

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 13TH APRIL, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE _____ NO.

CC251/2021

THE REPUBLIC

VRS

KWAKU AMANKWAH

ACCUSED PERSON PRESENT

INSPECTOR DAVID NUKPENU FOR THE REPUBLIC PRESENT

CAPTAIN (RTD.) NKRABEAH EFFAH DARTEY, ESQ. COUNSEL FOR THE ACCUSED PERSON PRESENT

RULING ON A SUBMISSION OF NO CASE TO ANSWER AS MADE BY THE DEFENCE COUNSEL ON BEHALF OF THE ACCUSED PERSON

The Accused person was first arraigned before this Court on the 16th September, 2021 charged with the following offences:

- i. Possession of Firearm without lawful authority contrary to section 11 of the Arms and Ammunition Act, 1972 (NRCD 9); and
- ii. Threat of Death contrary to section 75 of the Criminal Offences Act, 1960 (Act 29).

On his arraignment before this Court, the Accused person pleaded Not Guilty to the charge and submitted himself through full trial.

THE FACTS OF THE CASE

The complainant is a chief of Lakpo-Zome whereas the Accused person is a security man at Spring Agro Company at Adidome. On the 11th September, 2021 at about 3:00pm, the Divisional Police Command, Sogakope received a telephone call from the complainant that the Accused person with a pistol came to his house at Lakpo-Zome three times asking his wife repeatedly looking for the complainant at 10:00am on the same date. The police swiftly responded to the complainant's call and proceeded to the aforementioned town and arrested the accused person who was pointed out to police by the youth in his fiancée's room. On the spot search was conducted and side arm pistol with registration number HUV 2630 plus eight (8) rounds 9mm ammunition was found.

In proving its case, the prosecution called four (4) witnesses as PW1, PW2, PW3 and PW4.

PW1 (Torgbe Abordoh) told the court that on the 11th September, 2021, he went to his queen mother's house and on his return to the house, a certain young man came to the house and sat amongst some women in the house where his wife was present. When he was questioned on his mission, he became annoyed and they found a pistol with him. It is the case of PW1 that whiles he was going away, the Accused person also stood up and followed him, stood at a distance and started watching him. According to PW1, the Accused person returned to the house and confronted his wife as to why she told him that he was unavailable when he asked of him but he saw him receiving telephone call. That the Accused person informed his wife that when he returns she should tell him that he came to look for him.

PW2 (Beatrice Gati) testified as the wife of PW1. PW2 told the Court that on the 11th September, 2021 at 10:00am, she was in the house when the Accused person came and said he was looking for PW1. That eth Accused person who was hiding a side arm at his side became angry and went away when she started interrogating him. Later, the Accused person returned but PW1 was also present making calls. According to PW2, she did not point out PW2 to the Accused person because of fear since the Accused person had a gun. The Accused person returned again for the third time still looking for PW1 and the Accused person became aggressive.

PW3 (Teku Sampson) told the Court that on the 11th September, 2021, PW1 called him and told him that there was something happening. Upon hearing the message, he also called Richard Amexoxo and they went to PW1 where he narrated to them that someone came looking for him. So, they went where the visitor lodged but met his absence.

PW4 (Detective Inspector Courage Akpaloo) investigated the case. PW4 relied on his Witness Statements together with the exhibits attached.

After the close of the case of the prosecution, the defence counsel made a viva voce submission of no case to answer on behalf of the Accused person. The defence counsel submitted the prosecution has failed to prove the ingredients of the offence charged and the evidence of the Prosecution Witnesses have been so discredited that the Court cannot rely on it to safely convict the Accused person. Cases referred to The State vrs Ali Kassena; Re Akoto.

THE LAW ON SUBMISSION OF NO CASE TO ANSWER

Sections 173 and 174(1) of the Criminal Offences (Procedure) Act, 1960 (Act 30) provide:

“173 Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the accused.

174(1) At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require the accused to make a defence, the Court shall call on the accused to make the defence and shall remind the accused of the charge and inform the accused of the right of the accused to give evidence personally on oath or to make a statement.”

In the case of Michael Asamoah & Another vrs The Republic [2017] DLSC 2628 @ page 4, the Supreme Court speaking through Adinyira JSC stated the law on submission of no case as follows:

“The grounds upon which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial on indictment may be restated as follows:

- a) There had been no evidence to prove an essential element in the crime;*
- b) The evidence adduced by the prosecution had been so discredited as a result of cross-examination; or*

- c) *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it;*
- d) *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt and one with innocence. See also the cases of Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068; Affail v. The Republic [1975] 2 GLR 69; Apaloo and Others v The Republic [1975] 1 GLR 156-192; State v. Ali Kassena [1962] 1 G.L.R. 144, S.C.”*

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt as per sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323) and also as was stated in the case of Bruce-Konuah v. The Republic [1967] GLR 611 – 617, where Amissah J.A. stated thus:

“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the accused person’s guilt is on the prosecution.”

THE OFFENCE OF POSSESSION OF FIREARM

Section 11(1)(a) of NRCD 9 provides:

“Where any firearms, arms of war, ammunition of war or ammunition are, without the proper authority,

- (a) found in the possession of a person,
- (b) kept in a place other than a public warehouse, or
- (c) unlawfully kept in a private warehouse,

that person or the occupier of that place, or the owner of the place or any other person keeping them, commits an offence unless that person, occupier, or the owners can prove that they were deposited there without the knowledge or consent of that person, occupier or owner.”

The ingredients the prosecution needs to prove to sustain a conviction against the accused under NRCD 9 are as follows:

- i. The accused person must be in possession of the firearm; or kept own, possess or control the firearm or kept in a place other than a public warehouse, or unlawfully kept in a private warehouse; and
- ii. The accused person had no lawful authority to possess the firearm.

Section 26(1)(e) of NRCD 9 provides for the punishment of any contravention of this Act. It reads:

“A person commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years or to both the fine and imprisonment, if that person has in that person’s possession, without lawful authority, a permit granted under this Act”

Section 29 defines ‘firearms’ to include a gun, rifle, machine-gun, cap-gun, flint-lock gun or pistol, revolver, pistol, cannon or any other fire-arm, and an air gun, air rifle, or air pistol, whether whole or in detached pieces.

What will constitute possession is a term-of-art. Possession may be physical or constructive and the article or substance in issue may be in the possession of a

person or jointly with others. Section 148(1) of Act 29 defines possession of a stolen item which could be extended to cover possession of a firearm. It provides:

“The possession or control of a carrier, agent or servant shall be deemed to be in the possession or control of the person who employed the carrier, agent, or servant, and that person shall be liable accordingly.”

The Supreme Court in the case of Republic vrs Munkaila [1996-97] SCGLR 445 held that the definition of possession provided under section 148(1) of Act 29 is applicable to possession of narcotic drugs and possession may be physical or constructive.

Did the prosecution succeed in proving the ingredients of this offence? In offences of this nature, after the prosecution has introduced the charge and adduced the supporting facts or evidence from prosecution witnesses which amounts to the establishment of a prima facie case, the Accused has the evidential burden to raise enough evidence in support of his defence to justify the defence being considered by the court, before the prosecution assumes the legal burden of disproving the defence of the accused. The burden to prove that the accused person has lawful authority to possess or control the fire arm is on the accused person.

It has been established that the pistol retrieved from the Accused person belong to A5 Security Company which is located in Accra and the Accused person was deployed as a bodyguard to Sadat Mahindo, the CEO of Spring Agro Company.

Was the pistol licensed at the time of the incident on the 11th September, 2021? In the 12-paragraph Witness Statement filed by the investigator on the 19th April, 2022, nowhere did he state that the pistol retrieved from the Accused person was

unlicensed. The prosecution also tendered in evidence documents indicating license to bear the firearm and these were marked as Exhibits 'C' and 'C1'. The prosecution has not stated whether Exhibits 'C' and 'C1' establish that the pistol was unlicensed. To further weaken the case of the prosecution, when the investigator (PW4) was cross examined by the defence counsel on the 23rd March, 2023 on whether or not the pistol was licensed at the time of the incident, PW4 stated emphatically that the pistol was licensed at the time of the incident. The following is part of what transpired:

Q. You also noticed from your investigations that he had license to bear arms from Ghana Police.

A. Yes, My Lord.

So why then did the prosecution charge the Accused for this offence knowing very well he did not commit any offence of possessing a firearm without lawful authority? The court finds that the prosecution has not been able to establish a prima facie case against the Accused person on Count One (1).

THE OFFENCE OF THREAT OF DEATH

Section 75 of Act 29 provides that:

“A person who threatens any other person with death, with intent to put that person in fear of death, commits a second degree felony”

The ingredients the prosecution has to prove to succeed on the charge of Threat of Death are that:

- 1) that the accused must have threatened the victim with criminal force or harm;
- 2) that the harm if visited on the victim will result in murder; and
- 3) that the accused person must have intended to put the other person in fear of death or for that matter murder.

Justice Dennis Dominic Adjei in his book 'Contemporary Criminal Law in Ghana' at pages 185 to 186 stated the following as the ingredients of the offence of threat of death as follows:

"The first ingredient of the offence of threat of death is that there must be evidence of threat to kill issued by the suspect against the life of the victim. The second ingredient of the offence is the intent to put the victim in fear of death. Threat has been defined under Section 17 of Act 29 to include any threat of criminal force or harm. The law under Section 17(3) of Act 29 notes that it is immaterial whether a threat would be executed by the person issuing it or not. The determining factor is whether the victim of the crime feared death when the threat was communicated to him or her or was brought to his or her notice"

Section 17 (1)(a) of Act 29 provides that:

"In this Act, unless the context otherwise requires, "threat" means-

- (a) *a threat of criminal force or harm."*

In the case of The Republic vrs Amadu Bello [14/08/2007] CASE NO. FI6/7/07, the court held that:

“In a charge under Section 75 of Act 29, therefore, the prosecution must prove that the accused person said or did something which put the other person in immediate fear of being killed: threat of death means threat of murder”

In the *Amadu Bello* case (supra), the court noted that the question of whether a person did experience fear of immediate death is to be based on an objective test. The *actus reus* of the offence of threat of death consists in the expectation of death which the offender creates in the mind of the person he threatens while the *mens rea* will also consist in the realization by the offender that his threats will produce that expectation.

Also, in the case of *Behome vrs The Republic [1979] GLR 112 @ 123*, the Court stated that:

“If there is no evidence that he threatened that other person with death, or as the case may be with harm, and that where the appellants is therefore charged with threat of harm, the threat must be of harm and of nothing else.”

The Particulars of Offence in respect of the charge for which the Accused person is before this court reads:

“KWAKU AMANKWA,; AGED, 50; SECURITY OFFICER: On the 11th Day of September, 2021 at about 10:00am at Lakpo-Zome, a suburb of Sogakope in the Sogakope Circuit and within the jurisdiction of this court, did threaten one Torgbe Abordor VIII with a pistol with intent to put the said Torgbe Abordoh VIII in fear of death.”

Did the Accused person threaten the complainant (PW1) with the pistol with intent to put him in fear of death? According to PW1, he did not know the Accused person prior to the incident on that fateful day. From the 13-paragraph Witness Statement filed by PW1 on the 19th April, 2022, there is nothing to show that the Accused person threatened him with death. Also, the answers given by PW1 under cross examination does not establish that the Accused person threatened him of death. For the avoidance of doubt, the following is what transpired on the 1st August, 2022 when the defence counsel cross examined PW1:

Q. Did you sign the witness statement?

A. Yes, My Lord.

Q. Did you write the statement yourself?

A. No, it was the investigator.

Q. You are an educated person. Not so?

A. That is so.

Q. Do you have any problem with the Accused person?

A. I had no problem with him except the first day he came to my house.

Q. Why do you think the Accused person will threaten you with a gun?

A. The gun he brought to my house frightened or threatened me.

Q. Are you telling the court that because he had a gun you felt threatened or he came with a gun to kill you?

A. The gun he brought to my house threatened me.

Q. So your problem is he came to your house with a gun in his possession.

A. Yes, My Lord, because I don't even know him.

Q. Do you know that he is a security man?

A. I don't know.

Q. So you will agree with me that you as Torgbe you have not done anything to make the accused person want to kill you or threaten you.

A. I haven't seen him before, so I felt threatened.

Also, PW2 who is the wife of PW1 told the Court that the Accused person did not point the gun at PW1 but only had the gun by his side. PW2 added that the Accused person did not tell PW1 that he will kill him. The following is what happened when the defence counsel cross examined PW2 on the 10th October, 2022:

Q. Is PW1 your husband?

A. Yes, he is.

Q. Were you physically present when the Accused person came to the house?

A. Yes, My Lord.

Q. Did the Accused person point a gun at PW1?

A. No, but he had the gun by his side.

Q. So all that your husband saw was that the accused person was carrying a side arm. Is that correct?

A. Yes My Lord.

Q. Did the Accused person tell your husband that he will kill him?

A. No My Lord.

Q. Has your husband seen soldiers, police men carrying guns before?

A. I cannot say that.

On the part of PW3, he did not see the Accused person at all. The answers were provided by PW3 when the defence counsel cross examined him on the 10th Cross examination of PW3 by the defence counsel on the 10th October, 2022

Q. Did you personally see the accused person holding a gun?

A. No My Lord.

Q. So all that you know about this case you were told by somebody.

A. Yes, My Lord.

PW4 under cross examination by the defence counsel stated emphatically that the Accused person did not threaten PW1. So why then did the prosecution charge the Accused person for the offence of Threat of Death knowing very well that such an offence was not committed. This is what happened when the defence counsel cross examined PW4 on the 23rd March, 2023:

Q. You wrote this when you were a sergeant?

A. Yes, My Lord.

Q. Your promotion shows that you are hardworking.

A. Yes, My Lord.

Q. You will agree with me that accused person did not threaten the chief from your investigations?

A. Yes, My Lord.

From the evidence adduced at this stage of the trial, the court finds that the prosecution has not been able to prove its case against the Accused person beyond reasonable doubt. It would therefore be erroneous to safely convict him.

In the circumstances, the Accused person herein, Kwaku Amankwah is hereby acquitted and discharged.

Final Order:

The retrieved pistol HUV 2630 should be released to A5 Security Company Limited.

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ISAAC ADDO
CIRCUIT JUDGE
13TH APRIL, 2023