IN THE DISTRICT COURT, LA, TRADE FAIR-ACCRA, HELD ON THE 31ST DAY OF MARCH, 2023, BEFORE HIS HONOUR JOJO AMOAH HAGAN SITTING AS AN ADDITIONAL MAGISTRATE

SUIT NO. 304/2020

THE REPUBLIC

VRS

EDWARD SENAH

RULING ON A SUBMISSION OF NO CASE TO ANSWER

Introduction

1. The accused was arraigned before this Court on four counts of stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29). Altogether, he is alleged from the particulars of the offence to have stolen a black KIA Picanto with registration number GR 4247-19, a Samsung mini phone, a Samsung A2OS and the sum of GHC300.00 all belonging to Kojo Ali. The prosecution called three witnesses to prove

their case and at the close of the case for the prosecution, the accused filed a submission of no case.

Submissions of the accused

2. In his submissions, the accused argued that he could not be said to have dishonestly appropriated the vehicle, phones and money because the investigator was not credible nor did she conduct proper investigations into the matter. The basis of this submission is that he indicated in his cautioned statement that he bought the vehicle from one Akwasi at Kasoa. This notwithstanding, when asked under cross-examination the investigator denied that the accused mentioned Akwasi but subsequently admitted under further cross-examination that the accused indeed told him about Akwasi. Additionally, the investigator admitted she did not conduct investigations regarding Akwasi because she expected the accused who was then in her custody to make phone calls or use his family members to produce the said Akwasi before her.

3. Regarding the evidence of the first prosecution witness, the accused submitted that the witness alleged the accused drugged him at the Planet Kebab, a public restaurant, and a place where the witness admitted other people were present. The accused argued that

considering that a waitress served the witness, she could have laced his drink to steal the car, phones and money. Any other person present at that moment, according to the accused, could have stolen the items mentioned. The case for the prosecution was therefore susceptible to two or more likely explanations.

4. The accused finally submitted that there was no significant evidence linking him to the offences preferred against him. This was augmented by the fact that despite the allegation that there was a CCTV camera at the scene of the crime, no footage from the said camera was tendered in evidence. I, however, take a different view of the matter entirely.

The law on the submission of no case

5. It is provided under section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) that where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require the accused to make a defence, the Court shall, as to that particular charge, acquit the accused. In the oft-quoted case *Apaloo and Others v. the Republic [1975] 1 GLR 156* it was held that the circumstances in which submission of no

case might successfully be made were where amongst others there had been no evidence to prove an essential element in the crime charged. In the *State v. Ali Kassena [1962] 1 GLR 144 @149* Justice Crabbe wrote, *"[t]he question which the judge has to consider at the close of the case … is 'whether the prosecution has given reasonable evidence of the matters in respect of which it has the burden of proof'. It is for him as a matter of law to determine whether the evidence adduced has reached that standard of proof prescribed by law … to determine whether that standard has in fact been satisfied…"*

6. Altogether, the authorities are clear that the prosecution must fail if they fail to lead credible evidence on all the elements of the offence preferred against the accused. They must also fail if the evidence led has been so discredited by cross-examination or is so manifestly unreliable that no reasonable court could safely convict upon it. Additionally, the prosecution would have failed if further evidence is required to establish the case against the accused after the prosecution have closed their case: see Brobbey, *Practice and Procedure in the Trial Court and Tribunals* (2nd edn 2011 Advanced Legal Publications) at page 139, and *Mali v. the State [1965] GLR 710*.

The case for the prosecution

7. The evidence of the first prosecution witness (the complainant) was that he was an Uber driver who picked up the accused from the VIP lorry station at Circle on 13 December 2019 at around 6.30 pm. On their way to the airport, the accused told the complainant to take him to Planet Kebab in Osu to have supper. At Planet Kebab the accused bought a drink for him. After taking the drink the accused told him to follow him to Purple Pub for a kebab. On reaching Purple Pub the complainant alleges that he felt dizzy and after taking the kebab he lost consciousness for hours only to gain consciousness the following day to realise that his KIA Picanto saloon, Samsung mobiles phones and GHC300.00 had been taken away.

8. Under cross-examination, the complainant positively identified the accused as the person he took from Circle to Osu. He admitted that despite being an Uber driver, the accused did not order his services online. Rather, there were circumstances where sometimes Uber drivers picked up commuters offline. The accused challenged the credibility of the witness because of this singular claim that he sometimes operated offline. According to the accused Uber services must be ordered online and cannot be ordered by "word of mouth". He

posited that the complainant would have breached the regulations of Uber if he had allowed him to order his services offline. I, however, take a different view of the matter. I do not consider picking the accused offline to connote some moral opprobrium contrary to the conclusion of the accused on the issue. The witness was not on trial. A fortiori, there is no evidence that he allowed the accused to order his services offline to overreach Uber or any other person. The fact that the complainant is an Uber driver does not mean his services ought to be limited to Uber such that he ought to refuse to offer his services to anyone unless the person orders his services through Uber. These drivers work for money and insofar as their desire for money does not border on criminality, I think it would be far-fetched and outrageous, not to put too fine a point on it, to suggest that their integrity ought to be questioned for offering services other than Uber. What is relevant here is that the complainant identified the accused as the person he picked and took to Osu in the vehicle that was stolen.

9. The owner of the vehicle was called as the second prosecution witness. He gave the car to the complainant as his driver. According to him, on 14 December 2019 around 10.25 am, he had a call that the vehicle in question had been snatched from the complainant. Liaising with the police and with the assistance of the tracker he had installed

in the car, he tracked the vehicle to Teacher Mantey where the police patrol team intercepted the vehicle in question. The vehicle was subsequently driven to Pokuase Police Station where it was detained.

10. In her testimony, the investigator told the Court she was on duty when the complainant reported a case of stealing against the accused. She visited the scene of the crime. The vehicle was tracked heading towards Suhum. When it got to Teacher Mantey, the police patrol team intercepted the accused driving the said vehicle. Upon examination of the vehicle she realised, the accused had changed the registration number of the vehicle from GR 4247-19 to GS-9042-19, however, the chassis number on the vehicle was found on the title deed presented by the complainant. Investigations at DVLA showed that the registration number GS 9042-19 was forged. During interrogation, the accused could not give any tangible reason for how he got the vehicle. A search was conducted at the residence of the accused wherein one of the Samsung mobile phones belonging to the complainant was found.

11. In his cross-examination, the accused sought to discredit the investigation conducted by the investigator. He submitted that hers

was an armchair investigation. According to the accused, although the investigator denied under cross-examination that he told her about a certain Akwasi of Kasoa from whom he bought the vehicle, the investigator later admitted that the accused told him about the said Akwasi. The accused submitted in further support of his conclusion regarding the nature of the investigations conducted that the investigator took no action to investigate this claim about Akwasi but rather relied on the accused who was in custody, and his family to provide information on Akwasi. I have examined the record and noted that the investigator explained that she asked the accused to produce Akwasi or provide a receipt evidencing part-payment for the vehicle since that was his claim. She explained further that the accused called a phone number and placed same on loudspeaker but the call did not go through.

12. I am satisfied with the evidence of the investigator that she did not go beyond requesting the accused to provide evidence of the existence of a transaction between him and Akwasi. Desirable as it may be for the investigator to investigate thoroughly the claim of the accused regarding his alleged transaction with Akwasi, it ought to be noted that the prosecution do not have the burden to establish by

evidence what is peculiarly known to the accused. To clarify this point, I shall proceed to state briefly the constituent elements of the offence of stealing.

13. Section 124(1) of Act 29 provides that a person who steals commits a second degree felony. Section 125 of Act 29 defines stealing as the dishonest appropriation of a thing which does not belong to the one doing the appropriation. Dishonest appropriation is defined to include where an appropriation is done with intent to defraud or without a claim of right, and with knowledge or belief that the appropriation is without the consent of the owner: see section 120 of Act 29 and *Osei Kwadwo II v the Republic [2007-2008] 2 SCGLR 1148.* From the foregoing, to call upon the accused to answer to the charge, the prosecution must lead credible evidence on the fact that the items mentioned above were dishonestly appropriated by the accused who is not the owner thereof. One of the doctrines employed to determine whether the prosecution have discharged their burden at the close of their case is recent possession.

14. The cause celebre on the doctrine of recent possession in Ghana is *Armah and ors v the State [1961] GLR 136*. In that case, the shop of

S.A.T. Co. Ltd. was broken into and goods stolen therefrom. Within the space of a few hours thereafter, the accused persons were found in possession of a large number of goods very similar to those stolen from the shop and gave no reasonable explanation as to how they came by them save a fantastic story that they were found at Takoradi. The court explained that what constituted "recent possession" depended upon the nature of the property and the circumstances of the particular case; and in the doctrine of "recent possession" of stolen property, "recent" relates to the date of the stealing. Therefore where it was proved that premises had been broken into and property stolen therefrom, and that very soon after the breaking the accused was found in possession of that property, it was open to the court to find the accused guilty of the offence. The doctrine requires the prosecution to establish that the property in question which had been recently stolen was found in the possession of the accused who would have to give a satisfactory explanation regarding how he came by the same failing which he would be presumed to be guilty.[1]

15. In this case, the evidence shows that the vehicle belonged to the second prosecution witness who gave the same to the complainant to work with. The credibility of the evidence of the complainant that he

[1] P K Twumasi, *Criminal Law in Ghana* (1996 Ghana Publishing Corp) 359.

was with the accused immediately before the said vehicle was stolen is strengthened by the fact that the accused was found in possession of the vehicle the day after the vehicle was taken from the complainant. Admittedly, as submitted by the accused, the complainant a waitress served the complainant drinks; there was a CCTV camera at the scene of the crime. No one from the Purple Pub where the complainant fell unconscious was called to testify to corroborate the testimony of the complainant nor did the prosecution tender video footage from the CCTV camera. However, the probative value of these pieces of evidence is outweighed by the evidence that the accused was found in possession of the complainant's phone and vehicle. This corroborates in a material particular the testimony of the complainant that he was with the accused when he fell unconscious and lost his vehicle, phones and money. It is for the accused and not the prosecution, applying the doctrine of recent possession, to explain how he came by the vehicle and phone beyond mere averments. Accordingly, the submission of no case is dismissed. I hereby order the accused to open his defence if he so wishes.

SGD

JOJO AMOAH HAGAN
CIRCUIT COURT JUDGE