

DAVID F. BRYANT, Appellant, v.
REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued October 17, 18, 1966. Decided December 16, 1966.

1. On an indictment for assault and battery with intent to kill, the defendant may be convicted of assault and battery with intent to do grievous bodily harm.
2. When a judgment of conviction of assault and battery with intent to do grievous bodily harm has been rendered on an indictment for assault and battery with intent to kill, the Supreme Court will not hear an appeal based upon the crime charged in the indictment instead of upon the crime for which the defendant was convicted.
3. The Supreme Court will not assume jurisdiction over an appeal where the record shows an essential variance between the matter appealed and the subject of the judgment.

On appeal from a judgment of conviction on a verdict of guilt of assault with intent to do grievous bodily harm, the *appeal* was *dismissed*.

Joseph J. F. Chesson and *C. Leona Chesson* for appellant. *Solicitor General Nelson William Broderick* for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

When this case was called for hearing it was noted that the Solicitor General had filed a motion to dismiss the appeal which obviously halted us from opening the records in order to review the proceedings of the lower court. It would appear that defendant-appellant was indicted in the Circuit Court of the First Judicial Circuit, Montserrat County, for the crime of assault and battery with intent to kill; but the trial jury, not being satisfied with the evidence to support the charge, reduced same to as-

sault and battery with intent to do grievous bodily harm. Final judgment was rendered affirming the verdict of the jury. The defendant, now appellant, nevertheless filed and perfected an appeal to this Court for the crime of assault and battery with intent to kill. This we gather from the motion to dismiss the appeal which we feel necessary to quote as follows.

"The Republic of Liberia, appellee, respectfully moves Your Honors and this Honorable Court for the dismissal of the appeal in the above-entitled cause for the legal and factual reasons following, to wit:

"1. That defendant-appellant was indicted for the crime of assault and battery with intent to kill in the Circuit Court of the First Judicial Circuit, Criminal Assizes, Montserrado County, R.L., at its May term, 1963. At the February term, 1964, of the said court, the case was duly tried and the jury returned a verdict of 'guilty' against defendant-appellant for the crime of assault and battery with intent to do grievous bodily harm. A motion for new trial and a motion in arrest of judgment were both denied. The court rendered judgment upon the said verdict for the crime of assault and battery with intent to do grievous bodily harm and sentenced defendant-appellant to pay a fine of \$50 or serve imprisonment for three calendar months. To this final judgment and other adverse rulings of the court, the defendant-appellant excepted and appealed the cause to this Honorable Court for review.

"2. Notwithstanding the defendant-appellant was convicted for the crime of assault and battery with intent to do grievous bodily harm and final judgment rendered thereon, from which he appealed, yet he has elected to file an appeal for the crime of assault and battery with intent to kill contrary to the verdict of the jury and the final judgment of the trial court. Appellee submits that there was no verdict or judgment against defendant-appellant for the crime of assault

and battery with intent to kill from which he could have appealed to this Honorable Court.

"3. And also because appellee strenuously contends that appellant's appeal now before this Honorable Court for the crime of assault and battery with intent to kill, his bill of exceptions, appeal bond, notice of appeal, and other papers in connection with said appeal, should be dismissed because they were founded on no verdict or judgment of the lower court. Appellee submits that appellant should have prosecuted his appeal for the crime of assault and battery with intent to do grievous bodily harm for which he was convicted, and not assault and battery with intent to kill as he has done in the instant case.

"4. And also because appellee respectfully requests Your Honor to take judicial notice of the records of the trial certified to this Honorable Court by the clerk of the court below, including the verdict of the jury and final judgment of the court below, to form a part of this motion.

"Wherefore, appellee raises the plea of jurisdiction over the subject matter and prays this Honorable Court for the dismissal of the appeal and to send a mandate to the court below commanding it to resume jurisdiction and enforce its judgment for the crime of assault and battery with intent to do grievous bodily harm."

In opposition to this motion the appellant filed a five-count resistance which is important to quote in full regardless of whether it particularly answers the motion of appellee or whether it has any legal merit at all. Said resistance of appellant reads as follows:

"Now comes David Bryant, respondent-appellant in the above-entitled cause by and through Counsellors Joseph J. F. Chesson and C. Leona Chesson, and respectfully requests this Honorable Court to deny and dismiss the motion of petitioner-appellee's counsel, the

Honorable Nelson W. Broderick, Solicitor General of Liberia, as spread upon the minutes of this Honorable Court during its afternoon sitting on Tuesday, October 18, 1966, for the following reasons, to wit:

"1. Because in keeping with the Constitution of the Republic of Liberia: 'The Judicial power of this Republic shall be vested in one Supreme Court, and such subordinate courts as the Legislature may from time to time establish.' Constitution of Liberia, Article IV, Section 1st.

" 'The Supreme Court shall have jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and those to which a county shall be a party. In all other cases the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Legislature shall from time to time make.' Constitution of Liberia, Article IV, Section 2nd.

"Respondent-appellant cannot therefore understand why counsel for the petitioner-appellee has spread upon the minutes of this Court that this Court has no jurisdiction over the subject matter of the above-entitled cause, since the petty jury's verdict was that the respondent-appellant, then defendant, was guilty of the crime of assault and battery with intent to do grievous bodily harm and not guilty of the crime of assault and battery with intent to kill as charged in the indictment. That the final judgment was given by the judge in keeping with the said verdict; to which verdict and final judgment respondent-appellant, then defendant, announced exceptions and did perfect an appeal to this Honorable Court; but that his (respondent-appellant's, then defendant's) bill of exceptions is based on the crime of assault and battery with intent to kill instead of on the crime of assault and battery with intent to do grievous bodily harm, in keeping with the petty jury's verdict and the final judgment.

"Respondent-appellant submits that so long as a defendant excepts to a verdict, ruling, or judgment in a court, it means that he does not agree with them legally or otherwise and therefore he saves them for review by this Honorable Court; and since respondent-appellant's counsel excepted to the verdict of the petty jury as well as to the rulings of the trial judge on his motions for new trial in arrest of judgment, and to the final judgment of the trial judge upon the verdict of the petty jury, and he did give notice of his taking the necessary steps to perfect his appeal to this Honorable Court for a review thereof, it meant that he did not accept the verdict of the petty jury, the rulings of the trial judge, or the final judgment the judge had rendered based upon such a verdict; and in keeping with the Constitution of Liberia this is the proper forum to review the records in the case and to decide whether or not the trial judge and jury acted legally and correctly.

"2. Further, respondent-appellant submits that there is no law extant on our statute books which would authorize him or his counsel to change the title of a case lawfully docketed on a court's calendar, which has been tried in a lower court and was on appeal to this Honorable Court for review. If such was done, it would cause untold confusion and would be a tacit admission by the party appealing to this Honorable Court of his agreement with the verdict of the petty jury and the rulings and final judgment of the lower court.

"3. Respondent-appellant submits that the procedure adopted by the counsel for petitioner-appellee is wrong, illegal, and contrary to the statute laws of this Republic in that it is expressly stated in Section 360 of the Civil Procedure Law: 'An application to the court for an order shall be made by motion, which, unless made during a hearing or trial (a) shall be

made in writing, (b) shall state with particularity the grounds therefor, and (c) shall set forth the relief or order sought.' Therefore, for petitioner-appellee's counsel to have waited until the case was called for review by Your Honors and then proceed to spread his application on the minutes of this Honorable Court wantonly violated the statute law of this Republic.

"4. Respondent-appellant further submits that one of the basic reasons why he has perfected his appeal to this Honorable Court of dernier resort is because of the verdict of the petty jury to which he excepted. Section 277 of the Criminal Procedure Law provides: 'The verdict shall be unanimous, and shall be "guilty" or "not guilty," as the case may be. It shall be returned to the judge in open court.' Therefore for the petty jury to have returned a verdict of guilty for a lesser crime than that for which the respondent-appellant was indicted and tried was illegal and unauthorized; and hence the respondent-appellant, then defendant excepted to the said verdict and announced his determination to appeal to this Honorable Court. See BEALE, CRIMINAL PLEADING AND PRACTICE 347-354 (1899).

"5. Respondent-appellant still further submits that even in keeping with the common law, where the testimony is such that the defendant is either guilty of the offense charged or not guilty at all, the jury cannot return a verdict of finding him guilty of a lesser offense. Therefore, respondent-appellant was in his right to make his exception to the verdict of the petty jury because, in keeping with law, he should have been discharged without day from further answering when his guilt was not proven as charged in the indictment.

"Wherefore, in view of the foregoing legal and factual reasons stated above, respondent-appellant most respectfully prays Your Honors to dismiss the motion

of petitioner-appellee and grant unto respondent-appellant all and such other relief as the nature of the case demands, even to the extent of reversing the judgment of the lower court and discharging the respondent-appellant without day from further answering the within charge; and this your respondent-appellant will ever pray and request."

Section 354 of our Criminal Procedure Law provides that:

"An appeal may be taken by the defendant from:

"(a) a final judgment of conviction; or

"(b) an order denying a motion for discharge made because of delay in bringing to trial; or

"(c) an order denying a motion for change of venue." 1956 CODE 8:354.

We are here concerned with that part of this statute under which appeals are made to this Court for review of final judgment of a circuit court. This is after a jury empaneled to hear a cause has brought in a verdict against a defendant and said verdict has been confirmed by the trial judge. How can this Court review a criminal case in which no verdict has been rendered and no final judgment pronounced? This Court cannot, for want of jurisdiction, take cognizance over any matter when exceptions have not been taken to a final ruling.

But what is most astonishing is that the learned counsel, one of whom has been a chief prosecutor of this State, contended in their Counts 4 and 5 that a trial jury has no authority to reduce a crime from a higher to lesser degree, and quoted common law in support of their contention, although our Penal Law specifically provides that:

"Upon the trial of the indictment the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the said crime. Where there is rea-

sonable doubt of which degree the defendant is guilty, the jury must convict of the lowest degree." 1956 CODE 27:37.

If the crime thus reduced to a lesser degree were not a cognate one, this would give us some concern. If a defendant is indicted for the crime of murder and the evidence adduced during the trial fails to establish murder or other degree of homicide he will be acquitted; but where the evidence points to manslaughter, the jury is empowered to convict him for manslaughter. In our opinion, the defendant has appealed to this Court a conviction to which he has not taken exceptions, or rather upon which no final judgment has been rendered.

Varied and numerous are errors emanating from the courts below. A portion of these is sheer inadvertence; still a greater portion is deliberate pollution with its perverse purpose to thwart justice as a consequence of interest, hope of reward, or prejudice. The latter of these two has been regarded as sharp practice. It is the cardinal office of this Court to correct remissness and indifference and to disdain, condemn, and rebuke such iniquitous practices. It has been, and is always, our ardent and fervent desire to review cases advanced to this Court. "Let justice be done to all men" has been our unaffected motto. But when there exists a variance between the subject matter upon which the conviction was had in the court below and what has been improperly appealed from to us, this Court cannot assume jurisdiction, for there is no appeal legally brought before us.

The appeal is therefore dismissed. The lower court is hereby ordered to resume jurisdiction and enforce its judgment. And it is hereby so ordered.

Appeal dismissed.