CHUCK NEBO, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE EIGHT JUDICIAL CIRCUIT, NIMBA COUNTY.

Heard: May 19, 1981 Decided: July 31, 1981

1. To identify a signature does not necessarily require the writer himself. Anyone who has corresponded or transacted business with the person or who is acquainted with the handwriting of the person may identify his writing or signature.
2. Documentary evidence which is material to the issue of fact raised in the pleading and to the proof of the crime charged, and which is received and marked by court, should be presented to the jury.
3. Absence of a material witness is a ground for continuance especially when the movant had put the machinery of the court into operation.
4. The court on motion of a party may order continuance or a new trial in the interest of justice during trial.
5. A reversible error committed by the trial judge ought not to prejudice the interest of appellee.
6. Though it may be evident that the prosecution has failed to prove its case as required by law, when it appears, however, that a missing evidence and testimony can be supplied at a subsequent trial, a remand will be ordered, so that substantial justice may be done.

From a final judgment confirming a guilty verdict for murder, the appellant announced an appeal to the Supreme Court. A motion to dismiss the appeal was subsequently filed by appellee, but it was withdrawn after appellee conceded appellant's resistance. The Supreme Court, in holding that the trial court erred in excluding the autopsy report from the evidence, and after denying the prosecution's request for continuance, especially when the prosecution had put the machinery of the court into motion, *reversed* the judgment and *remanded* the case for a new trial.

J. Kennedy Belleh appeared for appellant. *Solicitor General Jimmie S. Geizue* appeared for appellee

MR. JUSTICE MORRIS delivered the opinion of the Court.

The defendant, Chuck Nebo was indicted for the crime of murder during the February 1980 Term of the Eighth Judicial Circuit Court of Nimba County. It is alleged in the indictment that, the defendant assaulted the late Rose Peabody, brutalized her with a belt and punched her in her mouth. That as a result of the said unlawful, felonious and violent treatment, the late Rose Peabody sustained mortal wounds, including subdural haematoma, bruised internal surface of scalp, laceration of left upper and lower extremities, and brain injury, from which she died. The case was tried during the August 1980 Term of the People's Eighth Judicial Circuit Court presided over by His Honour J. Patrick Biddle, Resident Circuit Judge, by assignment, and the jury brought a verdict of guilt against the defendant, which verdict was affirmed by the court's final judgment. The defendant appealed from the final judgment to this Court of dernier resort.

When this case was called for hearing, appellee informed us that he had filed a motion to dismiss the appeal on the ground that the appellant did not file his bill of exceptions within the required statutory time of ten days. The motion to dismiss was resisted by appellant with evidence indicating that the bill of exceptions was filed within ten days. Appellee then conceded appellant's resistance and withdrew said motion.

Appellant contended that the judge committed a grossly reversible error and therefore requested this Court to reverse the judgment of the trial court and discharge the defendant without day. Appellant argued that there was no coroner, medical, or autopsy report to establish the cause of decedent's death. He maintained that the doctor who saw the deceased on arrival at the Lamco Hospital should have submitted a report, or the pathologist who performed the autopsy at John F. Kennedy Memorial Hospital should have appeared at the trial to testify to the cause of death. Appellant further contended that the prosecution failed to produce at the trial the criminal agency - the alleged belt, and in support thereof, he cited the case of *Edward and Hage v. Republic*, and *Banjoe v. Republic,* 26 LLR 255 (1977). In the case of the former, there was an autopsy report submitted by Dr. S. B. Maale-Adsei, a pathologist of the J. F. K. Medical Center, but the court held that the prosecution did not produce evidence at the

trial to establish that decedent died of asphyxia attributable to strangulation or chocking as stated in the indictment. In the case of the latter, the court held that there was no coroner's inquest held, no medical doctor examined the bodies of the deceased, hence, there was no medical report verifying the cause of decedent's death. The court further held that the assumption that the decedent died of gun shot wounds inflicted by appellant Zoe Banjoe, during his admitted shooting in the market place on January 24, 1976, could not amount to proof, in that for the Supreme Court to uphold a judgment against an appellant in a murder case, his responsibility for the death of the decedent must have been proved beyond the shadow of a reasonable doubt. In the instant case, there was an autopsy performed and a report submitted which was testified to, marked and confirmed by court, but was excluded from the evidence.

It is interesting to know that the appellee, while contending that the judgment of the court below should not be disturbed, has also argued that the judge committed reversible error when he denied prosecution's request for the postponement of the trial, pending the arrival of the pathologist at the trial to testify to the autopsy report. Appellee has also contended that the judge committed reversible error by his refusal to admit the autopsy report marked and confirmed by court into evidence. The records certified to us reveal that there was an autopsy report testified to by witnesses Corporal Paye E. Laywahyi and Sergeant Harmon Sonyah, marked and confirmed by court as P/CE-20 (See sheets 2, 3, 4, 5 and 7-12 of August 14, 1980, 3rd day's session). It appears from the records that the above named witnesses were only examined on the genuineness of the signatures of doctors Walter L. Brumskine and Isaac A. Moses, and not the content of the autopsy report.

The appellant objected to the admissibility of P/CE-2, the autopsy report, on the ground of insufficiency of identification in that the doctors whose signatures appear on the report did not appear in persons to identify their signatures or confirm their authorship. The court then denied the admission into evidence of the autopsy report marked and confirmed by it as P/CE-2 on the ground that the doctors failed to appear to authenticate their signatures or show any legal reason why they could not come.

Hence, prosecution witnesses who testified to said documentary evidence were second hand evidence of the lowest grade.

The ground advanced by the appellant against the admission of the autopsy report into evidence, was not sufficient to warrant the exclusion of the document from the evidence; for to identify a signature does not necessarily require the writer himself. Anyone who has corresponded or transacted business with the person or who is acquainted with the hand writing of the person, may identify his writing or signature. Civil Procedure Law, Rev. Code 1:25.17. The witnesses for the prosecution did identify the signatures of Doctors Walter L. Brumskine and Isaac A. Moses. We would have agreed with the ground of insufficiency of identification of the autopsy report if the witnesses had failed to answer any question propounded to them on the document to which they were testifying. This Court has held that documentary evidence which is material to the issue of fact raised in the pleadings, and in this case material to the proof of the crime charged, and which is received and marked by court, should be presented to the jury. *Walker v. Morris*, 15 LLR 424, 429 (1963), and *Dagber v. Molley*, 26 LLR 422 (1978). In the case at bar, the judge ruled that the identification of one's signature other than the signer himself was second hand evidence which is of the lowest grade of evidence. We disagree and hold that the judge erred in excluding the autopsy report from the evidence submitted to jury who are the sole judges of the fact, especially so when said report has been testified to by the prosecuting witnesses and ordered marked and confirmed by court.

The prosecution wrote a letter to the clerk of court on August 12, 1980, and requested him to issue a writ of subpoena on witnesses Matthew Willy, Doctor Isaac A. Moses, pathologist, and Doctor Walter L. Brumskine, Chief Medical Officer of the J. F. K. Hospital, in Monrovia. The said letter was filed by the clerk of court on the 13th day of August 1980, and the subpoena was issued on the same day but it was not served on the witnesses. The writ of subpoena was again issued on the 26th day of August 1980 commanding Doctors Walter L. Brumskine and Isaac A. Moses, to appear before the Eighth Judicial Circuit Court in Sanniquelle, Nimba County, on the 27th day of August 1980 at the hour of 9:00 o'clock in the morning to testify as witnesses.

Doctor Walter L. Brumskine was served on the 27th day of August, 1980, at the hour of four o'clock *post meridian*, according to the sheriff's returns. Consequently, none of the doctors appeared at the trial. The prosecuting attorney then filed motion to continue the trial until the 15th day of September in order to get his material witnesses, the doctors, in court to testify to the autopsy report. The motion was resisted, argued and denied and the trial of the case ordered proceeded with immediately.

Appellee contended that the prosecution having put the machinery of the court into operation, the judge should have held any witness who ignored the writ of subpoena in contempt proceedings, but he should not have proceeded with the trial in the absence of the material witnesses.

It is our opinion that the judge erred in denying the motion filed by the prosecution because the absence of a material witness is a ground for continuance, especially when the prosecution had put the machinery of the court into operation. *Massaquoi v. Republic,* 14 LLR 372 (1961). The court should have granted the motion for even a shorter period to allow the prosecution to get at least one of his material witnesses. It was humanly impossible for Dr. Walter Brumskine to have been in Sanniquellie at 9:00 a.m. on August 27, 1980 from Monrovia, to testify for the prosecution, when he received the subpoena at 4:00 o'clock p.m. on the same day, seven hours after the hour he was to appear. The court should have taken judicial notice of the sheriff's returns while ruling on the motion. The court on motion of a party may order continuance or a new trial in the interest of justice during trial. Civil Procedure Law, Rev. Code 1:26.3.

The only issue raised in the appellant's bill of exceptions is that the prosecution never established the cause of decedent's death at the trial as is contained in count 1 (b) and (c) which is well taken, absent the autopsy or medical report. However, the errors of court should not prejudice any party. Therefore we hold that the exclusion of the autopsy report being a reversible error committed by the trial judge, ought not to prejudice the interest of appellee. In the case *Bing v. Republic,* 18 LLR 377 (1968) the Court held:

"Though it is evident that the prosecution has failed to prove its case as required by law, when it appears that missing

evidence and testimony can be supplied at a subsequent trial, a remand will be ordered, so that substantial justice may be done."

In view of the foregoing, it is our opinion that the judgment of the trial court is hereby reversed and the case is remanded for a new trial in order that all relevant evidence may be produced at the trial so that substantial justice may be meted out to all the parties. And it is so ordered.

Reversed and remanded.