

**IN THE CIRCUIT COURT OF HELD AT FIAPRE ON WEDNESDAY THE 26<sup>TH</sup> DAY  
OF JANUARY, 2024 BEFORE HER HOUNOUR AKUA ADOMA ADDAE ESQ.**

Court Case No. E7/19/2024

THE REPUBLIC

VERSUS

KWAME JOSHUA

**JUDGEMENT**

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The Accused person in this instant case is, per the charge sheet filed on the 29<sup>th</sup> of January, 2023, charged with two counts of stealing. One count for stealing an Apple iPhone X mobile phone valued at Two Thousand Six Hundred Ghana Cedis (GH¢2,600.00) and the other count for stealing a wallet containing the cash sum of One Thousand, Seven Hundred Ghana Cedis (GH¢1,700.00).

The brief facts of this case as per the facts attached to the instant charge sheet are as follows:

The Complainant is a businessman who lives at Kotokrom a suburb of Sunyani. The Accused person is a student who also lives at Kotokrom.

On the 3<sup>rd</sup> of November, 2023, the Complainant was returning from work and upon getting to a section of the road at Kotokrom, he parked by the roadside, in front of a provision shop, to buy sachet of water but he did not lock his car.

Upon returning to his car, he realized that his Apple iPhone X Mobile Phone and wallet containing an amount of One Thousand and Seven Hundred Ghana Cedis (GH¢1,700.00) had been stolen from his said car within the short period he stepped out of the car.

The Complainant saw some people sitting at the other side of the road and he went to them to ask if they saw someone coming close to his car and he was informed that the Accused was seen coming from the direction of the Complainant's car.

The Accused was subsequently called on phone by the area boys to return the items but he refused to do so. Accused was however later arrested by the area boys and taken to the police station where his investigation cautioned statement was taken. In the said statement, the Accused admitted the offence. After investigations the Accused was charged with the offence on the charge sheet and put before court.

On the 29<sup>th</sup> of November, 2023 when the Accused was first put before this Honourable Court, he pleaded guilty to count one but not guilty to count 2. In respect of count 2 therefore, disclosure orders were made, Prosecution complied with same 12<sup>th</sup> December, 2023 and proceeded to open its case by calling PW1, the Complainant and PW2 the Investigator.

### **Burden of Proof on Prosecution**

The presumption of innocence contained in Article 19(2)(c) of the 1992 Constitution of the Republic of Ghana gives rise to two principles. The first being that the Accused is innocent until he himself has pleaded guilty and the second is that the Accused is guilty only if his or her accusers are able to prove that the Accused is guilty.

The second principle therefore places a duty on prosecution to prove the guilt of the accused.

The standard by which this to be done is contained in several sections of the Evidence Decree, NRCD 323. Sections 11(1), (2),(3) and 15(1) all relate to the burden of proof in criminal trials.

For my purposes, section 15(1) provides that “unless and until it is shifted, the party claiming that a person is guilty of crime or wrong doing has the burden of persuasion on that issue.

This provision is similar to the provision contained in section 11(2) of NRCD 323 which says that:

“in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires prosecution to produce sufficient evidence so that on all the evidence, a reasonable mind could find the existence of the fact beyond reasonable doubt.

What these sections mean is that, since prosecution is the one alleging that the Accused herein had stolen the Complainant’s wallet containing One Thousand Seven Hundred Ghana Cedis (GH¢1,700.00), prosecution will have to lead sufficient evidence so that the court will find the existence of that fact, beyond reasonable doubt.

As was aptly put by the retired jurist, Stephen Alan Brobbey JCS in his book “Essentials of the Ghana Law of Evidence” at page 47:

In criminal trials, the burden to produce evidence is the obligation on the prosecutor to produce sufficient evidence in support of a charge to induce the judge not to withdraw the charge from consideration by the jury or convince the judge, where he sits alone, not to dismiss the charge summarily.

For prosecution to prove its case beyond reasonable doubt, it will have to lead evidence to show that the ingredients of the offence as laid down by the Court of Appeal in the case of *Ampah v. The Republic* [1977] 2GLR 171

In the *Ampah* case (*supra*) the court of appeal identified the elements of stealing as (i) dishonesty, (ii) appropriation and (iii) property belonging to another person.

Prosecution in this instant case called the Complainant as its first witness, PW1. In his evidence-in-chief before this court which, he identified himself as the owner of the stolen items including the wallet containing the cash sum of One Thousand, Seven Hundred Ghana Cedis (GH¢1,700.00). According to the Complainant, he parked his car in front of the shop where was buying some items.

The complainant said he saw the Accused standing by his car while he was trying to make his purchase, as though he also wanted to buy from the shop. It was upon his return that he noticed that his iPhone Mobile phone as well as the said wallet and its contents were gone. He said he looked around and noticed that the Accused had quickly crossed the road to the other side of the said road and then he shouted, "thief, thief". It was at that moment that the area boys came around and he narrated his ordeal to them.

The said area boys told him that it was the Accused who was hovering around the car. The boys went as far as taking the Complainant to "a base" where the Accused hangs out, all in a bid to help him retrieve his stolen items but unfortunately the Accused was not there. They even went to the home of the Accused but he was not there. They went further to call the Accused on his mobile phone and he answered. Per the complainant's evidence, the Accused admitted stealing the items and even asked the area boys and the Complainant to meet him at a location for the items but the Accused never showed up. All further attempts to get the Accused to return the stolen items did not yield any results.

At the end of the PW1's evidence – in – chief, the Accused was called upon to cross examine the complainant but the Accused informed the Court that he had no questions to ask the Complainant.

The Account of events as narrated by PW1 were corroborated by PW2 No 47121 D/CPL Daniel Danso Darko, the investigator in – charge of the case.

Though corroboration is not a requirement in this case, the definition provided in section 7(1) of The Evidence Act NRCD 323, provides me a basis to draw an inference from the said corroboration. The said section provides as follows:

“corroboration consists 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”

This court finds that, the corroboration of PW1 by PW2 confirms that indeed, the Accused did steal the wallet of PW1 which contained an amount of One Thousand Seven Hundred Ghana Cedis (GH¢1,700.00).

In addition to the evidence of PW1 and PW2, prosecution also tendered the investigation cautioned statement of the Accused, which was admitted without any objection, wherein the Accused admitted taking the Complainant's iPhone X. He however denied taking the wallet containing the One Thousand Seven Hundred Ghana Cedis. The Accused relied on this statement when his Charged Cautioned statement was taken. Both statements were tendered in evidence as Exhibits A and B respectively.

At the close of prosecution's case, prosecution had been able to lead sufficient evidence to show the existence of the ingredients of the offence of stealing against the Accused herein, namely that the Accused dishonestly appropriated the wallet containing the cash sum of GH¢1,700.00 belonging to the Complainant herein

There being such an inference as to the guilt of the Accused the burden now shifted on the Accused to punch holes in the story of the Prosecution.

Per section 13(2) of NRCD 323:

“Except as otherwise provided in section 15(3), in a criminal action, the burden of persuasion, when it is on the accused as to a fact essential to guilt requires only that the accused raise a reasonable doubt as to guilt”

On both occasions that the accused was called upon to cross examine PW1 and PW2 the accused said that he had no questions for the witnesses.

At the close of prosecution’s case, the court found that the Prosecution had made a case against the Accused and he was therefore called upon to open his defence. The Accused was also asked if he had any witnesses he intended to call, to which he answered that he had none.

The relevant portion of the proceedings of 5<sup>th</sup> January, 2024 are reproduced as follows:

Court: Please inform the Accused that he can opt not to say anything in his defence or he may stand in the dock and give evidence but will not be cross examined but the weight attached to it may vary. He can also stand in the witness box to give evidence and be cross examined.

Accused: I will stand where I am (the dock) and say that I have nothing to say. All I have to say is that the court should have mercy on me.

Court: why are you pleading with the court?

Accused: The crime I have committed, I will not repeat it again.

Court: So he is admitting that he committed the offences charged?

Accused: Yes I admit.

Court: Then why did you plead not guilty?

Accused: at the time I did not understand the implications of the plea. It was later that I got to understand the implications of the plea I took.

From the above extract, the Accused admitted the case of the prosecution.

It is interesting to note that, this Accused who claims that he did not understand the implications of a not guilty plea, had earlier pleaded guilty to count 1.

This Court is of the opinion that the Accused knew that it would be easy to prove that indeed he stole the iPhone X mobile phone but then, proving that he stole the wallet containing the cash sum of One Thousand Seven Hundred Ghana Cedis may not be as straight forward. At the close of prosecution's case, the Accused now pleads for mercy.

I find from the evidence before me and the conduct of the Accused on the 5<sup>th</sup> day of January 2024 that in respect of count 2, the Accused is guilty and I convict him accordingly.

The offence of stealing per section 124(1) is a second-degree felony which carries a maximum sentence of 25 years.

In sentencing the Accused, I have taken into consideration the age of the Accused. Prosecution has stated the age of the Accused as 20 years. Per section 60 of the Juvenile Justice Act, 2003 (Act 653) he is a young offender.

A young offender is defined to mean a young person who has been convicted of an offence for which the court has power to impose a sentence of imprisonment for one month or upwards with the option of a fine. A young person is also defined to mean a person who is eighteen years or above eighteen years but under twenty-one.

The Court of Appeal in the criminal appeal case of Kwabena Adjei vrs The Republic Criminal Appeal No. H2/13/2019, and dated 23<sup>rd</sup> December, 2020 the court of appeal held that the provisions of the Juvenile Justice Act must prevail over the Criminal Offences Act, 1960 (Act 29).

In the instant case therefore, the Accused is a young offender and as such he cannot be sentenced to the term exceeding twenty-four months. Per section 46(1), and subsection (3) of the Juvenile Justice Act, 2003 (Act 653):

- 1) Where a juvenile or young offender is ordered to be sent to a centre, the detention order shall be the authority for the detention and the period shall not exceed,
  - c) twenty-four months for a young offender of or above the age of eighteen years

in the light of all the foregoing, I sentence the Accused, Kwame Joshua as follows

Count 1: Twelve months imprisonment.

Count 2: Twenty- Four months imprisonment

Both sentences shall run concurrently

AKUA ADOMA ADDAE ESQ  
CIRCUIT COURT  
FIAPRE