IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI –W/R, HELD ON TUESDAY, 13TH MARCH, 2023BEFOREH/H NAA AMERLEY AKOWUAH (MRS.)

……..……

C1/4/21

THE REP.

Vrs

1. **KOFI ASIEDU@ADUSEI**
2. **JOHN KWEASI YANKSON@CYBORG**
3. **GEORGE AKUSEY ANAMAN**
4. **ERIC@ALU (AT LARGE)**
5. **YAW (AT LARGE)**
6. **KWESI AGBADZA (AT LARGE)**

A1, A2 & A3: PRESENT

A4, A5 & A6: ABSENT & AT LARGE

PROS.: SGT. EMMANUEL K.O. AGYEMAN

C/A1, A2 & A3: J.E. ABEKAH, Esq.

JUDGMENT

The initial Charge Sheet presented on 15/9/2020 had A3 as being "at large". At prosecution's request for time to conclude investigations, A3 was presented together with A1 & A2 on 29/9/2020 on an amended charge after his arrest. The two counts of conspiracy to commit a crime and robbery contrary to sections23&149of the Criminal (And Other Offences) Act, 1960 (Act 29) were maintained and to which A1, A2 &A3 (hereinafter referred to as "accused persons" pleaded 'Not Guilty' to the charges.

SUMMARY OF FACTS

The facts were that on 13/03/2020, the accused persons, including the three others at large, travelled from Takoradi to Bogoso where they entered into the premises of Transroyal Cocoa Buying Company and Mama Esther Cold Store Company Ltd. (for convenience, hereafter "the Depot" and "Cold Store" respectively). Accused persons attacked and killed Daniel Oppong and Peter Mensah, both security men manning the premises of the Depot and Cold Store. At the Depot, the accused persons loaded the company's KIA Rhino truck registered as AW 138-18 with 114 bags of dried cocoa beans and bolted. On their way from the Depot towards Atieku, they off-loaded the bags of beans into their own KIA Truck with registration number AW 8803-14 and abandoned the truck belonging to the Depot. Amidst these events, news of the theft and killings reached the townsfolk of Petepom Bogoso who relayed the information to the police at Atieku. However, by then the accused persons had passed through Atieku and were heading out when the police spotted them and gave chase. Accused persons abandoned their truck of dried cocoa beans and run into the Wassa Essaman forest. Being familiar with the territory, the youth of Wassa Essaman assisted the police and together, entered the forest in search of the accused persons. In the forest, Kofi Asiedu @ Adusei was spotted drinking water from a river while Kwame Agbadza was with him. On seeing the police, they took to their heels but were shot at by some of the townsfolk who held single-barrel guns. Kofi Asiedu @ Adusei was hit and injured, leading to his arrest. Kwame Agbadza escaped deeper into the forest. The police later searched KIA Truck with registration number AW 8803-14 and found a machete, an axe and a single-barrel gun. Kofi Asiedu@Adusei while in police custody admitted joint ownership of the items found in the truck and named his accomplices. He assisted and led police to arrest A2, John Kweasi Yankson @ Cyborg. On 25/09/2020 A3, George Akosey Annaman was arrested at Anyinase in the Ellembelle District. In their cautioned statements made to police A1, A2 & A3 admitted being involved in the robbery.

In law, the preceding alleged facts and admissions are woefully inadequate to determine the guilt or innocence of the accused persons. It has been settled and reiterated in the cases

of ***Tetteh v The Rep. [2001-2002] SCGLR 854*** and ***Dexter Johnson v Republic [2011] SCGLR 601 [2011]33GMJ 68 S.C*** that a conviction can only be supported where prosecution discharges its burden and proves the essential ingredients of the offence(s) charged. Accordingly, the Court conducted a full trial to determine the guilt or otherwise of accused persons. To discharge its burden as stated earlier, Prosecution called six (6) witnesses, namely Isaac Awortwe Arthur, William Asante, Michael Wiafe, Chief Inspector Joseph Kumi, General Lance Corporal Boakye Ansah, and Inspector Kwabena Nti (PW1 – PW6). Together, they tendered twenty-three (23) exhibits consisting of initial statements, investigation caution & charge statements, pictures, and corporeal things/items.

Due to the nature of the two counts, one being an inchoate offence and the other a substantive one, and their intertwined nature the facts considered, I shall set out the law on either, the relevant ingredients, the testimonies and evidence proffered in support. Then, in determining whether a reasonable doubt is raised as required by s. 13(2) NRCD 323, I shall discuss the defences put forth by each accused person relative to the charges as well as any available defences in law discernible from the facts of the case.

COUNT 1 – CONSPIRACY

Sections 23 &24 of Act 29 defines conspiracy, the scope and the punishment upon conviction and does not bear repeating. The essence of a charge of conspiracy against a person with named or unnamed persons under the new Act 29, as Marful-Sau JSC explained in ***Republic v Augustina Abu [AC] 2010 delivered on 23/12/2010***was that "*the persons must not only agree or act, but must agree to act together for common purposes. This to my mind raises the degree and standard of proof for the offence of conspiracy, since by the Criminal Offences Act, the prosecution must establish that the persons agreed to act, rather than just agreeing or acting*".

In ***Faisal Mohammed Akilu& 2 Ors. v The Rep. [2013] DLCA 4738*** the court determined that conspiracy is a two-edged definition that includes establishment of either a prior agreement or acting together. Prosecution will thus have to either prove that the accused persons had *a prior agreement or acted together* in carrying out the offence(s).

In the recent cases of ***Ayareba v. The Rep. [2016] 97 GMJ@ 125*** and ***Nyarkovrs The Rep. [2015] 89 GMJ @ 27*** the court discussed proof of a conspiracy by direct or circumstantial evidence. In the ***Augustina Abu case*** (*supra*) the Supreme Court noted that where circumstantial evidence is being relied on "*the circumstance establishing the facts from which conspiracy is to be inferred must lead uniquely to an inference of the existence of an agreement*". Reference also the case of ***Ibrahim Issah v The Rep. [2019] 135 GMJ*** where the Court of Appeal referred to ***Azamati&Ors v The Rep [1974] 1GLR 228*** distinguished the two ingredients of the offence of conspiracy as; 1. That there should be two or more persons and 2. Those two or more persons should have *acted together or agreed together* (emphasis mine) with a common purpose.

From the above, what evidence, direct or circumstantial did Prosecution adduce before me to lead to an irresistible conclusion that A1, A2& A3agreed to act or acted together to rob the two complainants of their property?

As a preliminary comment, I must state that none of the testimonies of prosecution witnesses (PW1-PW3) contained direct evidence to prove agreement amongst the accused persons. None of the prosecution witnesses were also eyewitnesses to the commission of the offences charged. Their testimonies were circumstantial in nature and based on discoveries made and events that occurred subsequent to the alleged commission of the offences. As such, it is concluded that the prosecution proffered no direct evidence of a prior agreement between the accused persons.

The next exercise is to find any indirect evidence that may support conspiracy; i.e., logical inferences from the evidence on record. S. 18 (2) of the Evidence Act, 1960 (NRCD 323) provides that "*an inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action*". In other words, where a court has a set of facts on record or established, it may come to certain conclusions when it examines them in the totality of other facts presented. See ***Logan &Laverick v The Rep. [2007-2008] SCGLR 76*** and ***Dogbe v. The Republic [1975] 1 GLR 118.***

In respect of subsequent events of acting together, the testimony of the Station Officer of the Ateiku Police Station, Chief Inspector Joseph Kumi(PW4) was that on 13/03/2020 after receiving a tip-off, he set off with a team towards Wassa Essaman when he realized that the same truck had earlier passed Atieku. On their way, he spotted the same truck coming back towards Wassa Essaman and so changed direction to follow it. PW4 said when the occupants of the truck saw the police chasing them, they abandoned the truck and ran into the forest. Police and the Wassa Essaman townsfolk entered the forest and arrested A1 after he sustained gunshot wounds. The other person with A1 ran away.

In addition to his testimony, PW4 tendered a copy of his initial statement (Exh. D) that he gave at the police station on 10/06/2020 in which he detailed that the information alert on which he acted was from the GPRTU chairman of Ateiku who told him that suspected armed robbers driving a KIA Rhino truck with registration number AW 8803-14 loaded with cocoa were driving from Bogoso direction to Osenso towards Ateiku.

Under cross-examination, PW4 told the Court that prior to A1's arrest, he did not know A1. He also repeated that there were 5 occupants in the truck on the Wassa Essaman road and A1 was the driver. The truck was loaded with bags of cocoa; three people in the bucket of the truck with the cocoa and two people at the front, including the driver. PW4 said he signaled the occupants of the truck to stop but they ignored him. It was when he threatened to shoot that they abandoned the truck and all five ran into the forest.

The essence of PW4's testimony with respect to Count 1 is that five persons, including the three accused persons standing trial, were together and acted together on 13/03/2020 on the KIA truck on the Wassa Essaman road. This fact was also contained in the tip-off from the GPRTU chairman of suspected robbers and of cocoa being on the truck.

The testimony of G/L/Cpl. Boakye Ansah (PW5) reiterated the testimony of PW4, his station officer, emphasizing that the tip-off received mentioned suspected stolen cocoa being transported by the persons suspected to have stolen them. He also testified that he was part of the team of four who went after the suspected robbers and actually saw the KIA Truck loaded with cocoa beans. In paragraph 8 of his testimony, he confirmed that there was more than one person on the truck which the suspected robbers abandoned. He corroborated PW4's testimony that the suspected robbers ran into the Wassa forest and it was there that A1 was arrested. Reference s. 7 of NRCD 323 which defines corroborative evidence as consisting of '*evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence".* Reiterating his testimony that he saw more than one person on the said date, PW5 answered a question put to him as follows;

> *"When we got to Essaman forest we saw 3 people sitting on the heaps of cocoa bags which was in the KIA truck. When we got near them, one banged the top of the KIA alerting them that the police were around. So he applied the brakes and I swerved to the passenger side and they turned around in the direction of Essaman. They moved forward and I was behind them. They all alighted from the car with the driver A1 remaining in the vehicle. He did not put of the ignition but jumped out of the car. I saw him clearly so the truck was decelerating in the direction of my car and my supervisor called me so I turned the ignition of the KIA truck and put block behind the truck. … So, myself, the station master and town folks entered the Essaman forest we saw A1 who was the driver and 1 other guy by the river. When they saw us, they took to their heels so one of the town folks shot one of them.*

> *They also shot A1 and the pellets spread from his neck, his back and to his legs and he fell down. So, we arrested him and took him to Atieku Christian Hospital for the pallet to be removed. After we took him to the hospital and we inspected the KIA truck, we found a big axe, a gun, and a machete in it behind the driver's seat"*

Despite Counsel for the accused person's argument that this piece of evidence was not credible because PW5 did not put same in his statement given to the police on 10/06/2020 (Exh. E) when the matters were fresh in his mind, I find the above reproduction as a fact because in Exh. E, PW5 repeatedly used the words "robbers" and singled out A1 from the group as the one who was arrested in the forest. Further, I accept PW5's testimony of several persons being on and jumping out of the KIA truck from which A1 was driving because he was an eyewitness, and as well, a corroborator of the testimony of PW4. In ***Francis Arthur v The Rep. [Criminal Appeal No. J3/02/2020]*** Anin Yeboah CJ, presiding, stated that;

> *'In essence, the corroborating evidence strengthens the initial evidence, which standing alone is insufficient to determine the commission of a crime. Retired Supreme Court judge and legal text writer Stephen Alan Brobbey writes in* ***Essentials of the Ghana Law of Evidence, 1st Ed. 2014*** *at page 85 that this definition connotes three concepts;*
>
> *Firstly, for the evidence to amount to corroboration, it must have some connection or relationship with the previous evidence.*
>
> *Secondly, that connection should amount to affirmation or denial of some relevant part of the previous evidence.*
>
> *Thirdly, the connection and affirmation should directly be referable or attributable to the person or fact in so far as the crime, claim or defence is concerned.*
>
> *If these three concepts exist, the court may conclude that the second evidence confirms, supports or 'corroborates' the first evidence"*

In ***Eric Asante v The Rep. [Criminal Appeal No. J3/7/2013]***, the Supreme Court through Pwamang JSC, stated that *"corroborative evidence must be independent of and from a source other than the witness whose testimony is sought to be corroborated*

Still on Count 1, the investigator in charge of the case, Detective Inspector KwabenaNti (PW6) testified that when he inherited the instant case from the Bogoso police, which was handed to him together with A1, he took his Investigation Caution Statement (Exh. F dated 20/03/2020), noticeably, a week after commission of the alleged offences. In paragraphs 6, 8, 10 & 20 of his testimony, PW6 stated;

> *6. A1 in his Caution Statement admitted his involvement in the robbery and mentioned his accomplices as A2, A3, Eric@Alu, Yaw and Kwame Agbadza*
>
> *8.On 20/03/2020, A1 led Police to the various places of abode of aforementioned accomplices but they could not be traced"*
>
> *10. On 30/03/2020, A2 was also arrested from his hideout at Edzi Filling station area*

20. On 25/7/2020, A3 was arrested from his hideout at Nzema Ayinasi

In Exhs. F & F1, admitted into evidence despite his lawyer's objection, A1 identified A2, A3 & A4-A6 as fellow gang members. A1 further elaborated on the part that each gang member played in carrying out the offences. Confirming the testimony of PW5, A1 in Exhs. F & F1 stated that two other members of the gang joined him in his truck while Elu Kwame@Eric joined A2's taxi and A3 drove the stolen KIA truck.

It is clear from his ICS that A1 did not, and could not have acted alone, considering the facts presented. It is humanly impossible for one person to drive two vehicles at the same time, pack more than 100 bags of cocoa beans, unpack them into another vehicle (as seen in Exh. J5), and drive **both** vehicles and a taxi away, as narrated.

From the preceding, I find as a fact that the accused persons acted together on the night of 13/3/2020. The immediate observation is important as it is linked to the defences of A2 & A3 who denied ever knowing or meeting A1 prior to their arrest, a matter to be discussed later in this judgment. Secondly, the finding leads to Count 2 in the sense that Count 1 being an inchoate offence, is linked to proof of Count 2. Accordingly, I will stay a final determination of Count 1 until after discussion of Count 2.

COUNT 2

s. 149 of Act 29 states that;

> *(1) Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily or on indictment, to imprisonment for a term of not less than ten years, and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less than fifteen years.*
>
> *(3) In this section "offensive weapon" means any article made or adapted for use to cause injury to the person or damage to property or intended by the person who has the weapon to use it to cause injury or damage; and "offensive missile" includes a stone, brick or any article or thing likely to cause harm, damage or injury if thrown.*

Section 150—Definition of Robbery

> *"A person who steals a thing is guilty of robbery if in and for the purpose of stealing the thing, he uses any force or causes any harm to any person, or if he uses any threat or criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of that or of other person to the stealing of the thing.*

S. 150 was restated in ***Kwame Awuah v The Rep. [2018]127GMJ 240 C.A.*** as follows;

> *"A person is guilty of robbery if he steals and immediately before or at the time of stealing and in order to steal, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force"*

The Court further stated on page 244 of the Report:

> *"it would be noted that the ingredients for robbery in s. 150(a) of Act 29includes the fact that the accused person shall steal a thing, the accused person uses force or causes harm to any person, and whether the accused person in using force or causing harm used an offensive weapon or offensive missile or not. In effect, the accused must steal a thing, he must have used a threat or criminal assault or harm on any person and he does so with the intent to prevent or overcome resistance of the other person to the stealing of the thing and in addition, whether an offensive weapon or missile was used or not in the threat or criminal assault or harm will determine the minimum sentence to impose"*

See also the case of ***Roger Agbadi v The Rep. [2019] 131 GMJ*** which succinctly listed the ingredients required to prove the offence of robbery.

The prosecution's evidence of robbery was found in the testimonies of PW1, PW2 & PW3 as well as Exhs. N, P, Q, S & T; the Baikal Single Barrel gun, a long axe, a cutlass, a rag and rope, and a piece of metal, suspected to be a piece of broken padlock. The testimonies of the said witnesses and the relevant exhibits are set out below;

Isaac Awortwe (PW1), the owner of Mama Ester Cold Store Ltd., told the Court that he knew two of the accused persons. He said that on 13/03/2020, through his wife, he was informed that his security man had been shot. He drove to the Cold Store and found the deceased security man in a pool of blood and then to the Bogoso police station and lodged a complaint. He tendered Exh. A, his Initial Statement dated 14th March 2020. During cross-examination, it was established that he did not witness the alleged killing of the security man but went to see the aftermath in the morning.

The essence of his testimony was to confirm that indeed one Peter Mensah of Kruger Security Company, stationed at the premises of his company, had been shot dead by unknown assailants. Secondly, A1 was arrested on the same day 13/03/2020 and so at the invitation of the police later in the day, he visited the station and saw A1 and another there for the first time.

William Asante testified as PW2. He told the Court that he has been a depot keeper for 11 years at the Depot and that on 13/03/2020, he was on his way to work when a colleague worker called George called and asked whether he took the Company's KIA Truck home the previous night, but he answered in the negative. George then told him that the Depot had been robbed and the security man of Mama Ester Cold Store, opposite their company premises, had been shot and killed. When he arrived at the Depot he saw a crowd of people at the Cold Store and a few persons on the opposite side where Depot premises were. To confirm what George earlier told him, he personally inspected the premises and found that 114 bags out of the 119 bags accounted for the previous night had been stolen, together with the company's KIA Truck. He said he informed Michael Wiafe, his boss and he later came to the scene with police officers. In the meantime, he and a group of people started looking for Daniel Oppong, the night security man. Shortly, he was found about 150 meters.

At the risk of being repetitive, Michael Wiafe (PW3's) testimony established that indeed 114 bags of cocoa beans, property of Transroyal Cocoa Company Ltd. (the Depot) was stolen and criminal harm caused to the security man present and on duty at the time of the stealing.

He told the Court that being the sector manager of the Depot, on 13/03/2020, he received a call from his depot keeper (William Asante) who informed him that unknown persons had broken into the depot and stolen all the bags of cocoa away. Also, that the depot's security man (Daniel Oppong@ YawAmoah could not be traced but that of the security man at the

Cold Store opposite had been found killed. He went to the depot and confirmed what he had been told. With the help of townsfolk, they looked for his depot security man but could still not find him. On his way to the police station to lodge a complaint, he received a call that his security man had been found dead about 200 meters behind the depot with his legs and hands tied behind him with his nose and mouth covered with cello tape. He inspected the depot and realized that 114 bags of cocoa beans had been stolen together with a KIA Rhino truck registered as AW 138-18.

On the authority of ***Francis Arthur v The Rep. and Eric Asante v The Rep. (Supra),*** I find that the evidence of PW3 further corroborated the fact of the stolen cocoa beans and the KIA Rhino truck from the Depot and the death of the two security men, presumably, at the hands of the same persons who stole the goods, a fair presumption and inference to make based on s. 18 of NRCD 323.

From the preceding discussions, I make the following findings of facts;

1. It has been established that the stolen cocoa and KIA Rhino truck (AW 138-18) belonged tothe Depot of which the first complainant, Michael Wiafe is an employee.

2. It has been established that the Depot's KIA Rhino truck was later found abandoned.

3. It has been established that the Depot was broken into with the use of force as shown by Exh. T, the remaining piece broken padlock which secured the depot.

4. It has been established that the Atieku police acted on a specific tip-off which mentioned the KIA truck registered as AW 8803-14. Ownership of this second truck has not been established but this is immaterial as it was the same truck that A1 & 4 others were found in and the same truck was what the 5 occupants fled from into the Wassa Essaman forest and were chased by the police.

5. It was established, and indeed admitted to by A1, that it was at the same Wassa Essaman forest that A1 was arrested.

6. It was a finding of fact that the stolen Depot's KIA Truck(AW 138-18) was not the one in which A1 & 4 others were seen in but this is easily explained by the fact of the moving of the Depot truck from its premises and later being abandoned in a bush when the information received was of a truckload of cocoa beans being conveyed towards Atieku on KIA truck registered as AW 8803-14

Without eyewitnesses, at this point the obvious question is how accused persons are connected to the aforementioned established facts of stealing and the death of the two security men, caused by grievous harm inflicted on them? What is the nexus between the facts on record and the accused persons? Unlike the position of the law stated in the case of ***Roger Agbadi*** (supra) where it was held that the evidence of a witness who swears to have seen an accused person committing an offence is sufficient to prove identity, in the instant case no witness actually saw accused persons allegedly committing the act of conspiracy, robbery and inflicting bodily harm to the two deceased persons on record. I must state that this was the gravamen of the Written Submission of Counsel for the accused persons.

It is trite law that where eyewitness accounts are absent, circumstantial evidence is the next port of call. In ***Frimpong@ lboman [2012] ISCGLR 297@313***, with reference to the cases of ***State v AnaniFiadzo [1961] GLR 416 and R. v Onufrejczyk [1955] 1 QB 388,***Dotse JSC explained;

> *"What must be noted is that a crime is always investigated after the act had been committed. However, during investigations, the police are able to put together strings of activities and draw the necessary inferences and conclusions. … some crimes are investigated based solely upon circumstantial evidence; as apart from the accused person there might not be any*

> *living eye witness of the crime. But courts of law will not throw their hands in despair only because there is no other eye witness account of the crime. This is the relevance and importance of circumstantial evidence which can be used to put together a very strong credible case capable of securing conviction for the prosecution"*

Circumstantial evidence is proffered by witnesses, usually persons involved in a case such as investigators, other police officers, persons who come unto the scene of crime later or were re-told the events leading to and after the commission of the crime, family members, etc.

Proof in law is not limited to eyewitness accounts but as S. A. Brobbey, JSC (Rtd.) in categorizing the 5 types of evidence used by a court in both civil and criminal trials noted at page 14 of his book "***Essentials of the Ghana law of Evidence***"(supra) includes, *"testimonies, sworn or unsworn, given in court [which] constitute testimonial or oral evidence upon which a court may make a determination so long as their qualitative and quantitative values are satisfactory in proving a fact".* Reference s. 179 (Interpretation) of NRCD 323 which defines "evidence" as "*testimony" writings, material objects, or other things presented to the senses that are offered to prove the existence or non-existence of a fact".*

In the business of criminal trial, the law provides for the use of circumstantial evidence from which a court can make a determination therefrom, provided it complies with the principles of law. In ***Logan &Laverick v The Rep. [2007-2008] 1SCGLR 76@90***, Aninakwa, JSC stated that;

> *"For circumstantial evidence to support a conviction, it must be inconsistent with innocence of the accused. It must lead to irresistible conclusion not only that the crime charged had been committed, but it was in fact committed by the persons charged in order to arrive at a definite conclusion"*

To resolve the obvious question, I shall discuss the testimony of the investigator (PW6) in this regard, since the testimonies of PW1-PW5, eyewitnesses to the aftermath of the alleged robbery and evidence of use of force have been extensively dealt with earlier.

PW6 testified that on 19/03/2020 when he inherited the docket of this case from the Bogoso police together with A1, he took his Investigation Caution Statement (hereafter 'ICS') in which he admitted to his involvement in the robbery and mentioned the names of his accomplices, A2, A3 and the three others at large. Again, A1 admitted that the exhibits shown him, i.e., a single barrel shotgun, an axe and a machete (Exhs. N, P & Q) were the weapons he and his accomplices used in committing the offence. In paragraph 8, he testified that on 20/03/2020 it was A1 who, in addition to mentioning the names of his accomplices, also led police to the various places of abode of A2, A3 & the three other accused persons at large. That on 30/03/2020, A2 was arrested at the Edzii Filling station area and when his ICS was also taken, he admitted his involvement in the crimes and mentioned A1, A3 & the 3 others as his accomplices. A2 also cooperated with police and led it to the places of abode of his other accomplices, but they could not be traced. PW6 said he took an ICS from A2 and a further ICS from A1 after the arrest of A2. After visiting the crime scene in Bogoso, he took charge of the weapons allegedly used by accused persons, the abandoned KIA Truck registered as AW 8803-14 loaded with cocoa and also took statements from PW2, PW4 & PW5, the arresting officers of A1. Subsequently, A3 was arrested from Nzema Anyinasi after both A1 & A2 mentioned him as an accomplice. His ICS was taken. Upon conclusion of investigations, he took the CS of A1, A2 & A3.

I have carefully read through and examined Exhs. F (taken on 20/03/2020) & F1 (taken on 9/06/2020, 3 months after Exh. F), the respective ICS & Further ICS of A1 and find that although both were taken at different times, both contain the same admission of guilt. In both statements, A1 gave the names of his accomplices and detailed narration of the events

prior to and subsequent to his travel to Petepom. For example, A1 stated on the second page of Exh. F that;

> *"The allegation levelled against me is true. The fact is that on 12/03/2020 at about 7:00am I was there when my car owner Elu Kwame a.k.a. Eric told me that he was traveling and when he is ready to go he will call me. On the same day at about 8:00 am Elu Kwame called me that he was in Bogoso so I should come there with Yaw and Anaman with the KIA Rhino Truckwhich I am the driver. So, I together with Yaw and Anaman who are members of our gang left for Bogoso in my truck. At Bogoso, we met Elu Kwame, my maste, Kwame Agbadza and John Kwasi Yankson who are also our gang members. …"*

In Exh. F1, A1 again stated that;

"the allegation levelled against me is true. The fact is we have robbery cyndicate made up of six members namely; Eric alias Alu, Kwame Agbadza, Annaman, Yaw, John Kwasi Yanskon and myself Kofi Asiedu. I remember on 11/3/2020, Eric, Agbadza and John Kwasi Yanskon took lead to Bogoso and later on same day, I. Annaman and Yaw also joined them at Bogoso ostensibly to rob a cocoa buying depot. I am the driver of the syndicate Kia Truck which we used to transport the stolen cocoa, whilst John Kwasi Yanskon is also a driver in charged a Taxi cab which we used for survilance or monitoring during day's time.

In both ICS A1 individually mentioned the names of A2, A3, A4, A5 & A6. He claimed ownership of the truck registered AW 138-18 and admitted to being the driver in charge on the relevant date, and some other dates in 2019 which are not the subject of this judgment. The admission of guilt in Exhs. F & F1 must comply with the provisions of s. 120, NRCD 323 to constitute confession statements. In summary, s. 120 of NRCD 323 requires that for a statement made out of court, unsworn to and not made under oath to be admitted as a confession, it must have been made voluntarily in the presence of an independent witness so long as it was made while the accused person was arrested,

restricted or detained by the state after his rights under Art. 14(2) of the Constitution, 1992 has been complied with, i.e. informed in a language that he understands of the reason of his arrest and his right to a lawyer of his choice. See the cases of ***Agyiri @Otabil v The Republic [1987-88]1GLR 58 and Duah v The Rep. [1987-88]1GLR 343***. I must state that during trial, an objection to the admission of Exhs. F & F1 was overruled on the basis that it did not contain grounds on which a voire dire may be held as distinguished in the case of ***Marfo v The Rep. [2018] 127 GMJ.***

I find that the sequence of events from the arrest of A1 in the Wassa Forest, the fact of bullet pellets in his body which he repeatedly told the Court he needed medical attention for, the subsequent arrest of A2 and the later arrest of A3 while A1 & A2 had been arraigned, corroborates the testimony of PW6 on A1 providing information on the names and places of residence of his accomplices and investigations carried out to confirm same. It cannot be that PW6 conjured up the details in Exhs. F & F1 when it is on record that it was the arrest of A1 that led to the arrest of A2 and then A3. In the ***Ibrahim Issah*** case (supra), on a ground of appeal that the evidence led by police was not credible because out of a busload of people on the Agona Nkwanta road, it was only the appellant and his accomplices who were asked to stand aside for inspection when the police had no cause to suspect them of any wrongdoing. In dismissing the appeal, the Court of Appeal noted at page 191 of the report that*"a question that might come to mind at this juncture is why the police only isolated the Appellant and the other accused persons from all the other passengers in the Hyundai Grace bus. An inference that can be drawn in response to that question is that the police by their training are able to identify suspected criminals by their behavior, appearance and answers to their initial questions asked. These and many more are what are referred to as circumstantial evidence because of the inferences that can be drawn from the circumstances aforementioned*". In the same vein, I find that of all the townsfolk and police personnel in the Wassa Essaman forest, it was A1 who was shot by the four men who came upon him and another at the stream.

In his defence A1 testified that he was in the forest to prospect for gold with a well-known hand-held device called "Pipi". I find his defence untenable especially because no such device or backpack, as he claimed, were found on him and in his entire testimony and documentary evidence on record, did A1 state that he was into 'galamsey' I find also that the stark departure from the statements in Exh. F & F1 and the testimony in Court begs belief. As discussed earlier, Exhs. F & F1 were admitted confession statements held to be in compliance with s. 120 of NRCD 323. When compared there are no material differences between Exh. F & F1, despite the lapse of time. The contradiction between his statements to the police, testimony in Court and even in his lawyer's Written Address, begs belief. The law has been settled in the cases of ***Rep. v Maikankan&Ors. [1972] 2GLR. 502 and State v Otchere&Ors. [1963] 2GLR 463*** 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 and his evidence cannot therefore be regarded as being of any importance in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradictions*". What was the reasonable explanation A1 gave as to the stark contradictions in Exh. F & F1 and his testimony in Court?

As to his presence in the Wassa Essaman forest, A1 admitted that he was indeed there and was shot and 'arrested' by a group of 5 men who came upon him when he was drinking at a stream. However, he said that he was there with a gold detector machine known as "pipi" prospecting for gold. Indeed, that he had been in the forest the previous days of 10th March, 11 & 12th March, and that on 13/03/2020 when he saw the five men he thought they were forest guards on their usual rounds and that was why he started running. He denied making, giving, or thumb-printing any statements at the police station and that the exhibits admitted as his were actually a figment of the imagination of the police officer.

Contrary to his defence, no gold-detecting device was found on him or at the scene where he was arrested. No backpack or other possession was also found at the scene and it is

difficult to accept this submission because if indeed accused person was a regular in the Wassa Essaman forest for three days, common sense will dictate that he takes water, food or some sustenance with him, especially when it is a notorious fact that most water bodies in Ghana are not fit for purpose due to the "galamsey" menace. I daresay that it was because A1 run into the forest without preparation that he was compelled to drink from the stream, a fact that supports the story of Prosecution witnesses. Right from the onset of proceedings and throughout, A1 was very vocal and even informed the Court of bullet pellets he said were still lodged in his body, compelling the Court to order for medical care for him. At other times, A1 complained of pains in his penis and requested the Court to have a look at his manhood to confirm. It is therefore surprising that A1 never mentioned being beaten or assaulted by the investigator and other police officers at the time of his arrest or subsequently. As such, I cannot accept his testimony rejecting Exhs. F & F1 as his and insisting that they were not his deeds, especially on the totality of evidence before the Court proving otherwise. Accordingly, on the preceding authority of ***Rep. v Maikanakan***(supra), I dismiss A1's Court testimony as to why he was in the forest at the material time as simply untenable and an obvious attempt to throw dust into the eyes of the Court.

The connection between the established facts on the evidence before me and A1 were made from the cross-examination of PW4 which established that A1 had bullets in his body from the gunshots and this puts out of question that a1 was indeed in the Wassa Essaman forest & was arrested there. Further evidence of positive identification of a1 as the driver of the KIA truck with registration number AW 8803-14 being the same person arrested in the forest was made by PW5 when he was under cross-examination as follows:

> *Q: I am suggesting to you that the group shot an innocent person who had not committed an offence*

A: We didn't shoot an innocent person. When A1 got down from the car I saw him, so when he was shot I was able to identify him as the driver

It is undisputed that both trucks, the one claimed by A1 as his and the one belonging to the Depot were used in transporting the cocoa from the depot as was seen in Exh. J5. First, it is a fair deduction to arrive at that A1 was on the premises of the Depot on the night of 13/03/2020 and participated in carrying away the bags of cocoa beans. Although in Exhs. F & F1, A1 stated that he only drove his KIA Truck to a place called High Tension at Bogoso on the instructions of Elu and waited.A1's statement purports that he had no knowledge of the operation and the intention of his master, Elu. However, this statement is not supported by other portions of his statement when he said that he parked his truck at the stated location for hours, slept until he was awoken by Elu and others. According to him, after the others had loaded his truck with the cocoa beans, without him asking any questions considering that it was 5:00am in the morning at a forested area, he took out a tarpaulin to cover the beans and drove off with two others. This narration is a clear indication of preconception, intention and preparation by all parties involved knowing very well the robbery they intended to undertake.

Secondly, it is a fair deduction to make, considering the duty of the deceased security men at post then to protect the property (cocoa beans) of the Depot, the exhibits N, P, Q, S & T made up of offensive weapons as well as items which can ordinarily be used in subduing a person who resists robbers from carrying out a robbery operation and comparing the injuries on the bodies of the two security men as evidenced in Exh. J& J1 and the pieces of rags and ropes used in tying up the second security officer as shown in Exh. J2 & J3 that, having established A1's presence at the said premises, he was and necessarily was a part of the robbery operation and the grievous infliction of pain and harm on the persons of the two security officers to enable him and others steal the bags of cocoa beans. Thirdly, to prove that those offensive weapons were indeed for A1 and the others on the KIA Truck,

PW4 & PW5 gave cogent and credible eyewitness accounts of retrieving the said weapons from the truck from which A and the others escaped. I find, without a doubt, that the entire circumstantial evidence adduced by prosecution overwhelmingly points to the active participation of A1 in the robbery and killing of the two deceased security personnel.

In addition to A1, A2 & A3 were said to be part of the robbery gang that accompanied A1 and carried out the robbery and killing operations. Prosecution witnesses, especially PW6 the investigator did not state the roles of A2 & A3, save that they were arrested upon A1 mentioning their names, giving their addresses and cooperating with police to arrest them. On the evidence of what connects A2 & A3 to the charges, are Exhs. F & F1 where A1 mentioned their names and further stated;

> "*So I together with Yaw and* ***[Annam]*** *who are members of our gang left for Bogoso in my truck. At Bogoso, we met Elu Kwame my master, Kwame Agbaza and* ***John Kwasi Yankson****who are also our gang members. …At this juncture, Eric aka Elu Kwame, Agbadza,* ***Annaman****, Yaw started off loading the cocoa bags with dried cocoa beans into my truck. After loading, I brought tarpaulin from my truck to cover the loaded cocoa after which Yaw and Kwama Agbadza joined in my truck and I drove towards Oppong Valley direction whilst Elu Kwame @ Eric joined the second suspect's taxi and Annaman also drove the other KIA Rhino truck behind me"*

I have stated elsewhere in this judgment that with the evidence of how the deceased persons must have been subdued, tied up, shot and killed, how the 114 bags of cocoa beans were loaded into the TCCL truck, off loaded into A1's truck, driven towards Atieku, etc., it is humanly impossible that this was the work of one person. Having found that A1 was present at the scene of crime, his statement in Exhs. F & F1 are key.

Similar to A1, A2's alleged involvement to the established facts was through his statement made to the police after his arrest as compared to his testimony given in Court. From his ICS (Exh. G), A2 admitted the charges of conspiracy and robbery. A2's role as a taxi driver by occupation was to drive some of the accused persons, including Eric, who he said was his customer prior to the 13/03/2020, from Takoradi to Tarkwa and onwards to Bogoso and the return journey. In Exh. G, A2 told the police that he went on the reconnaissance trip with the group of four earlier in the day before the operation was carried out in the night. Also, that whiles at the depot, he stood guard at a vantage point, called out and alerted A1 when someone approached. After A1, A3 – A6 came out of the depot with the bags of cocoa, he helped them pack led the convoy of two KIA trucks away from the scene. A2 admitted knowing A1, A3 – A6 and mentioned them by their names. He explained how he met each of the other accused persons. From Exh. G, A2's narration filled out the gaps in the statement of A1 and further fleshed out the testimonies of key prosecution witnesses. For instance, from Exh. G, it is deducible that police could not recover all the bags of cocoa because as A2 said, after they emptied out the bags of cocoa from the second truck driven by Annaman (A3), they took the empty sacks some distance away and burned them. Finally, from Exh. G, A2 stated that A1 came to the agreed rendezvous in the rubber plantation after they left the depot with his truck cocoa-laden. This disputes A1's statement that he was asleep at the High Tension when A4 and the others arrived and woke him up. In fact, A2's testimony put A1 right at the crime scene and an active participant in the operation that went on, not an unknowing passive participant under the control of Elu Kwame@ Eric.

Similar to A1's ICS, Exh. G complied with the requirements of s. 120 of NRCD 323 and so qualified as a confession statement upon which a conviction can be sustained. See ***Yaw Marfo v The Rep. [2018] DLCA 4873***

In his viva voce testimony to the Court, A2 denied making or giving a statement to the police upon his arrest. He denied knowing A1 prior and said that the very first day he saw him was when he was arraigned before this Court, 6-7 months after his arrest. He denied the charges and the facts in support of same particularly stating that his taxi could not go beyond the precincts of Apowa, a suburb of Takoradi and so he could not have traveled to Bogoso as alleged.

Yet, under cross-examination, A2 said he saw A1 at the police station and was actually introduced to him but he denied knowing him. According to ….

With regard toA3, his ICS was marked Exh. H in which he admitted to the charges of conspiracy and robbery, naming A1, A2, A4 – A6as his accomplices. He told the police investigator, PW6, of robbery escapades that they had engaged in in the Central Region and other areas prior to the one at Bogoso on 13/03/2020. A1 & A2 gave similar accounts in the ICS to the police. A3 detailed the careful reconnaissance and preparations that they made for 2-3 days before carrying out the attack. He narrated that they tied up the Depot watchman, carried him about 150 meters away and dumped him. He said it was Eric @ Elu who shot the security man of the Cold Store opposite and that it was A1 who drove the KIA truck belonging to the Depot which they stole from the premises. His testimony placed A1 at the scene of crime, not a non-participant who was parked a distance away driving the get-away vehicle. A3's statement explained that the Depot truck was abandoned because it was short of fuel, forcing the group to off load the cocoa beans into their own truck which he was driving. They set off towards Atieku and Wassa Essaman but had to turn back in the Bogoso direction because Eric@Elu alerted them of a barrier mounted on the road ostensibly to arrest them. He confirmed that including A1, they were 4 persons on the truck loaded with cocoa.

In Court, A3's testimony was a complete denial of ever meeting or knowing A1 & A2. In fact, he insisted that his arrest was a case of mistaken identity and that he was "**George Kwesi Anaman, not George Akuse Anaman"**.

In ***Enekwa&Ors. v Kwame Nkrumah University of Science & Technology (KNUST) [2009] SCGLR 242@248,*** the Supreme Court found that where particular facts could only be within the specific knowledge of a party, it was only proper to require the said party to produce evidence, if any, of the said facts. See also ***Fosua &AduPoku v Dufie (Dec'd) &Adu Poku-Mensah [2009] SCGLR 310*** which held that he who asserts, carries the burden of proof. The name of each person can only exclusively be proven by that particular person where he disputes the name or nomenclature by which he is popularly known. A3 told the Court that the Anaman family of which he was a member lived exclusively in Anyinase. The difference in the name on the Charge Sheet and that which he claims to be known by are the same, save the middle name "Kwesi". From his own testimony, I find that being a small family within the Anyinase area, the probability of mistaken identity is rather very narrow. The likelihood that someone else within that same community could be known by the same name was very low. With the burden on him, according to s. 13(2) and the case cited to prove a basic fact such as his own name and identity, he failed to lead a shred of evidence in this regard and I conclude that he failed to discharge the burden on him to raise a reasonable doubt as to his guilt.

From a detailed examination of the police station statements of A1, A2 &A3, I find that each accused person's story fits the others', as in a puzzle, and paints a more comprehensive picture of the events of the night of 13/03/2020. As earlier stated elsewhere in this judgment, such a 360-turnaround from their police station statements, especially when their courtroom testimonies were without merit, can only be dismissed as an attempt to deceive the Court in the face of evidence to the contrary.

Before I conclude, I must state that the establishment of a killing, death or cause of death of victims of a robbery is not a prerequisite for proof of robbery. It is only consequential so long as prosecution is able to prove the use of force or criminal harm in perpetrating the offence of stealing. Therefore, Counsel's argument that since Prosecution could not provide medical proof that accused person's caused the death of the two security men, Prosecution must fail is untenable.

CONCLUSION

I find that the essential ingredients for proof of the offence of conspiracy has been made out from the established concerted actions and working together of accused persons on the night of 13/03/2020, and by their own showing, the agreement reached prior to and preparations made before embarking on their criminal adventure.

I find also proved that accused persons used force and criminal harm in subduing and killing the two security men on guard to enable them have access to the Depot and robbed the company of 114 bags of dried cocoa beans.

CONVICTION

I find Kofi Asiedu@Adusei, John Kweasi Yankson @ Cyborg and George Akosey Anaman (A1, A2 & A3 respectively) guilty of the offences of conspiracy to commit a crime and robbery, contrary to sections 23 & 149 of Act 29 and convict them accordingly.

SENTENCE& CONVICTION

By unknown providential coincidence, today marks exactly three years when the offences were committed. In sentencing, I have considered the cruelty and lack of regard for the sanctity of human life by the accused persons when they shot and suffocated the two deceased persons merely to steal 114 bags of cocoa beans. A more befitting honour could

not be achieved than to hand down sentences that will fit the gruesome actions of accused persons and placate, if remotely possible, the two lost souls.

Accordingly, I sentence A1, A2 & A3 as follows;

COUNT	**A1**	**A2**	**A3**
COUNT 1	22 yrs (IHL)	22yrs (IHL)	22yrs (IHL)
COUNT 2	22yrs (IHL)	22yrs (IHL)	22yrs (IHL)

The sentences shall run concurrently

The sentences handed down take cognizance of the role ach accused person played in the commission of the crimes and are to serve as both a deterrent to them and other like-minded members of society.

.....

H/H NAA AMERLEY AKOWUAH (MRS.)