Court must also concern itself with the sentence imposed on the appellants by the trial judge. In his ruling, Judge Wolloh stated: "It is the ruling of this court that the two defendants are adjudged guilty by the

court and should be sentenced for six (6) years."

According to the Section 10.1(4) of the Penal Law, "Criminal attempt is an offense of the same class as the offense attempted except that (a) an attempt to commit a felony of the first degree shall be a felony of the second degree ..." Considering that the Penal Law has designated murder to be a first degree offense, it follows then that, pursuant to Section 10.1(4), criminal attempt to commit murder is a second degree felony. The Penal Law has set the maximum prison term for a second degree felony at five years. We do not go into the wisdom by the Legislature in determining that a person guilty of murder should be punished by death by hanging or life imprisonment, but that one charged with an attempt to commit murder can be sentenced for up to only five years. That is strictly the prerogative of the Legislature, and the Judiciary cannot interfere with that prerogative except where it is shown that the exercise of that prerogative was in violation of the Constitution or that the law is unconstitutional.

We hold therefore that, in addition to the grave error made in applying the preponderance of the evidence standard to this criminal matter, Judge Wolloh committed yet another egregious and glaring error in sentencing the defendants to terms of imprisonment of six (6) years. It is inexcusable for any circuit judge, especially in conducting a criminal trial, not to be conversant with the statute governing the conduct of the trial. We must again state, therefore, as we have done on many earlier occasions, that judges conducting criminal trials, indeed judges conducting all trials, must always be cognizant that the liberties, privileges, and property of defendants in their courtrooms are at stake and that it is compulsory that they be abreast with and display at all times adequate and sufficient knowledge of the law, substantive and procedural, no matter how basic or complex, so that rights guaranteed by our laws are not transgressed or rendered meaningless. Each defendant's liberty should be treated with the utmost care, and the judge must ensure that the standard which he or she applies is no less than he would apply or expect in his own situation. We are disappointed that Judge Wolloh did not seem to demonstrate this cardinal virtue in the instant case. He not only applied the wrong evidentiary standard but he compounded this error with the further error in sentencing the defendants to a higher term of imprisonment than is provided for by the law.

Accordingly, and under authority vested in this Court by the Constitution and statutory laws to ensure that the laws are properly and correctly applied and scrupulously adhered to, and that this Court can under such circumstances reverse or modify the judgment of the lower court and render such judgment as the lower court should have rendered, as are allowed and provided for by law, this Court hereby, in accordance with the sentencing law of this jurisdiction, reduces the sentence imposed by the trial judge from six years imprisonment to three years imprisonment. See White v. Russell and Ware, 3 LLR 198 (1930); John v. Republic, 13 LLR 143 (1958); Williams and Williams v. Tubman, 14 LLR 109 (1960); Lamco J. V., Operating Company v. Rogers and Wesseh, 29 LLR 259 (1981);Sibley v. Bility, 3LLR 548 (1985); The Ministry of Foreign Affairs v. The Intestate Estate of the late Jarbo Sartee, 41 LLR 285 (2002); Catholic Relief Services (CRS) v. Natt, Brown and Cororal, 42 LLR 400 (2004).We hold the view that while the offense with which the appellants were charged and convicted was egregious, we believe that based upon all of the circumstances of the instant case and the facts appertaining thereto, as revealed by the records, a term of imprisonment of two and one-half years seem an appropriate penalty. Consistent therewith, we hereby modify the judgment and reduce the term of imprisonment

accordingly.

Further, in imposing this sentence, we must clarify that the penalty shall take into consideration deduction of any period(s) which the appellants may have already served.

The Clerk of this Court is ordered to send a mandate to the judge presiding over the lower court from whence the appeal was taken to resume jurisdiction over the case, and to proceed to enforce the judgment of this Court. Costs are disallowed. AND IT IS HEREBY SO ORDERED

Counsellor Lawrence Yeakula of Liberty Law Firm appeared for the appellants. Counsellors Betty Lamin-Blamo, Solicitor General of Liberia, and Augustus C. Fayiah, Assistant Minister of Justice for Litigation, Ministry of Justice, appeared for the Appellee.