

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

Saah James of the City of Monrovia, Montserrado)
County, Republic of Liberia.....Appellant)

Versus) APPEAL

Republic of Liberia by and thru Emmett Aaron)
also of the City of Monrovia, Montserrado County,)
Republic of Liberia.....Appellee)

GROWING OUT OF THE CASE:)

Republic of Liberia by and thru Emmett Aaron)
also of the City of Monrovia, Montserrado County,)
Republic of Liberia.....Plaintiff)

Versus) CRIMINAL ATTEMPT
TO COMMIT MURDER

Saah James and Robert to be identified of the City)
of Monrovia, Montserrado County, Republic of)
Liberia.....Defendants)

Heard: November 8, 2022

Decided: July 5, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On the 16th day of September, 2011, the Grand Jury for Montserrado County sitting in its August Term returned a true bill charging Saah James, appellant herein and one Robert to be identified for the commission of the crime of criminal attempt to commit murder, a felony of the second degree. We quote verbatim the indictment as follows:

“ The grand jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Saah James and Robert to be identified, committed the crime of criminal attempt to commit murder, a felony of second degree, to wit:-

1. That on the 9th day of the month of July, A.D. 2011, on 20th Street Beach, City of Monrovia, Montserrado County, Republic of Liberia, the defendants, Saah James and Robert to be identified, with criminal mind and intent, and in total contravention of the laws of the Republic of Liberia and without any legal justification, purposely, knowingly, willfully and intentionally committed the crime of criminal attempt to commit murder against the private prosecutor; to wit:-

2. That on the date and at the place mentioned above, the defendants and the private prosecutor were at a graduation party[;] that without any provocation, he was told by one of the party guests that [one] of the defendants was looking for him to harm him[;] that as he tried to get out of harm's way, he encountered the defendants who stabbed him in his chest with broken stout and beer bottles.

3. That the wicked act of the defendants caused the private prosecutor to bleed profusely as he received serious wounds across his chest, which caused him to faint.

4. That the private prosecutor received medical treatment at a local hospital, and the following medical expenses were incurred:
 - a. drugs.....LD100.00
 - b. x-ray..... ...450.00
 - c. drug prescription.....5,715.00
 - d. drug prescription.....70.00
 - e. drug prescription.....50.00
 - f. total expenses.....LD7,765.00

5. That the defendants have no affirmative defense.

6. A person engages in conduct purposely if, when he engages in the conduct, it is his conscious objective to engage in conduct of that nature or to cause the result of that conduct.

7. A person engages in the conduct knowing, if when he engages in the conduct, he knows or has a firm belief unaccompanied by a

substantial doubt that he is doing so, whether or not it is his purposely to do so.

8. Bodily injury means physical pain, illness, or any impairment of physical function.
9. That the act of the defendants is contrary to 4LCLR, Title 26, Section 1.20 (b), 4LCLR, Title 26, Section 2.2 (c) and (b) and 4LCLR, Title 26, Section 1.7 (c) and (d) of the statutory laws of the Republic of Liberia; and the peace and dignity of the Republic of Liberia.

Witnesses	Addresses
1. T. Emmett Aaron	Monrovia, Liberia
2. Winton Blackie	" "
3. Joe Blackie	" "
4. Martin Gakor	" "
Glaylor S. Mulbah Foreman of the Grand Jurors	Cllr. J. Daku Mulbah County Attorney Mont. Co. RL

Filed this 16th day of September, A.D. 2011

Clerk of Court
Criminal Court "A"

After that, the First Judicial Circuit, Criminal Assizes "A" issued a writ of arrest for the defendants. The sheriff's returns, as found at the back of the writ, show that on the 22nd day of September 2011, the appellant, Saah James, was arrested, thereby bringing him under the trial court's jurisdiction. However, the other defendant, Robert, to be identified, remains at large up to and including the final ruling entered by the trial court. Accordingly, the appellant was admitted to bail.

The records show that the case was later assigned for trial in Criminal Assizes "B" of the First Judicial Circuit on the 24th day of September 2015. At the call of the case, counsel for the prosecution applied for, and the trial court granted a separate trial of the appellant. After that, the court arraigned the appellant, and he pleaded not guilty, thereby joining issue with the state. The trial court then empaneled a jury, and the trial commenced.

The prosecution produced the following category of witnesses: four general witnesses (Mr. T. Emmett Aaron, the private prosecutor, Martin Gaypue, Winston

Blackie, and Gurteborg Jallah, a police officer); one subpoenaed witness (Dr. J. Fallah Moses); and three rebuttal witnesses (Smith T. Duo, Winston Blackie, and Emmett Aaron).

The prosecution evidence tend to establish that the appellant and one Robert (identified as Robert Weah) were seen with broken bottles in their hands on the night of July 9, 2011 at the T& T entertainment place, which is in the vicinity of where the private prosecutor lived, located at the 20th Street, Beach Community in Monrovia; that they were hunting for the private prosecutor, a police officer, so as to retaliate for an alleged injury he (private prosecutor) inflicted on Robert Weah; that Winston Blackie advised the private prosecutor to go into hiding in order to elude the pair's hunt for him; that the private prosecutor and Robert Weah had had a prior altercation over the latter's girlfriend who is also the estranged girlfriend of the private prosecutor, but that the private prosecutor denied any such prior encounter with Robert Weah; that Martin Gaypue and Winston Blackie had advised the pair to abandon the hunt for the private prosecutor and wait until daybreak for a peaceful settlement of the conflict, but that the pair insisted and entered the premises of the private prosecutor where a graduation party was being held; that Winston Blackie demanded the pair to leave the premises in order to avoid disrupting the graduation party, but that the pair refused thus resulting into a fistfight between the appellant and Winton Blackie, which also resulted into the infliction of wounds on Winston Blackie and Martin Gaypu; that in the melee, the private prosecutor came outside he first encountered the appellant, and later Robert Weah, both of whom inflicted severe wounds on the chest of the private prosecutor using broken bottles; that Martin Gaypue and Winston Blackie rushed to rescue the private prosecutor upon hearing him cried that they are killing him; that Gaypue and Blackie met the private prosecutor in a pool of blood and unconscious due to profuse bleeding; and that Gaypue and Blackie took the private prosecutor to the nearby police station where the police advised them to take the victim to a hospital, take photos of his condition and later report the case to the police.

The prosecution evidence further tends to establish that on the following day, that is, the 10th day of July 2011, an examination of the victim at the JFK Medical Center showed that he had multiple lacerations on the anterior chest sustained from a sharp

instrument such as a blade, knife or glass bottle; that the hospital treated the victim with analgesic, antibiotics and tetanus toxoid medication, and placed him under 12-hour observation, after which the hospital discharged him; that the lacerations were sutured (or stitched) and that the stitches were removed after five days; that the x-ray review showed that the injury did not get into the lungs; that on the 1st day of September 2011, the patient received his medical report; that after nearly two weeks on the run, the friends of the private prosecutor located the appellant and alerted the police at which time he was arrested; and that the appellant reached out to the private prosecutor to have the matter amicably settled, but to no avail. Finally, at the close of the prosecution's evidence, the trial court admitted into evidence the oral testimonies of the prosecution's witnesses, including a rebuttal to the appellant's claim of *alibi*, and documentary evidence to include exhibits P/1, the photos of the victim's wound and P /2, the medical report, testified to, marked by the trial court and confirmed by the witnesses.

It should be noted that before the appellant could commence the production of evidence in denial of the prosecution's theory, he filed a motion for judgment of acquittal on the grounds that the private prosecutor failed to identify the alleged instrument used by the appellant to inflict the wounds on him; that Winston Blackie and Martin Gaypue were not present when the appellant allegedly gashed the private prosecutor, but rather the two only saw blood on the victim; that the testimonies of the prosecution witnesses contradicted each other as well as those made before the grand jury; and that the prosecution evidence failed to link the appellant to the act of inflicting injury on the private prosecutor. That, therefore, the prosecution evidence is insufficient to convict the appellant.

The records show that the prosecution filed its resistance to the appellant's motion for judgment of acquittal, denying all of the counts contained therein. After a hearing, the trial court denied the motion primarily on the grounds that the evidence the prosecution adduced must go to the jury to decide whether it is sufficient to convict the appellant as a matter of law. The appellant noted his exception to the ruling.

The appellant then took the witness stand and testified for himself, followed by the second defense witness, Dale Weah, who is said to be the brother of Robert Weah, the alleged accomplice that remains at large. The defense evidence tends to establish that on the 9th day of July, 2011, the appellant and Robert Weah were at

the T&T Beach playing Ludo and Checkers games when the latter said he was going to Josephine to get his key (Josephine is said to be an ex-girlfriend of the private prosecutor); that Robert Weah and the private prosecutor lived in the same house with adjacent rooms; that when Robert Weah met Josephine with the private prosecutor, confusion ensued and in the process, the private prosecutor broke the nose of Robert Weah with a stout bottle; that the appellant and others advised Robert to seek medication, but that he refused and insisted on retaliating; that the appellant went home, took bath, went to buy tea, passed by the graduation party where he (the appellant) met Winston Blackie and he asked blackie whether Robert had been taken to a hospital; that while talking, Winston slapped him (the appellant) causing him to fall in a dirt-bucket; that the appellant in turn took a stick and hit Winston; that Martin Gaypue intervened and the appellant hit him too; that after Martin talked to the appellant, the appellant left the scene at about 10:00 pm and went to bed; that on the next day at about 8:00 am, his daughter informed him (the appellant) that the police were looking for him based on a complaint filed by Winston Blackie and Martin Gaypue; that when the appellant got to the police station, the police took statements from him, charged him and detained him for up to four days; and that the police advised the appellant to go and settled with the pair that complained him; that on the fifth day, the police asked the appellant to produce Robert and that he told the police that he did not know where Robert was. That it was at that time that the appellant got to know that the private prosecutor was wounded; that the appellant and the private prosecutor have nothing in common.

At the close of the defense evidence on the 16th day of October 2015, the trial court charged the petit jury, and the jury returned with an 11/12 verdict of guilty against the appellant; that is, 11 jurors voted guilty while a single juror voted not guilty. After a jury poll, the guilty verdict was recorded on the prosecution application. The appellant noted exceptions to the jury's verdict.

On the 23rd day of October 2015, the trial court entered its final ruling upholding the guilty verdict as returned by the majority of the jurors, a motion for a new trial not having been filed. We quote an excerpt of the trial court's final ruling as follows:

"From these testimonies, it would appear that the defendant was denying that he never fled from the scene because according to him he was arrested the next day and not after two weeks. He also tried to

impress upon the mind of the court and jury that he was not arrested for the crime by the police but was in jail to help the police arrest Robert. One wonders why the police that arrested defendant Saar James and the police that took a statement from him at the police headquarters [were] not produced under the best evidence rule. 4LLR Scott vs. Sawyer, as found on page 500, the Court held "the best evidence that an issue admits of must be produced." In this case, the best evidence to prove that defendant Saah James did not run away was the police officer that arrested him, and the best evidence that he was not in jail because of the crime charged against him but was in jail to help the police to arrest Robert should have been produced under our law, the burden of proof will shift to a person who asserts otherwise or denies a statement made against him to prove the contrary. Once this is not done, the jury may probably consider the flight of the defendant in establishing his guilt. However, if the flight was to avoid mob justice and the person reported himself to the police, guilt cannot be presumed from the flight.

After the court correctly charged the jury by summarizing the facts and the law, the jury returned with a guilty verdict signed and acknowledged by 11 of the 12 empaneled jury. The court weighing the verdict of the trial jury against the testimonies adduced during the trial and the relevant laws controlling has no alternative but to confirm the verdict of the trial jury.

Under our law, criminal attempt to commit murder is a felony of the second degree punishable under our law to a sentence term from one (1) year to five (5) years.

Wherefore and in view of all that has been said, the defendant Saah James is hereby adjudged guilty of the crime of criminal attempt to commit murder and is hereby sentenced for a period of two (2) calendar years at the Monrovia Central Prison commencing as of today, the 23rd day of October, A.D. 2015 up to and including the 22nd day of October, A.D. 2017. And it is hereby so ordered."

After that, the appellant noted exceptions to the judge's final ruling and announced an appeal to this court of last resort. Accordingly, we consider as germane to the resolution of this case the following errors assigned by the appellant:

1. That the trial judge erred when he failed to charge the petit jury on the appellant's corroborated evidence of an *alibi*.
2. That the trial judge erred when he charged the jury that the appellant should have produced the police as the best evidence to testify on the appellant's detention at the police station.
3. That the trial judge erred when he gave an oral directed verdict to the trial jury as follows: "The evidence produced by prosecution is consistent with law and the trial jury should bring the defendant guilty"; and
4. That the trial judge erred when he upheld the verdict which is contrary to the weight of the evidence.

We shall consider each of the above-enumerated exceptions as the issues dispositive of this appeal and endeavor to discuss them in the order as presented.

As to the issue of *alibi*, the appellant testified that on the night of the 9th day of July 2011, after he had advised Robert to seek medical treatment due to the wound allegedly inflicted upon him by the private prosecutor, he went home, and later went to buy tea; that on his way home, he passed by the graduation party where he met Winston Blackie and inquired as to whether Robert had been taken to a hospital; that while talking, Winston slapped him, and he fell into a dirt bucket and that Martin Gaypue also joined in the melee on Winston side; that he hit both men with a stick; that after this fight, he went to bed at about 10:00 pm and the police

subsequently arrested him the following day, investigated him and detained him for four days upon the complaint of Winston and Martin. In other words, the appellant was not present when Robert encountered the private prosecutor. The appellant contends that besides the testimony of the private prosecutor that the appellant first gashed him, followed by Robert, the prosecution's two other witnesses, Winton Blackie and Martin Gaypue, testified that they heard the private prosecutor shouting, "They are killing me," and when they rushed to rescue the private prosecutor, they found him in a pool of blood; and that the appellant and Robert had by then escaped

the scene. It is also the contention of the appellant that the testimony of the private prosecutor not having been corroborated by the two other eyewitnesses on the scene of the fight, the prosecution failed to prove a prima facie case against the appellant; that therefore, the prosecution's evidence been "flimsy and unconvincing," a judgment procured therefrom must be reversed. More importantly, the appellant has charged that the trial judge failed to instruct the jury on his defense of *abibi*.

Conversely, the prosecution has argued that it produced three rebuttal witnesses who testified that the appellant and Robert embarked on a hunt for the private prosecutor to retaliate an alleged injury the private prosecutor had inflicted on Robert, a co-worker of the appellant; that the appellant and Robert had gone to the graduation party where Winton Blackie had advised the pair to leave so as not to disturb the celebration and that amid an altercation, the pair separately inflicted wounds on the private prosecutor and the two eyewitnesses, Winton Blackie and Martin Gaypue; that in the state of confusion, the two witnesses heard the private prosecutor crying that they are killing him; that the private prosecutor identified the appellant as being the first assailant on his person then followed by Robert; that the appellant together with Robert fled the scene; and that after two weeks of a police manhunt, the appellant was arrested while Robert remains at large. The prosecution also argued that a plea of *alibi* is an affirmative defense controlled by the same principle of law that governs affirmative averments made in an indictment; the burden to prove an *alibi* rests on the person asserting the plea.

First and foremost, we must take recourse to the records to ascertain whether or not the trial judge did fail to charge the jury on the appellant's plea of *alibi*. Our examination of the certified records shows that the trial judge gave the following instructions to the trial jurors:

“Defendant wants us charge you on the following laws:

1. Burden of proof which we have delved on.
2. Reasonable doubt: under the law if you have any doubt on your mind after listening to the testimonies of witnesses, that doubt should make you to have the defendant not guilty.
3. Corroboration: He also asked me to charge you on corroboration of testimonies but we have told you earlier that the testimonies of the state witnesses corroborated. And pointed to Saah James as the one

that committed the crime but you are the one of the trial of facts to give weight you want to give to these testimonies.

4. Alibi: They also want me to charge ‘alibi’. Under the law, the defendant has to prove that he was not present and did not commit crime so you will decide whether the lone testimony of Dale Weah was sufficient to convince you that defendant was not on the same.
5. You will also decide whether by circumstantial evidence he could be held guilty of this crime because his testimonies and that of his witness are not in agreement. He told you that Saah James went to the site two and half hours after the incident occurred, but Saah James told you he went there after Emmett was taken to the hospital. Decide whether he went there after or before the incident because it is you who will decide the facts and the weight of evidence presented before court.” Italics supplied.

Based on the above quoted instructions submitted by the appellant and read out to the jury by the trial judge, there is no doubt that the trial judge did charge the jury on the appellant’s defense of *alibi*. According to the record before us, the appellant produced one Dale Weah who testified that it was his brother Robert Weah that gashed the private prosecutor and not the appellant. The record further shows that in rebuttal to the testimony of the appellant’s witness, the State rebuttal witness, Smith T. Duo testified that Dale Weah was never present on the scene in addition to the testimonies of the private prosecutor and Winston Blackie pointing to the fact that the appellant was present on the scene and that he participated in the affray that resulted into the injury of the private prosecutor.

“An *alibi* is an affirmative plea and is controlled by the same principle of law that governs affirmative averments laid in an indictment”. It has been frequently held that the accused should be required to establish his *alibi* by the same measure of proof as that by which the prosecution is required to show his guilt. *Alibi* means that at the time of the commission of the crime charged in the indictment, defendant was at a different place so remote or distant or under such circumstances that he could not have committed the offense. It is a physical circumstance and derives its entire potency as a defense from the fact that it involves the physical impossibility of guilt of the accused. In a criminal case, it is incumbent upon the state to prove, as a part of its case, that the defendant was at the scene of the crime, and any evidence that

he was elsewhere, at the time, is competent and appropriate to weaken or destroy the proof which the state must offer. From this standpoint, an *alibi* is not only a legitimate but may be a very complete defense. In fact, it may be the only means that an innocent man may have of avoiding a conviction. It affords, when established, the most perfect, physically conclusive evidence of his innocence. *Yancy v R.L.*, 27 LLR 365 (1978), *Ben v R.L.*, 31 LLR 107 (1983), *Ishmael Kamara v. R. L.*, *Supreme Court Opinion, October Term, A.D. 2021*

The trial jury, considering the evidence adduced during the trial found most likely than not that the appellant did not produced evidence sufficient enough to support his defense of *alibi*. The jury, based upon the testimony of all of the witnesses of the prosecution and especially on the testimony of the state rebuttal witness, Smith T. Duo, found that the appellant's witness Dale Weah, the brother of Robert Weah, who was also charged along with the appellant was never present when the private prosecutor was attacked by the appellant and Robert Weah. It having been established by the records that the trial judge did not ignore the appellant's request to have the jury charge on the law on *alibi*, and there being sufficient evidence to support this finding of fact by the jury; we find no justification to disturb the verdict.

As to the second issue urged upon this Court to resolve, it is the contention of the appellant that the trial judge erred when he charged the jury that the appellant should have produced the police as the best evidence to testify on the appellant's detention at the police station. Our review of the trial court's final ruling shows

that indeed the trial judge imposed the duties upon the appellant to produce the two police officers to rebut the prosecution's allegation of flight by him after the incident. The trial judge held that the appellant having alleged that he did not run and that he was arrested the following day after the incident based on a complaint filed by Winston Blackie and Martin Garpue, he ought to have produced the arresting and investigating officers to prove that he was arrested on the day following the affray on the night of July 9, 2011.

It is the law in this jurisdiction that a defendant in criminal case is presumed innocent until the contrary is proved beyond a reasonable doubt. The burden of proof rests on the prosecution. *Ishmael Kamara v. R. L. Supreme Court Opinion, October Term, A.D. 2021*, *Winifred Mason et al v. R. L.*, *Supreme Court Opinion, October Term,*

A.D. 2021, Brownie J. Samukai et al v. R.L., Supreme Court Opinion, October Term, 2020

In the instant case, the trial judge appears to have placed the burden of proof on the appellant that he did not escape to evade answering to the charges levied against him. We think the position adopted by the trial judge was an error. Flight has been defined at common law as an act or instance of fleeing, especially to evade arrest or prosecution. In all such cases, this Court has held that “where a crime has been committed, flight in itself is an offense against the law and carries with it strong presumption of guilt.” *Black’s Law Dictionary, Ninth Ed page 714, Jusu v. R. L. 34 LLR 291 (1987)*

In the case *Mr. Mathew S. Wright, Sr. v. R. L., Supreme Court Opinion, March Term A. D. 2022*, this Court was appalled by similar error made by the trial court. In that case, the appellant, Mr. Mathew S. Wright was charged with the crime of criminal mischief, tried and convicted by the trial court. The appellant’s defense was that he did not procure the services of one Justin Zegbou to destroy the structures owned by the private prosecutors. The trial court held that the appellant was under a duty to produce Justin Zegbou, the best evidence the case admits of. This Court did not only reverse the trial court on that error, but also held that “it is an elementary principle of the criminal law that a defendant shall not be compelled to produce evidence against himself; and as a custodian of the law, a judge is

expected to regularly abreast himself with the laws of the land. Our Organic Compact, the Liberian Constitution (1986) categorically dictates that “... In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. ***He shall not be compelled to furnish evidence against himself***, and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt...” CONST. ARTICLE 21(h) emphasis supplied Also see *Munnah et al v. R. L. 35 LLR 40 (1988), Forleh et al v. R. L. 42 LLR 23 (2004)*.” Therefore, it was an error for the trial court to have ruled that the appellant ought to have produced the police officers to testify for the appellant so as to prove that he did not flee and go into hiding after the incident on the night of the 9th day of July, 2011.

However, a review of the transcribed records show that the appellant was forwarded to the Monrovia City Court on the 23rd day of July, 2011, that is, fourteen days after the alleged commission of the crime and admitted to bail. According to the testimony of the appellant, he was arrested on the 10th day of July, 2011, detained by the police for four days and on the fifth day, he was forwarded to the court. Assuming that the testimony of the appellant is true, it means he should have been forwarded to court on the 15th day of July, 2011 instead of the 23rd day of July, 2011. On the other hand, the testimonies of the prosecution's witnesses established that the appellant was arrested almost two weeks after the night of 9th day of July, 2011, charged and forwarded to court. It can therefore be said that the prosecution's evidence is supported by the records and that the appellant evaded arrest and prosecution for almost two weeks, thus creating the presumption of guilt. More besides, the prosecution's evidence also alluded that the appellant attempted a compromise of the case during the trial proceedings. Our search of the records reveals no evidence of rebuttal by the appellant. It is the maxim of law that "what is not denied is deemed admitted or he who keeps silent when he should speak, assents". *Munnah et al v. RL, supra*.

The appellant has alleged that the trial judge ordered an oral directed verdict of guilty against him. The appellant quoted alleged oral directed verdict as follows: "the evidence produced by prosecution is consistent with law and the trial jury

should bring the defendant guilty". In considering this assignment of error, we take recourse to the records to examine whether or not the trial court did charge the jury as alleged by the appellant. The records show that the trial court submitted a written charge to the jury, including the instructions of the parties. An excerpt of the written charge is quoted as follows:

"Now, the court's analysis of the witnesses' testimonies:

Under our law, there is something we call "burden of proof". The law says that the burden of proof will turn to the defendant if it says that what the plaintiff said is not true. In the instant case, the defendant should have brought before you the police that arrested him to prove to you that he was arrested on the second day after the incident and not after two weeks. He also told you that he was informed by police while in the cell that he was only there to assist them in finding Robert and

not because he committed the crime. Again, the police should have been brought by him to prove this statement, because once you have denied that he did not run away and that he was not at the party, the burden of proof shifts to him under the law.

Our examination of the records, including the minutes of the trial proceedings failed to establish any oral directed verdict as alleged by the appellant. This Court says that under circumstance as alleged by the appellant, he ought to have noted exception on the records to such oral directed verdict so as to enable this Court to review the exception and make a determination. It is the law in vogue that "...no party may assign as error all or any portion of the charge or any omission therefrom unless he excepts thereto before the jury retires to consider the verdict." *Criminal Procedure Law Revised Code: 2:20.8*

It is also the law that "an exception shall be noted by a party at the time the court makes any order, decision, ruling or comment to which he objects. Failure to note an exception to any such action shall prevent assigning it as an error on review by the appellate court. The party who excepts is entitled to have the exception noted in the minutes of the court." *Section 20.6, id.* More besides, this Court has held in a plethora of cases that it "can only take cognizance of matters appearing in the records in the lower court and certified to the Supreme Court. Thus, to accept or

endorse the contention of the appellants in the absence of such records or evidence to support the allegation, would be tantamount to indulging in and endorsing speculation and conjecture, an act, this Court has said repeatedly it is not prepared to countenance. This Court has repeatedly said that it cannot and will not premise its decision upon or indulge in speculative allegations. *Universal Printing Press v. Blue Cross Insurance Company, Supreme Court Opinion, March Term, A.D. 2015*" *Winifred Mason et al v. R. L., Supreme Court Opinion, October Term, A.D. 2021*

Now, we come to the last error assigned by the appellant, that is, that the verdict returned by the jury is contrary to the weight of the evidence adduced at trial. We again revert to the certified records before us and cull therefrom pertinent testimonies of the prosecution which the appellant has termed as uncorroborated.

The private prosecutor testified as follows:

"Ques. Mr. Witness what happened to you [on] that day?"

Ans. On that day, while I was at my house having a party, I received a call informing me that Saah James and Roberts were looking for me.

Ques. Mr. Witness, why were they looking for you?

Ans. When I got the call, I asked a friend who said Robert informed him that I hurt him and they were looking for me.

Ques. Where are Robert and Saah James if you know?

Ans. I can see Saah James up there, but I cannot see Robert now.

Ques. So what happened that day after they were looking for you?

Ans. As I said, I took it for a joke because Saah and Robert and I had no argument before, but to my surprise, Saah James entered our yard and started to insult that I have been rude and they will hurt me for hurting their friend. Then my brother got outside and told Saah that your friend Robert has a bottle. Please leave this yard because we are having a party but he continued to insult and got into a fight with my brother. While taking my brother from there, I felt a sharp instrument in my chest and I started to yell. People started to come around. While

leaving to enter my house it was dark, I felt another sharp instrument again, this time from Robert and it was on the center part of my chest. I also started to yell. Afterward, I went completely off. When I got to myself, I saw myself at JFK Hospital.”

On cross examination the private prosecutor testified as follows:

“Ques. Mr. Witness, can you tell this court who stabbed you?

Ans. Yes, I can tell the court who stabbed me. It was Saah James and Robert who stabbed me.

Ques. Mr. Witness, what was the instrument used?

Ans. It was dark as I said earlier, I did not see the instrument but my brother took a bottle from Robert and Saah James took the bottle from my brother and they said they will pay their debt on me.”

The prosecution’s second witness, Martin Gaypue testified as follows:

“Ques. Mr. Witness, what happened on that day?

Ans. What I saw and heard that day when we were having our program was that lately in the night they had the same program at [T&T] where more people were that night when I heard that Emmett and Robert were in confusion. Some people went there, but I did not follow as an elderly man. I left the party site coming home and there were I saw Robert with James commonly known as Sarto. Sarto was with Robert and Robert was complaining to me that Emmett fought him. That is how James/Sarto started complaining to me that the man own woman's business Emmett fought him; that was the statement Sarto made to me. In that process, Robert was having empty bottle in his hand and he said anywhere 'I see Emmett [I] will pay my debt on him. That was when I turned and said to Robert, sorry for the incident but please give me the bottle. James said do not give the bottle to the man until you pay your debt. I then said if things happened between your friends, look for a way of settlement, but do not push up fire. That was my advice. That is how Robert refused to give me the bottle or go to the drug store to treat the wound. So, I went back to the party

and did not enter my house again. Upon my arrival, all those who went on the scene had returned giving the same story that Robert and Sarto have bottles in their hands looking for Emmett. I then told one Winston to tell Emmett to go somewhere for the night till day breaks so that he can't get wounded, then Winston told me that they have already informed Emmett that they will pay their debt on him. While in that process, James arrived without Robert with the same complaint and Winston told him this confusion happened up the hill where he was not there and so he does not want anyone to spoil his program. He then advised James to leave, but James resisted leaving. That is how Winston went to him and ordered him to leave Winston's place and that is how I (Martin) and one Joe Blackie went between them trying to part them because they were about to fight. At that moment, Winston yelled, saying the man hurt him and myself, Joe who went also yelled and I who went there said that guy has a sharp instrument, he also cut me. It was for this reason, I said you kept on this issue and now spoiled our program. That is how Emmett who was in hiding upon hearing the

noise, came outside saying that he was going to have his bath, I then told Emmett are you coming outside, That is how he passed by me going toward his room when I heard him yelling saying 'Oh God, they guys are killing me'. All those who went on the scene started crying thinking that Emmett had died..."

On cross examination, the witness, Martin Gaypue, testified further as follows:

“Ques. Mr. Witness, in your testimony on the direct, you just testified before the court and jury that Emmett was walking from his room to take a bath and you heard him 'Oh God, the guys killed me ooh'. Did you see the guys Emmett was referring to?

Ans. When I heard Emmett yelled. I went there and met him in a pool of blood but did not see anyone.

Ques. Mr. Witness, by that answer, are you telling this court and jury that you did not see Saah James stabbed?

Ans. I was standing under the light, but they were in the dark, But, I did not see them.”

Then the prosecution’s third witness, Winston Blackie also testified as follows:

“Ques. Mr. Witness, what happened that night between Emmett and Saah James?

Ans. That night, my woman was graduating along with my sister. At the hour of 11:00 pm., we heard a call that Emmett was jumped on and we went there to rescue him. Then we saw Sarto and Robert coming down in search of us. We then asked as to what happened and they said they were looking for Aaron to hurt him. So from there we continued with the argument and started to beg them to settle the matter to allow the program to continue.

Ques. What happened next?

Ans. We took the bottle from him but he refused and Robert told him to hurt him. Then my uncle asked that he be treated but he refused. By then Emmett was already in the room.

Ques. What did you people do next?

Ans. The program continued. I saw Saah James coming to me and I said let's not continue to discuss. When day breaks we will continue with the discussion. But, he got mad at me and gashed me. I yelled and everyone started to intervene. Our uncle also went to help then he hurt him too. At this time Emmett came outside and we saw him in a pool of blood."

On the cross examination, the witness, Winston Blackie, also testified as follows:

"Ques. Did I hear you say that you were busy dancing?

Ans. Yes we were dancing on the program.

Qus. Mr. Witness, you stated in your statement that you only saw blood on the chest of Emmett. Did you also see Saah physically assaulting Emmett?

Ans. I saw blood on Emmett after he has hurt us also.

Ques. Mr. Witness, beside Saah James, did you see Robert too?

Ans. I did not see Robert.

From the reading of the testimonies of the prosecution quoted herein, we see a common theory that runs through them, that is to say that the appellant and Robert were seen armed with broken bottles in search of the private prosecutor with intent to hurt him in retaliation to an alleged wound he had inflicted on Robert and that in the process several injuries were reported. Although the two witnesses testified that they did not see the appellant inflict the wounds on the private prosecutor, but they heard the private prosecutor yelled amidst an affray that they are killing him. The private prosecutor identified the "they" as being the appellant and Robert who in fact were in search of him that night.

We also discern from the appellant's testimony a pattern of admission of his involvement in the violence at the graduation party while at the same time avoiding responsibility for the injury inflicted on the private prosecutor as follows:

"Ques. Mr. Witness, you have been charged by the Republic of Liberia for criminal attempt to commit murder on the 9th day of July, 2011, on 20th Street. Can you tell this court where you were at that time?

Ans. On the 9th day of July, 2011, we were sitting on a palava hut on the beach playing ludo and checkers on two separate boards. It was on one of the boards that we were playing and Robert said he was going to T&T on 20th Street, Sinkor to collect the door key from Josephine and knowing this Josephine to have been in love with Emmett at first, and they separated, [he] then became to love to Josephine in the same house with adjacent rooms. On that same night, he met Josephine and Emmett together and they went into confusion and broke his nose with a bottle and he started to bleed profusely.

Ques. What happened next?

Ans. I saw blood all over Robert and he started to explain that he met Josephine and Emmett at T&T and got hurt but vowed to retaliate.

Ques. What happened next?

Ans. We advised him to take treatment as a way out. But he refused and promised to pay his debt since it was not Emmett first time. We begged but he refused to listen. It was at about 9:00 pm Then I took one of the ludos boards to my house.

Ques. What happened next?

Ans, I took my bath and told my wife that I was going on the road to buy my tea with a boxer and an under vest on. After this I passed to the graduation site, passed by them and their older brother Martin was sitting a bit far from them, and I asked him whether or not Robert was taken to the hospital. While we were talking, Winston Blackie slapped me and I dropped in the dirt bucket and took a stick and hit Winston, Martin intervened and was also hit. Martin later talked to me and I left. It was 10:00 pm.

On the cross examination, the appellant testified further as follows:

“Ques. Mr. Witness, you were present in court and listened to prosecution second and third witnesses in persons of Winston Blackie and Martin Gaypue where they identified you as the one who gashed Emmett Aaron on the 9th day of July 2011. Am I correct?

Ans. Yes.

Ques. By that answer, the said witnesses also identified you as the one who inflicted injury on them by using sharp object before the incident with Emmett Aaron. Am I correct?

Ans. I was in court that day.”

Now, it is the contention of the appellant that the private prosecutor, not having identified the *corpus delicti* and the witnesses not having seen the appellant assailed and wounded the private prosecutor, the verdict returned by the jury is contrary to the weight of the evidence. This Court has held that “direct or positive evidence is not necessary to establish *corpus delicti*...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. *20 AM. JUR. 2d., Criminal Law, § 1231*... 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. *Taylor v. Republic[1961] LRSC 33, 14 LLR 524 (1961).*” *Wion et al v. R. L. 30 LLR 71 (1982).*

This Court has also held that “the jury is the trier of facts, and the judge of the weight and worth of the evidence and the credibility of witnesses. The sufficiency of evidence to prove the guilt, or any evidentiary fact looking thereto, is a matter within the province of the jury. *Living Counsellor et al v. R. L., Supreme Court Opinion, October Term, A. D. 2008, Ishmael v. R. L. Supreme Court Opinion, October Term, A.D. 2021.* We therefore hold that the verdict of the jury not having been contrary to the evidence, cannot and ought not to be disturbed. Additionally, considering that the evidence shows that the appellant and Robert Weah (at large) embarked on a hunt to inflict bodily injury on the private prosecutor which disposition, in our view, aggravates the offense of criminal attempt to commit murder for which a maximum term of sentence ought to have been imposed. We therefore affirm the final ruling of the trial court with modification that the appellant is sentenced to the maximum jail term of five years.

WHEREFORE and in view of the foregoing, the final ruling of the trial court is affirmed with modification that the appellant is sentenced to the maximum jail term of five years. If the appellant is on bail, the trial court shall order his immediate incarceration for the five years in a common jail, or where the appellant is incarcerated and has remained incarcerated for five years or more, he is ordered

released forthwith. 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 enforce the Judgment of this Opinion. Costs are disallowed. IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors T. Joseph B. Debley and Rachel B. Yabah Doubah of the Office of Public Defenders of Liberia appeared for the appellant. Counsellor Wesseh A. Wesseh, Acting Solicitor General of the Ministry of Justice appeared for the appellee.

Judgment affirmed.