

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2' ON WEDNESDAY, 26TH JULY, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO.: D9/23/2023

THE REPUBLIC

VRS

ISAAC BORTEY BORTEYE

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JONAS LAWER FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person was first arraigned before this Court on the 8th June, 2023 charged with the following offences contrary to sections 172 (1), 152 and 124(1) respectively of the Criminal Offences Act, 1960 (Act 29):

- i. Causing Unlawful Damage
- ii. Unlawful Entry, and
- iii. Stealing.

Upon his arraignment in this Court, the Accused person pleaded Not Guilty to all the charges after same had been read over and explained to him.

THE FACTS OF THE CASE

On the 31st May, 2023 at about 4:00am, the complainant, a pharmacist woke up only to detect that his room had been broken into and his cash of GH¢3,000.00, 50 pounds sterling, goodmans power bank, calculator, apple phone charger, apple ear pod valued GH¢1,500.00, caveman watch valued GH¢600.00 and wallet containing various ID cards, complimentary cards and

bank debit cards. The complainant realized the thief or thieves gained ingress into the room through the main door by breaking the lock.

A report was made to police and during investigations, the complainant's apple ear pod was tracked to the Accused person's room and he was arrested. A search was conducted on the Accused person and cash of GH¢2,905, 50 pounds sterling, ring were retrieved. Four pieces of fiesta vibe condoms which bear Batch Number CN58901, the same Batch Number as those in complainant's room were also retrieved. The Accused person led police to a cemetery near the Nungua Presbyterian Church where he disposed off the complainant's wallet with the ID cards. A search in the area led to the retrieval of the pharmaceutical ID card belonging to the complainant. The Accused person was subsequently charged.

At the trial, the prosecution called two (2) witnesses to testify in support of its case against the Accused person.

The testimony of PW1 (David Bortey Bletcher), who is the victim in this case confirmed the facts as presented by the prosecution supra.

PW2 (Detective Sergeant Simon Migida Mdeog-Naab) investigated the case. PW2 relied on his Witness Statement and tendered in evidence the Cautioned Statement, Cash of GH¢2,905.00 and its photograph, cash of 50 pounds and its photograph, Goodmans Power bank and its photograph, PSGH ID card, fiesta vibe condoms and its photograph. The Cautioned Statement of the Accused person, i.e. Exhibit 'A' was admitted into evidence after an extensive and rigorous Mini Trial over its admissibility. At the end of the Mini Trial, the court ruled that Exhibit 'A' was taken from the Accused person in compliance with section 120 of the Evidence Act, 1975 (NRCD 323).

After the close of the case of the prosecution, this Court decided on whether or not a prima facie case had been made out against the Accused person. In the case of *The Republic vrs District Magistrate Grade II, Osu, Ex parte Yahaya* [1984-86] 2 GLR 361–365 Brobbey J (as he then was) stated that:

“..... evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence.”

Accordingly, the Court therefore called upon the Accused person to enter into his defence, and also explained to the Accused person the following three (3) options available to him:

- i. To stay in the dock and rely on his statements (cautioned and charge statements);
- ii. To stay in the dock and make a statement which would not subject to cross-examination; or
- iii. Go to the witness box and give his evidence which is subject to cross examination and also to call his witness(es).

The Accused person opted to stay in the dock and made the following statement:

“I will stand in the dock and will not give evidence. I have nothing to say. I also don't have witnesses to call.”

THE ISSUES FOR DETERMINATION AND THE BURDEN OF PROOF

At the end of the trial, the following issues emerged for determination by this Court:

- i. Whether or not the Accused person herein intentionally and unlawfully caused damage to a door padlock belonging to the complainant.
- ii. Whether or not the Accused person unlawfully entered the room of the complainant.
- iii. Whether or not the Accused person dishonestly appropriated the property of the complainant listed in the facts of the case supra.

Section 11 of the Evidence Act, 1975 (NRCD 323) reads:

11. Burden of producing evidence defined

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

(3) In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.

In the case of Commissioner of Police vrs Isaac Antwi [1961] GLR 408-412, Korsah CJ stated and I quote:

“Burden of proof is used in two senses. It may mean the burden of establishing a case or it may mean the burden of introducing evidence. In the first sense, it always rests on the prosecution to prove the guilt of the accused beyond reasonable doubt, but the burden of proof of introducing evidence rests on the prosecution in the first instance but may subsequently shift to the defence, especially where the subject-matter is peculiarly within the accused’s knowledge and the circumstances are such as to call for some explanation.”

THE LAW ON THE OFFENCES CHARGED

Causing Unlawful Damage:

Section 172 (1)(b) of Act 29, and it provides:

“Whoever intentionally and unlawfully causes damage to any property by any means whatsoever —

(b) to a value exceeding One Hundred Cedis, shall be guilty of second degree felony.”

From the above, the elements of causing unlawful damage are as follows:

- i. That the accused person intentionally caused damage to the property, and
- ii. The accused person unlawfully caused the damage.

Causing Unlawful Entry:

Section 152 of Act 29 provides that:

“Whoever unlawfully enters any building with the intention of committing crime therein shall be guilty of second degree felony”

Section 152 of Act 29 has been explained under section 153 of Act 29 as follows:

"A person unlawfully enters a building if he enters otherwise than in his own right or by the consent of some other person able to give such consent for the purposes for which he enters."

In establishing the offence of Unlawful Entry, the prosecution shall prove that the Accused person unlawfully enters a building, he enters with the intention of committing a crime, and the offence is to be committed in the building.

In the case of Kanjarga vrs The State [1965] GLR 479-483, Ollennu JSC had this to say:

"To constitute the offence of unlawful entry, the entry must be made with a purpose or intent to commit a crime. It follows that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of entry and was the purpose for the making of the entry".

Stealing:

Section 125 of Act 29 defines stealing as follows:

"A person steals who dishonestly appropriates a thing of which that person is not the owner".

In the case of The State vs. W. M. Q. Halm and Aryeh Kumi Crim. App Nos. 118/67 and 113/67, 7 August, 1969; (1969) CC155, the court per Akufo Addo, C. J., Ollennu, Apaloo, Amisah JJ.A and Archer J stated the three essential ingredients which prove a charge of stealing under our criminal law as:

"(i) That the person charged must not be the owner of the thing allegedly stolen;

(ii) That he must have appropriated the thing;

(iii) *That the appropriation must have been dishonest.*" See also Lucien v. The Republic [1977] 1 GLR 351-359 at holding 2.

EVALUATION OF THE EVIDENCE

After a careful examination of all the evidence adduced so far in this case, I find that although sufficient evidence has been adduced by the prosecution to prove that the offence was indeed, committed, this Court has to determine who committed these offences.

It must be noted that the entire case of the prosecution is hinged on circumstantial evidence. There was no eye witness account to link the evidence adduced by prosecution in this case to the Accused person. It is trite 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.

Pollock C.B. beautifully described circumstantial evidence in the case of R. v. Exall [1866] 4 F & F 922 as follows:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link break, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the rope might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

The Supreme Court stated in the case of Dexter Johnson v. The Republic [2011] SCGLR 601 @ 605 per holding 2 as follows:

“Circumstantial evidence was quite usual as it was rare to prove an offence by evidence of eye-witnesses; and inferences from the facts proved might prove the guilt of the appellant. A presumption from circumstantial evidence should be drawn against the appellant only when that presumption would follow irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the appellant and incapable of explanation upon any other reasonable hypothesis other than that of guilt. See also State vrs Anani Fiadzo [1961] GLR 416; Bosso vrs Republic [2009] SCGLR 420; Noble Adu Gyamfi vrs The Republic [2015] GHASC 115.

In this case, it is not disputed that the complainant’s apple ear pod was tracked to the Accused person’s room at Nungua and the Accused person was met. In the room of the Accused person, a search conducted led to the retrieval of goodmans power bank, GH¢2,905, 50 pounds sterling, fiesta vibe condoms and cock ring.

During police investigations, the Accused person led the police to the cemetery near Nungua Presbyterian Church where the Accused person told police he disposed off the complainant’s wallet. Indeed, a search conducted at the cemetery led to the retrieval of the complainant’s PSGH ID card. It is obvious that it was the Accused person who mentioned to the police about the cemetery and he also led police to the place. The Accused person under cross examination of PW2 asked why three (3) of them were arrested but he was the only one arraigned before this Court. See the following excerpts of cross examination of PW2 by the Accused person on the 11th July, 2023:

Q. Why is it that you arrested three of us but left out the two but only brought me to court?

A. Accused person stated in his cautioned statement that he was taking responsibility of whatever items were found in his room because the owner could not be found.

Q. All your evidence is false. I put it to you.

A. That is not true.

Q. Why not true?

A. **The items were retrieved from your room, you led me to Nungua Presbyterian Cemetery to retrieve the complainant's PSGH ID card, you also disclosed to the police that was where you disposed of the wallet of PW1. The cemetery was locked. We scaled the fence and accused person went straight to the place to bring the ID card. You also took responsibility of all the items.**

Q. The place is not locked. What you said is not true.

A. That is not correct. The gate was locked.

Q. The gates were two.

A. We scaled the wall and did not use any entrance. There was one gate and locked with a chain. We couldn't access it and so we scaled the wall.

Q. Is it not true that we used the first gate before the boys started running?

A. You called your colleagues to come and help us to retrieve it. We were in mufti and the people the accused called to help us run away when they noticed that we were police officers.

Q. That is not true but didn't we use the unlocked entrance before the boys saw us?

A. We scaled the wall. (Emphasis mine)

Section 18 (2) of Evidence Act, 1975 (NRCD 323) provides:

"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."

This court is allowed to found a conviction of the Accused person upon inference of his guilt from circumstantial evidence available to the court. However, the inference must be logical and reasonable.

All the evidence adduced at the trial point to one and only one conclusion, that it was the Accused person who committed the offences. I find that the crime was indeed committed and the Accused person can thus be properly and safely convicted of the offences charged. In the circumstances, I find the Accused person herein guilty of the offences and he is accordingly convicted.

SENTENCING:

The Court has considered the fact that the Accused person is a first-time offender and a young man. The Accused person has been in custody for some time because of his inability to fulfil the bail terms granted him in a different court and has been in police lawful custody for some time now. However, looking at the premeditated way of committing the offences and to serve as deterrent to others, the court will pass a fairly deterrent sentence on the Accused person. The Accused person is hereby sentenced as follows:

Count 1:

The Accused person is sentenced to serve a prison term Two (2) years in IHL.

Count 2:

The Accused person is sentenced to serve a prison term of Five (5) years IHL.

Count 3:

The Accused person is sentenced to serve a prison term of Five (5) IHL.

All sentences shall run concurrently.

FINAL ORDER:

The retrieved cash the sum of GH¢2,905.00, 50 pounds sterling, goodmans power bank and pieces of fiesta vibe condoms should be released to the complainant, David Bortey Bletcher.

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ISAAC ADDO
CIRCUIT JUDGE
26TH JULY, 2023