CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 21ST MARCH, 2023

SUIT NO. D7/40/21

THE REPUBLIC

VRS

WAHAB ALHASSAN

JUDGMENT

The accused person was arraigned before this court on the 26th day of August, 2021 on a charge of attempt to steal contrary to ***Section 18 and 124(1) of the Criminal Offences Act, 1960 (Act 29)***.

The particulars of offence are that on the 22nd day of August, 2021, at 6:00am at Community 25, New Dawhenya in the Tema Metropolis and within the jurisdiction of this Court, he attempted to dishonestly appropriate one black Toyota Camry vehicle with DV plate number 4655-2021, the property of Charles Afropong.

The accused person pleaded not guilty after the charge were read and explained to him in Twi. A plea of not guilty serves as both a shield and a sword. A shield for the accused person who is presumed to be innocent until proven guilty and does not have to say anything in proof of his innocence and a sword pointed his accusers to lead evidence to establish a prima facie case against them.

In the case of ***Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879*** the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused*

person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."

It is only when prosecution has discharged their duties that the sword would now turn towards the accused persons; not to establish their innocence but to raise a reasonable doubt in the mind of the court.

In the case of ***Domena v. Commissioner of Police [1964] GLR 563 the Supreme Court per Ollenu JSC*** (as he then was) commented on the burden and standard of proof as such: "Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person. Except in special cases where the statute creating the offence so provides…"

See also the case of ***Richard Banousin v. The Republic, Criminal Appeal No. J3/2/2014 DATED 18TH MARCH, 2014***, where the Supreme Court per Dotse JSC noted in the following words. "The prosecution has the burden to provide evidence to satisfy all the elements of the offence charged".

Prosecution in proof of its case called two witnesses. PW1's evidence in chief is that he is the owner of the Toyota Camry vehicle and had put it out for sale. That accused person came to inspect and test drive the vehicle on behalf of someone who had

expressed interest. Accused advised that the test drive be done on a rough road and he complied.

Accused person was the one driving the vehicle while he sat in the passenger seat. In the course of test driving the vehicle, the accused told him that one of the tyres was not good. They both got down to check whilst leaving the engine on and the doors opened.

That the accused person run back to the car, entered and tried to speed off with the car but he jumped and hanged on to one of the doors. The accused person drove in a zig zag manner for him to fall off and in the process, the car veered off into a nearby gutter. That the accused person got off from the car and immediately started running. He gave him a hot chase and shouted for help and people assisted him in arresting the accused person.

PW2 is the investigator. He tendered in evidence the investigation caution statement and charge statement of the accused person as EXHIBIT A and B respectively. He also tendered in evidence as EXHIBIT C series photographs of the black Toyota vehicle with the drivers side in a gutter and after it was removed.

Prosecution closed its case after this.

Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30) provides that; "If 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 him to make a defence, the Court shall, as to that particular charge, acquit him."

According to the Supreme Court in the case ***of Asamoah &Anor. v. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted.

The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by 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, one with innocence.

See the celebrated case of ***The State v. Ali Kassena [1962] 1 GLR 144 in which the Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ) was approved*** **of**

Section 18 of Act 29 provides that;

(1) "A person who attempts to commit a criminal offence shall not be acquitted on the grounds that the criminal offence could not be committed according to the intent

(a) By reason of the imperfection or other condition of the means, or

(b) By reason of the circumstances under which they are used,or

(c) By reason of the circumstances affecting the person against whom, or the thing in respect of which the criminal offence is intended to be committed, or

(d) By reason of the absence of that person or thing

From the particulars of offence, prosecution appears to be coming under ***Section 18 (1) (c)***. That is that the accused person attempted to and could not commit the offence of stealing a Toyota Camry vehicle because the complainant hung unto the vehicle and accused person drove into a ditch whilst driving in a zig zag manner in an attempt to throw him away.

Per ***Section 125 of Act 29***, a person steals if he dishonestly appropriates a thing of which he is not the owner. In the circumstances of this case, the essential elements that prosecution has to prove to establish their case are;

1. that the accused is not the owner of the Toyota Camry vehicle
2. that the accused person attempted to appropriate the Toyota Camry vehicle alleged to have been stolen, and
3. the attempted appropriation was dishonest.

There is no dispute that the Toyota Camry vehicle as captured in EXHIBIT C series belongs to the complainant and not to the accused person. Accused person does not deny this. There is also no dispute that PW1 had put it up for sale and accused person had gone to inspect the vehicle on behalf of a potential purchaser.

The fact that the accused person was the one driving the vehicle with PW1 seated at the passenger seat during the test drive is also not in doubt. It is also not in doubt that the

accused person drove the vehicle into a ditch or gutter. What is in dispute is the circumstances leading to the vehicle ending up in a gutter as evidenced by EXHIBIT C.

According to PW1, the accused person had indicated that one of the tyres had an issue. That they both came down to check whilst the engine was on and the doors were open. Accused person then run back into the car and attempted to drive away. That he (PW1) in turn held unto the passenger door. Accused person drove in a zig zag manner ostensibly to throw him off but he held on. Whilst he was driving in that manner, accused drove into the gutter. That accused tried to run away and he chased him and also called for help. People came around and accused was arrested.

Accused person under cross examination disputed this and put forth the case that the vehicle drove into a ditch after one of the front tyres had burst and PW1 began to assault him for that and called for other persons who also came to the scene to assault him.

At the time of the incident, it was PW1 and the accused person who were present. Save for EXHIBIT C series, the vehicle, the evidence is essentially one of oath against oath.

Ollennu JSC said in the case of ***Amartey v. The State [1964] GLR 256-262*** held that "where a question boils down to oath against oath, especially in a criminal case, the trial judge should first consider the version of the prosecution applying to it all the tests and principles governing the credibility and veracity of a witness; and it is only when it is satisfied that the particular prosecution witness is worthy of belief that it should move on to the second stage, i.e. the credibility of the defendant's story; and if having so tested the defence story, it should disbelieve it, move on to the third stage, i.e. whether short of believing it, the defence story is reasonably probable''.

PW1 had maintained his stand under cross examination that accused person had attempted to steal the car. He was not evasive under cross examination and had testified with conviction. He remained consistent under cross examination.

PW2 had tendered in photographs of the vehicle as EXHIBIT C series. They show the vehicle in a ditch or gutter with the front fender damaged.

Accused person had also confessed to the offence and given a confession statement. In EXHIBIT A, which is the investigation caution statement of the accused person, he admitted the offence by saying in the process of trying out the car on the rough road, he decided to run away with the car. That the car entered the gutter and so he decided to run away but the man shouted and people came to arrest him and brought him to the police station.

In EXHIBIT B, which is his charge statement, he indicated that he was trying to steal the car before it entered into a gutter. It is trite that a confession statement, when properly obtained and which is admitted in evidence, is evidence against him. See the case of ***Francis Yirenkyi v. The Republic, CRA J3/7/2015 delivered on 17th February 2016 (unreported), SC and the case of*** **G/L/Cpl Ekow Russell v. The Republic (2016)102 GMJ124.**

The confession statement of accused person is in tandem with the evidence of PW1. Although accused person in cross examining PW2 had sought to put forth the case that

he made the said statement under duress, PW2 had denied same. Just like PW1, I found PW2 to be a credible witness.

At the close of prosecution's case, I determined that they had established all the relevant elements of the offence against the accused person. The evidence was not so discredited under cross examination and the evidence is manifestly reliable. The evidence at this stage also lends itself to only one explanation; the prima facie guilt of the accused person. Accordingly, the accused person is called upon to open his defence.

An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. If he is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***.

In arriving at whether an accused has raised a reasonable doubt, the court must first consider whether his explanation is acceptable i.e whether it believes the explanation given by the accused. If it does not, it must proceed to find out whether the explanation by the accused is reasonably probable. If that fails, then thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. In any of these instances, the court must acquit and discharge the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of ***R. v. Abisa Grunshie [1955] 1 W.A.L.R 36 and Darko v. The Republic [1968] GLR 203.***

In his evidence in chief, accused person said the test drive occurred around 6:30am. That before he proceeded to drive the car, he realized from the dashboard that the tyre warning sign was on. He notified PW1 who told him he would have it checked the next day.

That whilst he was driving the vehicle, the front tyre burst and the vehicle veered to the left and into a ditch. That his side of the vehicle was locked and he got trapped in the vehicle. PW1 came out and used his sandals to hit his forehead and face on the basis that he had damaged his car.

That blood started oozing from his head and so he pushed PW1 to the ground and managed to get out of the vehicle.

That two men came to the scene and PW1 told them that he was trying to steal his car and they started attacking him. He run away with the intention to go to the police station. A driver met him on the way and together with PW1 and the two men, he was taken to the police station.

He called one witness whose evidence is that he was the one who sent the accused person to go and inspect the vehicle. He answered under cross examination that as he was not present, he cannot tell whether or not the accused person had attempted to steal the vehicle.

To begin with, I do not believe the evidence of the accused person. He had been untruthful to this court in his attempt to denounce his confession statement.

In his evidence in chief, he had said at paragraph 26 that when PW2 was taking his statement and he explained that it was an accident, PW2 had pointed to a policeman in uniform standing behind him and holding a cane and told the said policeman to strike him with a cane if he denied the offence.

This is despite the fact that earlier on, when accused person was cross examining PW2, at page 9 of the record of proceedings, he had asked:

Q: Do you recall that when you were interrogating me you told me that if I did not admit what the man had said that I had attempted to steal the vehicle, you would make the policemen beat me and you called in three other police officers to surround me and told them to ready themselves to beat me

A: My lady that is not true

The fact that accused person was speaking from both sides of his mouth is evidently manifest from this. He was giving two different stories which had no connection to each other. It appeared that he forgot his case as he had put it across under cross examination and was making up a new case in his evidence in chief. Clearly, if he was telling this court the truth, he would not have forgotten and would have kept to one story.

It is settled law that a witness who gives varying statements cannot be given much credit. In the case of ***State v. Otchere [1963]GLR 463***, it was held that *"a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit. Such evidence cannot be regarded to be of any importance in the light of the previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction''*.

Again, I neither find the evidence in chief of the accused person to be acceptable or reasonably probable. In paragraph 27 of his evidence in chief, accused person had said later on that evening, PW2 came to pick him from the counter and then asked him if he would thumbprint or sign and when he said he would thumbprint, PW2 held his hand and used same to thumbprint.

However, before this, the very same accused person in cross examining PW2 at page 9 of the record of proceedings had asked;

> *Q: Do you recall that after you had taken down my statement, there were 2 other police officers present, you did not read the contents to me and asked whether I would sign or thumb print.*
>
> *A: My lady, I took the statement in the presence of an independent witness and after reading the statement to you, you approved of it by thumb printing and the independent witness also signed.*

On one hand, immediately after PW2 wrote down the statement, he had asked him in the presence of two policemen to make his mark and on another hand, PW2 had come to him later on in the evening for him to make his mark.

Further, although accused person had in cross examining prosecution witnesses put forth the case that he was arrested by a mob and brought to the police station, he changed this in his evidence in chief to say in paragraph 21 that it was when he was running away from being assaulted by PW1 and two men that a driver stopped him. That he explained issues to him and the driver then drove with him, PW1 and the two men to the police station.

This is despite the fact that accused person in cross examining PW2 at page 9 of the record of proceedings had asked him:

Q: Do you recall that I had been arrested by the mob before bringing me to the police station and I could not even see anything?

A: Accused person did not say that he could not see. He said he could see.

At page 13 of the record of proceedings, in answering questions by prosecution, accused person had said:

Q: And at that time, you got down and was running away and you were given a hot chase by people.

A: It is not true. When P.W.1 was hitting me with the stick, people came by and so I decided to run to the nearby police station to tell my story and when I reached, they arrested me.

Accused person was giving three stories. One was that he was arrested by a mob and sent to the police station, second that he was taken to the police station with PW1 and two other men by a driver who was driving a kia truck and thirdly that he was being beaten by PW1, people came by and he run to the police station to tell his story. Accused person had tried rather unsuccessfully to throw dust into the eyes of the court.

Furthermore, at paragraph 18 through to 20 of his evidence in chief, accused person had said that his car door got locked and he was trapped in the vehicle when it entered into a ditch. PW1 came out and began assaulting him with his sandals. Blood started oozing from his head and so he pushed PW1 and he fell into a gutter and he was able to come out of the vehicle.

Then at page 13 of the record of proceedings, whilst under cross examination by prosecution, he had answered;

Q: I also put it to you that you told P.W.1 when you were to test drive the car that you had detected fault and so you stopped to check the fault.

A: Please that is not so. When we were about to test the car, I realized that one of the tyres was low. It indicated on the dashboard. P.W.1 told me that it was nothing and so we should go and try it. On our way, the tyre blasted and threw us in a ditch. It is my side that fell in the ditch and so P.W.1 alighted from his side. When he got down, he removed his hand to slap me severally on the face and kept saying I had damaged his car. I came out of the vehicle and told him to assist me to remove the vehicle from the ditch but he was still hitting me with a stick.

The accused person's evidence in chief and his own questions and answers under cross examination are at great variance and accused appeared to be telling a different story at each point in the trial. His different stories serve as evidence that he was lying to this court.

I accept the principle in the case of ***Munkaila v. The Republic [1995-96] 1 GLR 367, in which AIKINS JSC*** reading the judgment of the court held that *"when an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up''*.

As earlier indicated, the evidence of DW1 was irrelevant to the court because he was not at the scene and all he knew about this case is what the accused person had told him. In answer to a question by prosecution at page 20 of the record of proceedings, he had said;

Q: The vehicle that you alleged you sent the accused person to go and inspect, he was running away with the vehicle. I put that to you.

A: I was not present and so I cannot tell. I sent him to go and inspect the car and so I do not know whether or not he was trying to run away with the car. I do not know him to be so.

I find at the close of the explanation by the accused person that I neither believe him nor find his explanation reasonably probable. The evidence on record also did not raise any defence in favour of the accused person.

At the close of the trial, I find that prosecution has established beyond reasonable doubt that on the 22nd day of August, 2021, at about 6:00am at Community 25, Tema, the accused person had attempted to steal a Toyota Camry vehicle as depicted in EXHIBIT C series which belongs to PW1. I hereby convict him of the offence.

PRE SENTENCING

BY COURT: Prosecutiom, is he known?

Pros: No, my lord.

BY COURT: Is there anything the court should take into consideration?

Prosecution: Due to the accident, the car got spoilt so the complainant has spent a lot to repair it.

BY COURT: Complainant, how has this crime affected you, if at all.

Complainant: My lord, it has affected me so much that I can barely walk and I have also incurred a lot of cost.

By Court: Convict, do you have any grounds of mitigation?

Accused: My lord, I plead with the court to have mercy on me. I did not make up my mind to steal the car. When he told me he had incurred cost, he told me to pay 5,000 and I paid 4,200.

BY COURT: On record, you are 51 years.

Accused: Yes, my lord.

BY COURT: Do you have a wife and children?

Accused: Yes my lord.

SENTENCING

The offence of attempt to steal carries with it the same punishment as the offence of stealing. It is a maximum of twenty five (25) years imprisonment.

I find that this offence was premeditated. Convict had chosen a day and time where it would be easy to commit the offence. He chose a Sunday morning around 6:30am. He was also so bent on committing the crime that when PW1 had held on, he chose to drove in a zig zag manner in order to throw him off without a care as to the level of injuries.

I take judicial notice that Sundays are not busy days on the road as many persons do not work and rather go to church. Sunday early mornings are generally quiet in many parts of this jurisdiction. At that time of the day, there were likely to be very few people and vehicles on the road particularly on an untarred road. Had PW1 not held on to the vehicle the way he did, the convict would successfully have executed the crime.

Offences against rights of property involving cars; be it car stealing or cars being used as objects for sale in defrauding people are on the ascendancy within this jurisdiction. It tends to give Tema a bad image as a place where one should exercise extra care when

buying or selling a car. It does not augur well for persons who are involved in the genuine business of selling cars within the jurisdiction. The courts must protect the economic rights of citizens within this jurisdiction to engage in legitimate business without negative clouds hanging over their heads.

I would not gloss over the fact that the convict took prosecution through a full trial to establish his guilt.

In mitigation however, the vehicle was not so damaged and is in the custody of PW1. Convict has also made some form of reparation by paying for the costs of the repairs to the vehicle as well as the cost of repairing the damaged parts of the vehicle. He is a first time offender and is not known to the law.

In consideration of all these factors, he is hereby sentenced to a four (4) year term of imprisonment in hard labour. He is also to pay five hundred (500) penalty unit to PW1 as compensation for his injuries within two (2) weeks from the date of judgment.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

ASP STELLA ODAME FOR THE REPUBLIC