IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH …….……...……..CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.……..ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE...……...….ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….……...…..ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR……..……..ASSOCIATE JUSTICE

Emmet Hoff, John Ebu Tarpeh, Solomon Gibson Emmanuel Teddy Gbah and Emmanuel Gibson …….Appellants	)
Versus	) APPEAL
The Republic of Liberia……..……Appellee	)
GROWING OUT OF THE CASE:	)
The Republic of Liberia……...Plaintiff	)
Versus	) CRIMES:) 1. MURDER) 2. CRIMINAL CONSPIRACY
Emmett Hoff, John Ebu Tarpeh, Solomon Gibson Emmanuel Teddy Gbah and Emmanuel Gibson ……Defendants	)

Heard: November 7, 2022 Decided: May 19, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On May 26, 2018, the Grand Jurors of Montserrado County presented an indictment against the appellants, Emmett Hoff, John E. Tarpeh, Solomon Gibson, Edward Gibson, Emmanuel Gibson, Mandingo Papay, Josephus Hoff, Winston Kennedy, Mark Dermah, Emmanuel Teddy Gbah for the commission of the crimes of murder and criminal conspiracy to commit murder.

The indictment alleges that during the morning hour of 9:45 a.m. to 10 a.m. on March 19, 2018, in the area of the Building for Tomorrow Community, Johnsonville Township, the deceased, Alexander Slocum, along with Samuel Benson visited a parcel of land which he, Samuel Benson intended to purchase from the deceased Alexander Slocum; that the co-defendant Emmett Hoff, having received information regarding the said visit to the land, quickly assembled co-defendants John E. Tarpeh, alias Ebu, Edward Gibson, alias Pepper Wulu, Mandingo Papay, Josephus Hoff aka Daniel Zoryou, Winston Kennedy, Mike, Bowlekey, and others to be identified, with the intent to commit a criminal offense, knowingly, purposely, willfully, and intentionally, armed themselves with deadly weapons such as cutlasses, sticks, knives, and iron poles, and confronted the deceased Alex Slocum while he attempted

boarding his motorbike; threatened to kill him, assaulted his person on various parts of his body which resulted to his death.

On arraignment, the appellants pleaded not guilty to the crimes charged in the indictment, thereby joining issue with the State. The appellants also waived their right to a jury trial in accordance with Article 21 (h) of the 1986 Constitution of Liberia, thus, a bench trial ensued.

The records certified to this Court show that during trial, the State presented eight (8) regular witnesses, one deposition witness and eight (8) rebuttal witnesses; while the defense also presented eight (8) witnesses to include statements from two witnesses who had testified during a trial in Criminal Assizes "B". We shall say more on this trial later in this Opinion.

During the trial before Criminal Assizes "A", the appellants filed several motions, to include, a motion for the recusal of the presiding judge; a motion for the release of the defendants on grounds of double jeopardy; a motion for change of venue; a motion to admit to bail; and a motion for severance. The trial judge denied all of the aforementioned motions with the exception of the motion for severance which was granted in favour of the present appellants, Emmett Hoff, John E. Tarpeh, Solomon Gibson, Emmanuel Gibson and Emmanuel Teddy Gbah, they being the only defendants who were arrested and arraigned, while the other defendants named in the indictment remained at large.

At the conclusion of the presentation of evidence and final arguments by the parties, the trial judge who sat as both judge and jury ruled, finding the appellants guilty and sentenced them to life imprisonment for the commission of the crimes of murder and criminal conspiracy. The appellants noted exceptions to the final ruling and announced an appeal to the Honorable Supreme Court seeking a reversal of their conviction and sentencing by the trial court. We must note here that during the pendency of the case, co-appellant Emmett Hoff died.

The appellant has submitted a sixty-nine (69) count petition for this Court's review, a careful perusal of which shows that the appellants have called this Court's attention to numerous errors allegedly committed by the trial judge, for which they seek a reversal of the trial court's final ruling. It is the law in this jurisdiction that the Supreme Court is not bound to pass on every issue raised by the parties, or address every issue presented in the bill of exceptions except those germane to the determination of the case, and that it is the exclusive province of the Supreme Court to pass only upon those issues it deems necessary to arrive at a decision. *The Liberia Company (UBCO) v. Collins, 36 LLR 828, 831* (1990); *Lamco J. V. Operating Company v. Verdier, 26 LLR 445 (1978); The Management of United States Trading Company v. Morris et al, 41LLR 191, 203-4* (2002); *CBL v. TRADEVCO, Supreme Court Opinion October Term 2012; Tehquah v His Honor Paye and RL, Supreme Court Opinion, March Term, 2014.* Consistent with this principle of law, this Court will limit its review of the appellants' bill of exceptions to counts 1,2,4,6,8,20,23,27,37,49,51,58, 60 & 65 which it deems necessary and relevant

making a determination in this case. We quote the said counts verbatim hereunder, to wit:

1. That Your Honor was in error to have ignored the fact that before subjecting the appellants to trial, the prosecution did not establish a *prima facie* case to hold the appellants to answer for murder and criminal conspiracy in the circuit court as required by law; in that, when the appellants were arrested, the police did not conclude investigation on the appellants before sending them to the Monrovia City Court. The appellants then requested for preliminary examination to determine probable cause since the magistrate can also determine *prima facie* evidence in the absence of the police but the appellants' request was denied by the magistrate in violation of their statutory rights; and the case was then forwarded to Criminal Assizes "A" in violation of the appellants' right to preliminary examination as provided for under Section 12.3 of our criminal statute, thus creating reasonable doubt in the prosecution evidence.

2. That further to count one(1) above, appellants submit that after they were denied their statutory rights under Section 12.3 of the Criminal Procedure Law, on May 15, 2018, they filed a petition for summary proceedings against the Stipendiary Magistrate of the Monrovia City Court before Your Honor but Your Honor declined to order the magistrate to conduct preliminary examination in order for the State to establish a *prima facie* case of murder and criminal conspiracy against the appellants which is the right of the appellants and not a privilege. The prosecution's failure to establish a *prima facie* case against the appellants at the Magisterial Court raises reasonable doubt in favor of the appellants. Notwithstanding the aforesaid, Your Honor erroneously ruled to have four of the appellants convicted even though the evidence produced by the prosecution during trial failed to prove murder beyond reasonable doubt.

4. The appellants further submit that our law provides that a charge against an accused must be proved as laid down in the indictment. Thus, the Supreme Court has consistently refused to uphold a murder conviction where the averments in the indictment were not established at trial. Your Honor made a reversible error when you ignored the material variance in the indictment and the evidence produced by the prosecution to prove the allegations as laid down in the indictment; in that, the indictment averred that all of the defendants were arrested on the 25th day of March, A.D. 2018, investigated and charged by the Crime Services Department of the Liberia National Police but the evidence produced by the prosecution mentioned that only one of the defendants was charged by the police and forwarded to court which material variance creates reasonable doubt which should operate in favor of the defendants for their acquittal but Your Honor erroneously convicted the defendants in the face of such reasonable doubt.

6. Appellants submit that during trial the theory that the prosecution relied on to convict the defendants was the production of direct evidence in the form of eyewitness testimonies but our law is clear that for a murder case, the testimony of an accomplice to the murder is admissible against the other defendants, although his testimony must be accepted with caution as found in the *Yancy v. RL* case decided in 1978. Despite the aforesaid law, during trial, the State failed to produce any individual who was an accomplice or a co-conspirator to the murder in order to be qualified as an eyewitness to the murder, and notwithstanding the prosecution's failure to produce such credible eyewitness account to directly link the defendants to the killing, Your Honor erroneously accepted the testimonies of prosecution self-styled eyewitnesses in persons of Henry Massaquoi, James Greene and Samuel Benson when the evidence clearly showed that these three witnesses named hereinabove were not accomplices nor co-conspirators to the murder; but despite the aforesaid illegal evidence relied on by the prosecution as direct evidence to link the defendants to the murder, Your Honor erroneously ruled against the defendants convicting the defendants for murder and criminal conspiracy which ruling was contrary to the evidence produced by the prosecution during trial.

8. That our law states that whenever the witnesses for the prosecution contradict each other a doubt results which should operate in favor of the accused. During trial, the testimonies of prosecution three witnesses in persons of Henry Massaquoi, James Greene and Samuel Benson contradicted each other which contradiction should have operated in favor of the defendants, but Your Honor ignored same and convicted the defendants based on such contradictory testimonies of the prosecution witnesses.

20. That Your Honor is quite aware that prosecution witnesses, Henry Massaquoi and James Greene both testified to an alleged aggravated assault incident and not the murder incident of the late Alex Slocum; and Your Honor erroneously relied on said testimonies to have the defendants convicted when Your Honor is aware that such testimonies create reasonable doubt as to the guilt of the defendants.

23. That Your Honor made further reversible errors in convicting the defendants and sentencing them to jail for life because Your Honor did not take into consideration the damaging testimonies of prosecution sixth witness in person of Inspector Harvey A. Page of the homicide squad of the Liberia National Police who testified on Monday, March 23, 2020 that the names of Emmett Hoff, John E. Tarpeh and the other Defendants named in the indictment were given to the police by family members and bystanders who claimed that the defendants were involved in the murder of the late Alex Slocum, when, these family members of the deceased and bystanders were not present on the crime scene when the incident occurred and without the police relying on scientific proof based on forensic report to link the defendants to the commission of the crime, the police accepted what the family members of the deceased and

bystanders told them; and on the basis of said hearsay evidence, Your Honor convicted the defendants for murder and criminal conspiracy and subsequently sentenced them to life imprisonment when Your Honor is quite aware that using hearsay evidence of family members to convict the defendants amounts to miscarriage of justice.

27. That during final argument, appellants argued that in a murder case, the prosecution is under a legal duty to establish the two parts of the corpus delicti; this is, the death of the decedent and to connect the defendants to the criminal agency which inflicted wounds on the victim resulting to death. However, during trial, the State failed to establish the cause of death and also failed to connect the defendants to the criminal agency used in committing the murder; however, it was therefore the duty of the State to establish at least one part of the corpus delicti, the cause of death by producing a medical report and a medical doctor to explain to the court the weapons that were used to inflict the wounds on the victim, but during trial the State relied on a report of a coroner who did mortuary science and not a medical doctor to establish the cause of death which report creates reasonable doubt.

37.That further to count 36 above, co- defendant, John E. Tarpeh in refuting Samuel Benson's testimony that he saw John E. Tarpeh among the group of men who confronted the late Alex Slocum on the land, co-defendant, John E. Tarpeh pleaded alibi by producing two alibi witnesses who testified on his behalf and established that he (John E. Tarpeh) was not at the crime scene when the late Alex Slocum was murdered. The first alibi witness of John E. Tarpeh said she was with the defendant on March 19, 2018 at the defendant's house from the morning hours up to 11:00 a.m., while the other alibi witness said he met John E. Tarpeh at Pepper Wulu Market at 11:15 a.m. on March 19, 2018 and was with John E. Tarpeh from 11:15 a.m of that day up to 3:00 p.m, doing work for one Pa Sarnoh on the avenue at Mark Deshield Community in Johnsonville. The prosecution failed to provide rebuttal evidence to John E. Tarpeh's two alibi witnesses; notwithstanding, the prosecution brought the same Samuel Benson as rebuttal witness and he repeated the same testimony he gave when he appeared as regular witness. The failure of the State to produce rebuttal evidence to John E. Tarpeh's two alibi witnesses clearly shows that there is insufficient evidence to establish beyond reasonable doubt that the crime was committed by co-defendant, John E. Tarpeh and Your Honor was in error to convict co-defendant, John E. Tarpeh and others for murder and criminal conspiracy.

49.That Your Honor was in serious error to have the defendants convicted after the police forensic technician told the court that there was no fingerprint of the defendants found on the body of the decedent to link the defendants to the crime which answer raises reasonable doubt to have the defendants acquitted.

51.That Emmanuel Gibson and Solomon Gibson pleaded alibi and used Emmanuel Gbah as an alibi witness and Your Honor agreed with Emmanuel Gbah that he was not part of the murder because he was in Bong County but

convicted Solomon Gibson and Emmanuel Gbah that they were part of the murder when Emmanuel Gbah who Your Honor released, told the court that as of March 15, 2018, Emmanuel Gibson and Solomon Gibson were with him; to which testimony of Emmanuel Gbah, prosecution did not bring rebuttal evidence from Bong County to disprove the alibi defense of Emmanuel Gbah but Your Honor erroneously convicted Emmanuel Gibson and Solomon Gibson for murder and criminal conspiracy when they provided alibi defense that they were in Bong County with Emmanuel Gbah doing coal business.

58. That throughout the production of evidence by the prosecution, they failed to prove conspiracy in that the prosecution did not produce any witness who appeared in court to testify as a co-conspirator by admitting to the commission of the crime linking the rest of the other defendants to their involvement in the plan and execution of the murder and that in the absence of such witness, conspiracy cannot hold because the allegations laid down in the indictment for conspiracy has no proof. Notwithstanding, Your Honor adjudged the appellants guilty of murder and criminal conspiracy to commit murder.

60. That Your Honor committed serious reversible error when Your Honor erroneously mentioned in Your Finl Ruling that the appellants were arraigned twice but due to manifest necessity, the case did not end and was transferred to Criminal Court A. The records show that after Your Honor commenced trial in this case when the court began taking evidence from the prosecution, the appellants filed motion for double jeopardy and that eventhough the appellants were entitled to double jeopardy because the second trial prematurely terminated since Judge Nuta who presided over the second trial was given indefinite extension to complete the trial and his reassignment to another circuit when the special assignment was not concluded was not manifest necessity because the termination of the second trial was not based on manifest necessity. The doctrine of double jeopardy bars Your Honor from conducting trial in this case for the third time but Your Honor denied the appellants their constitutional right of double jeopardy and proceeded to conduct trial for the third time in violation of the appellants' right under double jeopardy.

65. That your Honor was also in error to use call logs to establish whether or not Emmanuel Gibson and Solomon Gibson were in Monrovia on March 19, 2018, and committed the crime before going to Bong County because the call log is not capable of placing the appellants on the crime scene since it is a secondhand evidence and not a direct evidence as only an eyewitness who was at the crime scene can be considered direct evidence that can place the two defendants on the crime scene before flight can be established by the prosecution. However, during trial, the prosecution third witness, Samuel Benson said Emmanuel Gibson and Solomon Gibson were not on the crime scene on Monday, March 19, 2018, thus establishing that they were in Bong County along with Emmanuel Gbah on March 19, 2018, and did not commit the crime on March 19, 2018, before going to Bong County; and also because the call logs are not perfect evidence to establish flight, such evidence creates reasonable doubt as to whether the defendants were on the crime scene and Your Honor was in error to have used the said call logs to establish flight.

In summary of the counts quoted *supra*, the appellants have challenged the denial of their right to preliminary examination before the magisterial court; the denial of their motion for acquittal based on the principle of double jeopardy; the failure of the prosecution to rebut the appellants' alibi defenses; the alleged failure of the prosecution to establish a *prima facie* case; and the requirement that the prosecution must prove its charge as alleged in the indictment beyond all reasonable doubt. These are the issues that must be traversed by this Court for a final determination of this appeal. We shall commence our review thereof with the issue of preliminary examination. The appellants have argued that they were denied preliminary examination before the Monrovia City Magisterial Court and that this denial is a violation of their statutory right; that the reason for preliminary examination is to establish probable cause and that the magisterial court's failure to conduct the preliminary examination as requested by the appellants created reasonable doubt which should have operated in their favor.

Preliminary examination is addressed in Section 12.2 of our Criminal Procedure Law which provides that a preliminary examination shall be given to a defendant if he requests it. Hence, as a matter of law, if so requested, the use of the word "shall" in the mentioned statute, depicting a mandatory compliance, the appellants should have been granted preliminary examination. A recourse to the records shows that there were two notices of assignment issued out from the Monrovia City Magisterial Court citing the parties in this case to appear for the purpose of conducting preliminary examination. The first notice of assignment issued on April 27, 2018, for hearing on May 2, 2018, was not held due to the magistrate's participation in a judges' workshop; the second notice of assignment was issued on May 7, 2018, for hearing on May 10, 2018; however, there is no showing in the records that the Stipendiary Magistrate J. Kennedy Peabody conducted a preliminary examination as requested by the appellants; that the records infer that for the failure of the stipendiary magistrate to conduct preliminary examination as requested by the appellants, the latter proceeded to file for summary proceedings against the Stipendiary Magistrate before His Honor Roosevelt Z. Willie, Assigned Judge of the First Judicial Circuit, Criminal Assizes "A" praying the court to compel the magistrate to conduct the preliminary examination. The records are devoid of any ruling made by Judge Willie on the summary proceedings, but what is shown is that His Honor Roosevelt Z. Willie subsequently presided over the action of murder and criminal conspiracy to commit murder.

We agree with the appellants that in criminal cases commencing at the magisterial court, when requested, preliminary examination is a mandatory statutory right, and that the magistrate erred when he did not conduct the said preliminary examination. However, this Court says that the non-granting of preliminary examination to the appellants in no way creates reasonable doubt so as to operate in favor of the appellants to have them acquitted. The Supreme Court has held that "a reasonable doubt is an honest doubt of a defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack

of convincing evidence. Reasonable doubt is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is opened to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the truth of the charge". *B.T. Collins v. Republic of Liberia, 22 LLR 365 (1974); Williams v. RL,* Supreme Court Opinion, March Term, 2014. This means that before reasonable doubt can be established the prosecution must be given the opportunity to prove its case and likewise, the accused given the opportunity to confront his accuser(s) and the charges against him. In the present case, the magisterial court lacking the requisite tool to review this type of evidence which is only cognizable before a criminal circuit court where the matter remained and an indictment subsequently presented alleging the crimes of murder and criminal conspiracy; hence, the matter being before the proper forum where the evidence will be presented by the State which will ultimately determine whether the appellants can be discharged or convicted, we hold that the said denial does not create reasonable doubt, though an error.

As to the next issue of double jeopardy, the appellants advanced the following reasons therefor: (a) that the case was first heard by Judge Ceaineh D. Clinton during her assignment as trial judge of the First Judicial Circuit, Criminal Assizes "B" (b) that the second trial was terminated prematurely in Criminal Assizes "B" when judge Nuta was transferred to the 7th Judicial Circuit, Grand Gedeh County; (c) that when Judge Roosevelt Z. Willie commenced trial at the Criminal Assizes "A", this constituted the third time they were being indicted for the crimes of murder and criminal conspiracy and that they filed a motion evoking double jeopardy and requesting their acquittal.

The Constitution provides that "no person shall for the same offense be twice put in jeopardy of life or limb." 1986 Constitution, Article 21 (h).

Also, our statute provides that "double jeopardy attaches when a person has been placed on trial before a court of competent jurisdiction under a valid indictment or complaint upon which he has been arraigned and to which he has pleaded, and a proper jury has been empanelled and sworn to try the issue raised by the plea; or if the case is properly being tried by a court without a jury, after the court has begun to hear evidence thereon. Termination of the trial thereafter by the court because of manifest necessity, however, shall not bar another prosecution for the offenses set forth in the indictment or complaint…" *Criminal Procedure Law, Section 3.1; Lumel et al v Swope, Supreme Court Opinion, March Term, 2008; RL v Smith et al, Supreme Court Opinion, March Term, 2009.* Based on the the foregoing constitutional and statutory laws and precedents of this Court, we must delve into the records to determine whether double jeopardy did attach as claimed by the appellants.

The records reveal that this case was first called before the First Judicial Circuit, Criminal Assizes "B" during its August Term, A. D. 2019, presided over by Her

Honor Ceaineh D. Clinton Johnson who, upon the case being called, recused herself from the hearing thereof. Due to this act by Judge Johnson, the appellants were not arraigned, did not join issue with the State and no evidence taken, hence, double jeopardy cannot attach in this instance.

As to the allegation that double jeopardy attached for the second time when Judge Korboi K. Nuta presided over the February Term of Court A. D. 2020 of the same court, that is, the First Judicial Circuit, Criminal Assizes "B" where the appellants were arraigned and the trial commenced by the State presenting evidence, we observe the following from the records: that indeed the appellants were arraigned before Judge Nuta, pleaded not guilty thus joining issue with the State; that the State began submitting its evidence when judge Nuta's term expired and for which he requested and was granted an extension of the Term, by Chief Justice Francis S. Korkpor, Sr. (retired); that notwithstanding the granting of this extension, Judge Nuta was reassigned to the 7th Judicial Circuit, Grand Gedeh County, meaning that although the extension was granted, by the transfer of Judge Nuta to another circuit, he was without jurisdiction to continue hearing the matter. It was during this time that Judge Ceaineh D. Clinton-Johnson was reassigned to the First Judicial Circuit, Criminal Assizes "B" for the May Term 2020, but considering her recusal from the case during the August Term of Court, A. D. 2019, she refused to hear same and ordered that the case be transferred to Criminal Assizes "A" which was done, and venue before Criminal Assizes "A" where the appellants were again arraigned, entered a plea to the same indictment, and trial commenced.

The Supreme Court has held that "it is not every termination of a case by a court without concluding a trial that amounts to double jeopardy." *Rogers et.al v. Thorpe et. al, 32 LLR 175 (1974).* Our criminal statute as quoted above clearly provides that, for double jeopardy to attach, there must be a valid indictment, and if the case is being tried by a jury the defendant must be arraigned; he/she must enter a plea; and a proper jury must be empanelled and sworn to try the issue(s) raised by the plea or where a court sitting without jury begins to hear the evidence. Termination of the trial thereafter by the court because of manifest necessity, however, shall not bar the subsequent prosecution for the offenses set forth in the indictment or complaint. *RL v. Dillion, 15 LLR 119 (1963)*; W*right v. Reeves, 26 LLR 46-47 (1977); RL v Karngbay, 30 LLR 127 (1982); Togba v. RL, 35 LLR 389 (1988).*

As is clearly seen, the termination of a trial due to manifest necessity, shall not bar the subsequent prosecution for the charges set forth in the same indictment or complaint. Our inquiry into the question as to what constitutes manifest necessity shows that same may vary from case to case, depending on the facts and circumstances thereof. For instance, manifest necessity includes, but not limited to, illness of jurors, a judge, defendant or any person whose presence and participation is indispensable to a fair and impartial trial; expiration of the term; inability of a jury to agree; and separation of the jury. *Wright v. Reeves, 26 LLR 46-47 (1977).*

Accordingly, we note that in the instant case, the trial in Criminal Assizes "B" having been terminated for reason of the expiry of the term of court and the judge's reassignment, constitute manifest necessity within the contemplation of the above

stated grounds constituting manifest necessity, a condition which does not bar subsequent prosecution of the defendant, notwithstanding an extension of the period. *RL v. Smith et. al, Supreme Court Opinion, March Term, A.D. 2009.* Further, it is trite law in this jurisdiction that "a judge whose assignment over a court has expired has no authority to preside over same and/or decide a case in that court." *Lumel et.al v. Swope, Supreme Court Opinion, March Term 2008.* Hence, the trial under the same indictment and their subsequent conviction by Criminal Assizes "A" was proper and legal, and for which, double jeopardy will not attach.

The appellants further argued in their bill of exceptions that they were not within the vincinity where the murder and criminal conspiracy occurred, thus pleading an alibi. Alibi is a defense to a crime. It is an affirmative plea and is controlled by the same principle of law that governs affirmative averments laid in the indictment. Hence, an accused is required to establish his alibi by the same standard of proof as that by which the prosecution is required to prove the defendant's guilt. *Ben v. R.L, 31 LLR 107 (1983).*

Also, a defense of an alibi means that at the time of the commission of the crime charged in the indictment, the accused was at a different place so remote or distant or under such circumstances that he could not have committed the offense. *Fartorma v. RL*, Supreme Court Opinion, October Term, 2010.

By an alibi, the accused desires to establish that he had been at a place so remote that his participation in the crime was physically impossible. While alibi plea ought to be accorded fair consideration in favor of the accused, one key observation made by law writers is that an alibi is usually easily fabricated. The caution therefore is that an alibi defense must be subject to searching scrutiny. *AM JUR. 2d ALIBI, Sect. 184. (Criminal Law)*; *Yancy v. RL, 27 LLR 365 (1978).* Hence, in order for an alibi to effectively benefit an accused, it must be true, definite, and certain as to the presence of the defendant in a place other than the scene of the crime, at the time the crime was being committed. *Yancy v. RL,* 27 LLR 365 *(*1978*).*

We also examine the records to make our determination as to whether the appellants' alibi defenses will lie given the facts and circumstances of this case.

Co-appellant John E. Tarpeh testified that on March 19, 2018, he was at his house working and cleaning along with his sister from the morning hours to 11:00am and because he had work to do for one Pa-Sarnoh within the Mac Deshied area, he left his house and arrived at the market by 11:15am and met a fellow who followed him to the Mac Deshied area and they arrived at that site by 12 noon and worked there up to 3:00pm; that he later left the fellow and returned to his house; but that he forgot the name of the fellow he worked with at the Mac Deshield area.

The defense presented another witness, Otis Z. Jones who testified corroborating John E. Tarpeh's testimony, that he got to know the appellant John E. Tarpeh through one Pa-Sarnoh and that on the day the crime was committed, he arrived at the market by 11:00 a.m and that John E. Tarpeh arrived at 11:15 a.m and they both left for the

project site. The witness further testified that he did not know the whereabouts of the appellant, John E. Tarpeh before they met at the market site.

Appellant Emmanuel Gibson testified that since March 15, 2018, he and his brother traveled to Bong County to burn charcoal and while in Bong County, they met Emmanuel Gbah who asked to join them to burn coal and they agreed; that they remained at the coal site until June 14, 2018, and left for the main town to buy food and were arrested there by officers of the Liberia National Police and transferred to the Monrovia City Court.

Appellant Emmett Hoff testified that on the day of the incident, he left the Johnsonville Community where he resides around 11:00 a.m., drove his wife to the University of Liberia Campus, and continued to the African Methodist Episcopal University (AMEU) where he studied and remained in town until 9 p.m. before making his way back home.

The above referenced portions of the appellants' testimonies when considered all point to alibi as their defense to the crime charged. However, the records show that the prosecution produced rebuttal witnesses to disprove the alibi testimonies of the appellants, and commenced with Alfred Siafa who testified that he knows both Emmanuel Gibson and Solomon Gibson; that on the morning of Sunday, March 18, 2018, he and Emmanuel Gibson played football together on the Pepper Wulu Town Sports Pitch; that Solomon Gibson was on the field but did not practice with them that morning.

Attorney Daniel S. Tamba, the In-House Legal Counsel of Orange G.S.M was subpoenaed by the court on a motion by the prosecution to appear and testify to the Orange numbers of Emmanuel Gibson and Solomon Gibson and the call locations made from those numbers; that Attorney Tamba testified to and identified Solomon Gibson's number but said he could not identify or say with certainty that the number 0775751445 belongs to Emmanuel Gibson due to the lack of subscription for that number; that the purpose of a call log is to identify whether a particular number(s) either called or received calls during a certain period and that a call log will show the type of call that is being made, either an incoming or outgoing call, the answer time and date, the call duration, the call ID, and the name assigned to a particular number and the location of the caller. The witness further testified that the number 0777130086 belongs to Solomon Gibson and that on March 15, 2018 by 7:14 a.m, a call was made from Kebah Road, Bardnersville and on the same date, at 12:10 a.m, a call was made from the same number from Johnsonville; that the same number made a call at 15:07pm from Maggie Cube Factory Road, and at 17:18 pm from LPRC-II; that on March 16, 2018 at 7:09 a.m, a call was made from the number from Kebah Road, and the same date at 7:31 a.m, the number made a call from Johnsonville; that the call log also shows that on March 16, 2018 at 11:33 a.m, the number was at Caldwell; that on March 17, 2018 at 7:22 a.m the number was at Johnsonville, again; that on March 18, 2018 at 10:13 a.m, the number was at Kebah Road; that on March 19, 2018, the number received a call at 9:30 a.m and on the same date, at 9:55 a.m, a call was made from Johnsonville and the last time a call

was made from the number was on March 19, 2018, at 14:35 p.m. and it was made from Johnsonville, thus successfully disproving co-appellant Solomon Gibson's alibi.

As to appellant Emmanuel Gibson's alibi, the Lonestar Cell Corporation was subpoenaed by the trial court on a motion from the prosecution and produced call logs that indicated that the appellant Emmanuel Gibson made calls from Johnsonville, Caldwell and Kebah Road area from March 15, 2018, up to and including March 19, 2018, thus also successfully disproving co-appellant Emmanuel Gibson's alibi.

Additionally, in testifying for the prosecution as a rebuttal witness, Mr. Saliheo Sarnoh whom co-appellant John E. Tarpeh claimed to have worked for, testified that he got to know John E. Tarpeh through appellant Emmett Hoff since 2012; that, appellant John E. Tarpeh worked for him some time in 2013 and 2017, but that on March 19, 2018, the date the crime occurred, co-appellant John E. Tarpeh never worked for him, thus crumbling and disproving co-appellant John E. Tarpeh alibi.

The case *Ledlow et. al v. Republic, 2 LLR 569, 581-582* decided by this Court in 1925 is instructive in analogy to the instant case. In that case, Matthew C. H. Ledlow et.al were indicted by the grand jury of Grand Bassa County for the crime of murder. Appellant Ledlow contended that he was at his farm around the Mechlin River in Grand Bassa County when the decedent was murdered. It was not disputed that the appellant's farm where he claimed to have been was 25 miles from the City of Buchanan where the crime was reportedly committed. The State, however, produced rebuttal witnesses who testified that they saw appellant Ledlow in Lower Buchanan on the day the crime of murder was committed. Based on this evidence, the Supreme Court affirmed the guilty verdict of the appellant. Similarly, in the instant case, the prosecution through their rebuttal witnesses having provided sufficient evidence to disprove the alibi defenses of the appellants, same cannot be upheld, and we so hold.

The appellants have also argued that the prosecution did not present a *prima facie* case as the charges contained in the indictment were not proven beyond reasonable doubt to sustain their conviction. In order to substantiate this claim, the appellants contend that the testimonies of the prosecution witnesses in persons of Henry Massaquoi, James Greene and Samuel Benson as eye witnesses, they not being accomplices or co-conspirators said testimonies cannot be used against them or to link them to the crimes charged in the indictment; that the reliance on these witnesses' testimonies by the prosecution to link the appellants to the crime was improper; that the court erroneously ruled convicting the appellants for the crimes charged in the indictment based on these witnesses testimonies; and that these witnesses did not meet the legal requirement under the law to serve as witnesses to a murder case of conspiracy.

We take recourse to the records to examine the testimonies of these witnesses, which show that Henry Massaquoi testified that on the morning of March 19, 2018, he took a contract to brush a land in Johnsonville, "Building for Tomorrow Community" and

while brushing, he heard a group of men saying "your beat the man"; that when he drew closer to where the noise was coming from, he saw and identified the following persons: John Ebu Tarpeh, Emmanuel Gibson, Solomon Gibson, Emmett Hoff and Josephus Hoff; that the appellants he identified had sticks, cutlasses and shovels and were beating on another man; that he being afraid, did not return to his work, but went and told Andrew Slocum who had given him the contract that he saw Ebu and other men beating on someone; that he recognized the person to be the decedent when the appellants were lifting his body from the ground.

Witness James Greene testified that on March 19, 2018, he took a passenger to the Clear Heart Block Factory in the "Building For Tomorrow Community" and had the urge to ease himself, so he went in the bush to attend to nature when he heard a noise coming from the bush; that the noise was a group of men saying "your beat the man"; that he went closer to see what was going on and he saw and identified Emmett Hoff, Mark, John Ebu Tarpeh, Solomon Gibson, Emmanuel Gibson, Josephus Hoff and other people beating the man and it was Emmett Hoff that was giving the command for the others to beat the man.

Witness Samuel Benson testified that on March 19, 2018, one surveyor by the name of Tonia Buxton called him and requested that he come at his house; that when he got there, the surveyor presented him his phone to talk to someone who had a land and intended to sell same; that he (Samuel Benson) had told the surveyor that he wanted to purchase a land; that it was Alex Slocum he spoke with on the phone and when they met, they both got on a bike and rode to the "Building for Tomorrow Community" where the late Alex Slocum showed him parcels of land that were available for sale; that after they got through, they were embarking on their motorbike to leave the site when they saw about seven (7) men coming towards them and he identified one of the men to be John E. Tarpeh; that John E. Tarpeh walked directly to the late Alex Slocum and told him that "I have told you not to come here again, what are you doing here?"; that John E. Tarpeh collared the late Alex Slocum and started beating on him with the cutlass and that he became afraid and fled the scene.

This Court says that the appellants' argument to the effect that one must be a co-conspirator or an accomplice in order to have standing to link a person to the commission of a crime finds no basis in the law. To link a person to a crime, the witness need not be a co-conspirator or an accomplice; the witness only need to testify as to facts within his personal knowledge or recollection. *Civil Procedure Law, 25.21; Swary v. RL, 5LLR 49 (1963).* The three witnesses mentioned *supra* were all eyewitnesses to an incident between the late Alex Slocum and the appellants and few days thereafter, Alex Slocum was discovered dead and buried within the same area they had witnessed the incident. In fact, one of the witnesses, Samuel Benson saw John E. Tarpeh and others approach the decedent with weapons and saw John E. Tarpeh manhandle the decedent and assult him (decedent) with a cutlass. Given what we have said, we hold that the testimonies of the three eyewitnesses to the crimes of murder and criminal conspiracy are credible.

The appellants have also argued that the *corpus delicti* of the murder charge was not established at the trial and that the prosecution failed to establish the cause of death by an autopsy performed on the decedent's body by a medical expert.

We disagree with this argument advanced by the appellants, in that the testimonies of all of the prosecution's witnesses placed the appellants at the self same site of the murder; that they were seen using cutlasses and sticks attacking the deceased; and that the deceased body was found buried at the same place described by the witnesses. In the mind of the Court, the death of the decedent and the criminal agency or the *corpus delecti* were clearly established under those circumstances by the prosecution.

This Court has opined that "direct or positive evidence is not necessary to establish *corpus delicti.* The rule laid down by the early English authorities that the *corpus delicti* must be proven by direct or positive testimony has been modified by later decisions. The controlling authority now is that direct or positive proof is not essential; all the elements of the *corpus delicti* may be proved by presumptive or circumstantial evidence. It would be unreasonable to always require direct and positive evidence, for crimes are naturally committed at chosen times, in darkness and secrecy. The *corpus delicti* of a murder may be established without the production of the weapon alleged to have been used to effect the killing, and without evidence of a post mortem examination/autopsy. Proof of guilt of a crime will be deemed sufficient when the evidence thereof, even if circumstantial, is of such nature as to convince any rational mind of the criminal responsibility of the accused. There are numerous acts which can cause the death of a person; there are as many ways to commit murder as there are to destroy a man. Therefore, no particular kind of act is necessary to constitute the element of the crime of murder. It is sufficient if the act done or omitted results in death. 20 AM. JUR. 2d., *Criminal Law,* § 1231; *Williams et al v R.L.* 30LLR 71, 88 (1982); *Taylor* v. *Republic*, 14 LLR 524, 530 (1961).

Further, the records also show that the coroner's report established the following conditions of the decedent:

1. That the body was visually seen in a decomposing stage.
2. That multiple lacerations were observed on the head of the victim.
3. That one chop wound was observed on the back of the victim's left wrist.

The coroner then concluded in his report that the multiple wounds seen on the decedent's head were the cause of his death.

It is the law in this jurisdiction, that,: "…*the coroner may, if he is unable to ascertain the cause of death by preliminary examination, perform, if he is a competent medical practitioner, or authorize to be performed by a competent medical practitioner, an autopsy on the body of the deceased for the purpose of determining the cause and circumstances of death. Every such autopsy must be witnessed by two credible and discreet residents of the county, territory or district in which it is performed, and the coroner shall have the power to compel their attendance by subpoena…the report*

of the coroner shall be accompanied by a copy of the report of the medical practitioner, if any, and a certified copy of all the testimony taken." Criminal Procedure, Rev. Code 2:7.3, 7.5 Ibid. Nagbe v Williams et al, Supreme Court Opinion, October Term, 2010; Toe v. R.L. 30 LLR 491, 493 (1983).

Hence, the coroner's report having established from the preliminary examination conducted, that the cause of death was produced by the acts of the apellants without the possibility that death resulted from some cause other than the acts of the appellants.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court adjudging the appellants guilty and sentencing them to life imprisonment is hereby affirmed. The Clerk of this Court is ordered to send a Mandate to the court below, commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are disallowed. IT IS HEREBY SO ORDERED.

When this case was called for hearing, Cllr. Wellington G. Bedell of Garlawolu and Associates Law Offices appeared for the appellants. Cllr. Bobby Livingstone of the Ministry of Justice and Cllr. Arthur Johnson of the Consortium of Legal Practitioners Incorporated appeared for the appellee.