

IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS  
WEDNESDAY THE 31<sup>ST</sup> DAY OF MAY, 2023 BEFORE HER HONOUR  
EVELYN E. ASAMOAH (MRS)

CASE NO. D21/258/2023

THE REPUBLIC

V.

JONATHAN AMARTEY AMARTEIFIO

CHIEF INSPR. BENSON BENNEH FOR THE REPUBLIC

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*JUDGMENT*

- The accused was charged with the offence of unlawful possession or control of narcotic drugs contrary to section 37(2)(b) of the Narcotic Control Act 2020-Act 1019.
- The prosecution submitted the following facts: On 10th December 2022 at about 7: 45 Mamprobi Police District Command had information that someone was selling cocaine at Chorkor Lantemaami near the sea. The District Commander Chief Superintendent in charge of six men went to the said location and met the accused sitting outside a drinking bar holding a polythene bag. The Police held him and asked him what he was doing there and what was in the polythene bag. The police opened the polythene bag and found 14 wraps of some whitish substance suspected to be cocaine. The accused was arrested and taken to the police station for investigations. The accused admitted the offence in his caution statement and mentioned one Nikoi Ray as the one who gave it to him but he failed to assist the police to arrest the said NiiKoi Ray.

- In the case of **The Republic V. Godsway Dzomatsi** Criminal\_Appeal Suit No: H2/13/15 18th February 2016 Justice Dzamefe J.A define possession as follows:

*“What is possession in law: Possession is defined as the physical detention coupled with the intention to hold the thing detained as one’s own. The continuing exercise of a claim to exclusive use of a material object. Possession has two elements;*

*i. The physical possession of the thing*

*ii. The animus possidendi, the intention to appropriate to oneself the exclusive use of the thing possessed. Constructive possession is possession in contemplation of law as opposed to defacto possession or actual possession in fact.*

*Possession is prima facie evidence of ownership. “Possession is nine-tenths of the law” means that possession is good against all the world except a person with a better right example the true owner.... It is now settled on the authorities that, for the prosecution to succeed in establishing the guilt of the accused person charged under section 2(1) of PNDCL 236 for possession of a narcotic drug, it must lead credible evidence to prove the following ingredients; -*

- 1. That the accused person had physical or constructive possession or control of a narcotic drug.*
- 2. That the accused had knowledge of the presence as well as the nature and quality of the drug.*

*Where prosecution has successfully proved possession then the accused assume the burden of proving that the said possession was upon a licence issued by the Minister responsible for Health or upon any legal excuse...”*

- The prosecution called 3 witnesses, all police officers. The first prosecution witness contended that: On Saturday 10th December 2022, the police had

information that there were some people at Chorkor- Chemuana who were dealing in narcotic drugs. That he was part of the police patrol team that proceeded to the said location, near the sea. They arrested two men who were at a drinking spot. According to PW1, 14 substances wrapped in brown paper were found on the accused. The accused admitted that the wrapped substances are cocaine which belong to his Master who doubles as the owner of the spot. However, the accused failed to lead the police to arrest the alleged owner. The second prosecution witness also indicated that the accused was arrested at a hideout attached to a drinking spot and that 14 pieces of some substance parceled in brown papers suspected to be narcotics were found on the accused- in his pocket.

- The investigator stated that the 14 wraps of whitish substance suspected to be cocaine were counted in the presence of the accused, sealed in his presence, and forwarded to the Police forensic laboratory for examination.

The accused in his witness statement indicated that he does not know anything about the drugs. He testified that on the day of the incident, he was invited to a nearby bar by a few of his friends. However, after sometimes he was having asthmatic attacks. He found a bench and relaxed on it and later dozed off. He was awakened by someone and he saw two policemen standing by him. They got hold of him and another man and handcuffed them and then taken to the police station. That the other man who was also arrested was released.

- The accused in his testimony stated that he does not know anything about this matter. This is contrary to what he stated in his caution statement that he sold cocaine at the shore on the day of the incident. He stated:

*“...I later went to one Niikoi Ray drinking spot to buy some drinks. While at the place Niikoi Ray gave me twenty pieces of wrap cocaine in a polythene bag to sell for him at one wrap for ten cedis. I sold six wraps out of the twenty and gave the money to Niikoi Ray with fourteen pieces remaining. Later while I was sitting outside drinking, some Police rushed to me and asked about the content of the polythene bag. They held me and opened the polythene bag and found wraps of cocaine. They arrested me and asked me how I came by it. I told them it was given to me by Niikoi Ray to sell. They looked for Niikoi Ray but did not find him. I was escorted to Mamprobi police station to assist in the investigation. At the police station, the police officers poured the content in the polythene on the counter and counted the fourteen wraps of cocaine in my presence. Frankly speaking, the 14 wraps of cocaine belong to Niikoi Ray. He gave them to me to sell hence my statement”*

The accused at all material times knew that he was in possession of narcotic drugs- cocaine. He clearly indicated the sequence of events as well as the number of wraps, corroborating the evidence of prosecution witnesses.

**In the case of Ellis Tamakloe V. The Republic Criminal Appeal J3/2/2009 17th February 2010 – Justice Ansah JSC Stated:**

*“The ingredients of the offence of possessing narcotic drugs as can be gleaned from the offence created by section 2 of the Narcotic Drugs Control, Enforcement and Sanctions Law, 1990 PNDCL 236 which provided that: “(2) Any person who without lawful authority, proof of which shall be on him, has in his possession or under his control any narcotic drug commits an offence.”*

*To secure a conviction of a person charged with the offence of possessing a narcotic drug under PNDCL 236, the prosecution must prove beyond reasonable doubts that*

*i. "the appellant had custody or control of the drugs;*

*ii. he knew of the presence of the drugs; and he knew of the nature of the drugs possessed"*

- The evidence indicates that the accused knew the nature of the drug he possessed. The forensic report indicates that the drugs tested positive for Heroin and cocaine. He stated in his caution statement that the drugs were given to him by one Niikoi Ray to sell. Contrary to this statement, during cross-examination, he alleged that "the other person I was arrested with mentioned the owner of the bar as the one who sells such substances." His evidence was inconsistent. The accused had narcotic drugs at the time of his arrest at the beach, which he was selling. The prosecution proved its case beyond reasonable doubt. The accused is hereby convicted.

The court takes note of the fact that section 47 of Act 1019 only applies during the trial proceeding. In this instance, the accused has been convicted by the court. The evidence on record shows that the accused at the time of arrest was selling the narcotic drugs for consideration.

Section 113 of Narcotic Control Commission Act, 2020 - Act 1019 defines sell as "sell" means to offer, advertise, possess or expose narcotic for sale, to dispose of the narcotic whether for consideration or otherwise, or to exchange the narcotics.

Section 45 of the Narcotics Control Commission Act, 2020 (Act 1019) -

45(1) "A person who, without lawful authority, proof of which lies on that person, purchases, a narcotic during or plant with the intention to sell or supply the narcotic drug commits an offence

45(3) "A person who commits an offence under subsection (1) or subsection (2) is liable on summary conviction to a fine or a term or imprisonment as specified in the second schedule. The accused is hereby sentenced to pay a fine of 2,000 penalty unit or in default 4 years imprisonment with hard labour. The narcotic

drugs should be disposed of by burning - in accordance with section 108 (1) of Act 1019.

**(SGD)**

**H/H EVELYN E. ASAMOAH (MRS)**

**CIRCUIT COURT JUDGE**