

GHANA / JUDGMENT

REPUBLIC VRS ATTAH - MENSAH (B7/41/22) [2023] GHADC 1207 (11 December 2023)

[2023] GHADC 1207

COURT

District Court

CASE / FILE NUMBER

B7/41/22

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IN THE DISTRICT COURT TDC TEMA HELD ON MONDAY THE 11th DAY OF DECEMBER 2023
BEFORE HER WORSHIP BENEDICTA ANTWI CASE NO: B7/41/22 THE REPUBLIC VRS STELLA
ATTAH - MENSAH

JUDGMENT

The accused was arraigned before this court on one count of dishonestly receiving contrary to section 146 (1) of the Criminal Offences Act (1960) ACT 29. She was charged with one Brown Gabriel Mawuli (now convicted) for the offence of dishonestly receiving a stolen 55 inches LG led flat screen television. The first accused Brown Gabriel Mawuli (A1) pleaded guilty on the first arraignment to the three counts of unlawful entry, causing unlawful damage and stealing and was convicted on his own plea and sentenced. The accused was therefore charged with count four as follows; THE CHARGE REPUBLIC v STELLA ATTAH MENSAH [Date] COUNT FOUR STATEMENT OF ACCOUNT DISHONESTLY RECEIVING: Contrary to section 146(1) OF THE CRIMINAL OFFENCES ACT 1960 (ACT 29) PARTICULARS OF OFFENCE STELLA ATTA-MENSAH. PUPIL TEACHER, AGED 21. On the 17th day of September, 2022, at Prampram, in the Ningo Prampram Magisterial District and within the jurisdiction of this court, you dishonestly received 55 inches LG led flat screen television set value not yet known the property of Patrick Wilfred. which you knew to have been obtained or appropriated by means of crime to wit; stealing. Accused pleaded 'guilty with explanation' and the court recorded a plea of 'not guilty' on her behalf as the explanation offered could raise a defence when proved at the trial. The case proceeded to trial. The prosecution called one witness and closed its case. A submission of no case was raised suo motu by the court in accordance with sections 173 and 174 of the Criminal Procedure Act (1960) Act 30 and section 5(2) (a) of the 2018 practice direction on criminal procedure which states that "at the close of the case for the prosecution, the court shall on its own motion or on a submission of No Case to Answer, give a reasoned decision as to whether the prosecution has, or has not, led sufficient evidence against the Accused person as to require the accused person to open his defence" REPUBLIC v STELLA ATTAH MENSAH [Date] THE CASE OF

PROSECUTION The case of prosecution is that the on the 17th September 2022, one Brown Gabriel Mawuli the first accused (now convicted) and referred to in the judgment as A1, broke into the house of the complainant and stole some household items including a television set. Investigations led the police to the A1 who admitted the offence and led the police to the house of the instant accused person. A1 informed the police per his caution statement that he stole the television set and asked the accused to keep it for him. The television was indeed retrieved from the house of the accused by the police and the accused was charged with the offence of dishonestly receiving. Prosecution called only one witness, PW1 the investigator; who relied on her witness statement filed on the 20th December 2022 together with seven exhibits all admitted into evidence without any objection from accused person as her evidence in chief. Exhibit A is the caution statement of A1 who has already been dealt with by the court. Exhibit A1 is a further caution statement of A1 Exhibit B is a picture showing the front view of the stolen television Exhibit B1 is a photo showing the back view of the television Exhibit C is the charge statement of convict Exhibit D is the investigation caution statement of accused herein Exhibit D1 is the charge statement of accused herein. PW1 was cross-examined by counsel for accused and the prosecution closed their case. The court per its ruling delivered on the 27th April 2023 found that a prima facie case has been established by the prosecution and called upon the accused to open her defense. THE CASE OF ACCUSED REPUBLIC v STELLA ATTAH MENSAH [Date] The accused testified on the 2nd November 2023. She testified that she did not know that the television was stolen at the time she received it. She lives in the same neighborhood as the convict and calls him her brother. It was the convict, who asked her to keep it for him. She therefore informed her mother about it before going to collect the television set. She believed the convict could purchase the second television as he worked as an electrician and earned some income from same. On the 21st September, the convict led the police to her house to retrieve the stolen television set. She gave it to the police and was asked to follow them to the police station. That was when she discovered that the television was stolen. She gave her statement to the police per exhibit 'D' already tendered by the prosecution. Exhibit 'D' is the investigation caution statement given by the accused on the 21st September 2022. She stated that A1 called her on the 10th September 2022 and asked her to pick the television from his father's room at police farm as he was bringing his friend home but did not want the friend to see the television. According to the accused, she discussed it with her mother and she agreed for her to bring the television home. The prosecution cross-examined the accused and the trial came to an end. THE LAW AND BURDEN OF PROOF The fundamental rule in all criminal cases enshrined in article 19 (2) (c) of the constitution is that a person charged with a criminal offence is presumed innocent until proven guilty. REPUBLIC v STELLA ATTAH MENSAH [Date] When the accused pleads "not guilty", the prosecution assumes the burden of proving beyond reasonable doubt the guilt of the accused. In the words of Lord Sankey the chancellor in Woolmington v DPP (1935) AC 462; "Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the

prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained” This principle has been interwoven in our criminal jurisprudence and codified in the Evidence Act of Ghana (1975) ACT 323 as follows: Section 11 (2) of the Evidence Act “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 the prosecution to produce sufficient evidence do that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt” Section 11(3) “In a criminal action the burden of producing evidence when it is on the accused as to any fact the converse of which is essential to guilt requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.” Section 13 “Proof of crime” REPUBLIC v STELLA ATTAH MENSAH [Date] “In any 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.” Further in section 22 of the Evidence Act ; “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 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 facts” See the case of Ali Yussuf Issa (No.2) v The Republic (No.2) (2003-2004) SCGLR 174 The prosecution therefore has the burden of proving beyond reasonable doubt that the accused dishonestly received the stolen television set. They achieve this by proving the actus reus and mens rea together with all the ingredients of the offence by adducing admissible evidence in law. What are the ingredients of a charge of dishonestly receiving? The definition section of the charge at section 147 of Act 29 states as follows; “a person commits the offence of dishonestly receiving any property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assist in the disposal of the property otherwise than with a purpose to restore it to the owner” The ingredients therefore are;

- a. That the accused received, bought or assisted in the disposal of the property
- b. That she knew the property was appropriated by crime
- c. That the receipt was dishonest REPUBLIC v STELLA ATTAH MENSAH [Date] These elements constitute the actus reus and the mens rea of the offence of dishonest receiving and the prosecution must prove all these elements beyond reasonable doubt to secure a conviction.

ANALYSIS

The prosecution called only one witness, the investigator; PW1 who testified by relying on her witness statement and exhibits tendered above. In Exhibit “A1” the convict stated that he only gave the stolen television set to the accused herein for safe keeping and did not sell it to her. He also stated that the accused had nothing to do with the crime and that he committed the offence alone. Exhibit “C” is a confession statement given by the convict in the presence of one Ranf Alhassan an independent witness. He stated that he went to the complainant’s bungalow at Ocean

Green and stole the television set together with kitchen utensils, clothes sound speakers. It was around 10:00pm and he caused damage to the window as he wanted to remove the cooper wires from the air condition. He committed the crime alone but sent the television set to a place at Amasaman; a suburb in Accra where the accused lives. The facts as established in the course of the trial are that, the stolen television set was discovered in the house of the accused. The accused during her defense testified that she was in possession of the stolen television set because the convict asked her to keep it for him. In P. K. Twumasi's book *Criminal Law in Ghana* chapter 12, the learned author explains the doctrine of recent possession in relation to dishonestly receiving as a principle of law which states that if a person is found to be in possession of a thing which has recently been stolen and he is unable to give any satisfactory explanation *REPUBLIC v STELLA ATTAH MENSAH* [Date] as to how he came by it, he will be presumed guilty of dishonestly receiving unless he offers explanation which raises a reasonable doubt as to the prima facie case of prosecution. In this case, proof that the accused was in possession has been admitted by the accused and it is therefore not necessary for the prosecution to belabor this issue. What the prosecution needs to prove is that the accused knew at the time she took the television set that it was stolen. Counsel for the accused person cross-examined the prosecution witness by asking questions on the knowledge and intent of the accused. Which brings us to the mens rea; the prosecution must prove that the accused person knew that the television was stolen. This knowledge must be present at the time of receipt of the stolen television. During her evidence in chief, the accused person testified that she did not know that the television was stolen at the time she received it. During the trial, PW 1 was cross-examined on this and she stated as follows; Q: I am putting it to you that there is nothing in your witness statement that suggest that the accused person dishonestly received the said LED television. A: It was found in her possession. Q: And she gave you a reason why the television came to her possession. *REPUBLIC v STELLA ATTAH MENSAH* [Date] A: Yes. Q: She did not tell you that she bought the TV from the A1(convict) A: Yes. She did not tell me. Q: And you also got to know that no monies were charged between A1 and A2. A: Yes. In *Republic v Boateng* (1941) 7 WACA 109 thieves broke into a dwelling house and made away with certain items. Some of these were later found hidden in unusual places in appellant's house. He claimed he did not know the items had been stolen. However, they had been secreted away in such unlikely places that the court said that an inference of appellant's knowledge that the goods had been stolen, could be properly drawn. The burden is therefore on the prosecution to prove that there was some element of dishonesty in the knowledge of the accused when she took possession of the stolen property. As to the ingredients of knowledge and intent of the accused, guilty knowledge may be inferred from the surrounding circumstances as stated in the Boateng case (supra) The prosecution sought to surmount this task during the cross-examination as follows; Q: The statement that A1 asked you to go for the TV is not true *REPUBLIC v STELLA ATTAH MENSAH* [Date] A: It is true, he did not sell it to me. It was also not a gift. Q: I am finally putting it to you that you know very well that the TV was stolen. A: I did not know it was stolen, the television is second hand television but because people ask him to work on their televisions I thought he could buy a television. Both the convict and accused person herein have consistently maintained the story that she did not know the television set was stolen and she only came into possession

because the convict asked her to keep it for him. This is what the accused stated in paragraph 4 of her witness statement: “That on the 10th September 2022, I was at home when the 1st accused person called to ask me to pick a television set from his step-father’s house and keep it at our house for him because he will be coming home over the weekend with a friend and he does not want the friend to see the television.” The prosecution cross-examined the accused as follows: Q: I am putting it to you that your paragraph 4 is not true because you told the court that you stay together with A1. A: We live in the same house but my brother put the TV in his stepmother’s house. That is when he asked me to go and pick REPUBLIC v STELLA ATTAH MENSAH [Date] the TV from and the house is in the same vicinity. Q: Did you enquire from A1 where he got the television from when he asked you to take it to your step father’s house. A: I asked him and he told me he bought it. Q: Did you ask him how much he bought it for? A: No. Q: Your brother is an apprentice would he have gotten money to buy the television. A: His step mother gives him money and sometimes some neighbors ask him to work and he gets money. In her caution statement to the police, which was tendered into evidence by PW1 as Exhibit “D” she stated that she acted on the instructions of A1 to remove the television form his step-father’s room and keep it at her house because he is coming home with a friend and he A1 did not want his friend to see the television. She repeated this in her charge statement tendered by prosecution as Exhibit “D1”. Section 11 (3) of Act 323 (supra) requires the accused only to raise reasonable doubt as to her guilt on the charges leveled against her. Apart from the caution statements tendered by PW1, prosecution did not lead any further evidence to prove that the accused dishonestly received the stolen television REPUBLIC v STELLA ATTAH MENSAH [Date] set. They also did not state the circumstances under which they retrieved the television set from the accused. Was is hidden somewhere in the house of the accused? Was is openly displayed in the living room, waiting for the convict to come and retrieve it? The answers to these questions could help the court infer knowledge and intent of the accused, however no evidence was led on that. I find that the accused person have through cross-examination and evidence tendered demonstrated to the court that she did not have any dishonest intent at the time she took possession of the television. In the case of *Salifu & Anor v The Republic* (1974)2 GLR 291 it was held that “knowledge” refers to knowing that the goods have been stolen at the time the goods are received, and not subsequent to the date. In this case the prosecution has also not been able to provide any evidence to the court to show that the accused had prior knowledge about the criminal act of the convict. From the totality of the evidence led before the court, I find that the prosecution could not prove by any means that the accused dishonestly receive the stolen television. The accused on the other hand has been able to establish reasonable doubt as to her mens rea at the time she took delivery of the television. REPUBLIC v STELLA ATTAH MENSAH [Date] The principle in all criminal cases as per section 11 (3) of the Evidence Act is that the accused person only needs to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to the guilt of the accused. I find that the accused person did not know that the television set was stolen at the time she took possession of same. The accused therefore did not dishonestly receive the stolen television set. Having been unable to surmount the burden of proof beyond reasonable doubt, the case of the prosecution crumbles. The accused is acquitted and discharged with the following final orders RESTITUTION Let the television set retrieved from the accused person be

returned to the complainant forthwith. [SGD] DISTRICT MAGISTRATE BENEDICTA ANTWI
PARTIES: REPUBLIC v STELLA ATTAH MENSAH [Date] Ruth Sefakor for accused person holding
brief for Prince K. Hodo Chief/Inspector Agnes Konadu Accused person ---present REPUBLIC v
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