

GHANA / JUDGMENT

Republic Vrs Sitor Bright & 2 Ors. [2023] GHACC 435 (30 March 2023)

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IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 30TH MARCH, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE CASE NO.: CC150/2021 THE REPUBLIC VRS SITOR BRIGHT PROSPER ATIVOR AHMADU IDDRISAH 3RD ACCUSED PERSON PRESENT CHIEF INSPECTOR VICTOR SOMOAH FOR THE REPUBLIC PRESENT MARK ADZANU, ESQ. FOR THE 3RD ACCUSED PEROSN ABSENT

JUDGEMENT

In this case, three (3) Accused persons were first arraigned before this Court charged with the following offences contrary to the Criminal Offences Act, 1960 (Act 29): i. ii. iii. Conspiracy to commit crime to wit Stealing contrary to section 23(1); Stealing contrary to section 124(1); and Dishonestly Receiving contrary to section 146. On their first arraignment before this Court on the 1st June, 2021, the 1st and 2nd Accused persons pleaded guilty to the charges proffered against them, i.e. Counts One, Two and Three. They were accordingly convicted on their own plea and sentenced. However, the 3rd Accused person pleaded Not Guilty to the charge of Dishonestly Receiving, and he submitted himself to criminal proceedings through a full trial. 1 THE FACTS OF THE CASE The complainant is a tipper truck driver whereas the Accused persons are scrap dealers. The complainant detected theft of some of his car spare parts he packed in his house at Toklokpo so he informed the town folks. On the 29th May, 2021, the complainant went to work and so some of the youth were on guard in the bush around his house and about 1:30pm, the 1st and 2nd Accused persons went and stole the complainant's car gear box by scaling the fence wall. They were given a hot chase by some town folks, apprehended them and sent them to Sogakope Police Station by one Delali Robert Akpabli with marks of assault and soaked with car engine oil. Investigation led to the arrest of the 3rd Accused person and some of the complainant's spare parts were found during a search around his compound. In proving its case, the prosecution called three (3) witnesses. PW1 (Somlator James) told the court that on the 28th May, 2021, he returned from work and detected theft of his tipper truck spare parts in his house. On the 29th May, 2021, he was at work when he received a telephone call from the town folks that the 1st and 2nd Accused Convicts were arrested carrying some of his spare parts on the Accra-Aflao road. So he went and met the suspects in his house with some of the angry town folks. The convicts told them that they were sending the spare parts to the 3rd Accused person before they were arrested.

It is the case of PW1 that he went to the house of the 3rd Accused person to demand for the spare parts but did not meet him and told him what the convicts said so he should return the spare parts to him but he refused to call him as promised. On Sunday, he met PW2 (Coudzoe Kwame) who confirmed that on Friday, 28th May, 2021, the convicts hired him to load some spare parts from his (PW1) house and they 2 went and sold same to the Accused person. So, he together with PW2 went to the 3rd Accused person and confronted him where the Accused person confirmed but denied buying the items. PW1 told the court that the Accused person showed him some of the spare parts which he claimed the convicts brought to him but refused to buy them and later someone packed them around his house. PW2 (Coudzoe Kwame) told the court that on the 28th May, 2021 at about 4:00pm, the 1st Convict called him to come and carry some load for him. The 1st Convict was in the company of another person. That they took him to Toklokpo and they carried one car rim and a long metal which was under a tree at the entrance of the complainant's house. They asked him to take the spare parts to the house of the Accused person at Hlevi because they were going to sell it to him. It is the case of PW2 that when they got there, they did not meet the Accused person. So, the Convicts scaled the spare parts and called the Accused person through his phone and they went and met him at Adidome Junction. PW2 told the court that he charged the Convicts GH¢20.00 as loading fees. The Accused person asked him to go and come for the money later because he was not having money with him at that moment. The Accused person sent the 1st Convict to go back to his house and collect money from his wife. PW2 added that later he came to the Accused person and he paid him GH¢15.00. On the 29th May, 2021, the 1st Convict called him to send them to the complainant's house at Toklokpo. They loaded his tricycle with one round metal and on their way to the Accused person's house, a motor rider stopped him and asked him about the owner of the metal and he pointed to the Convicts but they took to their heels. The said motor rider asked him to return the items to where they picked them from because they were stolen items. 3 PW3, Detective Lance Corporal Happy Yawa Attah investigated the case. PW3 relied on her Witness Statements together with the attached Exhibits.

THE CASE OF THE DEFENCE The 3rd Accused person in opening his defence testified himself from the witness box and called one (1) witness as DW1. The Accused person told the court that he was at Adidome Junction when one motor rider called him to come home but he was engaged somewhere else and so he could not come. The motor rider came to where he was and told him that his worker had already weighed the items so he was coming for the money. According to the 3rd Accused person, he told him he would not give him any money until he sees the items himself. That when he got home, he saw the items the motor rider earlier mentioned. He called him back and told him he was not interested in buying the items so he should come and take them to where they got them from. That later one of the people who the motor rider said they were involved when they brought the items to his house came demanding for payment. That he told him that he had called the motor rider and told him that he was not interested in the items so they should pick them from his house. Upon his insistence, the items were taken from his house and put by the roadside not far from his house. The next morning, PW1 and the motor rider called him. They eventually came to his house and PW1 told him that the motor rider said they brought some items to his house the day before. It is the case of the 3rd Accused person that he told them he saw the items and called the motor rider that he was not interested in buying them.

One of the guys also came demanding for money but he told him that he was not interested hence they should collect the items from his house where he showed PW1 and motor rider that they put 4 them by the roadside. After showing PW1 the items, he told him he was going to bring his vehicle to come and convey them. Later, the police came with PW1 and the 1st Convict and collected the items and left. The next day, the police invited him to the station, he was arrested for buying stolen items. DW1 (Abubakari Illiasu) told the court that he was with the Accused person when he received a call to come home. So, they went to the house and met the complainant. That, when they got there, there was a motor rider with him in the house. The complainant alleged that his metal had been stolen and sold to the Accused person. The Accused person told the complainant that he was not in the house when the said metals were brought in. The Accused person further told the complainant that one of the people who came with the motor car had come to collect the metals and placed them by the roadside so the Accused person went to show the complainant where the boy had placed them. The legal issue that falls for determination after the end of the trial is whether or not the 3rd Accused person dishonestly received the stolen spare parts from the convicts. The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which reads: "A person charged with a criminal offence shall ----- (c) be presumed to be innocent until he is proved or has pleaded guilty." In the case of Republic v. Adu-Boahen & Another [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that: 5 "A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt". Section 146 of Act 29 provides as follows: "A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence." Section 147(1) of Act 29 defines the offence of Dishonestly Receiving as follows: "(1) A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner." The basic ingredients that the prosecution must prove in the offence of dishonestly receiving property are that: i. The property being the subject matter of the crime was obtained or appropriated by a criminal offence or the property has been obtained by a criminal offence; ii. The accused person knows that the property has been obtained or appropriated by a criminal offence; iii. The accused person receives, buys or assists in the disposal of the property otherwise than with a purpose of restoring it to the owner. See also Republic v. Bayford [1973] 2 GLR 421 at holding 1. 6 It must be noted that the property obtained or appropriated by a criminal offence which will constitute the subject matter for the offence of dishonestly receiving includes property from stealing, fraudulent breach of trust, defrauding by false pretence, robbery, extortion and falsification of accounts. It has been established by the prosecution that the spare parts were obtained through stealing from the complainant by the 1st and 2nd Convicts. Did the Accused person know that

these spare parts were obtained through a criminal enterprise? To be able to prove the state of mind of the 3rd Accused person at the time of receiving the spare parts mentioned, the prosecution shall be required to prove intent or knowledge or malice of the 3rd Accused person and this will be determined by the evidence adduced at the trial. P. K. Twumasi in his book “Criminal Law in Ghana” at page 77 stated as follows: “The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from proven facts.....” In the evidence of 3rd Accused person, he told the Court that when he saw the items brought by the motor rider and the convicts, he told them he was not interested and that they should collect them from his house. However, in the evidence of the motor rider, Coudzoe Kwame (PW2) he told the court that on the 28th May, 2021, the convicts engaged his services to convey some spare parts to the house of the 3rd Accused person with his tricycle. Then on the 29th May, 2021, he carried out the same work but was accosted by a motor rider who told him that the items he was carrying were stolen items. 7 On the face of the Charge Sheet, the Accused is said to have dishonestly received the spare parts on the 29th May, 2021. For the avoidance of doubt, this is how the Charge Sheet looks like: AHMADU IDDRISAH, AGE 54, SPARE PARTS DEALER: For that you on the 29th May, 2021 at Hlevi Kpogadzi in the Sogakope Circuit and within the jurisdiction of this court, did dishonestly receive car spare parts valued GH¢4,800.00, the property of one Somlator James, which you knew to have been obtained or appropriated by means of crime to wit stealing. From the evidence of DW1, the 3rd Accused person did not receive the stolen spare parts. The said criminal enterprise on the 29th May, 2021 was not concluded before DW1 was accosted by the motor rider. It cannot therefore be said that the 3rd Accused person dishonestly received the stolen spare parts on the 29th May, 2021. Section 148(1) of Act 29 provides: “Where a person charged with dishonestly receiving is proved to have had in possession or under control, anything which is reasonably suspected of having been stolen or unlawfully obtained, and that person does not give an account, to the satisfaction of the Court, as to the possession or control, the Court may presume that the thing has been stolen or unlawfully obtained, and that person may be convicted of dishonestly receiving in the absence of evidence to the contrary.” Section 148 is one of the few sections under Act 29 where the legal burden is on the accused person. It therefore means that where the prosecution has led evidence to show that the property found in the possession of the accused person 8 were stolen, the accused person has the legal burden of proving to the satisfaction of the court as to how he came by them. A court may not be seized with jurisdiction in a criminal matter where no Charge Sheet has been filed in accordance with law as in summary trials. A Charge Sheet may be compared with a Writ of Summons or a Petition or Originating Motion on Notice in civil proceedings. In this case, the Republic invoked the criminal jurisdiction of this Court with a Charge Sheet filed on the 1st June, 2021. As I have indicated earlier, the evidence on record does not establish that the 3rd Accused person received the stolen spare parts from the convicts on the 29th May, 2021. Upon the totality of the evidence adduced at the trial, the court finds that the prosecution has not been able to prove its case beyond reasonable doubt. In the circumstances, I hereby acquit and discharge the 3rd Accused person. ISAAC ADDO CIRCUIT JUDGE 30TH MARCH, 2023 9

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