IN THE CIRCUIT COURT HELD AT AKROPONG ON THURSDAY 21ST DAY OF MARCH, 2024 BEFORE H/H NANA ADWOA SERWAA DUA-ADONTENG OFORI SITTING AS THE JUDGE

CASE NO. D3/01/2024

THE REPUBLIC

VRS

CHARLES KWADWO FOSU

FINAL JUDGEMENT

COUNT ONE

STATEMENT OF OFFENCE

Unlawful Entry: Contrary to Section 152 of the Criminal Offences Act 1960 (Act 29)

PARTICULARS OF OFFENCE

CHARLES KWADWO-FOSU: AGE 27, TILLER On the 20th May, 2022 at Kwadaso in Kumasi in the Ashanti Circuit and within the jurisdiction of this court, you unlawfully entered the room of David Agyeman Asare with the intention of committing offence to wit "Robbery"

COUNT TWO

STATEMENT OF OFFENCE

Robbery contrary to section 149 of the Criminal Code, 1960 (Act 29)

PARTICULARS OF OFFENCE

CHARLES KWADWO-FOSU: AGE 27, TILLER On the 20th May, 2022 at about 12.30am at Kwadaso in the Kumasi in the Ashanti Circuit and within the jurisdiction of this court, and for the purpose of stealing from David Agyeman Asare and with the intent to overcome the resistance of the said David Agyeman Asare fired indiscriminately into his room and succeeded to ransack his rooms and stole his iphone 12 mini phone XS max, iphone 7 and a laptop computer all valued GHs13,000.

FACTS

The complainant, David Agyeman Asare is a business man who operates mobile money at Kwadaso where he resides. Accused person Charles Kwadaso Fosu is 27 years old tiller and also resides at Kwadaso. The suspect (deceased) Omar Issaka Muniru alias Tanguani was unemployed and resident in Kwadaso. Suspect Omar Issaka Muniru recently lost his life at a robbery scene when he engaged in a shoot-out with the police at Asuofia. The complainant and the accused person have been childhood friends and have known each other from their infancy. On 19th May, 2022, the complainant was visited by his friends by the name Valens Adomako who is a Navy Officer stationed at Takoradi and the two spent the night in the room of the complainant at Kwadaso. At approximately 12.35am on 20/05/2022, the accused person and suspect now deceased with facemasks broke into the complainant's room where the deceased were armed with a pistol and both started shouting that they should surrender their belongings else they will kill them. When the complainant heard their voices and the manner the accused person and the deceased were shouting and looking for the momo vendor living in the room, complainant went to hide in the kitchen and realized accused person who was his childhood friend Charles Kwadwo Fosu was part. The accused person and the deceased entered the room where Valens Adomako was sleeping and asked him of the whereabouts of the mobile money operator who lives in that apartment with him. When the witness explained to them that he is just a visitor and there is no momo vendor in the house, the deceased fired indiscriminately with the pistol. As a result of the fear they instilled in the complainant and his visitor, the accused person and deceased ransacked the rooms and the accused person took away one iphone 12 mini phone XS max, iphone 7 and a laptop computer all valued GHs13,000 and bolted. A report was made to the

Suntreso Police for investigation. On 26/8/22 the Suntreso police with the assistance of the complainant, arrested accused person when he returned from his hiding base in Accra. Further investigations revealed that between the month of April and May 2022, the accused person and deceased formed a syndicate and committed series of robberies within Kwadaso and its environs. After the arrest of the accused person, the suspect (deceased) continued to commit robberies and lost his life on 13/10/2022 when he opted to exchange fire with the police at Adankwame. The accused person has been charged with the appropriate offences after investigations.

Before I proceed analyze the case before this court, let me first comment on the charges against the accused person; unlawful entry and robbery. What is patently missing is a charge of conspiracy giving that the facts supporting the charges clearly refer to a second suspect, one Omar (now deceased) who allegedly played a significant role in both the unlawful entry and robbery charges.

Section 23 (1) of the Criminal Offences Act of 1960, Act 29 as follows:

Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

The case law on conspiracy has always been that proof of prior agreement by direct evidence is nearly impossible and that such an agreement is inferred from proven facts. **C. O. P. vrs Afari and Addo [1962]1 GLR 483**.

In **Mulcahy v. R (1868) L.R. 3 H.L. 306 at p. 317**, Willes J. thus expatiated the law on conspiracy:

"*A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself…"*

The offence of conspiracy is committed "where two or more persons agree to act in committing or abetting a criminal offence whether with or without a previous concert or deliberation…"

The agreement to commit a crime is not always proved by direct evidence. It may be established by inferences from proven facts.

It is therefore mindboggling and completely shocking to this court that not only did the prosecution fail to reproduce Omar's name on the charge sheet as a suspect, they more importantly failed to proffer any charges against him. I understand that from the facts Omar is apparently deceased. The facts did not indicate whether he died after the commencement of the case or before. In fact, if the facts are anything to go by, 'Suspect Omar Issaka Muniru recently lost his life at a robbery scene..'. Considering that the alleged offence of unlawful entry and robbery occurred as far back as May, 2022 but the matter commenced in May, 2023, reference to 'recent' indicates that Omar died after the case commenced in this court, in 2023. Again, considering that the fact Omar allegedly died at the hands of the police in a shoot-out, it is a wonder why the prosecution did not present any proof of death to corroborate their averments of Omar's death. I am inclined to believe that, prosecution decided to pursue their 'bird in hand' who is the accused person herein and completely ignore the one in the bush, Omar and therefore understanding that they would need to substantiate their claim that Omar is deceased, they decided to simply not proffer any charges which will require any 'extra burden on them' in regard to Omar. I know the crime and offence (criminal law) falls under the personal legal jurisprudential area where representatives of the offender cannot be made to replace him in his absence. However, this does not preclude the prosecution from still proffering charges in the absence of an offender, when no proof of death has been presented to the court especially when the facts clearly indicate that charges should be proffered against him.

Regardless of the demise of the Omar, assuming same is true, the accused herein could have been singularly charged for his part in the conspiracy as described by the facts.

In **Teye alias Bardjo v. The Republic [1974] 2 G.L.R 438, C.A.** it was held that although two or more persons who embark upon a joint criminal exercise would each be answerable for the acts done in pursuance of the joint enterprise including such acts as were incidental to and necessary for the achievement of the joint enterprise and were or ought to be in their contemplation at the time when they embarked on the exercise, yet where one of the participants took a different

course or went beyond what has been agreed upon or was in their contemplation then he alone would be liable, the others being freed of liability for the consequence of his unauthorized acts.

I shall now proceed to take the charges as presented to this court.

In criminal trials the prosecution has the burden of proof of the charge(s) beyond reasonable doubt. However, when the burden of persuasion is on the accused person as to a fact the converse of which is essential to guilt, the accused is required only to raise a reasonable doubt. [See section 11 (3) and 13 of the Evidence Act, 1975 (NRCD 323)]

COUNT 1 - UNLAWFUL ENTRY

Accused person was first charged with unlawfully entering the room of David Agyeman Asare, PW1, who was at the time of the offence with Valens Adomako, PW2.

Section 152 of Act 29

A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony.

153. Explanation as to unlawful entry

A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give the consent for the purposes for which that person

The prosecution's case is that the accused person entered into a residence at Kwadaso where they believe a friend of the Accused lived. It is their evidence that accused and one Omar (deceased) broke into David Agyemang's (childhood friend of accused) room to surrender else his belongings else, they (accused and Omar) will kill them (David and another). Prosecution tendered in pictorial and audio-visual evidence of the David's room ransacked and riddled with bullet holes. There was no evidence submitted of the alleged unlawful entry or robbery itself as it was happening.

The evidence submitted by the prosecution shows that the complainant premises were breached; gunshot bullet found on the premises shows indeed that there was crime committed.

The question before the court is whether the person/persons who enter the complainant's premises is the accused person before the court.

The prosecution tendered into evidence through the investigator, PW3 the caution statement on 15/09/2022 wherein the accused person admitted to unlawfully entering a hotel premises in company with one Omar Tanguani. Clearly, the investigation caution statement was tendered to be treated as a confession statement. The court finds that even if the statement of the accused was to be treated as a confession statement, the confession related to accused's unlawful presence at a hotel. This case involves the alleged robbery of a residential premises. It is therefore a wonder why prosecution will seek to rely on a purported confession statement which has no relevance or bearing whatsoever to the merits of this case.

In considering next whether the entry was unlawful I shall avert myself to the offence of unlawful entry contained in section 152 of Act 29. Can the accused persons in their own right enter the room of the first prosecution witness? I find that the entire evidence of the prosecution rests on the argument that the accused person is a close friend of the first prosecution witness, the two having grown up together and even attending the same school. PW1 was insistent that he knew the identity of accused because he was a very close childhood friend and even knew him as Charles Damptey and not Charles Kwadwo Fosu.

I find that in respect of count 1, on the charge of unlawful entry, the prosecution witnesses conducted themselves as credible witnesses except to say there are many unanswered questions leaving room for such gapping doubt that the doubt will have to go to the benefit of the accused person.

Section 80 (1) and (2) of NRCD 323 provide thus;

(1) Except as otherwise provided by this Decree, the court or jury may, in determining the credibility of a witness, consider any matter that is relevant to prove or disprove the truthfulness of his testimony at the trial.

(2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to the following:-

(a) the demeanour of the witness;

(b) the substance of the testimony;

(c) the existence or non-existence of any fact testified to by the witness;

(d) the capacity and opportunity of the witness to perceive, recollect or relate any matter about which he testifies;

(e) the existence or non-existence of bias, interest or other motive;

(f) the character of the witness as to traits of honesty or truthfulness or their opposites;

(g) a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial;

(h) the statement of the witness admitting untruthfulness or asserting truthfulness.

What boggles my mind is if the accused and PW1 were childhood friends who likely went their separate ways as they grew, how did accused find out where the PW1 lived if PW1 had not hosted or invited him there. From the pictures submitted to the court by prosecution, the PW1's home is a storey building. It is not known to this court whether PW1 inhabits the building alone or with co-tenants. Assuming, he lives alone, without any other tenants, without having any prior knowledge of the premises, it is not so easy to immediately determine which room houses the

PW1. Herein lies my doubt as to the unlawfulness of the purported entry. I do believe PW1 had hosted the accused in his home and as childhood friends entertained him prior to the day of the incident. Can a person be said to be unlawfully present at a property in which he has previously been? I believe so, if that person was invited there as a guest or if the premises was open to the public for an event and the event had come to an end. That is not the case here, the case here is an accused whom prosecution refers to as a childhood friend of prosecution. An accused whom PW1 insists were so close he could identify him behind a facemask in the middle of he accused person wielding a weapon and spray bullets in all directions as to goes substantial damage to the premises.

No evidence was submitted to indicate a fall out between PW1 and accused. No evidence was submitted to indicate accused was unwelcome in PW1's home. From their own testimony, but for their growing up and possibly seeking different adventures in life, PW1 and accused were close. I find it therefore hard to accept the prosecution's case that accused was on PW1's premises unlawfully when no evidence was submitted to support that claim.

If accused unlawfully entered the premises and riddled same with gun shots, why then did they not shoot the PW1 or PW2 who claim they were in the room and in fact saw the face of the accused behind a face mask. Why wasn't there any evidence overwhelmingly showing that in fact the first and second prosecution witnesses were severely beaten up in the room or their hands tied in an effort to overcome them. The intention of a person is determined by what he does. It will appear strange to the person untutored in the law but I must point out that for a man to force his way into another man's room armed with a gun, haphazardly spray the room with bullets, none of the bullets hit anybody hiding in the room, this person hiding in such a spot as to have seen the intruder but so well hidden that none of the sprayed bullet hits him. I do not know how to picture such a scene without having so many unanswered questions. It is either the PW1 and PW2 were so well hidden that they avoided being hit by the bullets or they were precariously perched behind some covers so that it is sheer miracle that saved them from getting shot but allowed them to see the intruder. I do not see how both of these instances can make reasonable sense unless I am being imaginatively myopic.

Save what I shall call 'the Hollywood-style' scene painted by prosecution, which I find highly doubtful, I find that believing they had a confession statement, the prosecution did not want to burden themselves proving the ingredients of unlawful entry as per section 153 of Act 29. They had the case so bagged there was no need to establish their burden of proof.

The courts on the burden of proof have held that *"Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would belief beyond a reasonable doubt that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, the general rule is that through out a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to the commission of the offence and his complicity in it except where he relies on a statutory or special defence. See* ***Sections 11(2) 13(1), 15(1) of the Evidence Act, 1975 (NRCD 323)*** *and* ***COP v Antwi [1961] GLR 408.***

However, beyond reasonable doubt does not mean beyond a shadow of doubt. The guilt of an accused person is sufficiently proved if the tribunal of fact is convinced that he committed the offence though there remains a lingering possibility that he is not guilty. See ***Oteng v The State [1966] GLR 352."***

I have already mentioned the flaw in the supposed confession statement and therefore find without any equivocation that the prosecution failed to establish a case of unlawful entry against the accused person and I acquit and discharge him of the charge of unlawful entry.

COUNT 2 - ROBBERY

It is the additional case of the prosecution against the accused that he, accused robbed PW1 and PW2 at gun point of their mobile phones and laptop computers.

Section 150 of the Criminal Offences Act of 1960 [Act 29] which states that:

"A person who steals a thin commits robbery.

(a) if, in and for the purpose of stealing the thing, that person uses force or causes harm to any other person; or

(b) if that person uses a threat or criminal assault or harm to any person, with intent to prevent or overcome the resistance of the other person to the stealing of the thing."

To ascertain whether or not accused did indeed commit the offence of robbery, I shall refer to the case of **Kwaku Frimpong @ Iboman Vs Republic [2012] I SCGLR 297** where the court explained that for a charge of robbery to hold, the prosecution has to prove the following:

1. The accused stole something from the victim of the offence
2. In stealing the thing the accused used force, harm or criminal assault or threat thereof
3. The intention of doing so was to prevent or overcome any resistance.
4. The fear of the violence by the victim must be personal to himself or someone in the room.
5. The theft must have been in the presence of the person threatened.

Animus furandi which is a prerequisite to all charges involving stealing.

Behome Vs. the Republic [1978] DLHC1133

The essence of robbery is the taking of property by violence or by threat of violence to a person with the intent that the resistance of that person or any other person will be prevented or overcome to the stealing of the thing. A mere idle show or threat of violence excited can hardly satisfy the test. It is, however, enough if money is demanded and the fact be attended with such circumstances of violence or threats, as, in common experience, are likely to create an apprehension of danger and induce a person or a member of his family to part with the money.

From the authorities explaining robbery at common law (upon whose principles section 150 of Act 29 is framed) the fear may be either of personal violence to the person robbed, or to a member of his family: see R. v. Donnally (1779) 1 Leach 193. Family here is, of course, applied in the restrictive sense of a man, his wife and children. Again, the thing stolen must be from the person

of the one threatened, or in his presence, if the property is under his immediate and personal care and protection: see R. v. Fallows (1832) 5 C. & P. 508 and R. v. Selway and Wynn (1859) 8 Cox C.C. 235. Reane's case (1794) 2 Leach 616 went on the principle that in a crime of robbery the property must be parted with from an immediate apprehension of present danger.

PROSECUTION'S CASE

PW1

PW1 testified that on 20th May, 2022 at about 12.30am, he was in his kitchen when he heard footsteps at his door. He rushed to find who was at his door and realized two masked men had broken in armed with a gun. One shot at him to scare so he started shouting for help. At the time, he had a guest, PW2, a navy officer also staying with him whom the intruders rushed on and he heard being interrogated about the whereabouts of a momo operator who lived in the house. He said from where he hid, he heard PW2 saying he did not know of any such momo operator. The intruders whom he identified as accused and another ransacked the room and took a laptop and three mobile phones. PW1 further testified that he was certain of the identity of the accused because he knew him very well as a child hood friend hence despite being masked he could recognize him and his voice. He says he reported the incident to the Suntreso Police crime officer who investigated his home and found empty bullet shells. He says on 20th September, 2022 he had a call from an uncle that the accused was a funeral ground and he in the company of others went to the funeral ground and arrested the accused to the Suntreso police station.

PW2

It is the evidence of PW2 that he is ordinarily resident in Sekondi as a Navy Officer but found himself in Kumasi and decided to spend the night with the PW1on 20th May, 2022. Sometime during the night, he heard shouts of help from PW1 that thieves had invaded the house and thereafter heard a gun shot in the house. Fearing for his safety, he hid under a bed and from there saw two masked men wearing all black attire. The men ransacked the room, stole a laptop and some phones and, on their exit, shot up the room once more.

PW3

The investigator, Inspector Jacqueline Owusu testified as PW3. It was her evidence that PW1 made a complaint to the police about a robbery incident which occurred at his home on 20th May, 2022 with the robbers making away with a laptop and three mobile phones. She said the crime officer, DSP Emmanuel Kyei immediately visited the crime scene and found two empty bullet shells from a 9mm ammunition. She continued that upon the arrest of the accused, an identification parade was conducted with PW1 identifying accused as the person came to his home to rob his at gun point. PW3 tendered a video showing a ransacked room indicating that PW1's property was taken away in the robbery. Evidence of the gunshot in the house showed the use of force and by that, that is clear evidence that victims could not overcome the perpetrators and that there is a possible fear of their life.

From these facts, even though there is no direct evidence connecting the accused to the commission of the robbery, can reasonable inferences be drawn to connect him to the commission of the offence? In the video tendered by the prosecution, the occupants of the room were heard mentioning the name of one Tanguani whom they alleged was the one who would commit such a crime. Tanguani as mentioned earlier, was listed as deceased by the prosecution. Tanguani is alleged by the prosecution to be a known associate of the accused, with whom several other robberies had been committed before his demise.

Confession statement

Section 120 of the Evidence Act, 1975 Act 323 provides that the court may rely on the confession statement of the accused if the statement was given voluntarily in the presence of an independent witness. Prosecution relied on the investigation caution statement taken from the accused and sought to rely on same as the confession statement of the accused. The crux of the statement was that accused confessed that he knew the PW1 very well from infancy and was informed by one Tanguani that a man should be robbed at a hotel. As planned, he went to the hotel in the company of Tanguani, they were armed and ready to rob the man but the man did not come to the hotel.

I will pause here to comment on the absurdity of the statement as presented to the court. The statement makes no sense in that there is no connection between the PW1 and 'a man at a hotel.'

Identity of accused

Prosecution testified that by reason of the long-standing infancy relationship with accused, PW1 was very familiar with his features, stature and voice and it was immaterial that accused was masked at the time of the robbery because PW1 could still make him out despite the disguise.

Additionally, prosecution relied on a CCTV footage that they had taken of accused which showed him wielding a gun with a mask on. Prosecution argued that the CCTV footage, coupled with the personal knowledge of the accused by PW1 as well as the style in which the robbery was committed was evidence of the modus operandi of the accused and his accomplices.

On the identity of the accused I am satisfied that there is enough circumstantial evidence to establish that the men including the accused were to the PW1's house and there robbed him and occupants of his house of their personal effects. It is immaterial that the items stolen were not recovered from the accused considering that some time had passed between the time of the crime and the time of accused's arrest. I am very mindful of the direction of Devlin J. (as he then was) in **R. vs Atter**, (The Times, 22 March 1956) that:

"Where one has a case where the evidence is purely circumstantial, then I must satisfy myself, in my judgment, that there is some piece of evidence that is more than mere suspicion, that there is some piece of evidence which would justify in saying that points to the accused."

Use of offensive weapon

It is the testimony of PW3 that the shell casings came from a 9mm pistol the accused was known to carry and use during his robberies. This was evidenced by pictures of PW1's house riddled with gun shots as well as the video of his room showing clothes strewn astray.

Value Of Items Stolen

The value of the items stolen is not difficult to assess. This can be taken from the particulars of the offence in count two, and these are a laptop and three mobile phones.

At the end of the prosecution's case, upon analyzing the testimony of the prosecution witnesses, I find that the prosecution witnesses presented themselves as credible witnesses and therefore the prosecution was able to establish a prima facie case against the accused and the accused was to open his defence.

Accused's Case

The accused testified on oath from the witness box. It was the accused's defence that this case is an unfortunate case of mistaken identity in which luck had eluded him. He says he had no idea who the PW1 was and did not know him from Adam. He insisted he was Charles Kwadwo Fosu and that was the name he was known by. He testified that Tanguani was completely unknown to him and that for years he had relocated to Accra to work with his brother as a tiler. On the day of the said robbery, he said he was in Accra working and was with his wife and child. He insisted that if he had stolen any property from the PW1, the property should have been found on him when he was arrested and the fact that it was not indicates his innocence. He again challenged the confession statement claiming he was brutally assaulted by the crime officer to confess to the robbery.

Mini Trial

The accused was adamant and maintained his innocence throughout the entirety of the trial. During prosecution's case, he challenged the admissibility of the confession statement put forth by the prosecution.

The accused person raised an objection to the tendering of the investigation caution statement which the prosecution intended to rely on as confession statement obtained from him during the course of investigation to the effect that the statement was not obtained voluntarily, i.e. that he was beaten by the crime officer at Suntreso police station to confess to the crime. The court on the back of the objection set down for trial to ascertain whether or not the confession statement was obtained voluntarily and therefore admissible.

Section 120 of the Evidence Act, 1975 Act 323 requires that as a general rule, a confession by an accused made outside of the court is hearsay and therefore inadmissible evidence unless same was made voluntarily and while arrested or detained, in the presence of an independent witness.

In **Duah v the Republic [1987-88] 1GLR 343**, the Court held that confession statement will be inadmissible if found to have been made involuntarily.

In **State v Banful (1965) GLR 433** which is relevant to this case, the Supreme Court determined that where the confession was given under duress exerted by or at the instance of a public official, the statement given was inadmissible.

During the mini trial, the prosecution called to testify the independent witness whose testimony was that she is a community police attached to the Suntreso police and was invited to be present while the accused's statement was taken. She said she thereafter explained the reason why the statement was being taken to the accused, whereafter he made the confession in Twi and same was interpreted to him after being reproduced in English. The independent witness testified that during the witnessing of the statement taking she did not see any marks, bruises or physical indications on the body or movement of the accused to show that he had been abused. She said he was articulate when giving his confession and seemed to understand same well when she explained what had been reproduced in English to him. The prosecution also called the Crime officer of Suntreso police, against whom the accused made the allegations of abuse. The crime officer denied any abuse against the accused and testified that when he was invited to have his statement taken, accused already had some bruises on his face and he accused confessed that he was beaten by some of the cell mates. The crime officer denied any conduct of abuse citing that he was aware that any statement taken under duress or abuse was inadmissible and would defeat the purpose of taking the statement.

The accused on the other hand was very insistent that the criminal and the station officer called him to the crime officer's office and when he got there, they used a computer cable to beat him mercilessly causing bruises all over his body. He says the bruises were so gory that he feared he might die if he did not confess to the robbery. He described being hit at his back with the cable wire causing marks all over the back of his body. Accused called his mother and brother to testify

to the abuse he suffered while detained. His mother's testimony was that, when she visited the accused after his arrest, he was completely covered in blood and had a big bruise on his head. She said she did not see any bruises on any other part of his body but his head and his face. Accused's brother also testified that he was called that accused had been arrested but he could not immediately go to the police station to see him. He admitted that when he did go, he did not see any bruises on the accused but realized he looked tired. He further testified that he did not see any blood on the accused or marks to show abuse by any person.

At the end of the mini trial, on the totality of the evidence provided to the court by the prosecution and the accused, the court found that the prosecution witnesses were credible and the evidence they had submitted to the court established that there was no abuse by the crime officer at the time the accused's statement was being taken. The court therefore ruled that the confession statement was admissible and accepted it into evidence.

Alibi

It is clear from the testimony of accused that he intended to rely on the defence of alibi but he seems to have held unto that as though he wanted to spring on the prosecution as a surprise when called upon to put forward his defence. Accused did not make any reference to being else located the entire time during the trial until he was called upon to open his defence. The court is guided that being self-represented, accused would not have been well-tutored on the procedure for trial and may have assumed he could only say so when called upon to speak. The records show that on several occasions, accused was advised and directed to seek legal help if he so minded and if he could not afford to do so, could call on Legal Aid Services for free legal services particularly giving the severity of charges he was facing. To prove his alibi, even though he did not file any Notice of Alibi, accused called to testify his wife, DW2, with whom he claimed he lived in Accra. It was the testimony of the wife that she lived in Accra with accused in 2022 after she delivered and had lived with him throughout without leaving Accra. She said she was very certain accused was not in Kumasi on 20th May, 2022 because he was with her in Accra celebrating her birthday and they went to Accra mall. Although DW2 said she had pictures to show that she went to Accra

mall with accused on her birthday, she did not provide any of the pictures to the court. She continued that she and accused came to Kumasi in August, 2022 for a funeral but at all times she was always with accused. During cross-examination DW2, admitted that accused sometimes went to work outside of Accra and did not always know where exactly he went to work when he left Accra.

DW3 was accused's brother with whom he said he worked as a tiller. DW3 tendered into evidence pictures of accused at different work sites to show that he was in Accra. DW3 admitted during cross-examination that he had no knowledge of the robbery case except what he had been told but insisted accused was supposed to be with him in Accra during the time the robbery occurred and he was shocked to find out he had abruptly travelled to Kumasi despite he, DW3 cautioning him not to go. The pictures tendered by DW3 depicted accused working at different places but there was no timeline provided to the court when the pictures were taking. They could very well have been taking long before 2022 or indeed in May, 2022. There was no way for the court to determine this because the pictures showed no evidence of location or time.

In assessing the credibility of the witnesses, I found that the prosecution witnesses were consistent were the facts as presented to the court and did not present contrary testimony to the documentary evidence presented. The defence witnesses on the other hand seem to contradict themselves as to the whereabout of the accused at the time of the crime. DW2 was certain she was with him at Accra mall celebrating her birthday but DW3 testified that he travelled out of Accra abruptly without his knowledge. I find that the contradiction creates in my mind a doubt which makes me believe the defence witnesses, particularly DW2 was not being truthful to the court as to the whereabout of accused on May, 20, 2022. I believe that accused was indeed in Kumasi as he confessed in his statement and did go to the PW1's house as a childhood friend but this time not to visit but to rob him believing that as a Momo operator, he had money on him at home.

Based on the admissibility of the confession statement which I find as proof that accused did rob PW1 at his residence at Kwadaso, I conclude that prosecution has executed the burden of proof fixed on them to establish that accused robbed at gun point, David Agyeman Asare on 20th May, 2022 at his residence at Kwadaso and made away with a laptop and three mobile phones.

I therefore find the accused Guilty of the offence of Robbery as charged and Convict him thereof.

When the accused was asked by the court to allocute, he said

"In all evidence by the prosecution they mentioned the names of the people who committed the robbery. The video that was played in the court those people names were mentioned. I have no knowledge of what they are talking about."

SENTENCING

In the case of **Kwashie v the Republic [1971] 1 GLR 488-496** where it was held that

In determining the length of sentence, the factors which the trial judge is entitled to consider are: ***(1) the intrinsic seriousness of the offence (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place; or in the country generally;(5) the sudden increase in the incidence of the particular crime;*** *and (6)* ***mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed."***

In the case of **Frimpong alias Iboman v Republic [2012] I SCGLR 297, at pages 329 – 331** as follows:-

What is to be noted here is that, whilst the minimum sentence for robbery has been fixed at 10 years simpliciter, in cases where offensive weapons have been used, the legislature has deemed it fit and proper to enhance the minimum to 15 years imprisonment. Being a first-degree felony means that the legislature has categorized the offence of robbery as a grave one. The maximum sentence can therefore be any number of years that a court deems suitable and appropriate under the circumstances unless the statute states otherwise.

Accused person was charged with Robbery contrary to section 149 of Act 29. The maximum punishment for this offence is a life sentence because Robbery is a first-degree felony. With no

weapon, a minimum sentence of 10 years shall be imposed by the court upon conviction and a with weapon, a minimum sentence of 15 years shall be imposed.

Prior Conviction

Prosecution submitted to the court that the accused was convicted on 3/08/2016 by another court for stealing and sentenced to pay a fine of Ghs600. Prosecution could not present a record of the conviction to the court that the sentence per section 300 of Act 30 had been completed.

I shall proceed to consider the Aggravating factors which could affect the sentence to be imposed.

1. Greater force used – yes evidence shows that gun was used in the commission of the crime
2. Greater injury – no injury was presented to the court
3. Was it a planned offence – no evidence of a planned offence was presented to the court
4. Breach of trust – yes, the accused is a childhood friend of the victim
5. After dark – yes, the crime was committed around 12.30am
6. Group/gang - yes, evidence shows accused in the company of one Tanguani (allegedly deceased) committed the offence
7. Remote/isolated location – Kwadaso is a bustling suburb in Kumasi. No evidence was presented to indicate that the particular house where the crime was committed is at a remote or isolated location
8. Degrading/dehumanizing factor – evidence submitted showed the victim's house was ransacked and several bullets were fired which could have potentially caused grave damage to the victims.

Mitigating factors

1. Lesser force used – evidence presented to the court indicate use of great force
2. Less or no injury – no evidence was presented to the court that injury was caused in the robbery
3. Young offender – the accused person is 27 years

4. Spur of the moment – no evidence was presented to the court that the crime was a spur of the moment occurrence.
5. Low mental capacity – the observation of the accused shows a well articulate person who understood the directions of the court, raised timeous objections, was able to articulate himself well to be understood and understood what was communicated to him.
6. Single offender – the facts indicate a gang but accused was charged alone.
7. Level of violence – evidence presented to the court indicated the use of a 9mm gun which was haphazardly fired.
8. Extent of fear – both victims are able bodied men with PW1, the complainant towering in stature over the accused. PW2, is a military officer with the navy and from their testimony, but for the fear of the gun being used on them, they will not have surrendered.
9. Was the gun loaded – evidence presented indicated that the gun was loaded and fired severally during the robbery.
10. Value of the victim – the property stolen are personal mobile phones and a laptop, no evidence was presented to indicate any sentimental value to the victims.

Personal background of Accused

1. Wife and Children- Accused is the primary bread winner for a wife and child. Currently the wife is not working and relies on the accused for sustenance.
2. Accused said he had saved about GHs3000 which he could use to offset his punishment.
3. Community work – no evidence was presented to the court about community work of the accused.

Prosecution prayed that since the accused was arrested and detained and Tanguani was killed, there has not been any robberies in Kwadaso. The otherwise tense feeling the people of Kwadaso had had disappeared since the accused was arrested because he was the one terrorizing the people in that locality.

To conclude, I find that the offence was committed with a weapon, a 9mm pistol. I find that there are more aggravating factors than mitigating factors but by reason of the fact that the accused has

already spent over one year in prison custody although he was granted bail on 23rd October 2022 by this court and he could not meet the bail requirement, I sentence the accused to a term of imprisonment of 20 years for the offence of robbery with a gun.

NANA ADWOA SERWAA DUA-ADONTENG

CIRCUIT COURT - AKROPONG