

THE STATE

V

SINNEH SESAY

ABU BAKARR TURAY

SHERIFF GIBRILLA SESAY

IBRAHIM KANU

ALHAJI DESMOND CONTEH

COUNSEL

J.A.K. Sesay State Counsel for The State

O.C. Spencer-Coker & M. Karimu Esq for The First, Second, Third and Forth
Accused Persons

D.K. Edwards Esq for the Fifth Accused Person

SUMMING UP TO THE JURY ON 2nd THE 4th DAY OF
APRIL, 2020 BY HONOURABLE MR. JUSTICE MONTFRED MOMOH
SESAY – JA

Mr. Foreman and Members of the Jury, all five (5) Accused persons are jointly charged on a two-count Indictment with the offences of conspiracy and murder. In Count I, the Prosecution alleges that all five (5) Accused persons on diverse dates between the 29th and 30th days of March, 2017 at Freetown in the Western Area of Sierra Leone conspired together and with other persons unknown to commit a felony, to wit murder. In Count II, the Prosecution alleges that all five (5) Accused persons murdered Tom Davies Jr.

Mr. Foreman and Members of the Jury, for Count I, conspiracy in law means when two or more people agree to do an unlawful act or a lawful act in an unlawful manner. The Prosecution must lead evidence to show that the

Accused persons did or said things from which you can infer that there was an agreement amongst them.

The elements of the offence of conspiracy include:

- there should be at least two people to conspire.
- there should be evidence of an agreement amongst all Accused persons i.e. each Accused should be shown to have done or said something in furtherance of a common criminal purpose or plan amongst them; and
- there should be evidence of the intention to agree to do an unlawful act or lawful act by unlawful means.

Mr. Foreman and Members of the Jury, in criminal law, the mere agreement to do an unlawful act is a crime. It is like a threat to kill somebody. The law will not wait the person to kill before the threat becomes a crime. The mere threat is a crime. So is conspiracy; the mere agreement to do an unlawful act or a unlawful act in an lawful manner is a crime.

Mr. Foreman and Members of the Jury, for the offence of murder as charged in Count II, the Prosecution must prove the following elements:

- that all five (5) Accused persons did something to the victim such as wound, strangle, poison etc him;
- that what the Accused persons did to the victim caused his death;
- that whatever the Accused persons did to the victim, they did it with the intention to kill him or to cause him serious bodily harm;
- that the victim died within a year and a day after what the Accused persons did to him; and

Also Mr. Foreman and Members of the Jury all the five (5) Accused persons are presumed to be normal persons i.e. they were not insane or mad people at the time they did what they did to the victim. If they were or are mad now in

course of this trial, it was for them to say so. Otherwise, we continue to presume that they are normal persons.

Mr. Foreman and Members of the Jury, the law is that it is the duty of the Prosecution to prove the guilt of the Accused persons beyond reasonable doubt. This means that the Prosecution must prove every element of the offences charged and at the end of the day and upon considering the totality of the evidence led by both the Prosecution and the Defence, you should feel sure that there was an agreement amongst all five (5) Accused persons to murder (i.e. Count I) and that the deceased i.e. Tom Davies Jr. died as a result of what the Accused Persons did to him (i.e. Count II). If the Prosecution proves every element of the offences charged beyond reasonable doubt, then you must find them guilty. But if the Prosecution fails to prove the guilt of each of the Accused persons beyond reasonable doubt, then you must find each of them not guilty. If upon considering the totality of the evidence led in this Court by both the Prosecution and the Defence, you have reasonable doubt, (not a fanciful doubt) in your minds as to the guilt of the Accused persons, then the law requires you to resolve that reasonable doubt in favour of each of the Accused persons by finding each of them not guilty of the offences charged.

Furthermore, Mr. Foreman and Members of the Jury, the Accused persons are not under any legal duty to prove their innocence; each of them can herefore properly choose to remain silent throughout the trial or even in the course of the investigations of the allegations by the police. But if each chooses to say something in his defence, the law requires you to consider whatever each might say in arriving at your verdict.

Mr. Foreman and Members of the Jury, another preliminary legal issue I must direct you on has to do with your role and my role in this

trial. You are the judges of fact and I am the judge of the law. As judges of fact, you should consider the evidence led in this Court by both sides and decide whether or not the Accused persons are guilty. I, as the judge of the law, my duty is to assist you with all the legal issues that have arisen in the course of the trial and relate them to the evidence to enable you arrive at a correct verdict.

Mr. Foreman and Members of the Jury, all five (5) Accused persons first appeared before this Court on Wednesday, the 21st February, 2017 and the trial commenced in earnest on Wednesday, 23rd May, 2018 before a panel of twelve (12) jurors and myself. The matter was part- heard until on Wednesday, the 26th June, 2019 and because of want of quorum of jury, I had cause to discharge the remaining nine (9) jurors and ordered the trial to start afresh and upon their arraignment on that same day, all five (5) Accused pleaded not guilty and you were then empanelled the matter again continued and both sides closed their respective case and I adjourned for Closing Address, summing up and verdict which were happened due to the persistent absence of the Defence Counsel O.C. Spencer-Coker and want of a quorum of jurors. I therefore had cause to discharge the remaining nine jurors and ordered the matter to start afresh again. This was on Wednesday, the 5th February, 2020.

The trial recommenced again on Wednesday, the 1st April, 2020 and after you were empanelled J.A.K. Sesay State Counsel made a short opening address after which the Prosecution called four (4) Witnesses, namely:

- (iv) PC 12079 Abdul Tayyib Bah. the Investigating Officer (IO) attached at the Legal and Justice Support Department, Central Police Station but was attached at the Criminal Investigations (CID) Congo Cross Freetown in 2017 when the incident occurred. He testified on Wednesday the 15th April, 2020.

- (iii) Michael Kullay Lahai of No. 2 Edward Street, Off Kissy Road, Freetown; and the uncle of the deceased. He testified on Wednesday, the 1st April, 2020.
- (iv) PC 12079 Abdul Tayyib Bah, the Investigating Officer (IO) attached at the Legal and Justice Support Department, Central Police Station but was attached at the Criminal Investigations (CID) Congo Cross Freetown in 2017 when the incident occurred. He testified on Wednesday the 15th April, 2020.

The Prosecution also tendered nineteen (19) pieces of exhibits including:

- (i) The Post Mortem Report as Exhibit A¹⁻⁵;
- (ii) The Medical Certificate of Cause of Death as Exhibit B;
- (iii) The Voluntary Cautioned Statement (VCS) of the First Accused as Exhibit C¹⁻¹⁰;
- (iv) The VCS of the Second Accused as Exhibit D¹⁻⁹;
- (v) The Additional Voluntary Cautioned Statement (AVCS) of the First Accused as Exhibit E¹⁻⁵;
- (vi) The AVCS of the Second Accused as Exhibit F¹⁻⁶;
- (vii) The VCS of the Third Accused as Exhibit G¹⁻⁹;
- (viii) The VCS of the Forth Accused as Exhibit H¹⁻¹⁰;
- (ix) The VCS of the Fifth Accused as Exhibit J¹⁻¹³;
- (x) The Charge Statement (CS) of the First Accused as Exhibit K^{1&2};
- (xi) The CS of the Second Accused as Exhibit L^{1&2};
- (xii) The CS of the Third Accused as Exhibit M^{1&2};
- (xiii) The CS of The Forth Accused as Exhibit N^{1&2};
- (xiv) The CS of the Fifth Accused as Exhibit R^{1&2};

- (xv) The Committal Warrant (CW) of the First Accused as Exhibit P¹⁻³;
- (xvi) The CW of the Second Accused as Exhibit Q¹⁻³;
- (xvii) The CW of the Third Accused as Exhibit R¹⁻³;
- (xviii) The CW of The Forth Accused as Exhibit S¹⁻³; and
- (xix) The CW of The Fifth Accused as Exhibit T¹⁻³.

Mr. Foreman and Members of the Jury, at the close of the case for the Prosecution on Wednesday, the 15th April, 2020 I put each of the five (5) Accused persons to his election and each elected to rely on the statements he had made to the police for his defence and that each said he was not calling any witness.

The Defence Counsel then closed the case for their respective clients i.e. M. Karimu Esq for the First, Second, Third and Forth Accused persons and D.K. Edwards Esq for the Fifth Accused person.

I then gave directions for Closing Addresses to be delivered by both the Prosecuting and Defence Counsel today, Wednesday, the 22nd April, 2020. They have today just delivered their respective Closing Addresses and I have decided to do the Summing up today without adjourning the matter because of the chequered history of the matter such that this is the third trial of this matter.

SUMMARY OF THE EVIDENCE LED BY BOTH THE PROSECUTION AND THE DEFENCE

Mr. Foreman and Members of The Jury, I shall now go over the evidence led by both the Prosecution and the Defence in this Court so as to refresh your minds on what has transpired in this Court in the course of the trial.

(Read the testimonies of the Witnesses and the Statements of all five (5) Accused persons and other exhibits particularly Exhibit A¹⁻⁵ i.e. The Post Mortem Report and Exhibit B i.e. The Medical Certificate of Cause of Death).

Mr. Foreman and Members of the Jury, I have taken the pains to go over the entire evidence led by both sides in this matter to refresh your minds and thereby assist you consider them in reaching your verdict.

Let me remind you that you are the judges of fact and I am the judge of the law as I have already explained to you earlier in this Summing Up. I shall further assist you on the relevant legal issues that have arisen in the course of this trial or are germane in this matter.

One such legal issue relates to how to deal with the evidence where there are two or more people jointly charged on an Indictment as in this matter where five people are jointly charged on an Indictment. The law is that in such a situation the Prosecution must prove the guilt of each Accused person separately and independent of the other. This means that an incriminating evidence by one Accused person cannot be used against a Co-Accused person. For example, where one Accused person makes a confession of the crime or admits doing something which resulted in the crime and also incriminates his co-accused, that confession or admission must only be taken or considered against the person making it.

However, where there is a charge of conspiracy as in the present matter in Count I, there is an exception to this rule under what is known as the acts and declarations principle. By this principle, the actions or statements of one accused person in furtherance of the conspiracy can properly be considered or used against a co-accused.

The Summary of the evidence before this Court is that on Thursday, the 16th March, 2017 in the evening hours at Upper Tengbeh Town, there was a

confrontation between the deceased, Tom Davies Jr and his friends including one Hassan and Sharka Kargbo (ie PW 2) and all five (5) Accused persons and others including one Jeremiah not now before the Court. The Accused seized the black bag of the deceased for which they said they quarrelled. The evidence is also that the Accused and others unknown belonged to a gang or clique group known as the Red Flag Movement or Members of Blood (MOB) with a red band as their colour which the Second Accused is said to have worn on his wrist. The deceased who is suggested to belong to another clique saw the Second Accused wearing the red rubber band and asked him to remove it.

They quarrelled and the quarrel developed into a fight in the cause of which the deceased was stabbed to death.

Mr. Foreman and Members of the Jury, both the Prosecution and the Defence (i.e. all five Accused persons) agree that there was a fight between the two groups and that it was in the course of the fight that the deceased was stabbed to death.

The Prosecution and the Defence disagree on the cause of the fight. Whilst the Prosecution Star Witness i.e. Sharka Kargbo (PW2) who was an eye witness said that it was as a result of the Accused persons seizing the deceased black school bag, the Accused persons (i.e. the First, Second, Third and Fourth Accused persons) suggested that the fight was over the red rubber band that the Second Accused wore which the deceased said he must remove.

Who do you believe? It is for you to decide.

Mr. Foreman and Members of the Jury, there is also some disagreement between the Prosecution and the Defence as to how the deceased met his death. Sharka Kargbo, the eye witness told this Court that all five (5) Accused persons were involved. That all five (5) Accused gripped him and braced him round his waist such that he cannot defend himself and the Second Accused stabbed him

with a knife on his chest and he later collapsed and died. In fact, Mr. Foreman in the course of your cross-examination of PW2 on this fact, you said the way the deceased was braced was like "Yeba feather" i.e. that the deceased was helpless to do anything.

The Accused Persons, on their part, gave a slightly different explanation. The First Accused said about twelve of them including the other four Accused and others not now before the Court, chased the deceased and when they caught up with him at Taqui Drive, he said seven of the others including Accused persons man-handled him and someone stabbed him to death. He said he stood afar watching and that he got information that the deceased was stabbed by the Fifth Accused. He later said in his Second Statement i.e. Exhibit E¹⁻⁵ that he was told that it was the Second Accused who stabbed the deceased.

The Second Accused, on his part, said in his first statement i.e. Exhibit D¹⁻⁹ that the deceased was stabbed by the 5th Accused but in his Second Statement i.e. Exhibit F¹⁻⁶, he said that he himself stabbed the deceased in retaliation because the deceased hit him on his head with a cutlass.

The Third Accused, on his part, said he was not involved in the fight but that he later heard from his sister, one Abibatu Sesay that it was the Second Accused who stabbed the deceased and that the Fifth Accused assisted the Second Accused in the attack on the deceased.

The Forth Accused said there was a fight between the Fifth, Second Accused and Jeremiah and deceased for deceased's bag but that he did not take part in that fight. That the Second Accused later confessed that he stabbed the deceased.

The Fifth Accused said that on his way to Tengbeh Town, he met a fight but could not identify those who were fighting and that when the fighters started

using cutlasses, he was afraid and ran away to his house. He said he later heard that the deceased had died. He admitted that after the incident, he ran to Kalangba from where his mother brought him and handed him over to the police.

Mr. Foreman and Members of the Jury, whilst there is some confusion as to who stabbed the deceased, there is no confusion that there was a fight between the deceased and his friends on the one part and the five (5) Accused and others not now before the Court on the other part. The evidence before this Court is that it was the Fifth Accused or the Second Accused who stabbed the deceased in the course of a fight between the two groups and the other Accused held him with his hand braced at his back while either the second or the fifth Accused stabbed him.

Mr. Foreman and Members of the Jury, who do believe? Do you believe Sharka Kargbo (PW 2) or the Accused persons and their different explanations? As for the Second Accused, which of his two explanations do you believe? In one breath i.e. in his first statement, Exhibit D¹⁻⁹, he said the deceased was stabbed by the Fifth Accused and in another breath i.e. his second statement i.e. Exhibit F¹⁻⁶ he admitted stabbing the deceased. Which of the two explanations do you believe? It is for you to decide. He also explains that he stabbed him because the deceased hit him with a cutlass on his head. In other words, he is raising the defence of self-defence. Do you believe him? You should decide.

But let me assist you with the law. The law is that where several persons engage in an act of killing and the circumstances are such that it cannot be known whose act actually caused the death of the deceased, then it is murder on each and every one of those engaged in carrying out the common act of all.

Mr. Foreman and Members of the Jury, the other legal issue that comes into play in the facts of this case is that the Second Accused himself confessed

in his second statement that it was him who stabbed the deceased with a bread knife. If you believe this statement as against his first statement that it was the Fifth Accused who stabbed the deceased, then I must assist you with the law on the effect of his second statement. In law, it is confession and when the confession is voluntary, direct and positive, it is sufficient to warrant a conviction without any further evidence. You can therefore consider this evidence against the Second Accused who made it for Count II.

If you believe the Prosecution Witness No. II when he testified that the Accused persons chased, attacked and gripped the deceased and braced him such that he could not defend himself before the Second Accused stabbed him, then another legal issue comes into play. It relates to the roles each of the Accused played. That is what is known as principal in the first degree and principal in the second degree. The principal in the first degree is the main or actual doer of the act that constitutes the crime. The principal in the second degree are those present at the commission of the crime and aided and abetted the commission of the crime. These must actually participate in the act.

In this matter, PW II said the Second Accused actually stabbed the deceased with a knife but that the other Accused Persons i.e. the First, Third, Fourth and Fifth held the deceased and braced him such that he could not defend himself.

So, in this case, the Second Accused is the principal in the first degree whilst the First, Third, Fourth, Fifth and the others not now before the Court are principals in the second degree.

It is for you to decide who you believe is the story of PW II or the stories of the Accused persons.

Mr. Foreman and Members of the Jury, there is uncontroverted evidence that all Accused persons were present in the fight between the two groups.

Some of the Accused said they did not participate (i.e. the Third, Fourth and Fifth Accused) but others said that they all participated i.e. the First and Second Accused. I have directed you earlier that for a conspiracy charge, the acts and declaration of one Accused can be considered against the other or all of the Accused persons. Which explanations do you believe? It is for you to decide.

Mr. Foreman and Members of the Jury, the Prosecution called PW I, Dr. Simeon Owizz Koroma, the Pathologist who said he did the post mortem examination to find out the cause of death of the deceased and that the deceased died as a result of acute haemorrhagic shock due to stab wounds on the upper left chest penetrating the heart with severed large inter-vertebral blood vessel and ruptured and collapsed left lobe of left lung with 4cm long laceration. In other words, he is saying that the deceased died as a result of the stab wounds. PW II, Sharka Kargbo and the First and Second Accused have confirmed that the Accused was stabbed on the chest. Do you believe the conclusion of Dr. Simeon Owizz Koroma? It is for you to decide.

Both Defence Counsel in their respective Closing Addresses raised the issue of the failure of the Prosecution to produce the weapons allegedly used to stab the deceased. They both submitted that the Prosecution ought to have produced the knife or human bone that the Prosecution witnesses spoke about and that such failure is fatal to the case for the Prosecution. I will assist you on this issue.

Mr. Foreman and Members of the Jury, the law is that the Prosecution need not produce the implements/instruments used in a crime e.g. wounding or murder. They can make out a case without the implements and in this matter. Dr. Owizz Koroma has told us that the deceased died as a result of stab wounds on his left upper chest. This is sufficient.

Also Defence Counsel M. Karimu Esq for the First, Second, Third & Forth Accused persons argued that there was material contradiction in the evidence of Dr. Owizz Koroma (i.e. PW 1) and PC 12079 Abdul Tayyib Bah (i.e. PW 4) on the number of wounds they each observed on the deceased. That Dr. Owizz Koroma said he observed one wound whilst PC 12079 Bah said he observed wounds on the chest, back and upper fore arms and submitted that this discrepancy was fatal to their case.

I must say that indeed that is the evidence as referenced by Learned Defence Counsel but I must point it out to you that Dr. Owizz Koroma is an expert Pathologist who said his job was to find out the cause of death in dead people and that he has done this type of job for over 38 years during which he had conducted thousands of autopsies. Who do you believe? Do believe him or the police officer who is not a pathologist? You should decide.

Mr. Foreman and Members of the Jury, the Prosecution was also to prove that the Accused persons had the intention to cause the death of the deceased i.e. they had the intention either to kill him or to cause him serious bodily harm. What do you say with such evidence before you? What would somebody or a group of people intend to do to attack and stab somebody on his left chest? Would they not intend to kill him or cause him serious bodily harm? Remember also Mr. Foreman and members of the jury that the fight emanated from the wearing of symbols between the two rival cliques or gangs? You should decide.

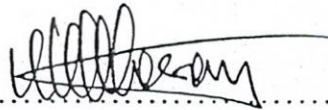
Mr. Foreman and Members of the Jury, the Prosecution was also to prove that the deceased must die within one year and one day after what the Accused would have done to him. In this matter Tom Davies (Jr) is said to have collapsed and died on the way to the hospital i.e. on the same day he was stabbed.

Are you satisfied that they have established this element? It is for you to decide.

Mr. Foreman and of the Jury, I have taken the pains to direct you on both the law and the evidence and it is now left with you to consider your verdict. Please do not consider anything you may have heard outside the Court either before, during or after the trial. You must limit yourselves to the evidence led during the trial which I have endeavoured to highlight and the relevant law.

I would now leave you to consider your verdict.

Thank you.



Hon. Mr. Justice Monfred Momoh Sesay

Justice of the Court of Appeal.

22/4/2020