

JUSTIN M. OBI, Appellant, v.
REPUBLIC OF LIBERIA, Appellee.

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

Argued October 15, 1970. Decided January 22, 1971.

1. An indictment is sufficient if it informs the defendant of the nature, time, place and circumstances of the crime charged when stated sufficiently so as to enable him to plead a defense of double jeopardy, were such defense available to him.
2. Malice as a necessary element to the commission of a crime, may be either express, or implied from the circumstances surrounding its commission.
3. When a person has been deliberately killed by another, malice will be presumed to have existed, even though no actual enmity has been proved.
4. Nor will the mere recitation by the defendant at the trial of the absence of actual ill-will be sufficient to eradicate the element of malice presumed in such a case.
5. Exceptions taken on the record but not incorporated in the bill of exceptions, are deemed waived and will not be considered on appeal.
6. The trial judge may properly summarize the evidence presented, in his charge to the jury.
7. The jury may properly consider the flight of a defendant in establishing his guilt, when he flees in apprehension prior to his arrest.

The defendant was charged with murder, tried and convicted. He had been an instructor at a college run by the religious denomination in whose offices the killing occurred. The defendant had stopped over in Monrovia on a plane flight from Biafra to the United States and while ostensibly looking for mail, after intruding into the offices, without saying a word, opened fire with a hand gun, killing two persons and wounding three others. He was indicted as principal, along with others as accessories, whose trials were severed. At the trial he claimed legal insanity, for the crime appeared to be senseless, with no apparent cause except a mutual agreement for his services to terminate at the college, after some acrimony. He also pointed to the lack of actual malice, based in part on a total lack of recall of the event. He appealed from

the judgment of the court in affirmation of the jury's verdict. *Judgment affirmed.*

Peter Amos George for appellant. *Solicitor General George Henries, Ephraim Smallwood*, County Attorney for Montserrado County, and *S. Raymond Horace* for appellee.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

A little over 14 years ago, this Court, in *Bryant v. Harmon*, 12 LLR 331 (1956), speaking through Mr. Justice Pierre, declared:

"Those whose duty it is to burrow into voluminous records, and who sift the testimony of numerous witnesses in search of facts, and who apply established principles of law and equity to those facts in an effort to bring order out of confusion; those men by their labor and toil serve the best ends of justice."

Today we are confronted with a case as voluminous in record and of a greater magnitude for, in our opinion, man's life is the greatest of all magnitudes.

The record reveals that one Justin M. Obi, alias Jus Madka Obiamalu, appellant in these proceedings, was at one time an instructor at Cuttington College and Divinity School, Suacoco, Bong County, an institution of higher education owned and operated by the Episcopal denomination, of which the late Bishop Dillard H. Brown was head. The record further reveals that for reasons unbecoming an instructor his services were terminated and his deportation to the United States of America, whence he was employed, was requested of the Immigration authorities by the President of Cuttington College.

On November 19, 1969, appellant re-entered the Republic of Liberia and, according to the record, was on the same day present in the office of the Episcopal Mis-

sion situated in the Chase Manhattan Plaza, Randall and Ashmun Streets, Monrovia, at which time he is alleged to have shot and killed Bishop Dillard H. Brown, Treasurer Claude Nader, and wounded three others.

On December 24, 1969, a grand jury of Montserrado County, during the November Term, 1969, of the First Judicial Circuit Court, having scrutinized the testimony of state witnesses ushered before them on orders of the court, in an ex parte proceeding, as is the practice obtaining in this jurisdiction, made presentment to the court and in continuity of proceedings under the law, presented to the court an indictment against Justin M. Obi, alias Jus Madka Obiamalu, as principal, and Julius Adighibe, Ernest Onyejekwe, Vincent Ojukwu, Y. I. D. Henshaw, Eddie Watson, Obi Atuanya, Emanuel Utoh, Abel Amobi, and Lionel Egelome, as accessories before and after the fact, charging them with the murder of Bishop Dillard H. Brown and the Treasurer, Claude Nader, and wounding three others.

“Republic of Liberia, “In the first Judicial Circuit
Montserrado County. Court, Criminal Assizes,
 Montserrado County,
 Republic of Liberia, sitting in
 its law division, November
 Term, 1969.

“Before his Honor, John A. Dennis, judge presiding
by assignment:

“Republic of Liberia, Plaintiff

“*versus*

<p>“Justin M. Obi, alias Jus Madka Obiamalu, principal, and Julius Adighibe, Ernest Onyejekwe, Vincent Ojukwu, Y. I. D. Henshaw, Eddie Watson, Obi Atuanya, Emanuel Utoh, Abel Amobi, and Lionel Egelome, accessories before and after the fact, Defendants</p>	}	<p>Crime: Murder</p>
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“Indictment

“The grand jurors, good and lawful citizens of the Republic of Liberia, residing in Montserrado County, duly selected, sworn and empanelled to inquire into; for and on behalf of the Government of the Republic of Liberia, do upon their oaths present Justin M. Obi, alias Jus Madka Obiamalu, principal, and Julius Adighibe, Ernest Onyejekwe, Vincent Ojukwu, Y. I. D. Henshaw, Eddie Watson, Obi Atuanya, Emanuel Utoh, Abel Amobi, and Lionel Egelome, accessories before and after the fact, defendants for a felony, to wit: murder; committed in the City of Monrovia, Montserrado County, Republic of Liberia, in manner and form as follows:

“The aforesaid Justin M. Obi, alias Jus Madka Obiamalu, a Nigerian national, defendant principal, previous to the finding of this indictment, that is to say on the 19th day of November, 1969, between the hours of 3:45 and 4:30 in the afternoon of the said day, in the offices of the Protestant Episcopal Bishop of the Missionary District of Liberia, known and referred to as Bishop’s House, in the Chase Manhattan Plaza, City of Monrovia, Montserrado County and Republic of Liberia, this Justin M. Obi, alias Jus Madka Obiamalu, defendant, did then and there with an automatic pistol loaded and charged with bullets, unlawfully make an assault upon the bodies and persons of the Rt. Rev. Dillard Houston Brown, Bishop of the Protestant Episcopal Missionary, District of Liberia, Patricia Anne Newiss, the Bishop’s secretary, Mr. Claude Nader, the District Treasurer of the Protestant Episcopal Missionary, District of Liberia, Mr. Jacob David, the Janitor and Mr. Benoit Michelon, respectively, and with the automatic pistol loaded and charged with bullets as aforesaid, the same being a dangerous and deadly weapon, the said Jus-

tin M. Obi, alias Jus Madka Obiamalu, defendant, not having the fear of God in his heart but being a man of wicked and malignant mind, there unlawfully, purposely, wickedly, willfully, maliciously, deliberately, feloniously, premeditatively and with malice aforethought pointed at, aimed at and did shoot and wound the aforesaid Bishop Dillard H. Brown, Patricia Newiss, Claude Nader, Jacob David and Benoit Michelin, repectively, on divers parts of their bodies; with intent he, the said Justin M. Obi, defendant, killed and murdered the aforesaid Bishop Brown and Claude Nader, and wounded Jacob David, Patricia Newiss and Benoit Michelin, respectively, contrary to the statute laws of the Republic of Liberia and against the peace and dignity of the State, and the grand jury aforesaid, upon their oaths aforesaid, do further present that from the explosion of the automatic pistol loaded and charged with bullets in the dangerous and deadly weapon aforesaid which the said Justin M. Obi, alias Jus Madka Obiamalu, defendant, had and held in his hands and with which he did point at, aim at and shoot and wound the aforesaid Bishop Dillard H. Brown, the said Brown did sustain mortal wounds and injuries on his head, his face, chest and other parts of his body and from which mortal wounds the said Dillard H. Brown instantly died; and by the means aforesaid the aforesaid Justin M. Obi, defendant, did then and there unlawfully, wickedly, purposely, willfully, deliberately, maliciously, feloniously, premeditatively and with malice aforethought do and commit the crime of murder contrary to the statute laws in such cases made and provided and against the peace and dignity of the Republic of Liberia. And the grand jury aforesaid, upon their oaths aforesaid, do further present that from the explosion of the automatic pistol loaded and charged with bullets, the dangerous and deadly

weapon aforesaid which the said Justin M. Obi, alias Jus Madka Obiamalu, defendant, had and held in his hands with which he did point at, aim at and shoot and wound the aforesaid Claude Nader at the time and place aforesaid, the said Claude Nader did sustain mortal wounds and injuries on his chest, arms, lungs, and other parts of his body and from which mortal wounds and injuries the said Claude Nader instantly died; and by the means aforesaid, the defendant, Justin M. Obi, alias Jus Madka Obiamalu, defendant, did then and there unlawfully, wickedly, purposely, willfully, maliciously, deliberately, feloniously, premeditatively and with malice aforethought did do and commit the crime of murder contrary to the statute laws in such cases made and provided and against the peace and dignity of the Republic of Liberia.

“And the grand jury aforesaid, upon their oaths aforesaid, do further present that from the explosion of the automatic pistol loaded and charged with bullets, the dangerous and deadly weapon aforesaid which the said Justin M. Obi, alias Jus Madka Obiamalu, defendant, held in his hands and with which he did point at, aim at, shoot and wound the aforesaid Patricia Anne Newiss, Jacob David and Benoit Michelin, respectively, at the time and place aforesaid, the said Patricia Anne Newiss sustained vital wounds and injuries in her mouth on her tongue, teeth, jaw and other parts of her body which but for the timely medical attention and treatment she received and through the mercies of God could and would have caused her death and from which vital wounds she is still undergoing medical treatment with several pains and agony; and at the time and place aforesaid and by the means Jacob David, one of the victims did sustain vital wounds on his left leg and other parts of his body and is presently under medical treatment suffering from

the wounds and excruciating pains. And at the time and place aforesaid and by the means aforesaid, Benoit Michelon, one of the victims, did sustain gunshot wounds on his right shoulder; with intent he, the said Justin M. Obi, alias Jus Madka Obiamalu, defendant, to kill and murder the said Patricia Anne Newiss, Jacob David and Benoit Michelon, respectively, contrary to the statute laws of the Republic of Liberia.

“And the grand jurors aforesaid upon their oaths aforesaid do further present that Julius Adighibe, Ernest Onyejekwe, Emanuel Utoh, Abel Amobi and Lionel Egelome, accessories before and after the fact, did then and there unlawfully, wickedly, purposely, willfully, maliciously, deliberately, feloniously, premeditatively and with malice aforethought on the 19th day of November, 1969, and on divers other times, facilitate the arrival in Liberia of Justin M. Obi, alias Jus Madka Obiamalu, defendant aforesaid, to Robert Field International Airport, and his movement from the said Airport, up to the office of the Episcopal Bishop of the Missionary District of Liberia, in the Chase Manhattan Plaza, City of Monrovia, Montserrado County and the Republic of Liberia, to murder the Rt. Rev. Bishop Dillard Houston Brown, Patricia Anne Newiss, Mr. Claude Nader, Mr. Jacob David and Benoit Michelon; Justin M. Obi, alias Jus Madka Obiamalu, defendant aforesaid, not having the fear of God in his heart but moved by the instigation of the devil and with wanton disregard for human lives, did then and there unlawfully, wickedly, willfully, maliciously, deliberately, feloniously, premeditatively and with malice aforethought point, aim at and did shoot and wound the aforesaid Bishop Dillard H. Brown, Patricia Newiss, Jacob David and Benoit Michelon, respectively, on divers parts of their bodies with intent, the said Justin M. Obi, alias Jus Madka Obiamalu, defendant, to kill and murder the

aforesaid Bishop Dillard H. Brown, Patricia Newiss, Claude Nader, Jacob David and Benoit Michelin, respectively, contrary to the laws of Liberia and against the peace and dignity of the State.

“And the grand jurors aforesaid, upon their oaths aforesaid, do further present Julius Adighibe, Ernest Onyejekwe, Vincent Ojukwu, Y. I. D. Hanshaw, Eddie Watson, Obi Atuanya, Emanuel Utoh, Abel Amobi and Lionel Egelome, did then and there unlawfully, wickedly, purposely, willfully, maliciously, deliberately, feloniously, premeditatively and malice aforethought after shooting and wounding the aforesaid Bishop Dillard H. Brown, Patricia Newiss, Claude Nader, Jacob David and Benoit Michelin, respectively, on divers parts of their bodies with intent, the said Justin M. Obi, alias Jus Madka Obiamalu, defendant, to kill and murder the aforesaid Bishop Dillard H. Brown, Claude Nader, Jacob David, Benoit Michelin and Patricia Anne Newiss, respectively, Julius Adighibe, Ernest Onyejekwe, Vincent Ojukwu, Y. I. D. Henshaw, Eddie Watson, Obi Atuanya, Emanuel Utoh, Abel Amobi and Lionel Egelome, accessories before and after the fact, did conceal and aid the escape of the said Justin M. Obi, alias Jus Madka Obiamalu, from the scene of the crime to avoid arrest (by Security), trial, trial conviction and punishment for the crime of murder and was thereafter arrested by the Security in Gbranga, Bong County, Republic of Liberia; and thereby the crime of murder the defendant did do and commit; contrary to the statute laws of Liberia in such cases made and provided and against the peace and dignity of the State.

“And the grand jurors aforesaid, upon their oaths aforesaid, do present: that the said Justin M. Obi, alias Jus Madka Obiamalu, defendant principal, Julius Adighibe, Ernest Onyejekwe, Vincent Ojukwu,

Y. I. D. Henshaw, Eddie Watson, Obi Atuanya, Emanuel Utoh, Abel Amobi, and Lionel Egelome, accessories before and after the fact, defendants at the time and place aforesaid, did do and commit the crime of murder contrary to the form, force and effect of the statute laws in such cases made and provided for and against the peace and dignity of the Republic of Liberia.

“Republic of Liberia, Plaintiff,

“By: E. WINDFRED SMALLWOOD, *County Attorney, Montserrado Co., R.L.*”

“*Witnesses:*

“Patricia Anne Newiss, Jacob David, Benoit Michelon, M. Wellington Harmon, NBI, Henry M. Melvin, Samuel Koeing, NPF, Caesar Jones, NBI, Fred Lawson (Medical certificate, et al.), Taxi driver, Automatic pistol, Bishop’s driver, Kamara.”

Severance of their trials was prayed for by the accessories and granted.

When the court convened in its February Term, 1970, it appeared that appellant was unable to obtain counsel. Whereupon counsellor Peter Amos George was appointed by the court to represent the appellant. Counsel, according to the record, asked for forty-eight hours within which to consult with the appellant and give the court his reply to the proposed appointment which was granted. At the expiration of this period, counsellor George appeared in court and gave consent to represent the appellant, whereupon the record discloses the court’s response:

“Because of the long years of experience of counsellor P. Amos George at this bar in the practice of law and having shown his competence in all legal matters he handled within this jurisdiction, he is hereby ordered by the court to carry the legal interest of defendant Justin M. Obi in these proceedings; further because of the experience of counsellor Winston A. Tubman in the practice of law in our jurisdiction, it is the or-

der of this court that he also be associated with counsellor Amos George in defending the legal interest of Justin M. Obi.”

Counsellor Winston A. Tubman’s association with counsellor George was at the special request of defendant Obi, and was approved by the court.

At this stage, the clerk of the court was ordered to read the indictment and ascertain the plea of the defendant.

Counsel for the defense gives notice to the court that before the defendant is arraigned and pleads to the indictment, he has certain objections to the indictment which he intends to file in the form of a motion to quash and prays the court, therefore, for twenty-four hours within which to do same, and submits.

The prosecution says that the announcement just made by counsel for the defense does not warrant, nor can it justify, the postponement of this matter since it is not a motion to quash or any of the preliminary motions prior to the commencement of the trial of an indictable offense, therefore, the prosecution most respectfully prays this court to deny same and the defendant be required to plead to the indictment.

Upon request of counsellor George, the case was again suspended until 1:00 P.M. of that day and when called at that time the following appears.

“The Court:

It is a cardinal principal of legal jurisprudence that if the defendant is denied any of his constitutional rights and privileges, by the subterfuge of the constitution or the court, he is said not to have had a fair and impartial trial. The motion to quash an indictment is one of the preliminary steps that may be taken by the defendant in a criminal trial. And since, indeed, it is the defendant’s counsel who has prayed this court to permit him to file such a motion by tomorrow morning, we hold the view that favorable consideration should be given to this request.

The defense however must bear in mind that 'justice delayed is justice denied.' The case is, therefore, suspended until tomorrow morning at the hour of 8 o'clock only for the filing of this motion to quash the indictment and not for any other reason which, if advanced, will not be entertained."

On February 13, appellant's counsel filed a motion to quash the indictment, consisting of five counts, in which they contended, substantially, that the indictment was insufficient because it was void of certain art words required by statute. Prosecution made resistance on the record contending that the indictment was sufficient in view of the fact that it informed the defendant of the place, time and manner of commission of the crime, as well as the means by which the crime was committed. Judge Robert Azango made the following ruling:

"Lord Hale, one of the most brilliant, profound, and erudite jurists of England, speaking of the technicalities anciently required in indictments, in his treatise on indictments, commented:

"The great, strict, and unseemly niceties required in some indictments, tend to the reproach of the law, to the shame of the government, to the encouragement of villainy, and to the dishonor of God.' It is plain, however, that much of the tautology and prolixity which characterized indictments in the early period of criminal procedure can be safely avoided without any infringement of the right of the accused to demand the nature and cause of the accusation against him and it is the policy of modern courts to disregard mere technical objections and to require only that a criminal pleading shall fully state the essential elements of the offense charged.

"Our Supreme Court has held that an indictment which informs the accused of the time, place, circumstances and conditions of committing the unlawful act

therein alleged, and that the act complained of is contrary to law, is generally a sufficient charge against him when stated with sufficient certainty to enable him to plead a defense of double jeopardy. *Seton v. Republic of Liberia*, 4 LLR 238 (1935).

“Let us now proceed, in keeping with the motion of the defendant, to ascertain the requisites of what is termed a valid indictment, in order to enable us to determine whether or not the indictment in the instant case lacks any requisites.

“According to statutes, the requisities of an indictment are: (1) the indictment must be from a court having jurisdiction; (2) that it appears to have been found by the grand jury for a proper County or District; (3) that the indictment is found as a true bill and signed by the foreman of the grand jury, and (4) that it is found with sufficient certainty, the charge contained, sufficient description of the crime of which the defendant is accused, as well as a statement of the facts which constitute it.

“From a careful inspection of the indictment in this case now before the court for consideration, we hold the view that the indictment contains all of the requisites necessary to constitute a valid indictment. The motion of the defense counsel is, therefore, denied and the court will immediately proceed with the trial of the cause by having the defendant arraigned, in keeping with law.”

To this ruling appellant excepted and has made it a part of his bill of exceptions, which will be passed upon later in this opinion.

The record reveals that immediately following the ruling denying the motion, the indictment was ordered read, to which defendant pleaded not guilty, whereupon the jury was empanelled.

The first witness to take the stand for the prosecution

was Miss Patricia Newiss, an employee of the Episcopal Mission in Liberia and one of the alleged victims of the shooting. She testified in chief:

“On the 19th of November, 1969, Bishop Brown returned to his office at fifteen minutes to four P.M. At that time Mr. Nader was in his office with the representative whose name I cannot recall. I was seated at my desk finishing up my work; Jacob also was talking with Kamara in the outer office. At 4 P.M. the door opened and Mr. Justin M. Obi came in. He came forward toward my desk. I asked him who and what he wanted, he did not reply. He continued toward my office towards Mr. Nader’s. He still said nothing to me. I repeatedly asked what he wanted. He then turned round and came towards my desk. I then asked again if I could help, if not he should sit in the waiting area until either Mr. Nader or Bishop Brown would see him. At this time he was standing at the front of my desk. He then turned around and came beside my desk and he started looking through papers and envelopes. At this point I stood up and asked him to put the papers down as he had no right to touch the papers. At this time Bishop Brown came from his office and looked over to Mr. Obi. Right up to this time Mr. Obi had not said one word and Bishop Brown had not been given a chance to speak. Obi took out his gun and shot Bishop Brown. I gasped and ran forward to catch Bishop Brown, Obi turned around and shot in my mouth. The next thing I was on the floor and I prayed. While I was on the floor, I couldn’t speak, I couldn’t read. I just held my face and prayed. While I was on the floor I heard shouts and screaming and three more bullet shots. All of this time I did not see Obi again. As I was lying, my face down on the floor at this time, I then crawled over towards Bishop Brown’s office, he was this time dead. I was at this point so angry

that such a wonderful man could be murdered in cold blood. I refused to die. I then crawled over behind my desk, still unable to speak. At this point Kamara, the driver, was shouting, 'It's not me, it's not me.' I, of course, knew it was not Kamara. I cried, Obi, Obi, but nothing could come, so I wrote with my own blood on the floor the name Obi, because I knew if God has not granted me to be here today, possibly no one would know who had committed this murder. Then help came; I was taken down to my brother-in-law's clinic, my brother-in-law is Dr. Wittk Sidney Lewis. On the office floor which I had been strapped down with the strapper, in the clinic, Doctor Lewis stitched my gashed tongue and this saved my life. I was then taken in an open pickup to the Catholic Hospital where I came through within 48 hours of critical period. This is my statement."

On cross-examination.

"Q. Tell us whether or not you have ever in such close proximity witnessed the shooting of a gun?

"A. I have never ever witnessed such a shooting and I know I will never again.

"Q. So then you cannot say for sure whether the defendant in the dock did shoot and kill Claude Nader, am I correct?

"A. I stated correctly that Bishop Brown was shot in front of me and I agree that was the time that Claude Nader was shot, I was at this time on the floor so I did not witness the actual shooting of Mr. Nader, but from shouts and screams I knew who was being shot and from where I was lying on the floor I had the full view of the open door to the office and up to this point no one had entered the office."

The next witness was Jacob David, another office employee of the Episcopal Mission. In answer to preliminary questions he admitted being acquainted with defen-

dant, that he had seen the defendant on and off in his office on several occasions, that he was acquainted with Bishop Brown and Claude Nader, that he knew them to be dead and that defendant killed them. His statement in chief has been set forth.

“On that evening when the driver went for the Bishop at the Spriggs Payne Airfield they arrived at four fifteen in the evening. While we were eating under the building, when we spied the Bishop we stopped. The Bishop laughed at us and then went on into his office. When I got through eating, I went upstairs. Then the secretary called me to fix coffee. After I was through fixing the coffee, I was sitting down when Mr. Obi, the defendant in the dock, arrived in the office. When he came in the office he closed the door, then went to the office of the business manager. The secretary then called Obi and told him, if you want to see someone you should ask for the person you want to see. Then he turned around and came back to look through the Cuttington mail. At this time it was about four thirty and the Bishop came out of his office with some papers in his hand going toward the secretary. Obi was still at the mail box. Just as the Bishop was about to hand the papers to the secretary, Obi shot him. After shooting the Bishop, the secretary was trying to make a call; it was at this time that he shot her into the mouth. Then he went into the business manager’s office and he also shot him. At this time the secretary was lying down flat on the floor bleeding through her nose. When I went to peep to see what was happening, he was coming through the business manager’s office after having shot him, then I tried to hide myself under the desk and he shot me under the neck. At the time he shot me, Obi went outside and I saw someone’s foot hanging from the ceiling whom I took to be Obi and so I told the people that Obi was in the ceiling. While I was going out-

side I saw Obi's bag beside the door and I then got in the elevator and went on the ground floor and made an alarm and said, my people you all come, oh. Then I was put in a taxi and carried to the hospital. This is all I know."

He testified further on direct examination that he knew the bag carried by the defendant and identified it when exhibited to him. On cross-examination, he was asked:

"Q. Say also whether you can remember what did Mr. Obi say when he entered the office of the Secretary?

"A. When Obi entered the office he did not speak to anybody, he just walked into the office and went to the business manager. Before he got to the door, it was at this time that the secretary called him. The secretary told him that the business manager was busy and that he should come back, this is what I had explained earlier."

Another witness for the prosecution was Joseph Kamara, the chauffeur who served both decedents. Mr. Kamara testified as reported below.

"Last year, November 19, Wednesday evening, I was in the office with Mr. Nader and he sent me to Spriggs Payne Airfield to pick up the Bishop. I picked up the Bishop and brought him to the office. We arrived at the office and the Bishop alone was in his office. The Bishop's door was half opened and Mr. Obi came inside with a handbag. He sat right by the door. Jacob was sitting down by the desk and I was bending down over the same desk reading a magazine. I then saw Mr. Obi came inside with his bag in his hand. There was a small gate and he opened the gate and came inside and passed by the secretary, then by me and Jacob and was on his way to Mr. Nader's door. I would like to state also that when the Bishop and I came, we stayed in the office until four o'clock and I asked him whether I would go home and he said, yes.

I went to Mr. Nader and told him that I was going home and he told me to stay until ten minutes because I was ten minutes late that morning. While I was waiting for the ten minutes to expire, it was at this time when Mr. Obi entered with his handbag. He sat down by the door and opened the gate and entered and passed by the secretary and me and Jacob and was about to enter Mr. Nader's office and the secretary said, so don't do that, you came in the office and speak to nobody, you just want to walk in, and she told him to sit down, somebody is in there, as soon as the person comes out you can go in. He turned right round and came right side the secretary's desk where the mail box was and started to pretend as though he was looking for mail. He had on a fanti shirt with design. While he was looking through the mail box, the Bishop came outside with papers to put on the desk; when he put the papers on the desk, Mr. Obi turned around to the Bishop, then the Bishop stood up. When the Bishop stood, I saw Obi take his gun from his pocket and pointed it to the Bishop; when the gun fired, the Bishop said oh, and fell down to the floor. While I was standing there I move and said, oh, the man has killed Bishop, and the Bishop fell right down by the secretary's desk. Then the secretary screamed and he shot the secretary. He turned towards me and Jacob. I was trying to run and go into the other office and I heard the gun behind me, I felt something inside my hand and I fell but I did not stand up. Now I went straight into Mr. Nader's office. When I got into Mr. Nader's office, he was about to move from his desk towards me. I heard the gun again. I did not stand up now. I went into the waiting room. I gripped the wall and I jumped into the ceiling. I lying down there for a little while, at that time all my body was trembling. I got up and stood up. I wanted to walk toward the door but I

could not walk; for each time I wanted to walk my foot bored the ceiling. The last place my foot bored, I lay down there. I started looking into the office. Everybody was just lying down on the floor. So I saw one white man in the office and I asked him, saying, my friend, the man who is doing the shooting is he gone? He said, yes, and started coming from the ceiling, started running behind him to go outside. When we got to the big door I saw one bright man with a suit on with one police and he grasped me. He said where is the gun? I said that it not me. I said that is one man from Cuttington. He put the handcuff on my hand. I said you see my hand bleeding, I said, that man from Cuttington name Doctor, because that was his only name I knew. I said, you carry me downstairs because I am afraid. I said, sometime the man is in the same building yet. So they brought me downstairs. They put me inside the police car. I stayed inside and they brought me to the Police Headquarters. From there they sent me to the NBI and I spent one night there. The next following day they brought me here to the cell. But when they brought me here into the cell they had already caught Obi.”

Mr. Wellington Harmon, a police officer assigned to and stationed at Gbarnga, Bong County, took the stand and testified.

“On the 19th of November, 1969, at 6:15 P.M., ELBC announced that an unknown man had shot and killed Bishop Brown, Claude Nader, and two others, names undisclosed. It was also announced that the alleged killer headed for Bong County; at such time I started to patrol. At about 8:25 P.M. of the same day and date, I was informed that there was a Justin Obi who seems to have been the unknown man, in other words, the suspected criminal. While patrolling the street in Gbarnga, Bong County, we met Mr. Justin Obi,

who, according to the radio, fitted the description of the alleged killer. Upon approaching him he made an attempt to draw a gun on me but unfortunately for him, I caught the gun before him. The gun was strapped in a shoulder holster on the side of Mr. Justin M. Obi, but because he had to use his left hand to draw the gun and I stood on his lefthand side, I was able to stop him from drawing the gun. He was therefore apprehended. When searched by me, he was found with a pack of fifty cartridges and a gun holster on his shoulder. In the shoulder holster was found caliber 9 millimeter, serial No. 55499, loaded with 9 cartridges, and upon the orders of the Chief of Police, Mr. Edwin Harding Smythe, Dr. Obi was brought to Monrovia at about 12:45 P.M. on November 20, 1969, from the Phebe Hospital in Bong County where he was carried by me on the grounds that he claimed to have drunk chemical substance. At five o'clock P.M. of November 19, he should have died after five o'clock. He was then at the said hospital attended by a doctor who disclosed to me that there was no evidence of the presence of any unusual substance in the stomach of Dr. Obi. He was then upon this ground brought to Monrovia as aforesaid."

He identified the gun and ammunition which he testified as having been found on the person of the defendant-appellant at the time of the arrest. The cross-examination was aimed at establishing that the defendant was apprehended by persons other than the witness, but without success.

Henry L. Nelvin, another police officer of Bong County, took the stand for the prosecution and corroborated the testimony of his colleague, Mr. Wellington Harmon.

Witnesses C. Wellington Campbell, Nathaniel Baker and Patrick Minikon, heads of the Criminal Investiga-

tion Services, testified to having each investigated aspects of the incident which resulted in the deaths of the decedents. They established, in corroboration of the foregoing testimony, the presence of the appellant at the office of the decedents at the time of the shooting, as well as the flight of appellant from the scene.

The late Cecil Jones, a ballistics expert, testified to having conducted laboratory tests of expanded bullets connected with the shooting and having determined that the bullets were fired from the gun found on the person of the appellant at the time of his arrest.

At this point, the prosecution rested.

On Wednesday, February 18, 1970, defendant called as his first witness, Mr. Melvin Mason, Dean of Cuttington College and Divinity School, who was asked to testify as to the general behavior of the appellant on that campus. Mr. Mason testified as follows:

“The first instance of report against Mr. Obi was the exchanging of houses without the permission and consent of the Housing Committee. The second report on the defendant was by a faculty member who said that Obi had removed the notice on the blackboard telling of a proposed psychedelic dance and writing of a letter by Mr. Obi pointing out the dangers of such a dance according to his interpretation as a chemist, which caused a confusion between him and the faculty member involved. The third instance of the report against Mr. Obi was by group of faculty members who said that it had been reported to them by a lady faculty member that Mr. Obi went to her house and accused her of being a participant in the plan of this psychedelic dance and after a brief discussion on this part, he slapped her. Academically, the class of physical chemistry reported that Mr. Obi had posted their grades on the bulletin board in a manner which was out of line of the general college policy. Fur-

thermore, he had been irregular in meeting his classes. These are the instances of report pertaining to his behavior which I recall at this time."

Asked whether appellant had completed his assignment with the College, the witness replied.

"He did not complete his term as originally decided between him and the College, because of his behavior as mentioned above previously, in addition to the fact that he had matters away from campus which took up more of his time, thereby serving as a handicap to his teaching, it was decided by the College administration that it would be in the better interest of both parties to terminate his service; consequently, President Baker, after a discussion with Mr. Obi in the former's office, wrote him a letter terminating his services. In that discussion before the writing of the letter, Mr. Obi said that he was thinking of resigning and would have his letter of resignation submitted by him within 30 minutes. However, President Baker's letter was sent immediately and I do not know and am doubtful as to whether Mr. Obi's letter was ever submitted."

Following the testimony of appellant's next two witnesses, in the persons of MacDonald Acolatse and E. Sumo Jones, the appellant himself took the stand and testified substantially that he was the defendant on trial; that his plea of not guilty was not meant to imply that he did not shoot and kill the decedents but that the shooting was unintentional, unpremeditated and without malice and, therefore, did not constitute murder. He testified further that the Bishop's death was a regrettable tragedy, especially so that the Bishop was his friend. He pointed out that the Bishop had gone out of his way to favorably intervene in his behalf. He contended that C. Wellington Campbell was in error when he testified that the Bishop was responsible for his dismissal from Cuttington College; that his leaving Cuttington was not an unpleasant event. He referred to the testimony of Dean Mason

in contradiction of the testimony of Wellington Campbell to the effect that the Bishop was responsible for his dismissal. He denied ever being arrested by the Immigration authorities as testified to by Campbell and cited the testimony of the Commissioner of Immigration in support of his denial.

After a very rigid and protracted cross-examination, and the discharge of the witness, defendant made application for a psychiatric examination for, according to the defense, the weight of evidence produced up to that point seemed to show that the defendant was suffering from mental shock and the like. To this application the prosecution entered objections but the court overruled the objections, granted the application and ordered a psychiatrist provided. Dr. Thebaud of the Rehabilitation Center was summoned and examined as to his qualification. He presented the following documents: a diploma from the University of Haiti; a certificate in psychiatry from the Royal Victoria Hospital from Montreal, Canada, certifying him to be a member of the staff of that hospital; a certificate from the Douglas Hospital, certifying that he served satisfactorily as a resident member of the staff of that hospital in psychiatry and a license to practice psychiatry issued by the Health Department of Haiti.

After examining these documents counsel for defendant stated:

“Defense, while not disputing the qualifications of Dr. Elder Thebaud, which is to state that the degree with which he commenced the practice of medicine is a degree for medical doctor. Apart from the certificate of the Douglas Hospital, there is no other evidence as to the fact of his qualification as a psychiatrist. However, defendant still maintains that he wishes to be examined by a qualified psychiatrist.”

The court, however, being satisfied with the doctor's qualifications, in view of the documents produced, and especially so since he had been licensed and employed by

the Liberian Government to practice psychiatry in Liberia, declared the doctor qualified and ordered the defendant submitted to him for examination. Having completed the examination, the doctor submitted his report.

“Mr. Justin M. Obi was examined by the undersigned at the prison compound of Monrovia at the request of the Criminal Court of Justice of the Republic of Liberia. My report is based:

“(a) On information collected from Mr. Obi (Justin M. Obi) himself;

“(b) On observation made personally during the three interviews I had with him.

“*Identification:* Mr. Justin M. Obi is a 29-year old male, and father of a three and half year old daughter. He is a Nigerian by birth, Roman Catholic in religion, and a chemist by profession.

“*Background:* Mr. Obi states that there is no history of mental illness in his family, he is the fifth member of a family of six, all of whom are in active employment and have never broken the law. As a child he was not inclined to violence. He became disobedient when he reached secondary school and started challenging discipline. His academic performance was good from primary school to University. After completing a degree in chemistry in Nigeria, he studied at the University of Wisconsin, USA, from 1962 to 1965, he then returned to Nigeria, remaining there till 1966. He left his country for England after the military coup took place; he left there because there was too much violence taking place. In 1967, he left England for the USA with the intention of settling there, but was offered a position in Liberia to teach chemistry at Cuttington College in 1969. However, he soon left Liberia and went back to the USA. There he noticed the condition of the black people, and he left, not ready to accept violence. When day

dreaming, he visualized violence without any repulsion, but has never seen himself participating in it.

“Medical History: My information states that, as of 1965, his concentration power had diminished. He used to practice boxing at that time and felt that the diminution of his power of concentration might have been the result of some injury he sustained in his head. In 1957, he was unconscious as the result of a car accident and had to be hospitalized for a period of twenty-eight days. In 1959, he was examined by a Nigerian psychiatrist, Dr. Lambo. The complaint for which he sought help was again diminution of the power of concentration. Mr. Obi states that sometimes he talks or laughs without being aware of it until somebody mentions it to him. He also remembers experiencing blanks in the mind while he was driving, and would become aware of it only when something happens, like a policeman screaming at him.

“Circumstances surrounding the incident of November 19, 1969, as reported by Dr. Obi: Mr. Obi was going from Biafra to the USA via Paris and made a detour to Monrovia. In the plane he remembers drinking two small bottles of whisky 30 or 45 minutes before landing in Monrovia. At 4:15 P.M. he was at the Ducor Hotel, at 4:10 P.M. he went to the KLM Office to have his ticket changed because of the detour he had made from mean journey. He planned to leave Liberia the next day. On reaching the front of the Chase Manhattan Bank he entered the building to check his mail. He opened the front door of the Episcopal House, saw many people in the room and felt nervous and confused; he had the fear of physical danger. The reason according to him was that coming from Biafra, he had been confronted with constant danger and death. He started checking through the letters, he saw people talking to him but

couldn't hear. Then he became paralyzed with fear. Suddenly he felt that somebody was walking behind him and he saw something flashing like a switch or knife. He turned very sharply and as he says, 'Everything went blank in mind. The next thing I remember was driving away from Kakata.' At that time he felt that something terrible had happened but did not remember that he had done any shooting. The taxi driver did not want to take him to Nimba because it was too late and left him at Gbarnga where he was arrested. He knew about shooting only when he was informed by the police.

"Mental Status: Mr. Obi states that occasionally he had auditory hallucinations, meaning that sometimes he has the impression that somebody is calling him even though nobody is around. The examination has revealed occasional mild memory defect. I have not found any evidence of serious mental disturbance during the three interviews I have conducted.

"Commentary: On the basis of the information collected from Mr. Obi and also on the basis of my own observation, I had retained two possible diagnoses which are not mutually exclusive: (a) acute pathological intoxication due to alcohol. This is a reaction of blind rage and confused or paranoid feelings with acts of violence, followed by memory loss for the attack. The condition is independent of the amount of alcohol taken. It occurs most frequently in persons with psychopathic character traits. Was Mr. Obi aware of what he was doing at the time of the shooting? Has he afterwards lost memory of the incident? This is quite possible if he had indeed taken, as he claims, a small amount of alcohol 30 to 45 minutes before landing in Monrovia. Therefore, the possible diagnosis of acute pathological intoxication should be retained, but have no way to prove or disprove it,

(b) Sociopathic personality disturbance (antisocial reaction). This is defined in the American Psychiatric Association's Diagnostic and Statistical Manual as follows: 'Chronically antisocial individuals who are always in trouble, profiting neither from experience nor punishment, and maintaining no real loyalties to any person, group, or code. They are frequently callous, . . . showing marked emotional immaturity, with lack of sense of responsibility, lack of judgment, and an ability to rationalize their behavior so that it appears warranted, reasonable, and justified'; in my opinion, this diagnosis should be retained. Sociopathic personalities are often unreliable. . . .

Conclusion: I have found Mr. Obi free of any obvious mental disturbance at the time of my several examinations. However, on the basis of his past history, his instability, his irrational behavior, I think that we are dealing with a case of sociopathic personality disturbance.

"ELDER THEBAUD, *Psychiatrist*,
Medical Director, Catherine
Mills Rehabilitation Center,
Paynesville, Monrovia, Liberia."

This report was submitted to the court and offered in evidence by the defendant. On direct examination the doctor was asked:

"Q. How many hours did you spend with Mr. Obi?

"A. Usually a psychiatrist's interview lasts about an hour but my different interviews I had with Mr. Obi, as far as I can remember, was extended beyond an hour duration.

"Q. But the interviews insofar as to enable formation of an opinion and Mr. Obi's mental state pertain only to the duration of the interview. Am I correct?

"A. In my report I stated that I found Mr. Obi free of any obvious mental disturbance, at the time of my several interviews.

"Q. So then you agreed that there is such a thing as temporary spells of insanity?

"A. Psychiatrists have abandoned the concept of insanity. However, discussing my first diagnostic possibility, I asked myself was Mr. Obi aware of what he was doing at the time of the shooting? Has he afterwards lost memory of the incident? This is quite possible. If indeed he has taken as he claims a small amount of alcohol thirty to forty-five minutes before landing in Monrovia, I have no way to prove or disprove it.

The final witness for the defense was Senator William V. S. Tubman, Jr., who testified only to having been visited at his home by the appellant, who related a story to the effect that he was having difficulties at the place of his employment, Cuttington College. Thereafter the defense rested.

The prosecution produced in rebuttal Edward R. Moore, Liberian Ambassador to Lagos, Nigeria, E. Harding Smythe, Director of Police, and Nathaniel Baker, Director of Executive Action Bureau. Moore testified that the defendant had once before been involved in a controversy involving threats to life at Lagos University, while Smythe and Baker testified that the defendant at the preliminary investigation held at the police station immediately upon his return to Monrovia from Gbarnga where he was arrested, stated that when he pulled his gun on the Bishop, he only intended to frighten him because the Bishop had neglected to forward defendant's personal effects to the United States as stipulated before his departure, but that the gun went off accidentally and kept firing. With these witnesses the state rested and argument was entertained on both sides.

On May 4, 1970, the court charged the jury and after

deliberation it returned a verdict of guilty of murder, to which defendant excepted and filed a motion for a new trial which was opposed, argued and denied by the court, and final judgment was entered against appellant. He excepted thereto and has based this appeal on a bill of exceptions containing seventeen counts.

In count one, appellant complains that his appointed counsellor, Peter Amos George, was not given the opportunity to study the case and prepare a proper defense but, rather, was limited to twenty-four hours in which to do so. The record we have received disclosed that only two requests were made for postponement, the first being a request for an opportunity to interview the defendant in order for counsel to determine whether or not he would accept the court's assignment. This leave was granted. The second was for time within which to prepare a motion to quash the indictment which was also granted. There is no showing on the record that counsellor George at any other occasion requested time within which to study and prepare his defense. This count is not supported by the record and is hereby overruled.

In count two, appellant complains that the trial judge was in error in denying the motion to quash the indictment. We have hereinabove quoted the indictment, the motion to quash and the ruling of the court.

This Court held that an indictment is sufficient if it informs the defendant of the nature, time, place and circumstances of the crime charged. *Williams v. Republic of Liberia*, 15 LLR 99 (1962).

The indictment in this case, having fulfilled these requirements, is in our opinion sufficient. Count two is, therefore, disallowed.

Count three complains against the sustaining of an objection to a question put to prosecution witness Patricia Newiss as to whether or not anyone else had ever entered her office and acted in a manner as the appellant had, that is to say, riffling through documents on her desk without

prior conversation with her or obtaining permission from her to do so. This question was objected to on the ground of irrelevancy. Appellant contends that the answer to this question would have established that something was mentally wrong with the defendant. This Court is of the opinion that the question was irrelevant in that, when Patricia Newiss was on the stand, the issue of insanity had not been raised and could not support the reason for the question. Insanity was not raised until the prosecution had rested, the appellant examined, cross-examined and dismissed. Count three is overruled.

In count four, appellant contends that he was denied on the objection of the prosecution the right to answer a question put to him by his counsel which tended to show that there was no malice between appellant and Bishop Brown. This Court holds that a mere recital by a witness accused of murder to the effect that he bore no ill-feeling to the decedent is insufficient to eradicate the element of malice underlying a charge of murder, as this Court held in *Darnenoh v. Republic*, 4 LLR 308 (1935), when it ruled that malice aforethought may be either expressed or implied and when a human being has been deliberately killed by another the law will presume malice even though no particular enmity has been proven. Count four is, therefore, overruled.

In count five, appellant complains against the overruling of objections made by him on the grounds of irrelevancy, which are too numerous for him to quote. Inspection of the record reveals that there were several objections of the appellant which were overruled without exceptions, which leaves this Court at a loss to know which objections appellant has reference to. More than this, this Court has over and again held that exceptions taken on the record and not incorporated in the bill of exceptions are deemed waived. Count five is, therefore, overruled.

In count six appellant complains twofold. Firstly,

that he was not examined by a qualified psychiatrist and secondly, that the court did not allow sufficient time for a thorough examination. We have hereinabove enumerated the several documents presented by the doctor in evidence of his qualification, which we consider to be sufficient. The second part of this count which complains against the shortness of time allowed for examination is untenable, for there is no indication in the record that the doctor asked for and was denied a period longer than that afforded him. Count six is hereby overruled.

Counts seven through thirteen complain of extracts from the evidence used by the trial judge during his charge to the jury which, appellant contends, were prejudicial and influenced the jury. This Court has held in *George v. Republic of Liberia*, 14 LLR 339 (1961), that in a criminal prosecution the trial court's charge to the jury may properly include a recital and summarization of the evidence. The charge of the trial judge to the jury was well within the permissible limits allowed. Counts seven through thirteen, therefore, are overruled.

Count fourteen complains about the denial of the motion for a new trial. The motion alleges in substance that the verdict was manifestly contrary to the weight of the evidence presented at the trial.

We have summarized the evidence which shows the admission of the appellant to having fired the shots, the testimony of eye witnesses to this fact, the testimony of investigating officers in further substantiation of this fact, as well as his flight from the scene and his reason stated for having drawn a gun on the decedents. Appellant's only real contention here is the absence of malice. We have cited the law governing malice and in our opinion the verdict was in accord with the evidence. The flight of the defendant was a strong presumption of his guilt and the jury had no other alternative but to have considered it in its deliberations. This Court has held that the fact that a defendant in a criminal prosecution flees from

the vicinity where the crime was committed, having knowledge that he was likely to be arrested for the crime, or charged with its commission, or suspected of guilt, in connection therewith, may be shown as a circumstance tending to connect the defendant with the commission of the crime, to authorize the inference of the guilt of the defendant, the *corpus delicti* being proven. *Jackparwolo v. Republic of Liberia*, 14 LLR 359 (1961).

In view of the foregoing, it is our considered opinion that the evidence being clear and the trial regularly conducted the verdict of the jury ought not to be disturbed. The judgment of the court below is, therefore, affirmed.

Affirmed.