IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA

ON THE 3RD DAY OFJANUARY, 2017.

BEFORE HIS LORDSHIP:JUSTICE MARYANN E. ANENIH.

CASE NO: FCT/HC/CR/96/11.

BETWEEN

COMMISSIONER OF POLICE.....COMPLAINANT

AND

1. **CALIPH SHERIFF**
2. **JERRY ACHICHI**
3. **SYLVESTER DAVID (BARON).....DEFENDANTS**

JUDGEMENT.

The three defendants, Caliph Sheriff, Jerry Achichi and Sylvester David (Baron) were arraigned before this court on a 5 count charge of offences under the Robbery and Firearms (Special Provision) Act Cap R 11 Laws of the Federation of Nigeria 2004, and the Penal Code Law (Cap. 89 Laws of the Northern Nigeria).

The charge was filed on the 15th of June, 2011 against the Defendants.

Application for Leave to prefer a criminal charge against the defendants was granted by the court on the 8th July, 2011, wherein the charge was deemed properly filed.

The Defendants are charged as follows:

Count One

That you Caliph Sheriff (m) 24 years, Jerry Achichi (m) 20 years, Sylvester David (Baron) (m) 22 years and Tallest now at large, on or about 20/2/2011 at about 2030 Hrs in Oyo Street Area 2 Garki - Abuja within the Abuja Judicial Division did conspired among yourselves to commit a felony to wit; Armed

Robbery, and thereby committed an offence punishable under section 1(2) (a) and (b) of the Robbery and Firearms (Special Provisions) Act Cap R 11 Laws of the Federation of Nigeria 2004.

Count two

That you Caliph Sheriff (m) 24 years, Jerry Achichi (m) 20 years, Sylvester David (Baron) (m) 22 years and Tallest now at large, on or about 20/2/2011 at about 2030 Hrs in Oyo Street Area 2 Garki - Abuja, within the Abuja Judicial Division attacked one Madam Regina Josiah Dimlong (F) 37 yrs and robbed her of jewelries valued at Three Hundred and Thousand Naira (N380,000.00), cash of Twenty One Thousand Naira (N21,000.00), Eight handsets, a digital camera valued at Eighty Thousand Naira (N80,000.00), a laptop valued at One Hundred and Twenty Thousand Naira and a Honda Car, and thereby committed Armed Robbery punishable under section 2 of the Robbery and Firearms (Special Provisions) Act Cap R 11 Laws of the Federation of Nigeria 2004.

Court Three

That you Caliph Sheriff (m) 24 years, Jerry Achichi (m) 20 years, Sylvester David (Baron) (m) 22 years and Tallest now at large, on or about 20/2/2011 at about 2030 Hrs in Oyo Street Area 2 Garki - Abuja, within the Abuja Judicial Division having in possession of double barrel locally made pistol, single barrel locally made pistol, single barrel pistol (toy), three live cartridges, one live ammunition, and a knife for the purpose of committing robbery and thereby committed an offence contrary and punishable under section 2 (4) (a) (3) of the robbery and Firearms (Special Provisions) Act Cap R 11 Laws of the Federation of Nigeria 2004.

Count Four

That you Caliph Sheriff (m) 24 years, Jerry Achichi (m) 20 years, Sylvester David (Baron) (m) 22 years and Tallest now at large, on or about 20/2/2011 at about 2030 Hrs in Oyo Street Area 2 Garki - Abuja, within the Abuja Judicial Division were found to have illegal possession of double barrel locally made pistol, single barrel locally made pistol, single barrel pistol (toy), three live cartridges, one live ammunition and one knife and thereby committed an offence contrary and punishable under section 3 of the robbery and Firearms (Special Provisions) Act Cap R 11 Laws of the Federation of Nigeria 2004.

Count Five

That you Caliph Sheriff (m) 24 years, Jerry Achichi (m) 20 years, Sylvester David (Baron) (m) 22 years and Tallest now at large, on or about 20/2/2011 at about 2030 Hrs in Oyo Street Area 2 Garki - Abuja, within the Abuja Judicial Division were arrested for belonging to a gang of persons associated for the purpose of habitually committing robbery and thereby committed an offence punishable under section 306 of the Penal Code Law (Cap. 89 Laws of Norther Nigeria).

The defendants were arraigned before this court on the five count charge which was read and explained to the three Defendants in English Language, the language of their election and they all pleaded not guilty to the five count charge on the 28th of October, 2011.

The prosecution in proof of it's case called four witnesses.

On the 8th day of February, 2011 Peter Yakubu Cotter gave evidence as PW1, same is summarised hereunder as follows:

> He knows the three accused persons. On 20th February, 2011 at about 3:00pm he came to the house of Regina at Area 2. He was at the house taking with 7 other persons up till 8:00 clock, He was at the dinning when some body knocked at the door and Regina asked her younger one to get the door, when she asked who was at the door, the person said 'it's your neighbour' Then three men just came in with guns each of them were holding the guns. And she said in Hausa 'stop this kind of joke' while using her hand to push the gun. So the other one said 'we are robbers all of you lie down.' They all lay down quickly. It was dark as there was no light. And then, they started beating those in the sitting room.
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> That Regina told them not to beat anybody that she is the owner of the house. Then they asked them to bring their handsets and they collected them. One of them came to meet him near the fridge, he pressed him down with one leg and collected his Nokia handset and his wallet from his pocket. One very tall man amongst them grabbed Regina and dragged her to the room. Then another one grabbed him and a small child and took a chair and sat down next to them while another one sat with the others in the sitting room.
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> The tallest one pushed them into the toilet. He instructed them to enter and locked them inside. They were about seven of them.

And they took the key of Honda Baby Boy belonging to Regina before they left.

They packed valuable items including handsets, jewelries and other things. He heard a sound like that of his car because his car is a Honda too. So one of them in the toilet peeped and said they were trying to remove the the Honda Baby boy Car.

Another man and himself opened the burglary proof by expanding it, then he came out and shouted "Armed Robbers, Armed Robbers". He saw the security man and queried him as to why he left the gate opened and he said they too were locked in the duty post.When he got to the entrance of the house he saw the key there and opened the door and proceeded to the door of the toilet and the others came out.

Then they went out and started shouting and they were advised to go and report at the police station, which they did.

He identified one of them in the court, that is the 1st accused person as one of the Armed Robbers that attacked them.

They were invited at SARS/Police station to write their statement which they did.

After about 8 days they called his aunty to say that they got the car in Kaduna. She called him that he should go to the police station and inform them that the car had been recovered and was at the police station in Kaduna.

He went to SARS and identified the car the day they brought it and he also identified the 1st accused person. But 1st accused person denied it to the police. They also recovered three guns found in the car. There was none of the other items stolen items in the car.

The tallest one escaped amongst the robbers and they haven't found him. He is really afraid of his safety because he saw him face to face and can identify him.

Under cross examination by the 1st Defendant's Counsel, PW1 testified that:

It's correct that he hasn't seen the tallest one till date. The tallest one went to the room with Regina. If that tallest one is added to the accused persons it will make it four persons. And before the incident he had never seen the 1st defendant.

On the day of the incident he was able to notice that 1st defendant was wearing a dark coloured shirt with stripes. It was dark that day so he didn't know the colour of the shirt.

He was able to see the type of gun because it was pointed at him. It was a short gun.

The first accused person was in SARS office when he was called to identify him. He cannot tell how many people were in that office when he identified him. There were several people there including his Aunty. The other accused persons were not present at that time. The 1st accused went with the tallest one and Madam into the room. When he took her there, he was lying in the parlour. They were gisting in the house when the robbers came.

When the Robbers came in, Regina was sitting on the floor in the sitting room. The appliances were not functioning since there was no light.

All of them including Regina were locked up in the toilet. It was that tallest one that locked them up. He was in the house since 3:00pm so he didn't know how many people were at the gate.

With him in the parlour during the incident, were Regina, her male visitor (now Local Govt Sec), Regina's younger sister, Angelina, her son Reggie, the small boy. her in-law Aunty Marie and her friend Jumai.

It was 8 days after his statement that he identified the car. It was much later when 2nd accused was caught that he confessed the guns were in the car. It was at the police station the guns were shown to him and he identified them. It was the alleged three guns that were shown to him by the police, when he went to their office.

Under cross examination by 2nd defendant's Counsel, PW1 testified that:

His glasses are fashion glasses and not medicated as he has no eye defect.

It was Angelina who opened the door and she only pushed the first one away with the gun when they entered. He was at the dinning table not dinning room when this happened.

It's correct that the room was dark. He didn't see the 2nd accused person. He doesn't know if he is among the robbers. He only identified the one he knows. He saw him at SARS when he was invited to identify

the Armed Robbers. And he was called to identify the guns after recovery.

Under cross examination by 3rd defendant's counsel. PW1 testified that:

He had seen the 3rd accused person in SARS before now. He didn't see the 3rd accused person on the day when he was first called to SARS, it was some days later that he saw him there.

He saw the 3rd accused person on the day of the robbery but he couldn't identify him. Three robbers came that day. But that the tallest one plus the three accused makes the number four.

Before that day he had never seen any of the accused persons. The 3rd accused was there that day among the three but he cannot identify him.He was not called to identify the 3rd accused person.

Upon re-examination by Complainant's counsel, PW1 testified that:

He wasn't there when the guns were recovered. The guns were brought and he identified it in presence of the 1st and 2nd accused persons.

On the 3rd of July, 2012 Mr. Kefas Yampin (PW2) gave evidence but did not tendered any exhibit.

Hereunder is the summary of his evidence.

His name is Kefas Yampin of Garki 2, Area 2, Oyo street No.9. He is a security man at the compound.

He is in court because of the robbery incident at the compound and he doesn't know the 3 accused persons.

On 20th of February, 2011, he was in the compound when he saw three people inside the compound. He stopped one of them. When he requested from one of them what he was looking for he said he was looking for Mr. Awilo. He told him he was a former tenant and has left the compound. Before he knew what was happening, the other two guys came and arrested him with guns. This was about 8:30pm. They were asking the other one why he was asking that question. They locked him up inside the security post. So he didn't know which flat they entered because he was at the security post. It was until he escaped through the window when he eventually came out he saw them going out with one of his madam's cars. He was shouting and nobody came.

Then Mrs Regina and others came out and started shouting. The car is called Honda baby boy.

He was in the security post that day with his brother whose name is Philip. It was after they left that day that people came. They were three people in the car when they were going. If he sees the people he cannot recognise them. When they came there was no light so they told him that if he looks at them they will blow his head off, so he didn't look at them.

After shouting 'thief, thief' he went to Garki police station to report where they were told to write statement at the police station, then he returned to the house.

After three (3) days he was taken to SARS office Garki, he spent 3 days at SARS office and was brought to Area 2. Then he was later told that they have found the car of his madam. She told him that they found the car in Kaduna state with one of the people who came that day. Then they later brought the car to the house in question where he works.

Under cross examination by Counsel to the 1st Defendant, PW2 testified that:

The premises is a block of flats of 6 flats 3 BQs. His madam's own is the 1st flat on the ground floor.

He saw the robbers with the shot gun but can't recognise their dress because it was dark and they asked him not to look at them. They were carrying 3 guns.

The Awilo they asked after used to reside at the Boys Quarter. He cannot tell if the robber that asked of Awilo is conversant with the compound.

Under cross examination by Counsel to the 3rd Accused person, PW2 testified that:

That he didn't know the 3rd accused person, nor which flat they entered.

It's after he came out that he started shouting that the people in his madam's flat and his madam came out and started shouting that he knew it's their flat that was robbed. And they took her car, he saw them driving out and by other things collected from them that he knew it's his

madam's flat they entered. It's correct that because it was dark he couldn't recognise the cloth the 1st accused was wearing.

They normally lock the gates at 10:30pm. In fact all the gates are locked at 10:30pm. He can't tell actually which gate they came in through. He just saw 3 people in the compound. They were 7 people with his madam that day.

Apart from his madam, Peter can drive. That day there was no NEPA light.

On the 2nd of August, 2012 (Mrs. Regina Josiah) (PW3) gave evidence.

Below is the summary of the said evidence of PW3, the nominal Complainant.

Her name is Mrs. Regina Josiah Dimlong of No.9, Flat , Oyo street Area 2, Oyo Street.

She is a public servant with the Nigeria Deposit Insurance Corporation. She knows the accused persons. They were 3 suspects arrested in respect of her car stolen on the 20th of February, 2011.

On the 20th of February, 2011 at about 8:30pm PHCN took light and not up to 5 minutes, they heard a knock at the door and she asked her sister to see who was at the door. When she asked who is there, the person answered-"it's your neighbour" she then unlocked the door and the first person pushed her down and they said every body lie down. Before she laid down she saw three men with guns and a torch light.

After they lay down they started beating them at random and one of them was saying where is the money?. When the beating was getting too much, she told them to stop, that she was ready to give them whatever they wanted that they should stop beating them. So one of them held her by the neck, slapped her and took her to the bedroom and the 2nd person followed thereafter and started opening her standing mirror drawer and the first thing he picked was her digital camera.

He packed all her jewelries (Gold) worth N380,000.00. He packed her hand bag, emptied it and took her N21,000.00. Then both of them took her to her younger sister's room, where she stays. In that room they picked her HP Laptop, they also took all her jewellery with N12,000.00 cash.

They took her back to the sitting room and collected all their handsets, about 8 different handsets. After that they demanded for the keys to her two cars. She told them that the smaller car was at the car park but that somebody travelled with the other car. He slapped her, kicked her when she told her somebody travelled with the other car, that why did she allow somebody to travelled with the other car. He asked for the other key and she told him it was on the dinning table. One of them picked the key on the dinning table. Then three of them pushed them to the bedroom and locked the seven of them in the bedroom toilet. Then she heard the car in the car park start and they zoomed off with it.

After they suspected the robbers had gone, they shouted and nobody was hearing them. So they had to bend the toilet window burglary proof.

So her cousin who had a small stature pushed out through the window, went outside and raised alarm. He came in through the main door and unlocked the toilet door for them to get their freedom.

She stated further that she bought the HP Laptop N120,000, the digital camera is N80,000.00. The vehicle they took away is Honda Accord 'baby boy' 2000 model with Reg. No. CK 891 RSH Abuja.

After they left with the vehicle she reported the matter to a nearby police station. She bought the car N1,050,000.00. The seven of them including her 7 year old boy went to the police station. They met a police officer Samuel Ishaya on duty that night. She asked that only 3 of them should write their statements. They wrote their statements and they were asked to go and return the next day.

On 21st before they went to the police station she borrowed her neighbour's handset to call her relatives to inform them of what happened to them.

Some of them tried to call her line and somebody responded but when they demanded to speak with the owner of the phone, the person switched off. Her sister Esther from Kaduna called, her brother in-law from Jos, her younger brother from Yola called the same line, it was all the same story.

She asked her younger brother who works with Glo Yola to help her track any number they use her line to call. He pleaded with his Manager, they did the tracking and tracked one line that the suspect

used her line to call almost immediately after the robbery and the duration of the discussion was over 8 minutes. On 21st the following day, they still used the same line to call her line around 8:00am.

With this information she went back to the police station and explained everything to the police officer. He assured her there was no problem that, they would continue with their investigation. Meanwhile on 22nd of February when she welcomed back that same line. She discovered they have used her credit of N1,410.00 with a balance of N13.00.

She made statement to the police in respect of this incident.

Prior to the incident she knew none of the accused. She didn't see any of the accused because it was dark.

Two days after lodgement of the case at the police station. She lodged a complaint of same at the state C.I.D with the help of one SS Officer Mr. Francis to whom she verbally explained what happened and he asked her to put in in writing. She was referred back to SARS where they will continue with the investigation.

That on 1st of March, 2011 at about 2:00pm she received a phone call that they recovered a car and saw her name and address from the particulars, that she should be told to come to the police station. She traced it and met the DPO there with 3 police Surveillance officers. One of whom told her the car was recovered on the 28th February, 2011. They searched the car and found no weapon or car particulars. According to him they took the 1st accused to where he has been lodging and searched the room and discovered her original plate numbers under the mattress and with copies of the vehicle's particulars where they found her name and address.She then explained to them how the car was stolen and that the case was at that time with SARS and the DPO himself contacted Ali Kuaran, one of the SARS Police Officers.

Ali Kuaran with two other officers from SARS Abuja travelled to Kaduna on 3rd of March, 2011. And on 3rd of March, 2011 they transferred the 1st accused with the car to SARS office Abuja. They told her they would continue with the investigation. A few days later, they arrested 2nd accused and the 3rd accused and called her to come over to the police station.

When she went to the police station Ali Kuaran told her they tortured all of them and they confessed that they hid their guns in the said car. He showed her three guns they recovered from the stolen car. One was a black toy, and the remaining two were pistols and one of them was fully loaded and the other empty. He took her to the car and showed her where they recovered the arms under the steering of the car. She was asked to buy a memory card so he could use it to snap the exhibits, the suspect and ammunitions which she did and then left.

Then on the 16th of March, 2012 she applied for the the release of her car. The DCO gave approval and she collected her car on the 17th of March, 2012.

The police told her they would continue with their investigation because the gang leader whom they mentioned as 'tallest' was still at large.

Under cross examination by 1st Accused, PW3 testified that:

Her flat is in a block of flats It's the 1st flat ground floor. When they picked the key they asked her which of the cars parked outside was hers and she told them. At the time of the incident three of the alleged robbers were in her premises. They have two gates leading into the premises. At the time of the incident there were two security guards at the gate.

The car was transferred to Abuja on 3rd of March, 2011. She didn't know the person the accused person called with her phone but the number is in her statement. The guns were pistols.

Under cross examination by 3rd Accused, PW3 testified that:

She was shown at the police station where they recovered the gun. It's correct she had said the officer in Kaduna told her they searched the vehicle but found no weapon.

The 2nd accused person opted not to cross examine PW3.

On the 25th of March, 2013 (Sergeant Mike Onyeke) (PW4) gave evidence and tendered Exhibits.

Below is the summary of the said evidence of PW4.

His name is Sergeant Mike Onyeke of State CID FCT Police Command Abuja.

He knows the accused persons. He also knows the Complainant. It was February 2011 that a lady wrote a petition to state C.I.D and the petition was referred to Woman sergeant Veronica Ogwu to investigate. In the petition the woman stated that she was attacked by three armed men at gun point, that her car and some valuable items were taken away.

Then on 2nd of march, 2011 him OC DSP Ahmed Yahaya (now retired) called on him that they should raise investigative activities to Kaduna state, that the lady who reported a stolen car called on him that DPO Sabo Taya kasha Kaduna state called her, that his men were on patrol and they arrested a vehicle with one occupant and upon searching of same they found the lady's phone number and called her. And the woman reported that the car was snatched from her at Gun Point.

They travelled to Kaduna and brought the 1st suspect and brought the vehicle down to Abuja, that is Sheriff.

When they came to Abuja he recorded his statement under words of caution and he wrote the statement by himself and he was detained in police cell. He took the statement to his Boss Ahmed Yahaya retired and left for another case.

From what 1st accused wrote in the statement and interview he had with his boss he mentioned the 2nd accused person Jerry. Then in his absence his OC sent Sergeant Ochani Austin and Corporal Paul Iyogun to go and look for Jerry. When they went there Jerry, 2nd accused wasn't around and his brother was invited. It was through the help of his brother that he was arrested.

They recorded the statement of the 2nd accused and his statement led to the arrest of 3rd accused person alias Baron.

When he returned his boss handed over the statement and 3 locally made pistols and the ammunitions to him that were recovered from them. He took them to the Exhibit room and registered them.

It's true he said the accused persons volunteered their statements.

When prosecution applied to tender the 2nd and 3rd accused person's statement, the 3rd accused person's counsel objected to the admissibility of their said statements on the ground that it wasn't voluntarily made and urged

the court to conduct Trial Within Trial to determine its voluntariness or otherwise.

The case was on Trial Within Trial from 25th March, 2013 to 28th of October, 2014 when Ruling on Trial Within Trial was delivered and the written statements admitted in evidence.

The prosecution tendered four Exhibits which were admitted in evidence and marked as:

1. Exhibit A- Statement of PW3 dated 24th February, 2011
2. Exhibit B- Statement of 1st defendant dated 3rd March, 2011
3. Exhibit C- Statement of 1st defendant dated 4th March 2011.
4. Exhibit D - Statement of 2nd defendant dated 10th March, 2011
5. Exhibit E- Statement of 3rd defendant dated 21st March, 2011.

And after several adjournments and Trial Within Trial, the prosecution on it's own volition, applied to close their case without presenting the PW4 before the court for cross examination by the defendants.

At the close of prosecution's case, the 1st Defendant opened his defence and gave evidence on oath on the 8th of July, 2015 as DW1.

The summary of the evidence of DW1 is as follows:

That his name is Ohiani Sheriff Caliph. Before this case, he was living at Jikwoyi opposite Crypsy Guest House Jikwoyi Karu, FCT Abuja. He works with Loktin Health and Fitness Concept in CBN Head Office. He is a Computer Operator and Fitness Instructor.

Prior to this case he didn't know the 2nd and 3rd accused persons.As for Peter Y.K Cotter, Kefas Yampe and Regina Josiah Dimplong, he didn't know them before this case until they came to give evidence as PW1, PW2 and PW3.

He knew the PW4 when he came with the team who came to pick him up in Kaduna.

In January 2011 he met his old time friend, Mr Jerry, (albeit not the same Jerry in this case). And he told him that people now display cars

in his car wash to sell. He gave him his complimentary card and he called him from there.

On 13th of February, 2011 he called him to accompany him to Kaduna for sale of car. He accompanied him to kaduna on that day to meet with the buyer of the Ash coloured Honda Accord car. The transaction lasted for a week as they were waiting for the buyer.

The transaction was done on the 21st of February, 2011 They returned to Abuja from Kaduna. He went home and he called him that evening, that the next day he had another car for sale from a customer who called him. He accompanied him to Maraba to pick the car and they brought it down to his place of work just beside, Federal Ministry of Finance. The car was a Honda Accord car (popularly called Honda Baby Boy) and it was parked in the office till the next day. The office is a car wash and Jerry said he also sell cars there.

The next day he told him the buyer is also interested in buying the same car. They drove to Kaduna for the sale. They were in kaduna for two days waiting for the buyer (23rd of February, 2011 to 25th of February 2011).

He suggested he knew a buyer in his place Okene in Kogi state. On the 25th of February, 2011, from kaduna, they drove to Okene, Kogi State. On getting to Okene they met a car dealer who requested for the papers of the car.

Mr. Jerry (his friend) showed him the papers which he guessed is from the former owner, one Regina with an attached receipt. That is the same car alleged to belong to the PW3. The dealer at Okene complained of lack of money and urged them to wait for sometime. But Mr. Jerry wasn't patient enough so the dealer from kaduna called. So on the 26th of February 2011 they left kogi to kaduna. Mr Jerry told him he had another call in Abuja. So Jerry left him with the car in the Hotel they lodged in Kaduna and he returned to Abuja. He was in Kaduna waiting when he was arrested in a barbing saloon by the Police.

Under cross examination the 1st defendant, DW1 testified that:

Before the incident that brought him to court he was working at CBN as a Computer Operator to Loktin Health and Fitness Company.

That he recalls, that sometime in February 2011 he was arrested at Kaduna with one Honda Accord car. He wasn't the only person arrested at the time. It was a raid that involved a lot of people.

After a preliminary enquiry at the police station in kaduna, other persons arrested with him were released.

He was the one that told them that the car belong to one Ms Regina in Abuja because it was in the document of the car.

When he was brought from kaduna to SARS in Abuja, it's not correct that he told the police there of the whereabout of his friends.

While the investigation was on, Ms Regina told the police in his presence that the same car was robbed from her at gun point.

It was not made known to him that Jerry, Sylvester David alias Baron and he participated in the robbery.

It's not true that he showed the police where the gun used for the robbery was kept.

It's not true that he robbed other items such as jewellery, phones etc along with the car, with his friends. He is not an Armed Robbery but a Professional.

Yellow, Westside and Tallest mentioned in his statement are not other members of his gang, he disagreed with that. He didn't plan the robbery of 20th February, 2011 at Area 8 Garki Abuja with the other accused person and tallest.

It's not true that the other accused persons and him belonged to a gang of robbers troubling people around Garki, Nyanya and Karu areas of Abuja. It's not correct too that he was the person who put fear in Ms Regina and others on said 20th February, 2011and drove away with the car and other belongings.

It's correct that his eventual arrest took place on the 27th of February, 2011, a sunday in Kaduna. It's not true that he had stayed in kaduna for 7 days before his arrest. The 2nd accused person's name is Jeremiah, he's his case mate and with him in prison so he knows him. He didn't know 2nd accused once used to carry out mechanical work on vehicles. He didn't know the 3rd accused person prior to his arrest but he knew him from SARS, his name is Sylvester.

It's not correct that the other accused persons and others not in court and him planned and carried out the robbery in the house of Ms Regina on the 20th of February, 2011.

Under cross examination by 2nd Accused Counsel, DW1 testified that:

The 2nd accused was not one of those arrested with him on that day. He also told this court that one Jerry wanted to help him facilitate his bail with N400,000.00 at SARS. That Jerry he mentioned is not the 2nd accused person. Since the said Jerry left on bail he hasn't been charged to any court. The 2nd accused person was brought to meet him in SARS, before then he has never met him.

Under cross examination by 3rd Accused Counsel, DW1 testified that:

The 3rd accused person was not arrested with him that day in kaduna.

On the 9th of March, 2011 he was brought out of the Cell at SARS to meet the 3rd accused. That is where he knew him.

The 2nd accused person gave evidence on oath on the 10th of March, 2016 as DW2.

Hereunder is the summary of the evidence in chief of DW2.

His name is Jeremiah Achichi, he met the two accused persons at the Police station. Prior to his meeting them at the police station he had never met them before.

On friday, 10th March, 2011, he left his Cousin in the shop. A customer called him to come and collect hand set from Wuse to come and fix. He went to collect the handset in order to fix it. When he came back he saw there was a crowd in front of his shop. His neighbours told him there was a fight around the premises of the shop. He asked people around and he was told that policemen came around for raiding and picked up his cousin in the process. He picked his phone and called him . He told him he's at the station but doesn't know which of the station.

He asked him to give the police men the phone so he can describe the station to him. He was putting his things in the shop, when he turned around and saw there were some police officer's around him. That's how he was brought to the police station. He did not make any statement at the police station at all.

Under cross examination by prosecution, DW2 testified that:

He is Jeremiah Achichi. He wasn't born on the 15th of April 1999 at Bande Kia L.G.A of Benue. He didn't attend any formal school at all. The only vocation/work he has ever learnt in his life is how to repair handset.

He cannot recall his age. He was born in Ogboko, Benue State. He live at St. Thomas Catholic Church No.13 Gboko South. He has never been a distributor of handsets. He doesn't know when handsets came into Nigeria. He doesn't learn the vocation of a mechanic in his youthful age. Nobody calls him Jerry Jerry.

He didn't have a Car wash at Nyanya before the incident which brought him to this court.

He has not been receiving stolen cars before the robbery that occurred in Oyo Street on 20th of February, 2011.

It's not true that the accused persons and one tallest are his friends with whom he planned the robbery on Mrs Regina Josiah with on the 20th of February, 2011.

He doesn't know the prosecution witnesses nor Sgt. Mike Onyeke, PW4. He did not not participate in the robbery incident that occurred at Oyo street on the 2nd of February, 2011.

Before this case, he had never been to Abuja metropolis.

It's not correct that that he robbed anybody. He didn't lock up anybody and her family in the toilet. It's not correct that himself and others have areas of robbery operation within the FCT and Nyanya. No pistol belonging to him nor others was recovered from his possession during the investigation of this case.

The first and third accused persons are not his friends, he only met them at the police station. It's not correct that the 1st accused person disclosed his whereabout to the police because he was involved in the robbery.

It's not correct that after robbing the PW3 and her family, he took the Honda Accord car robbed to Kaduna. He has never been to Kaduna.

He doesn't know anything about taking the car to Lokoja. It's not true that he used the phone of the PW3 to threaten her and her relatives which led to his arrest.

It's not true that he narrated a falsehood before this court to escape justice.

Under cross examination by 1st accused's Counsel, DW2 testified as follows:

He only knew the 1st accused at the police station. He never said anything to the contrary in his statement. He has also never sold any car before.

It's not correct that he conspired with the 1st accused person to rob PW3.

Under cross examination by 3rd accused person's Counsel, DW2 testified as follows:

It's only at the police station he met the 3rd accused person.

On the same 10th of March, 2016 DW3 3rd defendant gave evidence on oath.

Below is the summary of the evidence of the said DW3.

His name is Sylvester David. He has never met the 1st and 2nd accused persons. It was at SARS Division of police station that he met them. He doesn't know anything about this case and anything about 20th February, 2011. He is a student of Nasarawa State University and came back from school on 9th of March, 2011. He went to a table tennis court to exercise himself as usual, when he was arrested with four others. The next thing was that he found himself in the police station at SARS Abattoir.

They asked him what he does for a living and he said he is a student of Nasarawa State University, then he was asked to identify himself as a student. He explained that his wallet containing his I.D Card fell down while they were dragging him to the car. They said he was lying. He gave them his family phone number to confirm that he is a student, they refused and started hitting him. When he noticed that if he affirmed any question they asked him the beating stopped, so he accepted any thing they put to him just for the beating to stop. So they made him to confess to things he never knew in his life. They tied his hands with black

rubber and left him for sometime. He was in pains as he had sustained several injuries. An IPO helped him to write his statement because their beating caused his hands to dislocate otherwise he can read and write.

Before they took him to the cell he had sustained injury in his forehead, teeth, hands and legs. He was in SARS custody for three months. They were five in number but four people left on bail and he was then alone in SARS because his family was not capable of meeting the bail condition.

It was on 28th of July, 2011 that he knew he was in the same case with 1st and 2nd defendants because they told him so. They shared them into different cells and on the 28th of October, 2011 they appeared before this court. That was when he knew he was a co-defendant with 1st and 2nd defendants in the same charge. Before then he had never met the 1st and 2nd defendants. He didn't write any statement, he was forced in pains to sign the statement written for him by the I.P.O.

Under cross examination by Prosecution, DW3 testified that:

He has never met Mr Kefas, PW1. He knows Sgt Mike Onyeke, who took his statement, he was his IPO. He doesn't know Regina Josiah, PW3. He's literate and goes to school. He wasn't introduced to armed robbery in 2009, that was when he got his admission. It's not correct that Regan (AKA Risky) introduced him to armed robbery. He has never met Regan. Shegun and Chimezie were never friends whom he robbed with contrary to his said confessional statement.

He has never met any man called yellow who is a Supplier of arms. He never met any of the accused persons before. He didn't carry out robbery operation with anyone on the 20th of February 2011. He was in school on that day and doesn't know anywhere called Oyo street in Garki. He has never been there in his life.

He doesn't plan robbery operations at table tennis court and doesn't know anything about the Honda Accord car. He usually exercise himself at the tennis court in the morning when he's less busy after 10:00am before he takes his bath.

He didn't participate in the robbery with the 1st and 2nd accused persons. He never knew them before. On the 20th of February, 2011 he did not hold any gun and has never held gun in his life. His arrest is not

because of the robbery of 20th February, 2011 because on that day he was in school.

He has not narrated any falsehood. He knows nothing about this case. On 21st of March, 2011 he signed the statement he was forced to sign it, he didn't write it.

Under cross examination by 1st accused, DW3 testified that:

The 1st accused person was not among the four people arrested with him at the table tennis court.

He never knew the first accused person prior to his arrest contrary to Exhibit F. He met the 1st accused person in SARS Cell when they brought them out to go to court. That was 28th July, 2011 when they took them from prison to court.

Under cross examination by 2nd accused, DW3 testified that:

He had never met the 2nd accused person in his life. He was taken to Magistrate court at Wuse alone but the court didn't sit.

He first met the 2nd accused person on 28th July, 2011, when he was taken to prison from SARS.

He has never met Yellow or Jerry until they were taken to prison when he met Jerry.

At close of evidence, Counsel to the 1st, 2nd and 3rd defendants and prosecution filed, served and adopted their final written addresses before the court on the 28th of October, 2016.

Summary of Counsels' submissions are set out hereunder:

The 1st accused person in his written address filed on the 11th of April 2016 raised one sole issue for determination:

1. Whether the prosecution has proved the five count charges/offences against the 1st accused person beyond reasonable doubt to secure the conviction of the 1st accused person by the Honourable court.

On the above issue and count 1, Counsel to the 1st accused person submitted that prosecution must prove the elements of the offence strictly as contained in the charge, since the purpose of the charge is to give good notice to the defence of the case it is up against. He submitted that for the

prosecution to prove the alleged offence of conspiracy to commit Armed Robbery contrary to section 1(2) (a) and (b) of the Robbery and Firearms (Special Provisions) Act Cap R11, Laws of the Federation of Nigeria 2004, the prosecution must prove that the 1st accused person committed the alleged act of Armed Robbery in and/or furtherance with a common intention and agreement with other accused persons.

He referred the court to FEDERAL REPUBLIC OF NIGERIA V. MOHAMMED USMAN alias Yaro Yaro & Ano 2012 3 SCNJ (Pt1) 223 at 237.

SEGUN ODUNEYE V. THE STATE (2001) 1 SCNJ 7 at 20.

On count 2, counsel submitted that for the prosecution to prove the alleged offence of Armed Robbery contrary to section 2 of the Robbery and Firearms (Special Provisions) Act Cap R11 Laws of the Federation of Nigeria 2004, against the 1st accused person, he must prove the ingredients of the offence beyond reasonable doubt.

He submitted that the fact that the 1st accused person was arrested with the car, which he alleged was given to him by one Jerry to help him drive to Kaduna for sale and who the police arrested and released on bail without investigation and trial, is not enough for the court to convict him for armed robbery. And that the court cannot, convict the 1st accused person merely because the car stolen in the alleged robbery was found in his possession. He referred the court to the case of VINCENT OKHUEGBE V. THE STATE (1971) 1 U.I.L.R (THE UNIVERSITY OF IFE (NIGERIA) LAW REPORT) 55 AT PG.56 RATIO 3.

THE STATE V. JOHN OGBUDUNJO & 1 OR (2001) 1 SCNJ 86 AT PG. 102

On count three (3), he submitted that the prosecution has failed to establish that the 1st accused person was having life cartridge in his possession, the alleged guns, three ammunitions and a knife for the purpose of committing the alleged robbery on the 20th of February, 2011.

On count four (4), he adopted his submission on the 3rd count because the offences and ingredients are similar. He further submitted that the prosecution has failed to prove its case beyond reasonable doubt in respect of count 4 against the 1st accused person.

On count five (5), he submitted that for the prosecution to secure a conviction against the 1st accused person for this offence, he must establish the ingredients of the offence. He submitted further that by the particulars of this

charge, the prosecution has failed to prove this offence beyond reasonable doubt abi initio. And that prosecution's evidence must establish the particulars of the charge and not otherwise before the prosecution can secure a conviction. He referred the court to FABIAN NWATURUOCHA V. THE STATE (2011) 3 SCNJ 148 pg. 161.

In conclusion, Counsel submitted that based on the contradictions, loopholes and insufficient evidence from the prosecution to establish the particulars and elements of the offences as contained in the five (5) count charge, the court should discharge and acquit the 1st accused person.

The written addresses of Counsel on behalf of both 2nd and 3rd defendants are similar in all material respect to that of the 1st defendant. And they can be gleaned from the records before this court as canvassed. Recounting the addresses of both 2nd and 3rd defendants also at this juncture is therefore unnecessary. Particular aspects of the addresses will be referred to where necessary as at when the need arises in this judgement.

The prosecution in his written address filed on the 31st May, 2016 and adopted on the 28th October, 2016 formulated one issue for determination:

Whether from the evidence adduced before this Honourable court through PW1- PW4 and the exhibits tendered and admitted, the prosecution has proved beyond reasonable the offences of criminal conspiracy, armed robbery, unlawful possession of firearm and belonging to a gang of persons associated for the purpose of habitually committing armed robbery.

Prosecution's counsel submitted that to establish the offence of criminal conspiracy against the three accused persons, the prosecution must prove that the following:

a. An agreement between two or more persons to do or cause to be done some illegal acts or some act which is not illegal but by illegal means

b. where the agreement is other than an agreement to commit an offence, that some acts besides the agreement was done by one or more of the parties in furtherance of the agreement

c. specifically that each of the accused person individually participated in the conspiracy.

He referred the court to STATE V SALAWU (2011) 8 NWLR PT.1279 PG 580 at 589 ratio 1.

He submitted further that the offence of conspiracy is usually proved either by leading direct evidence in proof of the common criminal design or it can be proved by inference derived from the commission of the substantive offence. And that the prosecution must not prove that the accused persons were seen discussing together, it is purely a matter of inference from the conduct and the acts of the accused persons. He cited the case of SULE V. STATE (2008) 4 NCC PG.456 at 468 ration 12.

It is the submission of prosecution counsel that for the offence of armed robbery, the prosecution is to prove that there was robbery or series of robbery, that each of the robber was armed robbery and that the accused was one of those who robbed. And that in proof of the first ingredient which is whether there was robbery, the evidence of PW1, PW2, PW3 and PW4 are very clear as to the robbery attack on PW3 and that this has been proved by their evidence before the court. He went further to submit that the prosecution has discharged the burden on him.

He further submitted that taking into account the evidence before the court through PW1-PW4, the confessional statements made by the accused persons which were consistent, positive and actually met the six requirements of a valid confession as enunciated in the case of OSETOLA V. STATE (2012) 50 NSDQR Pg. 598 at 605 ratio 7, is relevant in this regards.

It is his submission that the oral evidence of the three accused persons during their trial and defence was nothing but an afterthought which were fabricated during their stay in prison and cannot be relied upon.

He submitted that the fact is that PW1-PW3 were able to identify the accused persons, and the confessional statements of the three accused persons were admitted and are before the court. And that it is only in circumstances where the identity of the accused persons are in issue or doubt that identification parade is necessary. And that there is no doubt that the snatched Honda Car was recovered from possession of the accused persons shortly after the robbery. He referred the court to the case of SUNDAY V. STATE (2011) 6 NCC 1 Pg.56 at 79-80.

In conclusion, prosecution counsel submitted that in view of the material, convincing and over whelming evidence before the court, the prosecution has proved his case against the three accused persons beyond reasonable doubt and urged the court to convict them accordingly.

I have considered the case of the prosecution, the defence of defendants and the final written and oral addresses of all the parties. And I am of the view that the issue for determination here is:

> *Whether the prosecution has successfully discharged the burden placed on her by law to prove the charges against the three defendants herein, beyond reasonable doubt.*

All the offences for which the defendants have been charged requires that the court examines the evidence before the court critically and revert to the specific and relevant laws for proper guidance to determine the culpability or otherwise of the defendants.

The defendants in Count one are charged as aforementioned for conspiracy to commit armed robbery.

The law is trite that for the prosecution to succeed in proving the charge of conspiracy to commit armed robbery against the defendants certain facts must be proved beyond reasonable doubt. They are:

1. That there was an agreement or confederacy between the convict and others to commit the offence.

2. That in furtherance of the agreement or confederacy, the defendant took part in the commission of the robbery.

3. That the robbery was an armed robbery.

For support of this position See SUNDAY ADEYEMO V. THE STATE (2010) LPELR-3622(CA) Pg.30-31 Para G-B.

It is trite that the overt act or omission which evidencesconspiracy is the actus reus.And the actus reus ofeach and every conspirator must be referrableand very often is the only proof of the criminalagreement which is called conspiracy.

See
ODUNEYE V. STATE (2001) 2 NWLR (PT. 697) 311 or LPELR-2245(SC) pg. 36 Para C-E.

In criminal trials the guilt of a defendant can be established by either or all of several ways including by Confessional Statement of the defendant, Circumstantial evidence and evidence of an eye witness. See

IGABELE V. STATE (2006) 6 NWLR (PT. 975) Pg.100 or LPELR-1441(SC) pg 34 paras F-G

And in order to secure a conviction of a defendant in respect of an offence, the onus is always on the prosecution to establish the guilt of the accused person beyond reasonable doubt. And the prosecution would achieve this by ensuring that all the vital ingredients of the offence charged are proved by the evidence adduced. See

YONGO & ANOR V. COP(1992) NWLR (PT. 257) 36 or LPELR-3528(SC) pg 14 paras D-F

IGABELE V. STATE (Supra) pg 30-31 paras E-A

OKORO V. THE STATE(1988)

Thus in order to secure a conviction for the offence of conspiracy against the defendants, the prosecution must establish the existence of the above mentioned ingredients of the offence of conspiracy in the conduct of the defendants.

The prosecution under the circumstance has the burden to establish both the joint criminal act (actus reus) and the criminal intention (mens rea) of knowledge by each of the defendants. See

ONYENYE V. THE STATE(2012) LPELR-7866(SC)(P 36,Paras C-F) where the Supreme court postulated as follows:

> *Section 8 of theCriminal Code CAP 38 Laws of Oyo State 2000 defined Common intention. The test of the presenceof Common intention under Section 8 of theCriminal Code Law of Oyo State is whether the actcomplained of is a probable consequence of the prosecution of their joint intention to carry out anunlawful act and that it is irrelevant who actuallyheld the gun because once one of them was inpossession of a gun, his hand is deemed to be thehand of all of them."*

See also

YARO V. STATE(2007) 18 NWLR (Pt.1066) 215 or LPELR-3518(SC) (Pp. 14-15,paras. D-A).

THE STATE V. FATAI AZEEZ & 4ORS. (2008) All FWLR (Pt. 424) 1423 at Pp. 1461 - 1462, paras F - B. where his lordship Mohammed JSC held that:

"Where there is a joint criminal act, an accused has nothing to rebut until the prosecution has established criminal intention or knowledge on the part of each and every accused person. The measure of liability is the extent of intention or knowledge of each accused. If several persons join in an act, each having a different intention or knowledge, each is liable according to his own intention and knowledge and not further. The onus of leading direct and positive evidence to show that all the accused persons had common intention squarely rests on the shoulders of the prosecution that all the accused persons had common intention tocommit the offences they were charged for..."

I have considered the entire case of the prosecution which is to the effect that the PW1, PW2 & PW3 were attacked by armed robbers who beat them up and made away with their belongings at gun point. The incident was reported to the police and arrest later made. And that PW3 was later invited to the police station in respect of the Honda Car which had been recovered from the 1st defendant during his arrest.

The mention of four persons referred to in the charge as against an attack executed by three persons as was led in evidence cast doubt on the culpability for conspiracy by the three defendants presently before the court.

The entire evidence of all the prosecution witnesses is that they were attacked by three persons, while the charge is to the effect that four persons conspired and carried out the said attack. And the prosecution witnesses had testified that Tallest who is said to be at large was one of the three men who attacked them. The fact therefore that there are currently three defendants standing trial before the court excluding Tallest cast some doubt on the case of the prosecution that the current three defendants conspired to commit the armed robbery. This is more so when there's no other evidence before the court that even attempts to clarify this doubt as to why four persons are named in the charge and evidence led showed three persons attacked the prosecution witnesses.

Outside the evidence above there's no positive or unequivocal evidence of any form placing the three defendants together in concert to commit the armed robbery at Oyo Street nor showing any form of agreement between them to commit the offence of armed robbery.

It is elementary that the crux of the offence of conspiracy is the meeting of the mind of the conspirators. The offence of conspiracy is therefore complete by the agreement to do the act, albeit this is hardly capable of direct proof. In this instance there's neither a confessional statement, circumstantial evidence nor eye witness evidence from which conspiracy as charged may be inferred or established. See

IGABELE V. THE STATE (Supra)
YONGO V THE STATE (Supra)

Thus and pursuant to the foregoing I find without further ado that the prosecution has not successfully discharged the burden to prove beyond reasonable doubt that the three defendants and Tallest now at large conspired amongst themselves to commit armed robbery.

In the event therefore the charge for conspiracy to commit armed robbery would have to fail.

The second count is for the offence of armed robbery attack on Madam Regina Josiah Dimlong at Oyo street Area 2 Garki- Abuja.

The next issue here is whether a case of armed robbery as charged has been established against the defendants.

For the prosecution to succeed in this instance there must be proof beyond reasonable doubt of the essential elements of the offence of armed robbery against the defendants.

In the case of ADEKOYA V. THE STATE (2012) LPELR-7815 (SC) pg 30 paras A-F the court reiterated the essential ingredients of armed robbery as established in numerous decided cases of the Supreme Court as follows:

> *"1. That there was a robbery. 2. That it was an armed robbery. 3. That the accused was the robber or one of the robbers. All the above must be proved beyond reasonable doubt before a conviction is sustained. Proof beyond reasonable doubt entails the prosecution producing evidence to justify the charge. It is immaterial in whichever form stealing/theft of anything was executed by an accused person, once the act involved extortion by force or infusing fear of instant death or hurt, it would amount to robbery."*

Okosi V. AG Bendel State(1989) 1 NWLR (Pt. 100) pg. 642."

See also

OSENI V. THE STATE (2011) LPELR-8152(SC) pg 23 paras E-G

EKE V. THE STATE(2011) 3 NWLR 589 or LPELR -1133(SC) pg 15 Para E-F

NWATURUOCHA V. THE STATE (2011) LPELR-8119(SC) Pg. 13-14 paras G-B

The PW1 in his evidence testified that the 1st defendant was one of the armed men who attacked them. That he identified him also when he saw him at the police station.

The defence counsel in his written address submitted that none of the prosecution witnesses gave evidence of identification parade conducted by the prosecution or police to confirm the purported identification of the 1st accused person by the PW1 who claimed not to have seen the 1st accused person before the incident. And Counsel referred on this to several authorities and relied particularly on IHEONUNEKWE NDUKWE V. THE STATE (2009) 2 SCNJ 223 at pages 261-252.

He argued that the court ought not to ascribe any value to the evidence of PW1 who identified the 1st defendant as one of the armed men who attacked them because he never knew 1st defendant before that day and there was no identification parade said to have been conducted.

In my humble view, an identification parade is not a sine quanon to prove that it was the defendant that committed the crime. It only becomes necessary where the need for caution in guiding against incidence of mistaken identity arises. I find support for this view in several Supreme Court decisions and particularly rely on the cases cited by defence counsel Vis:

TAJUDEEN ALABI V. THE STATE (1993) 9 SCNJ (PART 1) @ page 162.

See also;

NWATURUOCHA V. THE STATE(2011) LPELR-8119(SC)(Pp.23-24, paras. G-B)where the Supreme courtper ADEKEYE, J.S.C reiterated that:

> *"An identification parade is not sine qua non to a conviction for a crime alleged, it is essential in the following instances -*
>
> *a. where the victim did not know the accused before and his first acquaintance with him was during the commission of the offence.*
>
> *b. where the victim or witness was confronted by the offender for a very short time.*
>
> c. where the victim due to time and circumstance might not have had full opportunity of observing the features of the accused."

See also: ADEBIYI V. STATE(2016) LPELR-40008(SC)(Pp. 15-16, Paras. E-E)

And in EMMANUEL OCHIBA V. THE STATE (2011) 12 SCNJ (PT.11) 527 at pg 249 the court resonated on the issues the court ought to meticulously consider in order to guide against mistaken identity as follows:

> *"In order to ascribe any values to the evidence of an eye-witness identification of a criminal, the court in guiding against cases of mistaken identity must meticulously consider the following issues:-*
>
> *(1) Circumstances in which the eye witness saw the suspect - was it in difficult conditions.*
>
> *(2) The length of time the witness saw the suspect or defendant a glance or longer observation.*
>
> *(3) The opportunity of close observation.*
>
> *(4) Previous contact between the two parties.*
>
> *(5) The lighting condition. "*

The PW1 had in his testimony identified the 1st defendant as one of the armed robbers, a fortiori he himself and PW2 & PW3 said there was no light and the place was dark at the time of the incident.
Particularly under cross examination the PW1 testified that:

> *"On the day of the incident I was able to notice he was wearing a dark colored shirt with stripes. It was a packet shirt. It was dark that day so I don't know the color."*

The same PW1 also stated under cross examination that he didn't know the 1st defendant before the robbery incident. It does appear doubtful from the evidence of the PW1 that he could have had sufficient length of time and opportunity of close observation to imbibe and have a mental picture of the construction of the 1st defendant's face and his entire appearance. These attributes are necessary for consideration in evidence of identification. More so in this instance when he says it was dark. I'm further fortified in this view by the decision of the court in the case of NDIDI V. STATE(2007) 13 NWLR (Pt. 1052) pg. 633, pp.651-652, paras. H-A; 653, G-H; 654, D-E.

Contrary to the submission of prosecution counsel, the PW1 did not say he saw 2nd defendant, as a matter of fact, under cross examination on the 8th

February 2012 he said he didn't see the 2nd defendant and doesn't know if he is amongst them.

It is in the light of the above excerpt of evidence that this court would take the evidence of identification by PW1 with a pinch of salt and exercise caution in attaching weight to same.

Since that evidence by the PW1 is the only evidence of identification of 1st defendant as one of the robbers this court would be reluctant in relying on it without corroboration to establish the identity of the 1st defendant as the armed robber.

The issue of identification in criminal trials is crucial and important. This is because the prosecution must prove beyond reasonable doubt that the person charged committed the offence.

This court would therefore under the circumstance not attach any probative value to the PW1's said evidence of identification of the 1st defendant. See

Cases already cited above(Supra)

It is pertinent to point out that outside the evidence of the PW1 purporting to identify the 1st defendant, there's no other piece of evidence including all the extra judicial statements before the court placing any of the defendants at the scene of the armed robbery incident at PW3's Oyo street residence on said date.

Be that as it may and with due respect to learned defence counsel I do not agree with their submissions that there was no robbery incident at the said Oyo street residence of PW1. All three prosecution witnesses narrated their ordeal and the incident at that address on the faithful day. The veracity of their testimony in this regard was not shaken under cross examination nor their credibility impugned. I also observed their demeanour in court and have no reason to disbelieve their testimony in that regard. The testimony of the IPO regardless, I am of the view that where the evidence of the other witnesses is direct, credible and unequivocal then the court ought to rely on it where it remains believable and unrebutted. I believe their evidence that there was a robbery on that day and that it was an armed robbery. It is trite law that even the cogent and credible evidence of a sole witness can ground a conviction. See

ALI V. THE STATE (2015) LPELR -24711 SC pg 63-64 paras E-B where the Supreme Court held that:

"It is trite that the court can convict on the evidence of a sole witness if that witness can be believed given all the surrounding circumstances. Truth, it has been held, is not discovered by a majority vote. One solitary credible witness can establish a case beyond reasonable doubt. See Abeke Onafowoon v. The State (1987) NWLR (Pt.61) 538. This court held in Akpabio v. The State (1994) 7 NWLR (Pt. 359) 635 that a single credible witness can establish a case beyond reasonable doubt unless where the law requires corroboration. In other words, the evidence of one credible witness, accepted and believed by the court, is sufficient to justify conviction unless, of course, such a witness is an accomplice in which case his testimony would require corroboration."

See also on this position:

OTEKI V. A G BENDEL STATE (1986) 2 NWLR (PT. 24) 648 or LPELR-2823 (SC) pg 39-40 Para C-B

ODUNEYE V. STATE (Supra)

Inspite of the foregoing there's still no credible evidence before the court that establishes that any of the defendants was seen as one of the armed robbers who attacked the prosecution witnesses at Oyo street. It still remains therefore for the prosecution to establish that ingredient of the offence of armed robbery. This the prosecution has failed to do. In order to establish this offence all the ingredients must be proved to exist. See

CHUKWUKA OGUDO V. THE STATE (2011) 12 SCNJ (PT. 1) pg 1 @ pg 22 or LPELR-860(SC)(P. 29, paras.C-E) where his lordship RHODES-VIVOUR, J.S.C. held that:

"To succeed in the offence of armed robbery the prosecution must establish that:
(a) There was a robbery;

(b) It was carried out with the use of offensive weapons; and

(c) The accused person participated in the robbery.

All of the above must be proved beyond reasonable doubt before a conviction can be sustained..."

Suffice to say therefor that the prosecution has not successfully proved the offence of armed robbery beyond reasonable doubt against any of the defendants. That count would also fail.

The third count is that of having possession of firearms for purpose of committing robbery at Oyo street Area 2 Garki Abuja on the 20/2/2011.
While the fourth count is that of illegal possession of firearms at Oyo street Area 2 Garki, Abuja.

These two counts would be taken together since they are similar and both relate to illegal possession of firearms.

In order to prove the offence of illegal possession of firearms The law requires the prosecution to establish the following ingredients:

1. That the accused was found in possession of firearms.

2. That the firearms were within the meaning of the act.

3. That the accused had no license to possess firearms.

See the case of

BELLO OKASHETU V. THE STATE (2016) LPELR-40611(SC) pg. 16 - 17 Para E-A.

See also
STATE V. OLADOTUN (2011) Vol. 199 LRCN pg 66 or LPELR- 3226 (SC) pg 20-21 Para E-A

EKANEM JOSEPH STEPHEN V. THE STATE (2008) LPELR-8360(CA) pg 20 -21 Para D-D

The most crucial condition for consideration here is whether the defendants were found in possession of the firearms and ammunition under reference in the charge.

The PW3 in her evidence testified that she was told by a policeman in Kaduna that no weapon or car particulars was found in the recovered car. But that when they were brought to Abuja, Ali Kuramo told her the defendants were tortured after which they confessed and showed the police where they hid their guns in the car. That the three guns were shown to her, one of which was a toy gun.

The PW4 who testified before this court as the investigating police officer only rendered the following testimony about the recovered guns:

> *" Then in my absence my OC sent Sergeant Ocheni Austin and Corporal Paul Iyogun to go and look for Jerry. When they went there*

Jerry, the 2nd accused wasn't around and his brother was invited. It was through the help of his brother that he was arrested.
They recorded the statement of the 2nd accused and his statement led to the arrest of 3rd accused person alias Baron.
When I returned my boss handed over the statement and 3 locally made pistols, the ammunition to me that were recovered from them. I took them to the Exhibit room and registered them.
That's all I have to say."

The above PW4 is the same witness that was never produced by the prosecution for cross examination. Even if his testimony was credible, it still is not direct evidence.
Suffice to say under the circumstance that there's no direct evidence nor credible circumstantial evidence linking the defendants with possession of the firearms and ammunition at Oyo street on the 20th February 2011 as charged.
The prosecution therefore has not successfully proved counts three and four of the charge beyond reasonable doubt against the defendants.

Having made the above findings in respect of the first four counts of the charge against the three defendants, I wish to observe further that the court is empowered to find and convict a defendant for a lesser crime where the evidence before the court proves same, even if he is not so charged for the said crime. See

EMMANUEL ZACHEOUS V. PEOPLE OF LAGOS STATE (2015)LPELR-24531(CA)(PP. 39-40,paras. F-B)where his lordship AUGIE, J.C.A held that:

"...There is also no issue or grouse regarding the substitution for a lesser offence, which the lower Court is allowed to do anyway - See Nwachukwu V. The State (1986) 2 NWLR (Pt.25) 765, where the Supreme Court held that a conviction can lie in respect of a lesser offence either on a trial of the offence charged or by an accused pleading guilty to such lesser offence. So, a Court has power to convict for a lesser offence, although not charged, if it is of the view that facts proved by the Prosecution do not establish the offence charged but constitute the lesser and related offence".

See also;

ADEYEMI V. THE STATE (1991) 6 NWLR (PT. 195) 1 @ 19-20 PARA F-B

MUFUTAU OWOLABI V. THE STATE (2014) LPELR-24039

SUNDAY OSHIM V. THE STATE (2014) LPELR-23142 (CA)

The above position on conviction for a lesser crime appears to be rooted in the principle apropos of Mens Rea and Actus Reus. Where a defendant is found to have committed acts that relate to two separate offences, the fact that the court does not read mens rea in a particular offence doesn't mean criminal liability cannot be found in another offence. See

ABEKE V. STATE (2007) 9 NWLR PT. 1040 (S.C) Page 411 or LPELR-31 SC Pg. 18 PARA C-Ewhere his lordship TOBI, J.S.C of Blessed memory held that:

> *"...the prosecution mustprove that the accused had mens rea and actus reus. Put in common simple parlance, mens reameans a guilty mind. And actus reus means aguilty act. In cases of strict liability, mens rea comesbefore actus reus. In other words, the accuseddevelops the guilty mind before guilty act. Put inanother language, the guilty mind instigates theguilty act or flows into the guilty act.*

See also;

CHARLES OKASI V. THE STATE (2016) LPELR- 40454 Pg. 24

It is a well settled position of the law that where a defendant is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged, he may be convicted of the offence which he is shown to have committed regardless of the fact that he was not charged with that particular offence. See
Sections 223, 229, 230 & 236 of the ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015.

And

ODEH V. F.R.N (2008) LPELR-2205(SC) or (2008) All FWLR (Pt. 424) 1590 at P. 1606, paras B - C.

EMMANUEL ZACHEOUS V. THE PEOPLE OF LAGOS STATE(2015) LPELR-24531(CA)(PP. 39-40,paras. F-B).

It is pertinent to point out that the 1st defendant was found in possession of the Honda Car which was stolen from the PW3 at the time of the armed robbery incident at her residence. The 1st defendant in his evidence before the court and his statements at the police station admitted to being in possession of the car at the time of his arrest. There's therefore no doubt that the undisputed evidence before the court is to the effect that the car was recovered from him by the police.

The defendants were arraigned before this court on charges premised on and punishable under the ROBBERY AND FIREARMS SPECIAL PROVISION ACT and THE PENAL CODE LAW respectively.

And both legislations have envisaged offences of receiving or being found in possession of stolen items and have prescribed punishment accordingly.

The ROBBERY AND FIREARMS SPECIAL PROVISION ACT 1984 CAP R11 LAWS OF FEDERATION OF NIGERIA 2004 at Section 5 provides as follows:

Section 5

> *" Any person who receives anything which has been obtained by means of any Act constituting an offense under this ACT shall be guilty of an offense under this Act and shall be liable upon conviction to be sentenced to imprisonment for life."*

While the PENAL CODE LAW at Section 317 provides as follows:

Section 317

> *"Whoever dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen property shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both."*

The 1st defendant having been found to be in possession of the car some days after the robbery incident, has stated in his evidence that he accompanied some other person named Jerry to receive the Car from one man at Mararaba. Having admitted receiving the car, the question that now arises is whether the defendant received the car and/or retained same dishonestly having reason to believe it was stolen. This is in tandem with the doctrine of recent possession reflected in Section 167(a)of the EVIDENCE ACT 2011 which is to the effect that the man who is in possession of stolen goods soon after the theft is either the thief or is a receiver of the stolen goods knowing them to have been stolen unless he gives proper account on how he came into possession of the goods. See

<u>BLESSING BOTU V. THE STATE(2014) LPELR-23225 (CA) pg 35-37 Para B-A</u>

> *"By the doctrine of recent possession if a person isfound in possession of property recently stolen, thepresumption is that he is either the thief or knewthe property to be stolen. See Aremu v the State(1991) 7 NWLR (Pt 201) 1, Yonao v. C.O.P.(1990) 5 NWLR (Pt. 148) 103 at 116*

- 117.The proximity of the time of possession to the theftseems to be an essential requirement of thepresumption whether the appellant is the thief, orreceived them with knowledge that they are stolengoods. See Madagwa v. the State (1988) 5NWLR (Pt 92) 50. In this case the appellant wasfound as an occupant of the stolen vehicle less thantwo hours after it was stolen at gun point fromP.W.2.The Supreme Court in the case of State v Nnolim(1994) 5 NWLR Pt 345 Pg 394 at Pg.410 whereAdio J.S.C also held:"An explanation by an accused of the way inwhich a stolen property came into possessionwhich might reasonably be true and which isconsistent with innocence, although the court may not be convinced of its truth, woulddisplace the presumption under Section148(a) of the Evidence Act. See Salami v. TheState (1983) 3 NWLR Pt 85 Pg. 670. In thisconnection, the Court may infer guilty knowledge where the accused gives noexplanation at all about how he came to be inpossession of the property recently stolen orwhere the explanation he has given is untrue..."

SUMAILA V. STATE(2012) LPELR-19724(CA)(P. 22, paras. B-F).
KOLAWOLE V. STATE(2015) LPELR-24400(SC)(Pp. 23-24, paras. D-B).

The question that then arises here is whether the 1st defendant has given reasonable and proper account of how the car came into his possession without any reason for him to have reasonably believed or suspected that it was stolen. In resolving this question I further refer to THE STATE V. JOSEPH NNOLIM & ANOR (1994) LPELR -3222 (SC) PG. 21-22 PARA G-A where his lordship ADIO J.S.C postulated that:

> *"In order to prove the offences of stealing and receiving stolen property knowing it to be stolen against an accused, there must be evidence that the property in question was stolen. It must also be proved in the case of the offence of receiving stolen property knowing it to be stolen that the accused, when he came into possession of the stolen property, knew that it was stolen."*

YONGO & ANOR V. COP (1992) (Supra)

See also
Cases cited Supra above in respect hereof.

In line with the requirements of proof of essential ingredients of receiving stolen property in the authorities referred to above, it is undisputed that the car in question found with 1st defendant was a stolen property and that he received and retained same. As for knowledge of whether or not it was stolen

this has to be inferred from the surrounding circumstances by credible evidence before the court.

The 1st defendant conceded to the admissibility of Exhibit B and C. In his evidence in chief he narrated events leading to his making of the statements (marked Exhibit B & C) on the 3/3/11 and 4/3/11respectively. Having conceded and admitted making the statements at a much earlier opportunity shortly after the incident at the time of his arrest, I would proceed to carefully examine same. For purpose of clarity and better understanding the two statements are reproduced here under:

1st defendant's statement of 3/3/11:

> *" ...I of the above name and address freely elect to state as follow; I mr Ohiani Caliph Sheriff was born in Okene Kogi State in the year 1987, January first and I attended Christ the King Nursery and Primary School okene Kogi state and enrolled in Abdul Aziz Attah Memorial Modern College okene (AMCO) in the year 1996 and was transferred in the year 2001 while in S.S.2 and joined Government Day Secondary School Iruvuachaba okene yogi state to finish my S.S.C.E in the year 2002. And I enrolled in Computer School, Masal Computer Institute in the year 2004 to obtain my diploma Certificate. I know Jerry in Abuja when I started work with my certificate as a computer operator in a hotel computer centre located at ogun state house in central business district Federal Ministry of Finance, he working place as a car wash was just down the building, so in the evening after every day work, we sit and talk together and that's how I get to know Jerry in the year 2007, but not a very close friend of mine. Jerry told me he is a car dealer when I saw him with a car driving but he explain that he not big time in it, he just work with people he know and those who know him, he will collect the car if you want to sell and help to sell and also if want to buy, he go ahead to prove it, with his complimentary card he shows me. Last two weeks in the month of January I went to meet Jerry, he said he has a car to sell in kaduna (a Honda Accord Car) so I excorted him to Kaduna, he lodge in a hotel and stay in the same room for more than a week before he told me that the buyer has just pay the money so we left to Abuja that same day on monday afternoon. The next day we get to Abuja which is on tuesday he told me to meet him in maraba so we went to carry the car from maraba to his car wash place, were we all depart home (sic) and the next day we meet in his car wash and drive the car to kaduna myself with him beside me, on the way I ask him of the papers or document of the vehicle (a Honda accord red car) he show me some papers in the pigeonholl which is the agreement and the purchasing receipt of the car and told me that the custom papers are in kaduna, the vehicle plate number is AG 476 SGD too the next day we*

trace a buyer to kogi state, the buyer said he dont have money. I came back to kaduna on saturday 26th of February 2011. Where we lodge in Asoh Mum Park hotel and the next day which is on sunday we left to Abuja to source for money to sustain us before the buyer come and buyer the car on Tuesday (sic), he told me in four days the buyer was coming to buy the car. I was arrested with the car in snooker and saloon shop and I called him to bring the papers of the vehicle so that I could be released. I communicated with him and am sure he was on his way before communication was cut off with him and me. After the arrest the police take me to our hotel place for investigation and they recover the vehicle original plate number in his bag (CK 891 RSH Abuja) and I was taken back to the station for further investigation sir. "

1st defendant's statement of 4/3/11:

"I Caliph Sheriff was born in the family of Mr. Caliph Raji Yakubu in Kogi State Okene Local government Area in Ozuwaya/Iruvuchaba Okene in the year 1987 January 14th. I attended Christ the King Nursery and Primary School Okene and thereafter in the year 1996 general admission into secondary school, Abdul Aziz Attah Memorial College Okene Kogi State and was transfer while I was in S.S. 2 to another secondary school, Government day Secondary School Iruvuachaba okene where I gained my ordinary Certificate and in the year 2004 I enrolled on Computer studies at Master Computer training Institute in Okene Kogi State and attained my Diploma Certificate. I came to Abuja in the year 2006 towards ending following a called from my mother that there was a vacant position for security personnel in her friend's office. When I got to Abuja for the interview the manager advise to further my education or look for another job in Ogun state house located at central business district, a hotel inside the building name Millinian Court Guest House and there computer operator in there computer centre. I have a brother a senior Manager in Central Bank of Nigeria who secure me a job with Loktim Health and Fitness Concept in Central Bank office in the year 2009 and in the year 2010 december my manager and I have a little misunderstanding and the Director of the office was not around so the Manager suspend me and I refuse to sign the suspension letter, so the Director call me on phone to follow the instruction of the manager till he get back from his journey. 2007 when I was working in Millinian Guest house in Ogun state house. Jerry was working as a car wash beside the building , so every night after work we gather to talk about work and every other things. though he is not very close. In the year 2010 december I met with Jerry and we discuss about work and later told me, he now has someone working for him in the car wash and buy and distribute the car wash machine and also help in buying and selling cars, at the end of the day he gave me his card and last two week I met with him and says he is going to Kaduna to sell a car, since I don't have anything doing now I decided to excort him and when we

get to Kaduna he lodge a hotel room which am sure his regular because he was familiar to the people in the hotel, we stay in the hotel for one week and a day before he finally return with some money which he pay the hotel bills and we left to Abuja on the monday and the next day which is tuesday he called me to meet him in maraba that he has a car for sell and he need to transfer to Kaduna again when I get to Maraba I collected the key and droven to town his car wash office and the next day we went to Kaduna. When we get to kaduna he called a buyer in my present and aggressively hanged the phone, he told me buyer is pricing the Honda Accord car low. I ask to transfer the car to Kogi state that there was a car dealer that I know he could easily sell the car there. We travel to Kogi state and the dealer says he did not have much money to buy for now and we later transfer the car back to Kaduna and he was blaming me to the journey. Jerry lives in maraba behind maraba under the bridge. I Caliph Sheriff did not rubb the woman's cars and did not know the people who did.
I suspected the vehicle because of the person that give it to him, is a man and according to the papers in the car the paper shows the car is owned by a woman (sic)." (Underlining mine for emphasis).

I have gone through the entire evidence of the 1st defendant before the court, including the oral testimony and the above mentioned written statements. And I don't find anywhere wherein the 1st defendant stated categorically that he didn't know the car was stolen or that he had no reason to believe the car was stolen. All he said is that he isn't the one who robbed the car nor knew who did. The complimentary card of the said Jerry he referred to was never tendered before this court. This is even more so when the 1st defendant in his statement of 3/3/11, Exhibit B had stated that upon his enquiry about the papers of the car on their way to Kaduna, Jerry showed him some papers in the pigeon hole which included the agreement and purchase receipt and that Jerry told him the custom papers were in Kaduna. He stated that the vehicle plate number was AG 476 SG. However he later stated in the same statement that after Jerry had returned to Abuja, the police arrested him and took him to their hotel for investigation where they recovered the original plate number, CK 891 RSH in a bag in the hotel where he was staying. Although he said the bag found in the hotel where he was staying belonged to the aforementioned Jerry.

All through the 1st defendant's evidence he stated that he saw the name of the PW3 as the car owner on the documents, what he never said is whether or not he recognized that the number plate of the car he initially quoted as AG 476 SG was different from the Original number plate CK 891 RSH later discovered in his hotel room. He never stated whether the number plate he saw on the papers tallied with the number plate affixed to the car he was arrested with. I find it unnecessary at this stage to draw any inference on this

because the 1st defendant attempted to clarify this in his statement of 4th March 2011.

In his statement of 4th March 2011, 1st defendant stated that he suspected the vehicle because the person that gave it to him is a man and according to the papers in the car the papers shows that the car is owned by a woman.

The question that then arises is what step he took in respect of his suspicion of ownership of the car. Did he report to the police? No. Did he try to verify the true owner? No. Did he abandon the car with the said Jerry? No.Rather it was the other way round, as the said Jerry appeared to have abandoned the car with him. Rather than take the right step with regard to his suspicion of the vehicle he made cross country trips with the vehicle all in a bid to dispose of it in exchange for monetary gain. He has not given any cogent believable reason or justifiable account of why he received and retained the car under such circumstance.

Suffice to say that I am of the view that the evidence of the 1st defendant himself before the court is to the effect that, despite that he had reason to 'suspect' the ownership of the car, yet he dishonestly retained the car in order to make money from it.

This court therefore has no other option but to revert to the doctrine of recent possession highlighted in Sc. 167(a) of the Evidence Act as applied in the cases already mentioned Supra.

With regard to the essential ingredients for proof of receiving stolen goods I surmise in this instance that:

1. The property in question has been found to be stolen during an armed robbery attack on PW1, 2 & 3.
2. That the 1st defendant received and retained the stolen car.
3. That he retained it dishonestly.
4. That he knew and or had reason to believe that the car was stolen.

And in line with the provision of the law and a plethora of Supreme Court decisions it is only when these essential ingredients have been satisfied that a conviction for the said offence can be sustained. He himself admitted he made across country trips trying to dispose of a car he "suspected" for monetary gain. This is a car for which he made no payment or consideration. And in line with this I refer to;

SEBASTIAN S. YONGO &ANOR V. COMMISSIONER OF POLICE(1992) LPELR-3528(SC) pg 36 Para E-G where his lordship KARIBI-WHYTE, J.S.C. postulated as follows:

"The essential ingredients of the offence whichthe prosecution is required to prove in order tosecure a conviction under this section are:- 1. That the property in question is stolen property.2. That the accused received or retained suchproperty.3. That he did so dishonestly.4. That he knew or had reason to believe that theproperty was stolen property.
It is only where these essential ingredients aresatisfied that a conviction under section 317 of thePenal Code can be sustained."

It does appear that those conditions have been met here.

The three defendants had hitherto been found not guilty of offences in respect of counts 1;2,3 & 4 as charged.

The 1st defendant however appears culpable in respect of the offence of receiving stolen property. It has herein before been revealed above that a defendant could be convicted of a lesser crime for which he was not charged. And also that the lesser offence of receiving anything obtained by means of an act constituting an offence of or receiving stolen property has been codified in Section 5 of the ROBBERY AND FIREARMS SPECIAL PROVISION ACT and Section 317 of the PENAL CODE LAW respectively.

The court in convicting for a lesser crime also ought to take cognizance of the similarity between the ingredients of the offence charged and the lesser offence. However I have found that going into an expose on these similarities at this juncture would be an academic discuss or activity and only amount to an exercise in futility. Reason for this would be reserved for now and given hereafter in the conclusion of this judgement.

Meanwhile Count 5 of the charge against the defendants is in respect of offence of arrest for belonging to a gang of persons associated for the purpose of habitually committing theft or robbery. It read thus:

"ThatyouCaliph Sheriff (m) 24 years, Sylvester David (Baron) (m) 22 years and Tallest now at large, on or about 20/2/2011 at about 2030 Hrs in Oyo Street Area 2 Garki-Abuja, within the Abuja Judicial Division were arrested for belonging to a gang of persons associated for the purpose of habitually committing robbery and thereby committed an offence punishable under section 306 of the Penal Code Law (Cap.89 Laws of Northern Nigeria."

The above mentioned Section 306 reads as follows:

Section 306

"(1) Whoever belongs to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery and not being a gang brigands of shall be punished with imprisonment for a term which extend to ten years and shall also be liable to fine.

(2) Whoever belongs to any wandering or other gang of persons associated for the purpose of habitually committing robbery punishable under any provision of paragraph (b) of subsection (1) of section 303, and not being a gang of brigands, shall be punished with imprisonment for not less than fourteen years, with or without fine and canning."

A scrutiny of the Section 306 of the Penal Code Law shows that the ingredients of the offence codified therein are:

1. That there is in existence a gang of thieves or robbers

2. That the persons in the said gang are associated for the purpose of committing theft or robbery.

3. That the said theft or robbery is to be committed habitually and

4. That the defendant is a member of the gang.

The evidence of the 1st, 2nd and 3rd prosecution witnesses did not succeed in exposing any of the defendants as a member of a robbery gang. It is only in the evidence of the PW4 wherein he tendered the purported confessional statements of the defendants.

The 3rd defendant in his said confessional statement admits to belonging to an armed robbery gang. That he was introduced to the gang by Reghan aka Risky. He said they were four in number when they started the armed robbery work. He also mentioned Jerry (2nd defendant) and Sheriff (1st defendant) whom they later got to know and were working with. The 1st defendant also in his said confessional statement, Exhibit D also mentioned that he was outside the premises in Jikwoyi with a gun at the scene of the robbery when the car was handed to him and he drove off the car. He also mentioned the 3rd defendant as one of those who snatch cars at gun point.

To my mind the confessional statements of these two defendants which were admitted in evidence after trial within trial ordinarily establishes the presence of the four ingredients of the offence as alleged in the charge.However I would exercise caution at this juncture for the following reasons. Firstly, the said count 5 of the charge as can be gleaned above specifically states that the defendants were arrested at OE street Area 2 Garkia- Abuja. This is not in tandem with the undisputed evidence of place of arrest of the three

defendants. From the evidence before the court, the 1st defendant was arrested in Kaduna, the 2nd in Mararaba and the 3rd at a place where he said he went to play tennis sport. There's no evidence before this court placing any of the defendants at the said Oyo street at the time of their arrest. The evidence before the court therefore does not support the content of this Count 5 of the Charge.
The law requires that any allegation of crime against an accused person has to be proved beyond reasonable doubt in order to secure a conviction. See

Section 135 -137 of Evidence Act 2011.

THE STATE V. SALAWU LPELR -8252 (SC) PG. 47-48 PARA A-E

OKORO V. THE STATE LPELR -7846 (SC) PG. 43 Para C - G

JOHN ANOR V. THE STATE LPELR 8152 PG. 41-42 PARA G - A

In this instance even the witness the PW4 who tendered the said confessional statements was never produced by the prosecution for cross examination by the defendants. Despite several adjournments for the cross examination of PW4, the Complaint, Commissioner of Police failed to produce him, thereby denying the defendants the opportunity to cross examine him and test the veracity of his testimony. This is a serious omission which affects the fabric of the testimony of PW4 as it bothers on the defendant's right to fair hearing. See

MAJOR AL MUSTAPHA V. THE STATE(2013) 17 NWLR (PT. 1383) Pg. 350 @ Pg 409 Para D-E & 423 Para D-Hor (2013) LPELR-20995(CA)(Pp. 102-104, paras. F-E) where the court canvassed that:

> *"...it is settled law that a Court cannot act on the evidence of a witness that cannot be produced or located for cross-examination after he had been examined in chief - see Isiaka v. The state (2011) All FWLR (pt. 583) 1966, wherein it was held -*
> *"- - The platform on which the lower Court placed his reasoning for the conviction is weak and unjustifiable. A Court or Tribunal should never act on the evidence of a witness whom the other party wants to cross-examine, but cannot be reproduced or located for cross-examination after he must have been examined-in-chief.*
>
> *The most honourable thing for the lower Court would have been that the evidence of PW3, who tendered Exhibit 5 should have been expunged from the record of the Court or the lower court should not have attached any weight to it because the essence of cross-examination is to test the veracity and accuracy of the witness and not*

just a jamboree or merry making. A witness who fails to make himself available for cross-examination should know that all his evidence goes to naught."

See also the unreported Judgment of this Court delivered on 10/12/12 in Appeal No. CA/J/71C/2009 - Shehu Shegun v. The state, wherein it was held -

"The aim of cross-examination is to enable the cross-examining party to demolish or weaken the case of the party being cross-examined to also allow the cross-examining party the opportunity of stating or representing its case through the witness of its opponents. In ensuring that an accused person's right to fair hearing is manifestly protected, such accused person must be given the opportunity to examine either in person or by his legal practitioner the witnesses called by the Prosecution. The entire trial process revolves around this art of cross-examination. The Evidence Act actually underscores the purposes of cross-examination in Section 200, which provides inter alia

"When a witness is cross-examined, he may in addition to the questions referred to be asked questions which tend -

(a) To rest his accuracy, veracity or credibility, or

(b) To discover who he is and what is his position in life, or

(c) To shake his credit by injuring his character.

To deprive an accused person of this opportunity amounts to gross violation of his constitutional right to fair hearing".

I also rely on the case cited by the defence counsel:
THE STATE V. JOHN OGBUBUNJU & 1OR (2001) 1 SCNJ Pg. 86 @ 102 - 103 or LPELR- (SC) Pg 51 Para D-F where the Supreme Court per Ogundare JSC reiterated that:

" In law an accused person is under no obligation to prove his innocence. The burden of establishing his guilt beyond reasonable doubt rests throughout on the prosecution. See Patrick Njoven & Ors V. The State(1973) 1 NMLR 331. Failure to do so would lead to the discharge of the accused person."

I am of the humble view therefore that it would be against the rule of fair hearing to convict the defendants based solely on evidence they denied which was elicited through a witness they never had the opportunity to cross

examine. It is settled that cross examination is to, inter alia test the credibility and correctness of the testimony of the witness. And in my view Justice would not be complete where opportunity is not given for this: See

ANTHONY OKORO V. THE STATE (Supra) (2012) LPELR -7846 (SC) PG. 31-32 PARA D - A

AL MUSTAPHA V. THE STATE (Supra)

In the same vein it would not be in the interest of justice to make the defendants to bear the brunt of the negligence of the Complainant who abandoned his case midway into the trial.

Where the prosecution fails to adduce evidence sufficient to establish the guilt of the defendant, then the court would under such circumstance have no option than to absolve him of guilt. This is in line with the time honored principle that it is better that ten guilty persons escape Justice than for one innocent man to be punished for an offense he did not commit. See

SHINA OKETAOLEGUN V. THE STATE (2015) LPELR -24836 (SC) PG. 27 Para A.

and

SHEHU V. THE STATE (2010) 8 NWLR (PT. 1195) S.C PG. 112 or LPELR-3041 Pg. 25-27 PARA G C.

Where his lordship Ogbuagu JSC reiterated while applying this principle as follows:

" ...It is now firmly settled that it is an elementary proposition, that suspicion however strong will not found or lead to a conviction. In other words, it cannot take the place of legal proof. See .....
I agree with the submission in paragraph 5.6 page 10 of the Appellant's Brief of Argument and this is also now firmly settled in a line of decided authorities, that it is better for ten guilty persons to escape than one innocent person to or should suffer.
In other words, it is better to acquit ten guilty men, than to convict an innocent man. See ..... In the case of Saidu v.The State (1982) 4 SC 41@ 69-70, Obaseki, JSC stated inter alia, as follows:
"It does not give the court any joy to see offenders escape the penalty they richly deserve but until they are proved guilty under the appropriate law in our law courts, they are entitled to walk about in the streets and tread the Nigerian soil and breathe the Nigerian air as free and innocent men and women."
On his part Sir Matthew Hale is quoted as remarking that:

"It is better that 5 criminals escape Justice rather than one innocent person to be punished for an offense he did not commit."
"So be it with the appellant. In the circumstances of the evidence before the court which are borne out from the Records. I will give benefit of my doubt, in favour of the Appellant and render my answer to issue 2 of the Appellant, in the Negative."

In line with the above position of the law this court cannot rely on the evidence of PW4.

Now I return to the issue of lesser offence. I am of the aforementioned view that it is irrelevant to embark on a continuous course on Section 317 of the Penal Code Law because it has been settled by the Supreme Court that lesser offence envisaged (as in Section 223, 229, 230 and 236 of ACJA 2015) can only refer to a lesser offence under the same law or Act under which the main or composite offences was charged and not a lesser offence under another law.

In this instance therefore I am of the humble view therefore that none of the higher offences in Counts 1-4 under the ROBBERY AND FIREARMS SPECIAL PROVISION ACT can be substituted for a lesser offence under THE PENAL CODE LAW. I find further support for this view in

ANTHONY OKOBI V. THE STATE (1984) LPELR -2453(SC) Pg 21-22 Para E-B
Where the Supreme Court postulated that:

" The High Court of Lagos State cannot, in my view proceed to convict the appellant who was charged and tried for an offense under the Robbery and Firearms Special Provision Act under the Criminal Code of Lagos State because the court found that it had committed no offense under the Robbery and Firearms (Special Provision)Act.
As no offense under the Robbery and Firearms Special Provision Act was proved, the High Court of Lagos State is not, in my view, entitled to apply the Provision of Sc. 179(1) of the Criminal Code Law to enter a conviction for an offense under the Criminal Code. Lesser offense mentioned in Section 179(1) can only, in my view, refer to lesser offense under the same Law or Act under which the main or composite offense was charged. It cannot properly be interpreted to refer to a lesser offense under another law."

Also in the same case at page 23 his lordship Obaseki J SC at paras A-C reiterated as follows:

"I am of the settled view that this court hasno jurisdiction to entertain any application toconvict the appellant of a lesser offence underthe Criminal Code at the hearing of an appealagainst a conviction for an offence under theprovisions of the Robbery and Firearms(Special Provisions) Act. There being noprovision under the Robbery and Firearms(Special Provisions) Act permitting such acourse of action, it will amount to a denial ofjustice to the appellant to convict him of an offence under a law different from that underwhich he was tried for the sole purpose ofsecuring his conviction."

Thus suffice to say that the defendants cannot be convicted for the offence of dishonestly receiving stolen property pursuant to Section 317 of the Penal Code Law.

Before rounding off this judgement I wish to observe that it appears Life wants to give the defendants who are still so young a Second Chance, hence the negligence and recklessness of the Complainant in drafting the Charge and the eventual abandonment of their case. I hope the defendants would embrace this opportunity and take all events culminating in this trial and the judgement after five years, as a life lesson and guidance in caution in their future endeavours and activities.

In the final analysis and pursuant to the above findings and particularly the case of THE STATE V. OGBUBUNJO & ANOR(Supra) particularly at page 21 Para E- Gall the three defendants are hereby found not guilty in Counts 1,2,3,4 and 5 as Charged.

Consequently and in line with Section 309 of the Administration of Criminal Justice Act 2015, all the defendants Caliph Sheriff, Jerry Achihi and Sylvester David(Baron) are hereby discharged and acquitted of all the five counts of the charge against them.

(SIGNED)

Hon. Judge.

Appearances:

John Ijagbemi Esq for prosecution

S.G Kekere Akpor Esq with J.A Okpor for 1st defendant.

Okoto Bruce holding the brief of Hassan Daudu for 2nd Defendant on behalf of Legal Aid Council.

Adeshina Olufemi Oluwole Esq for 3rd defendant.