

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
FRIDAY THE 28TH DAY OF JULY, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE

CASE NO. D7/13/2023

THE REPUBLIC

VRS.

BERNARD AKAN ADOTEY

ACCUSED: PRESENT

PROSECUTION: C/ INSP. AWUAH ANSAH PRESENT

COUNSEL: OSMAN MOHADEEN ESQ. FOR ACCUSED ABSENT

JUDGMENT

The Accused Person is charged with one count of Robbery contrary to section 149 of the Criminal Offences Act, 1960 (Act 29) and one count of Money Laundering contrary to section 1(2)(a)(i) of the Anti-Money Laundering Act, 2020 (Act 1044).

The facts as presented by prosecution are that on 12th August, 2022 at about 5:30pm, while the complainant by name Abigail Amanor who is a beautician was at her saloon, the Accused pulled up in front of the salon in a blue coloured Hyundai Sonata salon car with registration number GC 9297-21. According to prosecution, the Accused remained seated in the car and indicated to complainant that he wanted to do a pedicure. Prosecution says that complainant requested for the phone number of Accused as she was busy at the time to call him later. Prosecution says that while he was calling out his phone number, the Accused suddenly snatched the complainant's iPhone 13

Pro Max and drove off. According to prosecution, complainant held unto the phone and car but was unable to keep up with the pace of the car and fell off with one of the tyres running over her left hand and suffered some lacerations. Complainant made a report to the police and according to prosecution on 15th August, 2022 the Accused employed a similar modus operandi with the same car to snatch a phone from a young man at New Achimota and was arrested and handed over to Mile 7 Police. Prosecution says that at the Station complainant identified the Accused as the culprit. Prosecution says that the Accused admitted the offence and stated that he sold complainant's phone at the Kwame Nkrumah circle but could not lead the police to the buyer. Prosecution says that their investigations revealed that the Accused rented the car in question under the pretext of attending a wedding but rather used it to commit the crime. Prosecution says he used the proceeds to buy household items such as a Hisense table-top fridge, one Nasco air conditioner, one HP laptop computer, one leather bed, mattress, one flat screen tv set, one DSTV decoder, one Amcon electric iron and one Bruhm microwave. Based upon these facts he was charged and arraigned before this court.

Prosecution called four witnesses in support of its case. PW1 was Abigail Amanor, PW2 was Amaniwaa Constance, PW3 was D/Inspr Patrick Agyei Asamoah and PW4 was Priscilla Komsoon.

PW1 testified that she is a beautician who lives at Tantra. According to her, on 12th August, 2022 she was at her shop around 5:17pm when the Accused person came with a blue Hyundai Sonata and parked in front of it. She stated that the Accused person called her and told her he wanted to do a pedicure but the place was busy so she asked the Accused if he could wait. She testified that the Accused asked for her number which she called out to him but the Accused informed her that he did not get the number right, so she went closer

to the Accused person's car and he snatched the phone from her hands. She stated that she tried to follow the car so she held the door firmly and was running along as the accused moved the car, but the Accused drove off with speed and she fell off and the Accused took away her iPhone 13 pro max valued at GH¢12,000.00. She testified that she could identify the Accused when seen.

PW2 testified that she is the younger sister of PW1. According to her on 12th August, 2022 at about 5:30pm she was eating with PW1 and three others at her saloon located at Mile 7 when the Accused pulled up in a Royal Blue Hyundai Sonata Saloon car. She stated that the Accused indicated that he wanted to do a pedicure and PW1 told him to go and come back later because they were eating. She testified that she requested for the phone number of the Accused so that she could call him when done. According to her, the Accused appeared not to hear PW1 so went closer to the car and suddenly the Accused snatched PW1's iPhone 13 and drove off. She stated that PW1 managed to hold on to struggle over the phone while the car was in motion, but she fell off a distance away and the tyre run over left hand. She was uncertain about her ability to identify Accused when seen.

PW3 testified that on 15th August, 2022, the Accused was arrested after he employed a similar modus to that which was adopted in this case to snatch another phone from a young man at New Achimota. He testified that at Achimota, PW1 identified the Accused as her assailant so he took an investigative cautioned statement from him. According to him, the Accused admitted the offence and indicated that he sold the phone to a buyer at Kwame Nkrumah Circle but could not lead police to the buyer. Prosecution says that the National Security CCTV camera installed along the street in front of complainant's shop captured the incident in a twelve-minute-long video footage. He testified that investigations revealed that the Accused rented the

car at Spintex on 12th August, 2022 under the pretext of attending a wedding program but rather used the car to commit the crime. According to him, he used the proceeds to buy one Hisense table-top fridge, one Nasco Air conditioner, one HP laptop computer, one leather bed, one mattress, one flat screen TV set, one DSTV decoder, one Amcon electric iron and one Bruhm Microwave oven. He tendered the following which were admitted and marked as follows:

- Exhibit A: Pen drive
- Exhibit B & B1: Charge Sheet and Brief Facts
- Exhibit C: Statement of PW1
- Exhibit D: Statement of Priscilla Koomson
- Exhibit E: Statement of Daniel Botchway
- Exhibit F: Statement of Wisdom Tetteh
- Exhibit G: Statement of Constance Amaniwaa
- Exhibit H: Statement of Gerrard Krael
- Exhibit J: Statement of Promise Korley @ Sege
- Exhibit K: Investigative Cautioned Statement
- Exhibit K1: Charge Cautioned Statement
- Exhibit L: Medical Form
- Exhibit M Series: Photographs

PW4 testified that PW1 is her friend, and she is a beautician and works at the same shop as PW1. According to her, on 12/08/2022 at 5:30pm she was eating with PW1 at the shop when the Accused pulled up in a Royal Blue Hyundai Sonata salon car. She testified that the Accused informed them that he was in for a pedicure and PW1 told him to go and come later because they were eating. She stated that PW1 went close to the car to request for the Accused person's number in order for them to call him when they were done. She testified that the Accused suddenly snatched PW1's phone and sped off. She

stated that PW1 held onto the phone while the car was in motion, but she fell, and the tyre run over her left hand. She testified that she will be able to identify him when seen as he is dark and has a little beard.

Prosecution closed its case, and the Accused was called upon to open his defence to the charges levelled.

Accused person elected to testify on oath on 13th July, 2023. He testified that he is a student and lives at Teshie. According to him, on 15th July, 2023 he was at Achimota Mile 7 around the Jesus and Mary School when he was arrested for snatching a mobile phone by a gentleman named Bright Zigah. He testified that the said person sent him to the Achimota Mile 7 Police Station and around 11:45am while he was in custody the complainant Abigail Amanor came to the police station and he was brought out of custody by PW3. According to him, he was sent to the CID Office, but he does not know what happened and he was told that they had a video of him snatching Abigail's phone from her hence he was brought to court.

During cross examination of the Accused by Prosecution, he indicated that though the cautioned statements bear his signature, it was made under duress. According to him, the commander at the Mile 7 police station forced him to write the statement. Accused stated that when the statement was taken it was just PW3 and the commander who were present and there was no independent witness present. When Accused made these allegations, Exhibits K and K1 which are the investigative and Charge caution statements had already been admitted in evidence. Indeed, I note that both Exhibits K and K1 constitute confessions and have been certified by an independent witness named D/PW/CPL Nudze Miriam Selase in accordance with section 120 of the Evidence Act, 1979 NRCD 323.

It is a trite principle of law that once a confession is admitted in evidence, it will require no further proof of its contents before it is relied upon. Admissibility and probative value are however two distinct concepts. In the case of **G/L/CPL EKOW RUSSEL VRS. THE REPUBLIC CIVIL APPEAL NO. J3/5/2014; SC dated 13TH JULY, 2016**, it was held by Akamba JSC as follows:

“Since a true confession is so highly persuasive, care must be taken to ensure that the tribunal of fact does not credit evidence of a confession unless there is good reason to believe that the confession was actually made in the terms presented in court and was a true and reliable statement when made.”

The Accused person has throughout the trial denied an involvement with the offences levelled and called into question rather belatedly the conditions which existed when the said confession statements were taken. The evidence that the commander was present during the preparation of the statement of the Accused was not challenged. The testimony of the Accused as to the presence of the commander when his statement was taken therefore tones down the effect of the confession and discounts the weight of the said confession. When the issue was raised by Accused, notwithstanding the fact that the Statement were already in evidence, due to the fact that Prosecution’s strongest effort to prove count one came from their reliance on Exhibits K and K1 and the CCTV recording tendered as Exhibit A, Prosecution ought to have through the cross examination put their case across to enhance the probative value of the Confessions.

In the case of **LANQUAYE v. THE REPUBLIC [1976] 1 GLR 1** it was stated by Taylor, J as follows:

“It seems to me that our courts must be vigilant and must endeavour to detect very subtle forms of duress which the experience of other courts in other

jurisdictions show are classical police methods used for circumventing the requirements of the law. This in my view is absolutely necessary in order to ensure a fair administration of criminal justice and protection of the citizen from arbitrariness, for these two considerations the fair administration of criminal justice and the protection of the citizen from arbitrariness are the essential hallmarks of the operation of the rule of law in a civilized society."

The above considerations thus weaken the probative value to be placed on Exhibits K and K1.

As already indicated, count 1 is a charge of Robbery. Section 150 of Act 29 which is titled 'Definition of Robbery' provides as follows:

"A person who steals a thing commits robbery.

- (a) If in, and for the purpose of stealing the thing, that person uses force or caused harm to any other person, or*
- (b) If that person uses threat or criminal assault or harm to any other person,*

with intent to prevent or overcome the resistance of the other person to the stealing of the thing."

It is the case of Prosecution that the Accused person on 12th August, 2022 robbed PW1 of her phone. According to prosecution, this said act of the Accused was caught on video through a CCTV Camera installed on the street. This video is before the court as Exhibit A. Also, the evidence is that the Accused rented a car which is seen in the video, and it was this vehicle that was used to commit the offence. Prosecution also tendered Exhibit M2 which is a photograph of the vehicle prosecution says was used by the Accused in the commission of the crime. On the back page of Exhibit M2 is the following inscription:

“The blue Hyundai Sonata Saloon car used by accused Bernard Akan Adotey to snatch the complainant’s iPhone 13 pro max on 12th August, 2022.”

Exhibit A is a 12 minutes and 18 seconds long video. The date on the video is 2022-08-12 and the time of the video is 17:25. At around 3 minutes and 40 seconds into the video, a blue Hyundai vehicle with registration number GC 297-21 is seen emerging from a junction, takes a right turn after which it makes a stop at a point on the road joined at three minutes and fifty seven seconds. No one emerges from the vehicle, however, a lady is seen approaching the vehicle and standing by same and goes back inside. The lady emerges again at about seven minutes and forty-four seconds and stands beside the vehicle on the driver’s side for awhile. At eleven minutes twenty-eight seconds, the vehicle is seen driving off with the lady holding unto the vehicle after which she falls unto the street.

When PW3 was cross examined by counsel for the Accused on 8th December, 2022 the following ensued:

“Q: You claim that there was a CCTV coverage of the incident not so

A: Yes

Q: Why did you jump into obtaining CCTV coverage when you had not exhausted your investigation

A: I did not jump into obtaining the footage, I went through all the needed processes before getting them

Q: Can you tell this court some of the basic investigative steps you took before you relied on the CCTV

A: Apart from the witness statements from complainant and others at the scene, I got in touch with the rental company from which the Accused Person rented the car involved and they confirmed the date on which he rented it, the Accused person also admitted to the crime

and the CCTV footage depicted everything that happened on the said date and time so I was convinced beyond all reasonable doubt that the Accused Person here was the one who committed the crime.”

During cross examination of the Accused by Prosecution the following ensued:

“Q: I put it to you that you rented the car for the purpose of robbing people of their phones.

A: No that is not so.

Q: Have you watched Exhibit A

A: No

Q: I put it to you that it was shown to you at the police Station and you saw yourself in

A: That is not so

Q: I put it to you that during the act of robbery, a CCTV camera captured you and that is in the pen drive and it shows you

A: No

Q: Do you want to see it

A: Yes

BY COURT: The contents of Exhibit A are to be shown to the Accused Person

Q: So now you have seen the video

A: Yes

Q: And you saw the car you rented

A: Yes I saw Hyundai Sonata with registration No. GC 297

Q: I put it to you that that is the car you rented

A: No

Q: But it is the same number you saw in the video

A: I saw GC 297-21 which is not the car I rented

Q: Look at Exhibit M2 is it not the same car you were arrested with

A: This is the car I was arrested with, GC 9297-21

Q: Is it not the same thing in the video

A: No''

There is before this court Exhibit E which is a Statement of Daniel Botchway who states that he owns the blue Hyundai Sonata Saloon car with registration number, GC 9297-21 and that he gave it to one Bismark Sarpong who is a car rental agent to rent it out but on 17th August, 2022 he found out from a call from Bismark that he (Bismark) had given the car to one Wisdom to rent it out on 12th August, 2022 and that a client had used the vehicle to commit a crime and the vehicle was parked at the Mile 7 Police Station. In addition, there is before the court Exhibit F which is a Statement by Wisdom Tetteh. He indicates that on the morning of 12th August, 2022 Accused called him that he wanted to rent a car, but he did not have the kind of car Accused wanted so he fell on his friend named Bismark who gave him a Hyundai Sonata car with registration number GC 9297-21 which he handed over to the Accused for rent for three days.

It is a trite principle in criminal law that once an Accused pleads not guilty, the facts of prosecution are put in issue. (See *CHAPPEL V. DPP (1988)89 CR. APP R 82*). Thus, the main facts in issue in this case is that Prosecution is to prove that the Accused person was the person in charge of the blue Hyundai Sonata car with registration number GC 9297-21 which was used to rob PW1 of her iPhone. All of prosecution's witnesses' testimony allude to the fact that the Accused person stayed in the said vehicle to commit the act.

The Accused admits that he rented the vehicle pictured in Exhibit M2 however, he denies being the person in charge of the vehicle in Exhibit A. Indeed, a cursory look at the vehicle in Exhibit A shows that the registration number of that vehicle is GC-297-21. This is evidently different from GC 9297-21, therefore the two vehicles could not be said to be one and the same. In fact, no explanation has been offered as to why the registration number in the video which appears to be prosecution's strongest piece of evidence is inconsistent with the said vehicle which was rented and is parked at the police station pictured in Exhibit M2. This is a fatal discrepancy in the case of prosecution which remains unresolved. In the case of **BROBBEY AND OTHERS v. THE REPUBLIC [1982-83] GLR 608** it was held as follows:

“Proof beyond reasonable doubt in a criminal trial implies that the prosecution's case derives its essential strength from its own evidence. Therefore, where part of the evidence adduced by the prosecution favours the accused, the strength of the prosecution's case is diminished proportionately and it would be wrong for a court to ground a conviction on the basis of the diminished evidence.”

In this case, the part of the evidence adduced by prosecution that the vehicle used in the robbery is that contained in Exhibit M2 actually favours Accused. This is simply because going by prosecution's own evidence, the said robbery which Accused denies was carried out by a person in charge of a vehicle with registration number GC 297-21 which is not what prosecution's evidence shows was rented by the Accused.

Again, PW1 testified that she could identify the Accused when seen. PW3 testified that PW1 identified the Accused as her assailant at the Station. During cross examination of PW1 by Accused on 5th December, 2022, the following ensued:

“Q: What can you identify on me which shows I am the one

A: Your face and you have a tattoo on your shoulder

...

Q: Do you know me or have you met me before

A: No. I don't know you and I have not met you.”

Accused testified that while in custody at the Achimota Mile 7 Police Station in respect of a case involving snatching the mobile phone of one Bright Zigah, PW1 came to the station, and he was brought out of custody by PW3 and sent to the CID office where he was told that they had a video of him snatching PW1's phone. This evidence was not challenged by prosecution during cross examination. In the Supreme Court case of **IGNATIUS HOWE V. THE REPUBLIC CRIMINAL APPEAL No J3/3/2013 dated 22ND MAY 2014** it was held as follows:

“The court pointed out that where the identifying witness had known the accused for some time prior to the commission of the crime and had led the police to the house then it would be pointless to hold an identification parade. But where the identifying witness saw the accused only for the first time for a brief period at the commission of the offence then the failure to hold an identification parade or to prove his personal characteristics would detract from the weight to be attached to the evidence of identification.”

PW1 stated emphatically that she never knew Accused prior to the said robbery. Though PW1 stated that the Accused has tattoo, evidence of which would have led credence to the weight to be attached the evidence of identification, that was never placed before the court. Therefore, based on the above authority, the failure to conduct an identification parade detracts from the weight to be attached to the evidence of identification.

I shall at this point turn to count two which is a charge of money laundering contrary to section 1(2)(a)(i) of the Anti-Money Laundering Act, 2020 (Act 1044). The section provides as follows:

“A person commits an offence of money laundering if the person knows or ought to have known that a property is, or forms part of, the proceeds of unlawful activity and the person

(a) converts, conceals, disguises or transfers the property for the purpose of

(i) concealing or disguising the illicit origin of the property;”

PW3 testified that Accused used the car he rented on 12/08/2022 to commit a crime and used the proceeds to buy some household items comprising of one Hisense tabletop fridge, one Nasco air conditioner, one HP laptop computer, one leather bed, one mattress, one flat screen TV set, one DSTV decoder, one Amcon electric iron and one Bruhm microwave oven. Prosecution tendered Exhibit M1 being photographs of items alleged to have been purchased by the Accused from the proceeds of selling the iPhone of PW1.

From the above analysis of count 1, I find that there is no evidence before this court showing that the Accused robbed the phone of PW1 and used the proceeds to purchase the said items mentioned. Moreover, Prosecution has not put before this court evidence of the alleged amount realized from the said sale except to say that the Accused admitted selling same for Three Thousand Ghana Cedis (GH¢3,000.00) while the value of the said phone is Twelve Thousand Ghana Cedis (GH¢12,000.00). Assuming it was the case that there was ample evidence of robbery and sale of the phone for Three Thousand Ghana Cedis (GH¢3,000.00), the question which then arises is whether or not the said Three Thousand Ghana Cedis (GH¢3,000.00) could have been sufficient to purchase all the items listed. Indeed, during cross examination of PW3 by counsel for Accused, when asked how much an HP

Laptop cost, he indicated that “depending on specification some could be bought as much as Two Thousand Five Hundred Ghana Cedis (GH¢2,500.00) or even Three Thousand Ghana Cedis (GH¢3,000.00)”. Such that, even if it is assumed that the laptop of Accused cost Two Thousand Ghana Cedis (GH¢2,000.00) leaving a balance of One Thousand Ghana Cedis (GH¢1,000.00), it is not reasonably probable that in 2022 all the other items being one Hisense tabletop fridge, one Nasco air conditioner, one leather bed, one mattress, one flat screen TV set, one DSTV decoder, one Amcon electric iron and one Bruhm microwave oven would all cost One thousand Ghana cedis (GH¢1,000.00) or less be they new or used. As was stated by Dostoevsky, a novelist of old, ‘a hundred suspicions do not make proof’ and this quote holds true in criminal jurisprudence.

The law is trite, that where there are doubts, the benefit of the doubt must be given to the defence. (see *LUTTERODT V. COMMISSIONER OF POLICE (1963)2 GLR 429; SC*). In the Supreme Court Case of **TETTEH SAMADZI VRS THE REPUBLIC CRIMINAL APPEAL NO. J3/1/2016 dated 6th April, 2017** it was stated as follows:

“Trial courts must avoid falling for the version of the prosecution in criminal trials without subjecting its case strictly to the constitutional standard of proof beyond reasonable doubt.”

The proven facts and circumstances of this case leave a reasonable doubt as to the involvement of Accused in the robbery in question as well as laundering of money. I conclude in the words ascribed to the English Jurist William Blackstone, circa 1769 which has come to be known as Blackstone’s Ratio¹, that “the law holds that it is better that ten guilty persons escape, than that one innocent suffer.” The Accused Person is therefore acquitted on counts one

¹*“Commentaries on the laws of England”. J.B. Lippincott Co., Philadelphia, 1893.*

and two. Any confiscated properties of the Accused are to be returned to him forthwith.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**