

GHANA / JUDGMENT

Republic vrs. Bawa (1338/24)

[2025] GHADC 119 (3 March 2025)

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COURT

District Court

CASE / FILE NUMBER

1338/24

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IN THE DISTRICT COURT LA ACCRA HELD ON MONDAY 3RD MARCH, 2025 BEFORE HER
WORSHIP ADWOA BENASO ASUMADU-SAKYI SITTING AS MAGISTRATE CASE NO: 1338/24 THE
REPUBLIC VRS BASHIRU BAWA ACCUSED PERSON present PROSECUTION: Chief Inspector Paul
Osei Adjei with Inspector Sylvester Kwarteng for the Republic

JUDGMENT

THE CHARGES The Accused person herein was arraigned before this court on the 24th of July, 2024 on the following charges;

- a. Count one: Unlawful entry to commit crime contrary to section 152 of the Criminal Offences Act, 1960 (Act 29), and
- b. Count two: Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29)

INTRODUCTION

The accused person was arraigned before this Court on the 24th of July, 2024 on the charges of Unlawful entry to commit crime contrary to section 152 of the Criminal Offences Act, 1960 (Act 29), and Stealing contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29). The accused pleaded guilty with explanation to both charges after which the court changed his plea to not guilty and after prosecution closed its case, the court dismissed an application for submission of no case and ordered the Accused person to open his case on the 27th of January, 2025. FACTS OF THE CASE The brief facts that culminated into this instant case is that the complainant who is a soldier residing at Burma camp states that on the 20th of July, 2024 at about 1:47 am the accused person unlawfully entered his room at RECCE Barracks while he was asleep. The complainant states that the accused person upon entering the complainant's room he proceeded to steal his Samsung mobile phone valued at One Thousand Five Hundred Ghana Cedis (GH¢ 1,500.00) which he was charging. The complainant states that a colleague of his spotted the accused person and raised an alarm which woke up another colleague of his. The complainant's colleagues pursued him and was eventually arrested. That upon his arrest, a search was conducted on him and the

complainant's phone was found on him. He was then handed over to the Cantonments police station and was charged with the offences stated on the charge sheet and arraigned before the court. The Accused person pleaded not guilty to both charges and was granted bail on the 24th of July, 2024. Prosecution opened its case on the 12th of November, 2024 and ended on the 12th of February, 2025. **BURDEN AND STANDARD OF PROOF IN CRIMINAL CASES** The court is under an obligation to discuss the facts of the case together with relevant laws and the required standard of prove before a determination can be made to either convict or acquit. Sections 11 and 13 of the Evidence Act, 1975 (NRCD 323) enjoins the courts to satisfy itself that prosecution has produced sufficient evidence to establish that on the totality of the evidence adduced by it a reasonable mind could find the existence of the fact beyond a reasonable doubt. Section 11 (2) and (3) of the Evidence Act, 1975 (NRCD 323) provides as follows; 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. 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. Section 13 of NRCD 323 also provides as follows;

- (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. In *Rahim Ibrahim and Three Others v. The Republic* [2017] DLCA 2012- Justice Barbara Ackah-Yensu JA (as she then was) stated: "It is trite learning that under Article 19(2)(c) of the 1992 Constitution, every one charged with a criminal offence is presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person will be called upon to give his side of the story. See *Gligah and Atiso vrs The Republic* [2010] SGLR 870". Even though the burden of persuasion remains on the prosecution throughout the trial, the evidential burden shifts as and when it becomes appropriate. Section 15 of the Evidence Act, 1975 (NRCD 323) provides that unless and until it is shifted, the party claiming that a person is guilty of crime or wrong doing has the burden of persuasion on that issue. With the above provisions in mind it is clear that unless and until the burden of producing evidence and burden of persuasion is shifted this burden is on prosecution. Also the burden of persuasion on prosecution is discharged when the ingredients essential to guilt are proved sufficiently to establish a prima facie case against the accused and it is only when the burden has been discharged that the accused person is called upon to open his defence and provide evidence that is converse to the elements

essential to guilt and by doing so raise reasonable doubt in the prosecution's case. See *Woolmington v. DPP* and *Ali Kassena v. The State* and *Banousin v. The Republic* [2015-2016] 2 SCGLR 1232. In *Asare v. The Republic* [1978] GLR 193-199, per Anin J. A, reading the Court of Appeal decision stated as follows: "There was no burden on the accused to establish his innocence, rather it the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt." Article 19(2)(c) of the 1992 Constitution of Ghana provides that an accused person is presumed to be innocent until he is proved guilty or pleads guilty. Thus in the instant case when the accused person pleaded not guilty to the charges I am required to satisfy myself that the accused person has been proved guilty before I can convict.

DISCUSSION OF THE LAW AND FACTS It is a cardinal principle of law that the statute creating and defining an offence, determines the ingredients of the offence which are to be proved. Section 152 of the Criminal Offences Act, 1960 (Act 29) prohibits unlawful entry. A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony. Unlawful entry is defined by section 153 of Act 29 as follows; 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 enters. This implies that the charge of unlawful entry means a person entering into a building otherwise than in his own right or by the consent of the other person able to give such consent for the purposes for which he enters. Here, the disjunction would be noted between entering in a building in the exercise of a lawful right and with the consent of a person able to give such consent. Thus, an accused person does not commit the offence of unlawful entry even if he enters a building with the consent of a person who is able to give consent in so far as the accused person enters the building in the exercise of a lawful right. Thus, in *Kanjara v. The State* [1965] GLR 478 at page 482 where a steward boy entered his master's room and took money from his drawer, the Supreme Court in holding that the boy had access to the room in the performance of his lawful duties explained that: "To constitute that offence, the entry must be made with a purpose or intent to commit a crime. It follows that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of entry and was the purpose for the making of the entry. Therefore if a person entered premises for a lawful purpose, i.e. to visit a friend, and while in the room he saw a diamond ring, which he coveted and pocketed, he could properly be convicted of theft of the diamond ring, but a conviction for unlawful entry with intent to steal would not accord with the law. Since it is probable upon the evidence, that the appellant might have committed the theft in the course of his lawful duties in the room, his conviction for unlawful entry is bad and must be quashed". Again, in *Behome v. The Republic* [1979] GLR 112 where a husband after surveilling his wife caught her entering another man's room, the husband was acquitted on the charge of unlawful entry of the man's room despite forming an intention to commit a crime prior to the entry because, as the Court noted, on the facts the husband had the right to enter his wife's lover's room to apprehend him. The Court opined at holding 1 as follows: "Consequently since the initial entry was lawful the subsequent offence of assault or causing harm could not be sustained to found conspiracy

albeit the appellant had formed the intention to commit crime before the entry and he in fact committed a crime thereafter”. Consequently, the prosecution must lead evidence to show that the accused formed the intention to commit crime a particular crime and entered the premises for that purpose without lawful excuse of a person capable of giving consent. The Court has to therefore ascertain from the evidence of the prosecution whether the actus reus was revealed and whether the prosecution led evidence on all the elements of the offence the accused person has been charged with. Prosecution’s case is that the accused person allegedly entered the room of the complainant while he was sleeping with the intention of stealing his phone. Accused person’s case is that he did not enter the room of the complainant but rather stood at the entrance of the complainant’s room due to the rain. This is what he had to say in the written statement he gave to police upon his arrest which was tendered into evidence and marked as Exhibit C; “...On reaching complainant’s barracks, it started raining so I stood at the entrance of the complainants room to avoid the rain. Immediately someone came out of the room and started shouting thief and also said he suspects me to be a thief...” Prosecution called four witnesses to testify in support of its case and they were No. Trooper Hashim Abdul Rahman (PW1), No. 221567 Trooper Ilinyan Mukanjo (PW2), and No. 221108 Trooper Kalowi Clinton (PW3) and D/PW/Insp. Elizabeth Hanson (PW4). The 1st Prosecution witness Trooper Hashim Abdul Rahman who claimed was the one who saw someone in the room stealing PW2’s phone and that upon chasing the said person out of the room, saw accused person hiding in a garden had the following to say in his witness statement which was adopted as his evidence in chief;

1. On the 19/07/2024 at about 1:47 am, I was felling urine so u decided to use the washroom.
2. Immediately I got up from my bed, I saw someone rushed out of the room so I shouted twice for him to stop but the person did not stop, one of my roommate who heard me shouting got out from his bed and ask me what the matter was and after I told him what I saw, he accompanied me to trace the person.
3. After a reasonable distance, the accused person hid himself in a small garden and later my roommate saw him in a corner of the garden so he shouted at the accused and he came out. There a search was conducted on him and the phone of our colleague Samsung Galaxy A05 was found on him.
4. We then took him to the duty officer and reported the matter to him During cross examination of PW1 on the 25th of November, 2024 the Accused person failed to discredit PW1’s testimony. This is what happened; Q. How do you know me? A. On the 19th of July, I was on top of my bed and immediately I got out of my bed someone rushed out from the room and I quickly shouted twice but the person did not stop so a colleague of mine woke up and asked what the matter was and I told him I was suspecting that someone had entered our room so we quickly rushed out to trace where he had run to. After a reasonable distance we got to know he was hiding in a garden. My colleague then entered the garden and found him in a small corner and my colleague shouted “come out” then he came out. The 3rd prosecution witness Trooper Kalowi Clinton, corroborated the testimony of PW1. He stated

that he heard PW1 making noise and upon enquiring from him what the matter was PW1 told him that he saw someone coming out from the room. I will reproduce the relevant portions of the PW3's witness statement which was adopted as his evidence in chief as follows;

3. On the 19/07/2024 at about 1:47am, I was preparing to sleep when I heard my colleague Hashim Abdul Rahman making some noise so I asked him what the problem was and he told he saw someone coming out from the room.
4. I immediately accompanied him to trace the said person.
5. After a reasonable distance, the accused person hid himself in a small garden and later I saw him in a corner of the garden so I shouted at him to come out and he came out. There a search was conducted on him and the phone of one of our colleagues, Samsung Galaxy A05 was found on him. A careful perusal of the record clearly shows that the Accused person failed to discredit the testimony of PW3 as he maintained his testimony throughout cross examination. This is what the PW3 had to say during cross examination by the accused person on the 25th of November, 2024; Q. You do not know me and even if you know me well do you know me A. I only got to know you when you rushed out from our room on the day of your arrest and we found our phone on you Q. I hope you know all your colleagues and you can identify all of them so why is it that you were unable to arrest me when you saw me but you waited until the rain stopped and you came to me to suspect that I am a thief and you took my phone A. I never saw you anywhere until my friend shouted three times "Hey 3 times" and I jumped out of my bed and I asked what was the issue and he said someone rushed out of our room. We saw you running at a distance and we chased you and we caught you in the garden. You were not wearing a shirt neither were you wearing sandals but you only folded your shirt and your sandals and placed it under your armpit. So when we chased and caught you we saw a phone with you and when we put on the phone we realized the phone belonged to PW2 and we handed you over to the MPs. From the foregoing it is clear that the testimonies of PW1 and PW3 stands unchallenged and as such I hereby conclude that prosecution has been able to prove beyond reasonable doubt that it was the accused person who entered their room unlawfully without any authority or in the exercise of any lawful right. Accused person bears the burden to raise a reasonable doubt as to the assertion that he was the one who entered the complainant's room. I will reproduce the relevant portion of his witness statement which was adopted as his evidence in chief as follows;
3. I was hungry at midnight around 12:40 am and I decided to go and get some indomie.
4. It was raining at the time so I stood on the pavement at the 37 military Burma Camp
5. All of a sudden, a military man appeared and questioned me on why I was standing on the pavement.

6. The military man said he suspects I am a thief and that this is how things get stolen at Burma Camp. Accused person was cross examined on the 12th of February, 2025 and prosecution discredited his story about the pavement as prosecution's case was that there was no shelter on the pavement. Accused person changed his story and stated that he stood at the end of the roof close to the pavement. This is what ensued; Q. And also if it was truly raining on that day you would have not stood on the pavement as you claim as there was no shelter. A. That is not correct. I was standing at the end of their roof close to their wall on the pavement From the above it is clear that there are several inconsistencies in the testimony of accused person in the record of proceedings. First of all he changed this testimony when he was pressed further during cross examination on the 12th of February, 2025. This is what he had to say; Q. And also if it was truly raining on that day you would have not stood on the pavement as you claim as there was no shelter A. That is not correct. I was standing at the end of their roof close to their wall on the pavement Q. I am putting it to you that the 64 house you are talking off has no pavement A. When I say pavement, I mean the veranda that leads to the kitchen Q. I am putting it to you that the place you are referring to is right in front of 64's door. A. That is correct Q. So you have now agreed with me that you were in front of the door and not standing on the pavement A. Yes I agree This is clearly a departure from his testimony and his statement provided in Exhibit A. The accused person also testified that he never hid from PW1 and PW2 on the said day and only stood on the pavement until he was confronted by a soldier. This is what he said his witness statement which was adopted as his evidence in chief on the 12th of February, 2025 as follows;
4. It was raining at the time so I stood on the pavement at the 37 military Burma Camp.
5. All of a sudden, a military man appeared and questioned me on why I was standing on the pavement.
6. The military man said he suspects I am a thief and that this is how things get stolen at the Burma Camp.
7. He then called one of his colleagues and started beating me and accused me of being a thief. This testimony is contrary to the statement he gave to police on the 20th of July, 2024 which was tendered into evidence and marked as Exhibit C. I will reproduce the relevant portion of Exhibit C as follows; "...Immediately someone came out of the room and started shouting thief and also said he suspects me to be a thief. I started running whiles they were chasing me. I then hid myself in a garden nearby and saw them pass. After few minutes one of them came back and saw me under a roof sheet, immediately I came out I saw his phone fell down from his pocket so I alerted him to pick up his phone which he did...". He then denied that he hid during his cross examination on the 12th of February, 2025 as follows; Q. And you stated also that they shouted at you "thief" and you started running for refuge in your own statement A. I did not state so. I said I was standing on the pavement and they arrested me. Q. In your own statement given to the police you stated that you went to hide in a garden to avoid being hidden A. That is not correct. It may have been the C. I. D who wrote that but I didn't say so Q. So eventually you run and hid somewhere A. I did not run to hide anywhere

The accused person then goes on to state that he was arrested by many soldiers even though in he testified that there were two soldiers who arrested him. This is what he said in his witness statement on the 12th of February, 2025;

5. All of a sudden a military man appeared and questioned me on why I was standing on the pavement.
6. The military man said he suspects I am a thief and that this is how things gets stolen at the Burma Camp.
7. He then called one of his colleagues and started beating me and accused me of being a thief.
8. I told them I was not a thief and that I was standing on their corridor to avoid the rain.
9. They continued to beat me and sent me to their guard room. He however changed this testimony during his cross examination on the 12th of February, 2025 as follows; Q. I put it to you that there is no way that the phone will drop from PW1's pocket because it is not his phone A. That is not true. They were many when they were beating me and I saw the phone later after I was arrested Q. In your own witness statement and your written statement you have not stated anywhere that many soldiers beat you up but you stated it was 2 soldiers who beat you up A. I stated that they were about 21, maybe it was the C. I. D who failed to state same. I also forgot to state same in my witness statement Q. You forgot to state it in your witness statement because what actually happened was that it was 2 soldiers who beat you up A. I was informed that I should cut my statement short because I was talking too much Q. I put it to you that the inconsistencies of your statements from your own mouth indicates that you are not being truthful to this Honorable Court. A. I am being truthful From the foregoing it is clear that a mountain of inconsistencies exists in the evidence given by the accused person and his answers during cross examination. It is my opinion that he failed to pass the credibility test as provided within the meaning of section 80 of the Evidence Act, NRCd 323. In *Obeng v. Bempong* [1992-1993] GBR part 3 at page 1027 the Court of Appeal held that "inconsistencies, though individually colorless, may cumulatively discredit the claim of the proponent of the evidence." Accused person has clearly concocted this testimony to make up a story which will prove his innocence out of non-existing facts and a compilation of the inconsistencies of his testimony therefore discredits his testimony. See *Emmanuel Dapaah Kunkuma v. National Lottery Authority* (2013) JELR 68740 (HC). The accused person having failed to raise a reasonable doubt as to his guilt, I hereby hold that prosecution has been able to proof beyond reasonable doubt that the accused person unlawfully entered the room of the complainant without any authority or in the exercise of his legal right. The second charge to be proved is the charge of stealing which has been provided for in section 124(1) of the Criminal Offences Act, (Act 29) as "A person steals who dishonestly appropriates a thing of which that person is not the owner". The ingredients to be proven in order to succeed on a charge of stealing was stated in the case of *Dramanu v. The Republic* [1973] 2 GLR 37, *Koranteng- Addow J.* noted at page 381 as follows; In a case in which the accused person has pleaded "not guilty" the burden lay on the prosecution to

establish all the three ingredients to the charge, namely:

- (1) that there was an appropriation,
- (2) that the appropriation was dishonest, and
- (3) that the accused was not the owner of the stolen thing. In the case of *Mensah and Others v. The Republic* [1978] GLR 404, the court emphasized the basic ingredients requiring proof in a charge of stealing a thing to be; (i) (ii) (iii) that the person charged must not be the owner of it, that he must have appropriated it; and that the appropriation must have been dishonest. See *Brobbey and Others v. The Republic* [1982-83] GLR 60; *Lucien v. The Republic* [1977] 1 GLR 351. Appropriation of a thing involves moving, taking, obtaining, carrying away, or dealing with a thing with the intent that a person may be deprived of the benefit of ownership of that thing, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing. Dishonest appropriation has been defined in Section 120 of Act 29 as follows; An appropriation of a thing is dishonest if it is made with (a) an intent to defraud; or (b) if it is made with by a person without a claim of right, and (c) with a knowledge or belief that the appropriation is without the consent of some person for whom he is trustee or who is owner of the thing, or that the appropriation would, if known to the other person, be without the consent of the other person. To constitute a dishonest appropriation of a thing, it is not necessary that the accused person should know the owner of the thing. It is enough if the accused has reason to believe that some other person, whether certain or uncertain, is interested on or entitled to, that thing as owner in that person's own right, or by operation of law, or in any other manner. In *Brobbey and Others v. The Republic* [1982-83] GLR 60, the court observed at page 615 that a "a person cannot be guilty of stealing unless he is proved to have appropriated a thing in the first place. Section 120(1) of Act 29 stipulates that an appropriation of a thing is dishonest if it made with an intent to defraud or if it is made by a person without a claim of right and with a knowledge or belief that the appropriation is without the consent of a person for whom that person is trustee or who is owner of the thing, or that the appropriation would, if known to the other person, be without the consent of the other person. In *Ampah v. The Republic* [1977] 2 GLR 171 at holding 3 it was held that: "The failure to call an identified owner to give evidence of his lack of consent was not necessarily fatal on a charge of stealing. The crucial issue was whether the appropriation was dishonest which depended on the state of mind of the person doing the act amounting to appropriation. Whether an accused person had a particular state of mind was essentially a question of fact which had to be decided by the trial court. The facts disclosed in this case were entirely inconsistent with the conduct of an owner who would consent to the appropriation of his property. The facts, on the contrary, showed in no uncertain terms that if the Chamber had known of the appropriation by the appellant it would have protested". It must be stated that to be guilty of stealing, the accused person need not be proved to have carried away the item stolen. It is not necessary in proving stealing to establish that the accused carried away the item stolen. It is sufficient if the accused treated the property in a manner inconsistent with the owner's ownership of the

property. See *Aning v. The Republic* [1984-86] 2 GLR 85. It is a cardinal principle of criminal law that for a person to be guilty of stealing the person must have *animus furandi*; that the intention to steal. See the case of *Aning v. The Republic* (supra) and *Commissioner of Police v Gaituah* [1961] GLR 789. Thus, where it is established that the appropriation is dishonest, the *mens rea* requirement is satisfied. The second prosecution witness, Trooper Ilinyan Mukanjo, who is the owner of the phone which was allegedly stolen by the accused person also corroborated the story of prosecution and stated in his witness statement which was adopted as his evidence in chief as follows;

3. On 19/07/2024 about 1:57am, I was sleeping when my roommate Hashim Abdul Rahman came and woke me and told me to check my phone.
4. I check where I placed on charge when sleeping but it was nowhere to be found.
5. It was there that he told me about the accused person stolen my phone from the room and that they arrested him and he was in the guard room.
6. I accompanied him to the duty officer and found my phone with him. I identified my phone being a Samsung Galaxy A05. From the above PW2 testifies that he identified his Samsung Galaxy A05 as the phone which was found on the person of the accused person upon his arrest. A careful perusal of the record of proceeding clearly indicates that the Accused Person unfortunately failed to discredit the testimony of the 3rd prosecution witness. This is what ensued on the 25th of November, 2024 during his cross examination as follows; Q. You claim I have stolen your phone and that is why you brought me to court. Tell this court how I stole your phone. A. You stole my phone on 19th July, 2024 around 1:57am while I was at asleep. I was awoken by a colleague who informed me that someone came into our room and has taken my phone and that person had been arrested and sent to a duty office It must be noted that PW2 was not part of the people who arrested the accused person. It was after he was arrested that he was awoken up to check on if the phone found on the person of the Accused Person was his and yet the accused person claimed that he was part of the soldiers who arrested him and that he placed his hands in pocket. This is what ensued during cross examination; Q. When I was arrested weren't you the one who held me and placed your hand in my pocket A. No This testimony of PW2 was corroborated by PW1 in his witness statement which was adopted as his evidence in chief as follows;
5. After a reasonable distance, the accused person hid himself in a small garden and later my roommate saw him a corner of the garden so he shouted at the accused and he came out. There a search was conducted on him and the phone of our colleague Samsung Galaxy A05 was found on him.
6. We then took him to the duty officer and reported the matter to him.
7. I later went to the room and woke my colleague whose phone was stolen and informed him. This testimony of PW2 was also corroborated by PW3 in his witness statement. I will reproduce the relevant portions of the witness statement as follows;

3. On the 19/07/2024 at about 1:47 am I was preparing to sleep when I heard my colleague Hashim Abdul Rahman making some noise so I asked him what the problem was and he told me he saw someone coming out from the room.
4. I immediately accompanied him to trace the said person.
5. After a reasonable distance, the accused person hid himself in a small garden and later I saw him in a corner of the garden so I shouted at him to come out and he came out. There a search was conducted on him and the phone of one of our colleague Samsung Galaxy A05 was found on him.
5. We took him to the duty officer and reported the matter to him where the accused was detained in the guard room. I have perused the record and I am satisfied that the accused person failed to discredit the testimony of PW1 and PW2. This is what happened during cross examination of PW1 on the 25th of November, 2024; Q. How do you know me? A. On the 19th of July, I was on top of my bed and immediately I got out of my bed someone rushed out from the room and I quickly shouted twice but the person did not stop so a colleague of mine woke up and asked what the matter was and I told him I was suspecting that someone had entered our room so we quickly rushed out to trace where he had run to. After a reasonable distance we got to know he was hiding in a garden. My colleague then entered the garden and found him in a small corner and my colleague shouted “come out” then he came out. Q. Why it is that he was the only person who complained of his missing phone when you all have phones A. When we found you in the garden a search was conducted and a phone was found on you. The phone found has a picture of my colleague as the wall paper. PW3 never wavered in his testimony during cross examination by accused person on the 25th of November, 2024. This is what happened; Q. Did you arrest me in the room or outside the room? A. You were arrested outside Q. You said you were not asleep so why didn't you arrest me inside the room but rather outside and what strength do I have to run away from the room. A. We were at the last part of the room so before my colleague could shout out for your arrest, you run away Q. That is not true. Can you show me the gap between where you were and where I was arrested? A. It is about 130 meters Q. That is not true. There is a wide gap between their corridor and where I was arrested A. That is not true. We do not have a corridor when we were entering our room Q. I hope you know all your colleagues and you can identify all of them so why is it that you were unable to arrest me when you saw me but you waited until the rain stopped and you came to me to suspect that I am a thief and you took my phone. A. I never saw you anywhere until my friend shouted three times, “Hey 3x and I jumped out of my bed and I asked what was the issue and he said someone rushed out of our room. We saw you running at a distance and we chased you and we caught you in the garden. You were not wearing a shirt neither were you wearing sandals but you only folded your shirt and your sandals and placed it under your armpit. So when we chased and caught you we saw a phone with you and when we put on the phone we realized the phone belonged to PW2 and handed you over to the MPs. From the testimony adduced by prosecution witnesses above it is clear that the accused person failed to discredit

prosecution's case. Upon being chased by PW1 and PW3, it is clear that it was only the accused person who was found hiding in a garden at that time of the night and the phone of the 2nd prosecution witness which was being charged in the room was found on the accused person. Prosecution has clearly proved beyond all reasonable doubt that the accused person dishonestly appropriated the phone of the 2nd prosecution witness which was clearly not his and which he took without PW2's consent. I have carefully read the record of proceedings and it is clear that the accused person failed to raise reasonable doubt to his guilt on the charge of stealing. Accused person also stated that the alleged stolen phone fell out of the pocket of one of soldiers who arrested him. This is what he said in Exhibit C; "...I started running while they were chasing me. I then hid myself in a garden nearby and saw them pass. After few minutes one of them came back and saw me under a roofing sheet immediately I came out I saw his phone fall from his pocket so I alerted him to pick up his phone which he did and together with the others, they held me and sent me to Recci guardroom. This testimony was discredited by prosecution as the alleged phone which was stolen belonged to PW2 who was not present when the accused person was arrested. Thus, if indeed the phone which fell out of the pocket of PW1, that phone would belong to PW1 and not PW2. This is what happened on the 12th of February, 2025; Q. It was after your arrest that they went to call PW2 to come and identify his phone. A. That is not true Q. I put it to you that there is no way that the phone will drop from PW1's pocket because it is not his phone A. That is not true. They were many when they were beating me and I saw the phone later after I was arrested From the testimony adduced by prosecution witnesses above it is clear that prosecution was able to meet the burden on them to prove beyond all reasonable doubt that the accused person stole PW2's phone. It is obvious that, prosecution has successfully established its case against Accused person, with the latter's explanation failing to cast any reasonable doubt as to his guilt on both counts. Consequently, I pronounce Accused person guilty as charged. He is accordingly convicted of all the two charges preferred against him. Before sentencing accused however, this court takes these factors into consideration; his plea of mitigation, the time he has spent in police custody and the fact that this is his first brush with the law. Accused person in the light of the above is sentenced to serve a prison term of One Month I. H. L on Count one and Four Months I. H. L on Count Two. Both counts are to run consecutively. The accused person may appeal within a month. SGD H/W ADWOA BENASO ASUMADU-SAKYI MAGISTRATE

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