

**IN THE CIRCUIT COURT, HELD IN NSUTA, ON
MONDAY, THE 13TH DAY OF MAY 2024 BEFORE HER
HONOUR WINNIE AMOATEY-OWUSU, CIRCUIT COURT
JUDGE**

CASE NO: 219/22

THE REPUBLIC

VRS.

OSMAN BUKARI

JUDGMENT

1.This Judgment is delivered in the absence of the accused. On 17th August 2022, the accused was arraigned before this Court on one count of parking motor vehicle at a prohibited place contrary to section 19(a) of the Road Traffic (Amendment) Act, 2008 (Act 761) and one count of resisting arrest contrary to Section 226(a) of the Criminal Offences Act, 1960 (Act 29). He pleaded guilty to the charge of prohibited parking but not guilty to the charge of resisting arrest. The same day, he was convicted and sentenced on the charge of prohibited parking.

The case therefore proceeded on the charge of resisting arrest only.

2.A summary of the facts as contained in the Charge Sheet and read by the prosecution at the commencement of the case is that, the complainant, C/Insp. Peter Konlan, is the Station Officer at the Nsuta Police Station whilst the accused is a driver resident at Mampong. There have been a lot of recalcitrant drivers within the Nsuta township who do not obey simple road traffic regulations and as a result, end up causing accidents. In view of that, most of the drivers within Nsuta and its environs, including the accused, have been advised by the Nsuta Police Command as well as the Ghana Private Road Transport Union (GPRTU) executives of the Nsuta Branch to desist from such behaviours. On 12th August 2022 at about 2:35 p.m., the complainant was on his routine visit within the Nsuta main station where a lot of drivers and motor tri-cyclists have been parking at unauthorized places making it difficult for other road users and pedestrians to drive or walk freely. On reaching the Kumasi Station area, he

saw there were a lot of vehicles parked on the shoulders of the road where the drivers had already been sacked from. While still standing there to ensure all the drivers moved their vehicles, the accused, who was then in charge of Toyota Avensis taxi cab with registration number AP 434-22 came to park right in front of the complainant. The complainant asked him to move his vehicle away as he has been warned several times about the act but he refused and decided to challenge him. The complainant therefore arrested the accused for disrespecting him and refusing his orders and sat in the vehicle and asked the accused to move the vehicle to the Police Station for processing but he again refused. Later, the accused moved the vehicle from the scene to a distance of 50 metres and stopped. All efforts by the complainant for the accused to move the vehicle to the Police Station failed so he called for re-enforcement. There, the accused moved the vehicle to the Police Station where he was processed and arraigned before this Court for trial.

3. Article 19 clause 3 of the 1992 Constitution provides that the trial of a person charged with a criminal offence shall take place in his presence unless; -

(a) he refuses to appear before the court for the trial to be conducted in his presence after he has been duly notified of the trial; or

(b) he conducts himself in such a manner as to render the continuation of the proceedings in his presence impracticable and the court orders him to be removed for the trial to proceed in his absence.

4. The record shows that on 20th November 2023 when the prosecution called its last witness and closed its case, the accused was present in Court. Subsequently, the accused has failed to be present in Court. On 16th February 2024, this Court delivered its Ruling that the prosecution had made a prima facie case against the accused and invited him to answer the charge. The same day, the Court issued a Bench Warrant for his arrest. Till date, the accused has failed to be present in Court. Therefore, on 15th April 2024, the Court announced that

because the accused has, by his continuous absence, made it impossible for the trial to continue in his presence, the Court had deemed his defence closed and announced 13th May 2024 for Judgment.

5. Article 19(2)(c) of the 1992 Constitution states that an accused is presumed innocent until he is proved guilty or he pleads guilty. In a criminal trial, the burden rests with the prosecution to prove the charge against the accused.

6. The burden of proof in criminal cases is codified in the Evidence Act, 1975 (NRCD 323) as follows:

“Burden of Proof

10. Burden of persuasion defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

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.

13. Proof of crime

(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

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

Also, Section 22 of NRCD 323 provides:

“22. Effect of certain presumptions in criminal actions

In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact.”

7. In **Abdul Raman Watara Benjamin v. The Republic, Criminal Appeal No. H2/17/2019 dated 9th July, 2020 (unreported)**, the court stated, “It is trite that in criminal trials it is the duty of the prosecution to prove the case against the accused person beyond reasonable doubt. This has been codified in sections 11(2), 13(1) and 22 of the Evidence Act, 1975 (NRCD 323). At the end of the trial the prosecution must prove every element of the offence and show that the defence is not reasonable. The prosecution assumes the burden of persuasion or the legal burden as well as the evidential burden or the burden to produce evidence. The legal burden or the burden of persuasion is to prove every element of the charge. The evidential burden is to adduce evidence that will

suffice to establish every element of the offence. This burden remains on the prosecution throughout the case. Proof beyond reasonable doubt also implies that it is beyond dispute that the accused person was the one who committed the offence.” Also, in **Asare v. The Republic [1978] GLR 193 @ 197**, Anin JA held, “As a general rule there is no burden on the accused; that he is presumed innocent until his guilt is established beyond reasonable doubt; that the burden is rather on the prosecution to prove the charge against him beyond reasonable doubt”.

8. In **Brobbey & Ors v. The Republic [1982-83] GLR 608**, Twumasi J explained the expression “proof beyond reasonable doubt” as follows: “Proof beyond reasonable doubt in a criminal trial implies that the prosecution’s case derives its essential strength from its own evidence. Therefore, where part of the evidence adduced by the prosecution favors the accused, the strength of the prosecution’s case is diminished proportionately and it would be wrong for a court to ground a conviction on the basis of the diminished

evidence.” Lord Denning MR in **Miller v. Minister of Pensions [1947] ALL ER 372** also explained the principle when he stated that: “The degree of cogency need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to affect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with a sentence “of course it is possible but not in the least probable” the case is proved beyond reasonable doubt but nothing short of that will suffice”.

9. When the prosecution makes a prima facie case against the accused and the Court calls on the accused to open his defence, the accused’s only duty is to raise a reasonable doubt about his guilt. See Section 11(3) and 13(2) of NRCD 323. In **Commissioner of Police v. Antwi [1961] GLR 408**, the court held, “The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the

prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything. If he can merely raise a reasonable doubt as to his guilt he must be acquitted.”

10. Where an accused gives no evidence or explanation in his defence, as in this case, the Court is bound to consider any evidence which favors his case as well as the cautioned statements obtained from him by the Police and tendered during the trial. See **Kwame Atta & Anor v. Commissioner of Police [1963] 2 GLR 460**; **Annoh v. Commissioner of Police [1963] 2 GLR 306**. Further, questions asked and answers given during cross-examination form part of a party’s evidence and must be considered by the court in evaluating the evidence as a whole. See **Ladi v. Giwah [2013-2015] 1 GLR 54**.

11. In **Lutterodt v. Commissioner of Police [1963] 2 GLR 429**, the Supreme Court per Ollennu JSC set out how the court should approach the defence of the accused as follows: "In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

- a. if the explanation of the defence is acceptable, then the accused should be acquitted;
- b. if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;
- c. if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict."

12. Also, in **Republic v. Francis Ike Uyanwune [2013] 58 GMJ 162, CA**, it was held per Dennis Adjei, JA that: "The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that is to say the prosecution must establish a prima

facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing, he may run the risk of non-production of evidence and/ or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused must give evidence if a prima facie case is established else he may be convicted and, if he opens his defence, the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable, the accused should be acquitted and if it is not acceptable, the court should probe further to see if it is reasonably probable. If it is reasonably probable, the accused should be acquitted, but if it is not, and the court is satisfied that in considering the entire evidence on record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three-tier test.”

13. Upon the direction of the Court, the prosecution filed its Witness Statements and other disclosures on 14th September 2022. Case Management Conference was held and the case proceeded to trial with the prosecution’s case. To establish its case, the prosecution called four witnesses:

- i. C/Insp. Peter Kwame Konlan – PW1: The Station Officer at the Nsuta Police Station and the complainant;
- ii. Emmanuel Nyamekye – PW2: A Community Police Assistant;
- iii. Samuel Kofi Amanfo – PW3: The Secretary of the GPRTU, Nsuta Branch; and
- iv. No. 48638 D/Sgt. Mawuli Kuatsikor – PW4: The investigator of the case stationed at the Nsuta Police Station.

14. The aforementioned witnesses relied on their Witness Statements and the other disclosures filed as their evidence in this case. The following were also tendered through PW4:

- i. Investigation Cautioned Statement of the accused marked as Exhibit A; and
- ii. Charge Cautioned Statement of the accused marked as Exhibit B.

15.As earlier indicated, the accused spurned the opportunity to be heard when he refused to attend Court after 20th November 2023. Therefore, the only evidence to be considered in his defence will be elicited from his cross-examination of the prosecution witnesses and his cautioned statements to the Police which the prosecution tendered during the trial.

16.I shall now evaluate the evidence against the accused and the accused's defence to determine whether the prosecution has proved its case beyond reasonable doubt or the accused has raised reasonable doubt about his guilt.

17.Count 2 reads:

COUNT TWO
STATEMENT OF OFFENCE
RESISTING ARREST: CONTRARY TO SECTION 226(a)
OF CRIMINAL AND OTHER OFFENCES ACT 1960, (ACT
29)

PARTICULARS OF OFFENCE

OSMAN BUKARI: DRIVER: For that on 12th day of August, 2022 at about 2:35pm, at Nsuta township in the Ashanti Circuit and within the jurisdiction of this court, did prevent the execution of the law by resisting the lawful arrest of yourself by C/Insp. Peter Konlan.

18. Section 226(1)(a) of Act 29 provides that a person commits a misdemeanour when that person tries to resist or prevent the execution of the law, by resisting lawful arrest or the lawful arrest of another person. To successfully prove the charge, the prosecution must lead sufficient evidence to prove that:

- i. The accused tried to resist his arrest or the arrest of another person; and
- ii. The arrest was lawful.

See **Ampofo v. The State [1967] GLR 155; Brobbey & Ors v. The Republic [1982-83] GLR 608**

19. Where an arrest is made in accordance with law, a person who resists it commits an offence. On the contrary, where the

arrest is unlawful, a person who resists it does not commit an offence. From Section 3 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), a Police Officer may effect an arrest by one of three means: (a) by actually touching the person; or (b) by confining the person; or (c) by the person submitting voluntarily to the custody of the Police Officer, either verbally or by conduct. A Police Officer may arrest with or without a warrant. Under Section 10(2)(a) of Act 30, a Police Officer may arrest without a warrant a person whom the Police Officer suspects on reasonable grounds of having committed an offence. Under Section 7 of Act 30, unless the person being arrested is in the course of committing a crime or is pursued immediately after escaping from lawful custody, the Police Officer is mandated to inform the person of the cause of the arrest, and if acting under the authority of a warrant, notify the person of the contents thereof and if required, show the warrant to the person.

20. The statutory duty imposed on the Police to inform the person arrested of the cause of the arrest is made a constitutional right in the 1992 Constitution, Article 14(2) of

which provides that a person arrested shall be informed immediately, in a language he understands, of the reasons for his arrest and of his right to a lawyer of his choice. In **Amadjei & Ors v. Opoku Ware [1963] 1 GLR 150 @161**, Crabbe JSC said, "A person who is arrested without a warrant is entitled to know as soon as is reasonably practicable that he is being arrested and also the grounds for his arrest. If the officer arresting fails to inform the suspect accordingly the arrest would be unlawful, unless the arrested man is caught red-handed and the crime is patent to high heaven."

21. The first step in effecting an arrest is to place the person under arrest, that is, to inform the person that he is under arrest. When words or actions constituting proper arrest are uttered to the person, he is under an obligation to submit to the arrest. In **Amadjei & Ors v. Opoku Ware [supra]**, Crabbe JSC held that there was an arrest when the constable said to the second appellant, "You are arrested" and prevented him and the other plaintiffs from leaving the house. Also, there is an arrest if a Police Officer makes it plain to a person that that

person cannot go out of his presence or control. In **Shaaban Bin Hussein v. Chong Fook Kam [1969] 3 All E.R. 1626 @ 1629, P.C.**, Lord Devlin stated, "An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when, by words or conduct, he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go."

22. When a Police Officer places a person under arrest, that person shall remain in the custody of the Police unless granted Police Enquiry bail or presented before a court of competent jurisdiction within forty-eight hours of the arrest for the court to consider whether to remand or release the person on bail. See **Article 14(3)(b) of the 1992 Constitution**. Also, while in the custody of the Police, the person is under the control of the Police and must seek the permission of the Police to do anything.

23. PW1 testified that on 12th August 2022 at about 2:35 p.m., he decided to go around to visit his personnel who had been

detailed for duties at various points within the Nsuta township. He called PW2 to come and pick him with a motorbike because the service vehicle was unavailable. PW2 picked him and they went to visit his personnel at the Nsutaman Rural Bank and Kwamanman Rural Bank, both of whom they met on duty. From there, they continued to the Nsuta main Lorry Station to check the drivers who normally parked their vehicles along the shoulders of the road causing obstruction to other road users and pedestrians resulting in accidents. Immediately some of the drivers saw him, they started moving their vehicles away. Others also were still parked until he went to meet the drivers and asked them to move their vehicles to avoid arrest, which they obliged. While he was waiting for all the drivers to move their vehicles, the accused came from nowhere and parked at the same prohibited area. He quickly asked him to move his vehicle because he has been arrested in the same area previously and warned several times but the accused refused and started to challenge him in the full glare of the public and in the presence of PW2. After the several attempts for

him to move his vehicle failed, he decided to cause the accused's arrest and asked him to sit in the vehicle and move to the Police Station for necessary action. The accused still refused until some drivers intervened and then, he decided to move his vehicle to the Police Station. He also asked PW2 to follow them with his motorbike to the Police Station. After the accused had moved his vehicle, Toyota Avensis taxi cab with registration number AP 434-22 from the scene to a distance of 50 metres and close to the Kwamanman Rural Bank, he stopped again, removed the ignition key, alighted from the vehicle and left him inside. All efforts by him to compel the accused to move the vehicle to the Police Station proved futile as the accused was making phone calls.

24.PW1 testified further that after some time, the accused brought the phone to him to speak to the person on the other end but he refused. They spent about an hour at that spot and all the advice from the people around to the accused to obey him fell on deaf ears. Because the Police and the GPRTU worked together, he called PW3 to come and see what was

going on. Upon his arrival, PW3 met the accused at the same spot and advised him for about thirty minutes to move the vehicle but he refused. Finally, he decided to call for reinforcement and within a short time, two of his personnel, PW4 and G/Const. Ali Awudu arrived to assist. He instructed PW4 and G/Const. Ali Awudu to cause the accused's arrest and handcuff him to the Police Station. The accused quickly sat in his vehicle and was joined by PW4 and G/Const. Ali Awudu to the Police Station. He submitted his statement in support of his claim. PW2, PW3 and PW4 corroborate PW1's testimony in all material particulars.

25. By way of defence, the accused stated in Exhibit A, his Investigation Cautioned Statement, that on 12th August 2022 at about 2:34 p.m., he drove from Bonkrong to Nsuta and parked on the shoulder of the road near the Nsuta-Kumasi lorry station. He was waiting to collect something from someone so he had not turned off the vehicle's ignition. Minutes later, PW1 came to board the vehicle (taxi cab) and said he had arrested him for parking at an unauthorized

place. He was trying to explain himself to PW1 that he had not intentionally parked at the place to pick passengers and that he had not even done any work as at that time. He drove to a different location and parked to explain himself but PW1 refused to listen to his explanation. PW1 later called the Police Station for personnel to come and take him to the Police Station and he was eventually taken there.

26. In Exhibit B, the Charge Cautioned Statement, the accused relied on his former statement, Exhibit A. When an accused has an opportunity to give another statement to the Police and he relies on his former or earlier statement, it is deemed that he gave the statements voluntarily. See **Kerechy Duru v. The Republic [2014] 71 GMJ 186**.

27. In his cross-examination of PW1, the accused admitted that PW1 sat in his vehicle and told him he was under arrest. In Exhibit A, the accused stated that PW1 told him he was under arrest for parking at an unauthorized place. There is evidence before the Court that the accused pleaded guilty to

the charge of unauthorized/prohibited parking on the first date of his arraignment.

28. There is further evidence that PW1 upon arresting the accused instructed him to drive to the Police Station which he heeded but stopped on the way. The accused claimed when he cross-examined PW1 that he did not seek PW1's permission or consent to stop the vehicle to explain himself to him but admitted rather that, he on his own stopped the vehicle and started explaining himself to PW1 but he refused to listen. There is further evidence from the accused in Exhibit A corroborating the prosecution's evidence that PW1 had to call for reinforcement in order to eventually re-arrest and handcuff the accused and take him to the Police Station. Also, the accused did not deny that PW3 was called to the scene to intervene to get him to move to the Police Station.

29. It is provided in Section 9(1) of Act 30 that a person who is arrested shall be taken with reasonable dispatch to the Police Station or other place for the reception of arrested persons.

The accused was thus, obliged to obey PW1 so that upon reaching the Police Station, he could explain himself to him. Having been put under arrest, the accused was not to conduct himself in a way that would prevent PW1 from fully effecting his arrest. He should not have stopped the vehicle without first seeking the consent or permission of PW1. By stopping the vehicle on their way to the Police Station without the permission or consent of PW1 and insisting he wanted to explain himself to PW1 at all cost in defiance of his instructions, the accused was trying to resist or prevent the execution of the law by resisting his arrest by PW1.

30. On the totality of the evidence adduced, I find that the accused has failed to raise reasonable doubt about his guilt on count 2. I find him guilty and convict him accordingly.

31. In passing sentence, I am mindful that the accused is a first offender. I sentence him on count 2 to a fine of 250 penalty units, in default, he shall serve 15 months' imprisonment.

SGD.

HH WINNIE AMOATEY-OWUSU

CIRCUIT COURT JUDGE

PARTIES AND REPRESENTATION:

- 1. THE ACCUSED ABSENT**
- 2. D/C/INSP. AMOS WAJAH FOR THE PROSECUTION
PRESENT**