MUSA SHERIFF, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT, LOFA COUNTY.

Heard: March 23, 1981 Decided: July 30, 1981

1. Although in a criminal case each count of a bill of exceptions should be reviewed by the appellate court, the entire records of the proceedings of the trial court should also be reviewed in order to determine whether substantive justice has been accorded the defendant for the affirming or reversal of the judgment.
2. The interrogation of the suspect by the town chief, his councilmen, and the police authorities without warning him of his rights or without the presence of his counsel, is a flagrant violation of, and a governmental infringements upon his liberties and his fundamental rights..
3. No peace officer or other employee of the Liberian Government shall interrogate, interview or examine, or otherwise make inquiries of a person suspected of an offense, or request any statement from him without informing him of : (a)the nature of the offense of which he is accused or suspected; (b) that he has the right to have legal counsel present at all times while he is being questioned or is making any statement or admission;(c) that he does not have to make any statement or admission regarding the offense of which he is accused or suspected; and (d) that any statement or admission made by him may be used as evidence against him in a criminal prosecution.
4. When testimonies reveal that the defendants in a criminal proceeding were stripped naked, subjected to electric shocks on their sexual organs, whipped, and publicly subjected to various inhumane and disgraceful exhibitions, the verdict and the judgment confirming it may be reversed..
5. A defendant's fundamental right to counsel commences, under our law as well as the laws of all civilized countries, as soon as his liberties are restrained by any peace officer or an employee of the State.
6. Trial legally commences immediately after the liberties of an accused are restrained and he is subjected to an investigation which seeks information from him touching on the offense of which he is a suspect.
7. Examining the body of a suspect or doing anything to him in order to obtain evidence against him without his genuine exercise of his right to counsel is an illegal trial and an invasion of his privacy.
8. The physician required to establish the degree of sanity of one criminally charged is a psychiatrist.
9. Among a college of physicians, the most competent is the one who is an expert in that particular field for which qualification is desired.
10. Insanity is always a complete defense in all criminal prosecutions; it is never a mitigating circumstance of the crime. However, in order to render the plea of insanity an absolute defense, it must be clearly and convincingly evident that the accused was actually labouring under the defects of his insanity at the time of the commission of the crime and not prior or subsequent to it.

11. Where one accused of a crime pleads insanity, the State in insisting on prosecuting him, is deemed to have denied his insanity. Hence, the burden of proof rests on the prosecution to prove the accused to have been sane. It would be an absurdity of the law and a denial of a fair and impartial trial to require one who pleads insanity to produce evidence of his insanity.
12. Where insanity is of the nature to constitute a valid defense to a criminal prosecution, it is deemed to have deprived the will power of the accused to have known and understood his own conduct at the time. It is senseless therefore to require such an incapacitated person to produce evidence of his own unknown and unrealized conduct.
13. Testimonies of ordinary witnesses to prove insanity must be corroborated by evidence of a medical expert.

Appellant was indicted, tried, and convicted of murder by the Tenth Judicial Circuit Court, Lofa County, from which he appealed to the Supreme Court.

Appellant contends, among other things on his appeal, that his fundamental rights were violated in that he was interrogated by the town chief, his councilmen, and the police without his legal counsel being present and without due warning of his fundamental rights; that the evidence produced at the trial by the prosecution is insufficient to support the verdict in that a physician, whose expertise is not psychiatry, was called upon to establish his sanity or insanity, which evidence the court relied upon; and that he was denied his rights to have witnesses testify on his behalf.

The Supreme Court held that custodial interrogation of the appellant by the town chief, his councilmen, and the police without counsel and due warning, is violative of the law; that the physician required to establish the degree of sanity of one criminally charged is a psychiatrist, and not just any physician; and that where one accused of a crime pleads insanity, the State, in insisting on prosecuting him, is deemed to have denied his insanity and the burden of proof rests on the State to prove that the accused is sane. To the extent that the State did not comply with or meet the aforesaid standards, and in view of the procedural defects in the trial, the Supreme Court *reversed* the judgment and *remanded* the case for a new trial.

M. Fahnbulleh Jones appeared for appellant. *Momo Kiawu and Jimmie Geizue* appeared for appellee.

MR. JUSTICE MABANDE delivered the opinion of the Court.

On March 28, A. D. 1973, defendant, now appellant, is reported to have murdered one David Jones in the Barkadu Bush, Sarkonedu Area, Voinjama District, Lofa County. One Robert G. Sheriff, a nurse at the Tellewayan Hospital in Voinjama reported to the Voinjama Police Detachment that appellant Musa Sheriff murdered David Jones. Sgt. Martin Kullie and Patrolman Robert Ambullie were immediately dispatched to Barkadu where they took the appellant into police custody and interrogated him, during which he reportedly admitted the commission of the crime. Appellant is reported to have killed the decedent because when the appellant asked the decedent a question the decedent responded in the Lorma language which provoked the appellant; whereupon, the appellant attacked, fought, and killed the decedent. After the reported killing of decedent, appellant is said to have disgorged his brains, intestines and vital organs and to have put them into his pocket and to have put the blood of decedent in a plastic container and run away with them.

On his way to Barkadu, appellant is reported to have met Fatuma Kamara, widow of the deceased, and threatened to kill her with a spear; she screamed and Town Chief Vai Musa went to her rescue. When the town chief inquired of the appellant as to what he was doing with the woman, he told the town chief that he (the town chief) was the victim he was searching for to kill.

The prosecution charged appellant for committing the crime of murder. He was arraigned and tried by a jury which convicted him. As a matter of right, appellant filed a motion for a new trial contending that the weight of the evidence adduced at the trial was insufficient to sustain a verdict of guilt and that there existed a material variance between the indictment and the evidence as a whole; hence, the doubt of guilt should operate in his favour. The court denied the motion to which he excepted and filed a motion in arrest of judgment which was also denied. To this denial, the appellant/defendant also noted exceptions.

The appellant has therefore appealed to this Court and has filed for our consideration a twenty-eight (28) count bill of except-ions. Though each count of a bill of exceptions should be reviewed by the appellate court in a criminal case, the entire records of the proceedings of the trial court should also be re-viewed, in order to determine whether substantive justice has been accorded the appellant for the affirming or reversal of judgment. Civil Procedure Law, Rev. Code 1: 24.18 (1)(2)

The counts of the bill of exceptions are in many respects repetitive. For reasons satisfactory to the Court, we shall restrict ourselves to those issues that are most pertinent and necessary for the fair and just determination of the case.

We have therefore summarized the important questions presented for our consideration into six (6) issues namely:

(1) Whether interrogation of an arrested person by a town chief, his councilmen, and the police, without the presence of the defendant's counsel is illegal governmental infringement upon the fundamental rights of a suspect? (2) whether a trial commences whenever a person's liberties are restrained and he is subjected to investigation; (3) whether the right to counsel commences before a detained suspect is subjected to interrogation; (4) whether evidence adduced at a trial of an accused must be beyond reasonable doubt in order to support a verdict of guilt; (5) whether a suspect who pleads insanity has the burden of proof of his insanity; and (6) whether a suspect who pleads insanity has an absolute right to be examined by an expert (such as a psychiatrist) even though a competent medical practitioner is available within his immediate vicinity?

We shall consider each of these issues chronologically:

The appellant's counsel opened his argument by contending that the interrogation of the suspect by the town chief, his councilmen, and the police without the presence of counsel and due warning of his rights were violative of the law. The prosecution, however, argued that the questioning of the appellant by the chief could not be attributed to the State as the chiefs are not prosecuting officers. The interrogation of the suspect by the town chief, his council-men and the police authorities without warning or advising him of his rights, and

without the presence of his counsel is a flagrant violation of, and a governmental infringement upon his liberties and his fundamental rights.

"No peace officer or other employee of the Republic shall interrogate, interview or examine, or otherwise make inquiries of a person suspected of an offense, or request any statement from him without informing him of the following:

a) The nature of the offense of which he is accused or suspected;

b) That he has the right to have legal counsel present at all times while he is being questioned or is making any statement or admission;

c) That he does not have to make any statement or admission regarding the offense of which he is accused or suspected; and

d) That any statement or admission made by him may be used as evidence against him in a criminal prosecution." Criminal Procedure Law, Rev. Code, 2: 2.3

We are of the opinion, that a town chief and his councilmen, as well as a police officer, fall within the governmental categories specifically classified by the statutory phase "No peace officer or any employee of the Republic..." A town chief and his councilmen, including an overseer, are all members of the executive branch of government who constitute the prosecution in investigating and prosecuting a crime. Their conduct with respect to criminal administration is, in the eye of the law, an act of the governmental branch responsible for criminal prosecution.

The continual turbulence around the world today, sources from man's non-adherence to the rule of law. Where criminal justice remains to be a myth, society's revolt against injustice is ever present. Our generation is bewildered with atrocious crimes of the kind never heard of since the days of the inquisition courts and the star chambers. It was for the absolute prevention of atrocities upon an accused by governmental officers, investigators and an angry mob following the reported commission of a crime that the law expressly prohibited interrogation without right to counsel or sufficient warning.

In *Swary v. Republic*, 28 LLR 194 (1979), it was established that governmental officers are still in the habit of stripping naked, kicking, flogging with automobile fan belts and inflicting, cruel and inhumane punishments on suspects mainly to obtain confessions.

In a recent case *Yancy v. Republic*, 27 LLR 365 (1978), the Court reversed the verdict when the testimonies revealed that defendants were stripped naked, subjected to electric shocks on their sexual organs, whipped and publicly subjected to various inhumane and disgraceful exhibitions. These and many like inhumane governmental conducts are imputable to every secret interrogation of an accused.

In our generation of ostensible civilization, it is often difficult to determine whom to prosecute, the suspect, the prosecutor or both, when we consider the behavior of those clothed with the authority to carry out justice.

A defendant's fundamental right to counsel commences, under our law, as well as the laws of all civilized countries, as soon as his liberties are restrained by any peace officer, security personnel or other authority of the State. The appellant's right to counsel therefore commenced as soon as he was detained by Town Chief Vai Musa, his councilmen, and the police officers. Their failure to accord him his fundamental rights violated his basic right to a fair and impartial trial. Evidence therefore obtained from the accused in violation of his fundamental rights are illegal and inadmissible into evidence against him. Evidence obtained by the State from its unlawful interrogation of an accused cannot legally support a verdict of guilt.

On the issue of when the trial of an accused legally begins, the prosecution argued that trial commences after the defendant arrives in court and the presiding circuit judge calls the case for hearing. Counsel for appellant contended that a trial commences as soon as the prosecution begins interrogation of a suspect.

We are of the opinion that trial legally commences immediately after the liberties of an accused are restrained and he is subjected to an investigation which seeks information from him, touching on the offense of which he is a suspect. Exami-

ning the body of a suspect or doing anything to him in order to obtain evidence against him without his genuine exercise of his right to counsel is an illegal trial and an invasion of his privacy.

Counsel for the appellant argued that the evidence produced at the trial by the prosecution is insufficient to support the verdict of guilt. Though it would have been worthwhile for us to have discussed at length the testimonies of the prosecution's witnesses in order to arrive at a final determination of this case, we will not do so because of several trial irregularities. Instead, we have decided not to review the evidence but to remand the case for retrial.

At the trial, appellant requested the court to order the issuance of a subpoena on a psychiatrist to examine him in order to establish his plea of insanity. The trial judge granted the request and ordered the clerk of court to immediately prepare a radiogram to the Chief Justice informing him that there was a murder case on trial, and that the appellant had applied for psychiatric examination; hence, a psychiatrist should be sent immediately to examine him so that the trial could continue without a lengthy interruption. The trial was thereafter suspended. When the court resumed business, appellant's case was called and the trial judge *sua sponte* amended his ruling and ordered Dr. W. V. Gulman of the Tellewayan Hospital, in Lofa County, to examine appellant and that appellant should engage a physician of his own choice to participate in the examination.

A trial judge may amend or modify his rulings within the term with notice to the parties.

Appellant's counsel argued, however, that since appellant had pleaded *in forma pauperis* and insanity, the law providing for psychiatric examination of a defendant intends an actual psychiatrist and not any physician. He further contended that physicians are of various grades and qualifications. In rebuttal, the prosecution argued that all physicians licensed by the Republic are regarded as being equally qualified and competent for all medical functions. Further contending, the prosecution maintained that every physician is competent to examine a person and determine his mental condition.

We hold that the physician required to establish the degree of sanity of one criminally charged is a psychiatrist. Among a college of physicians, the most competent is the one who is expert in that particular field for which qualification is desired.

Where a defendant is charged for murder, his life is at stake as well as the interest of the whole society in a fair and impartial trial; hence, the most available and convincing source of evidence should be pursued. A psychiatrist, and not any physician, should therefore examine and determine the mental condition of one who claims insanity as a defense.

It is a universally accepted concept of criminal administration that one of the essential ingredients for criminal responsibility is intent.

Insanity is always a complete defense in all criminal prosecutions. It is never a mitigating circumstance of the crime. In order, however, to render the plea of insanity as an absolute defense, it must be clearly and convincingly evident that the accused was actually labouring under the defects of his insanity at the time of the commission of the crime and not prior or subsequent to it.

There are, however, many degrees of insanity which only a physician trained and qualified in that science could be able to determine with certainty.

The prosecution argued that on pleading insanity as a bar to the prosecution, the appellant had the burden of proof of his insanity. Counsel for the appellant contended that while normally the burden of proof lies on the party who alleges the fact, in criminal prosecution, when the defendant pleads insanity, the burden of proof that he was sane at the time of the offense rests absolutely on the prosecution.

We are of the opinion that where one accused of a crime pleads insanity, the State in insisting on prosecuting him is deemed to have denied his insanity, hence the burden of proof rests upon the prosecution to prove the accused to have been sane. It would be an absurdity of the law and a denial of a fair and impartial trial to require one who pleads insanity to produce evidence of his insanity. Where insanity is of the nature to constitute a valid defense to a criminal prosecution,

it is deemed to have deprived the will power of the accused to have known and understood his own conduct at the time. It is senseless therefore to require such an incapacitated person to produce evidence of his own unknown and unrealized conduct. *Teh and Wahhab v. Republic,* 10 LLR 234 (1949) and *Hance v. Republic*, 3 LLR 160 (1930)

Counsel for the appellant finally argued, that the denial of appellant's right to have his witnesses, in person of the jailer and the sheriff, into whose custody he was immediately placed for detention after his arrest, testify in his behalf, was a denial of his right to have compulsory process for witnesses in his favour. Therefore, counsel for appellant contended that the appellant did not have a fair and impartial trial; hence, he should be acquitted and discharged without day. The prosecution contended that the testimony of the jailor and the sheriff as to their observations of the appellant's attitude, conversations and behavior while under their custody, was irrelevant and immaterial to establish appellant's claim of insanity, especially as a medical doctor appointed by the court had made his professional expert report.

We are of the opinion that testimonies by ordinary witnesses to prove insanity must be corroborated by evidence of a medical expert. *Scott v. Republic*, 1 LLR 430, 432 (1904).

Justice is a dynamic, steadily progressive, and motivating factor of a civilized and ordered society. National sense of justice develops concomitantly with the gradual growth of civilization. As group psychology attains the realization of its responsibility to the society and its people, it accords the extent of basic rights it acknowledges for the individual as an attribute of social justice. Of course even a fair and democratic minded people cannot conduct their affairs beyond the level of their group's civilization, time and sense of justice, but we cannot at this age revert to the already realized evils of past years.

With the advent of science and technology, an accused who pleads insanity, places responsibility entirely on the State to have him examined by an expert psychiatrist, and if he is determined to be insane, to have him medically treated before he is released to join the public in their strive to survive and

develop in peace and security.

While any medical doctor was an expert on all medical issues years ago, today only a psychiatrist can professionally determine the sanity of a person.

In view of the several procedural defects, the case is hereby remanded for retrial not inconsistent with this opinion.

The said retrial should have precedence on the docket after receipt of the mandate from this court when the accused shall have had psychiatric examination and report. And it is hereby so ordered.

Judgment reversed, case remanded.