

**THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON WEDNESDAY THE 2ND DAY OF MAY 2018
BEFORE THE HON. JUSTICE I.B. GAFAI
JUDGE**

CHARGE NO: FHC/AWK/27^C/15

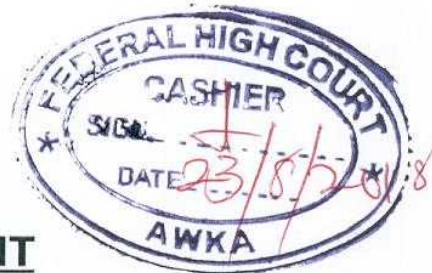
BETWEEN

INSPECTOR GENERAL OF POLICE COMPLAINANT

AND

TOCHUKWU IBE ACCUSED

Accused In Court.
P.O. Ezema for the Prosecution.
V.C. Agbo for the Accused.



JUDGEMENT

By an amended charge dated the 4th, filed on the 7th of March 2016, the Accused herein Tochukwu Ibe was arraigned on the 17th of May 2016 for an offence under the Advance Fee Fraud and Other Related Offences Act thus:

"That you **Tochukwu Ibeh** sometimes in the month of September, 2013 at Onitsha in the Juridical Division of this



*Vincent Egon Ego
S.E. (Ct)*

Honourable Court, by false pretense and with the intent to defraud, obtained from Mr. Onyekachi Eberechi the sum of seven thousand United State dollars \$ 7,000 USD equivalent of One million two hundred thousand naira (N1.2m) on the pretense of using same to purchase wearing apparels for him from China but converted the said sum to your own use and you thereby committed an offence punishable under S.I (1) (3) of the Advance Fee and Other Fraud Related Offences Act, 2006."

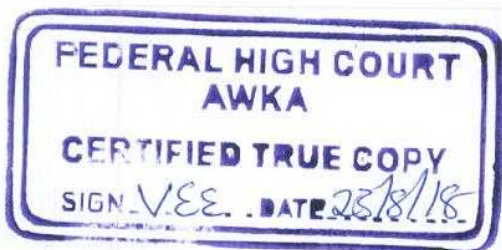
The charge was read and explained to the Accused in English which he understood to the satisfaction of the Court. He pleaded not guilty.

At the trial, three witnesses testified for the Prosecution in proof of the charge.

PW1 is Orjiude Lazarus. His evidence in chief is reproduced here thus:

"I am here in respect of a transaction of goods supplied to our warehouse by a Chinese named Lier Zea Chenzin. In the packing list, it bears the name of Eberechi with a debt of \$4,000 attached to it. It is the Chinese supplier's phone number that was written on it. We did not know the said Eberechi.

The supplier instructed our company to release the goods to one Mr. Nathyn. We released the goods to him. In February 2015 one Eberechi came and claimed the goods and we informed him that we have already released the goods to the said Nathyn L. N.



Vincent Eyang Eyo
SECRET

Yes, I made a statement as a witness to the Police. The Accused never had any transaction with our company. He later filed a suit against us at the Magistrate Court Onitsha but abandoned it. That is all."

There was no cross examination.

PW2 is Sgt. Ikemba Felix of the zonal Police headquarters Umuahia. His evidence in chief run thus:

"There was a Petition in 2014 on this case. The AIG assigned the matter to the zonal investigation Bureau. It was assigned to C team to which I belonged. It is a case of obtaining money by false pretense. Yes, I can identify the Petition. (PW2 shown a Petition by the Prosecution) Yes, it is the Petition.

Prosecution: I tender it.

Mr. Tagbo: Not objecting.

Court: Admitted as exhibit "1".

(Signed)
I.B. GAFAI
JUDGE
16/03/17

PW2 ctns: We obtained the statements of the Complainant and the Accused. The Accused wrote his own Statement under caution in English, which he understood and endorsed. He signed it and I also endorsed. I can identify the Statement. (PW2 shown a



Statement by the Prosecution) Yes, this is the Statement made by the Accused.

Prosecution: I tender it.

Mr. Tagbo: Not objecting.

Court: Admitted as exhibit "2".

(Signed)

I.B. GAFAI

JUDGE

16/03/17

PW2 ctns: In the course of our investigation, we moved to Expert Customize Ltd Onitsha but did not find anything incriminating there. I interviewed PW1 also there; he is staff of the Expert Customize Ltd. While there, the Accused on his own voluntarily wrote an agreement to refund the Expert Customize Ltd the money he fraudulently collected from them.

Yes, I can identify the agreement he wrote. (PW2 shown a document) Yes, this is the agreement.

Prosecution: I tender it.

Mr. Tagbo: I object because it is not among the proof evidence. That is all.

Prosecution: It is a summary trial.



Court: The document is relevant under section 6 of the Evidence Act. It is admitted as exhibit "3".

(Signed)
I.B. GAFAI
JUDGE
16/03/17

PW2 ctns: Both Accused and the Complainant are traders. I filed a Report of my investigation. I can identify it. (PW2 shown a Report), Yes, this is the Report."

Upon cross examination, the PW2 stated thus:

"The Accused admitted collecting the money from the Complainant. I refuse to answer the question on how the Complainant paid the money to the Accused."

PW3 is Onyekachi O. Innocent. His evidence in chief is thus:

"I know the Accused. He and I deal in the same line of business in the same Main Market on Sokoto Road Onitsha. Yes, I knew PW2. He is the I.P.O. in this case. I knew PW1, he is a staff of Expert Customize Ltd. In 2013, I gave the Accused \$7,000 on business. He told me that he was travelling to China and that he would buy goods for me from China with the money. He was to buy textile for me. He did not do that. He did not refund my money.



He issued me fake receipt and asked me to go to Expert Customize Ltd to collect the goods. I did. The company said it had no goods for me. I reported to the peace Committee of our market. They heard from both of us and mandated him to pay me my money. He refused. I reported the matter at Police headquarters zone 9 Umuahia. I paid the Accused the \$7,000 through Bureau de change. Ever since then, I have been idle because the Accused has still refused to refund me my money."

Upon cross examination, he stated thus:

"Yes, I sent the money to the Accused through Bureau De change at China. The Bureau de chage did not issue me receipt. They do not issue receipt. Yes, I paid the money to him through the Bureau De change while he was in China."

The Prosecution closed its case.

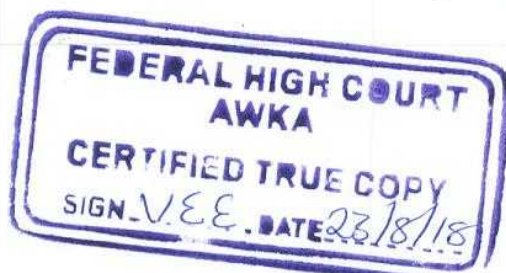
In his defence, the Accused testified as DW1 and called one other. This is what he stated in his evidence in chief:

"...(DW1 shown exhibit 3 by his learned counsel)

DW1: Exhibit 3 was produced at zone 9 Umuahia. It was done on duress. No, I did not agree in exhibit 3 that I was owing the PW3.

In September 2013, I was to travel to China. The PW3 was my friend. He told me I was to do him a favour while there, because his visa was not out then.

A day before I left he came to my shop and gave me a lady's gown to give it to one Yamag a



Chinese woman; that he wants the woman to produce the gown for him. I was in China on 1st October 2013. I delivered the message to the said Yamag. She knows him as her customer. They had spoken on phone. He instructed for 1000 units of the gown. A week later, he called me on phone that he needed to send money to her. He sent \$2000 to me at China. I and the woman went to the bank and withdrew the money. We went to the market to buy the material. After about 3 weeks the goods were ready. He sent yet another payment but this time to the woman. He urged me to ensure that the goods be delivered to the warehouse of Mr. Alex Ofodile. He also informed the woman of where to send the goods. The woman gave me a receipt too of the 1000 units/pieces, it was a receipt of \$5,980. I gave the receipt original together with the warehouse receipt. The goods arrived Nigeria on 16/1/14 and on 18/1/14 he went to the warehouse to collect the goods, because there was excess. I was aware of the \$2000 he sent while I was at China, the 2nd payment, I was not aware because he sent it directly to her and the 1st one I was also aware of it though sent directly to the woman. The monies were normally sent from Nigeria through Bereau De change.

While the Complainant was in China later, I gave him the receipts. He never alleged then that it was forged. The warehouse refused to give him the goods because only of the problem he may



have had with the woman; i.e in respect of the excess she had sent to him. I gave the Policemen during the investigation who include PW2 the receipts and the packing list showing evidence of payment of \$5,980. I did not obtain the sum of \$7000 because even the total goods were not up to \$7,000. The monies he sent to me was in China. I did not convert his money to my own use."

Upon cross examination, he stated:

"Yes, I know PW3. I have known him since 2012. Both of us sell ladies wears. Yes, he is my friend. He knew about my movements to China because I told him. No, it is not true that it was in his shop that I told him about my journey. It is not true that I told him about my journey. I did not mention that he sent any money to me.

Yes, I mentioned \$1,000 but did not say that it was paid into my account. The sum of \$2,000 was paid directly to the Chinese woman.

I never received any cash payments from him in cash on directly.

Yes, I knew H.O. Onyebuchi, he was the lawyer who came to zone 9 Umuahia to bail me. He is a lawyer. Yes, he wrote a Petition on my behalf. Yes, I was an Applicant at the Magistrate Court Onitsha in suit no. MO/557/14 (DW1 shown a document) yes, it is the Petition and the copy of the suit).

Prosecution: I tender in evidence.

Mr. Tagbo: Not objecting to.

Court: Admitted as exhibit "5".



Cross examination ctns: Yes in paragraph 1 of exhibit 5 (letter to AIG) my lawyer said I was given \$5,980 from PW3. I am aware of the monies but no money came into my hands. Yes, I know Ekwerekwu Esq. He was also my lawyer. Yes, it was his law office that filed the suit at the Magistrate Court Onitsha. Yes, he wrote a letter to Peace Committee also on this case. There was no final decision by the Peace Committee.

Yes, in paragraph 4 of my Petition to the IGP I stated that money was paid to me. At the end of the suit, we applied that it be struck out as we had out of Court Settlement. I did not abandon it."

He further stated thus:

"Yes, I mentioned that one Harrold C. Ekwerkwu was my lawyer in this case. Yes, he filed a suit for me no 0/557/14 at the Magistrate Court Onitsha. Yes, I annexed the processes in that suit and we served the Police; when we filed our fundamental rights suit. It is not true that I contradicted myself between what I said therein that I collected \$6,000."



There was no reexamination.

DW2 is Nnadum Nzubechukwu. His evidence in chief is similarly reproduced here thus:

"Yes, I knew Accused. Yes, I knew Onyekachi Ebere. They are both traders they deal on the same articles.

I became aware of this charge sometime in 2014 when I went to Expart Logistics to carry my goods. I saw both of them raising their voice. The Accused told me that their goods were with the Expart Logistics but they refused to give him because the number of goods purchased were more than the number of the goods supplied from China.

The Accused sent money through beareu De change to the Chinese supplier. He sent the amount to the supplier. Accordingly to them, they begged the Accused to beg the supplier to supply the goods on time. We concluded that the Accused should pay the supplier the remaining amount and he did. I do not know the balance.

After some months, I heard that the Accused went again to pick the goods but they refused to release same to him; that they had already released to another company. They called the Accused for the goods in the first place because it was to him that the goods were directed by the Chinese supplier.

Yes, I saw the goods and it was bearing the name of the Accused. That is all."

Upon cross examination, he stated thus:

"I did not know what transpired between the Accused and the PW1 or how they met. Yes, I did not make Statement



to the Police. Yes, I never went to the Police on this matter. Yes, I have been in Nigeria.

Yes, I have been coming to this Court on this case; I came two times. Yes, I was sitting right here inside the Court. Yes, he the Accused had informed me that I was going to be a witness for him in this trial. No, I was not invited by the Police in the course of the investigations over this case. No, my evidence in this Court is not derived for what I listened to in the earlier proceedings. All I said is the truth. The warehouse is an open place, there is nothing hidden there and I went right inside.

No, I do not know PW2. The warehouse has about 50 workers, so how can I know every staff there? No, my evidence is not fabricated."

There was no reexamination.

It is noteworthy here that PW3 was recalled by the Defence in the course of the testimonies for the Defence and was further cross examined whereby he stated thus:

"Yes, I know the Accused before the incidence in this case happened. We do business on the same line in the market. He is a trader. Yes, he does travel to China. Yes, I also do go to China. Yes, I visited China during the time the Accused was there. Yes, I met with him there. No, we did not discuss anything with our customer in China. We met on the road. (PW3 shown a receipt by the Defence counsel) No, I do not know anything about this receipt. The Accused gave me fake receipt while we were in China; that I should come to one company here and collect my



goods. (PW3 shown the same Receipt again by the Defence counsel) No, is not the receipt he gave me in China. I do not know this Receipt. The Receipt is with the company he sent me to here in Nigeria. I cannot remember if I gave the Police a copy of that receipt. The company told me that the receipt is fake. It was the Accused who issued me with the receipt.

Yes, I went to the office of one man called Dollarman. No, there was never a time I and the Accused together paid any money to Dollarman. No, I never heard about one Nathy N. The receipt given to me by the Accused was written in Chinese language. The money I paid him was through Bereau de change in China. The name of my customer in China unknown to me. It is not true that I paid the money to my Chinese customer. No, the goods never arrived in Nigeria. No, Dollarman never called me on phone. I cannot remember how many times I visited Dollarman's office. I was there only to verify the receipt. It was the Accused who took me to Dollarman's office and he Dollarman confirmed it.

The sum of \$1,200 I paid to my Chinese customer was because of the excess of my goods. Yes, I made the payment when we were here in Nigeria. I paid the extra charge because the Accused said the goods did not arrive there because of that. No, I am not aware of any agreement between the Accused, me and one other. I do not know anything about the Nathy N. you are talking about."

Both learned counsel later filed their written addresses which they adopted on the 25th of April 2018.



For the Accused, a lone issue for determination was formulated by his learned counsel Chief Ugo Ugwannadi thus:

“Whether the Prosecution has proved its case beyond reasonable doubt as required by law.”

Learned counsel for the Prosecution Agene Mathew (SP) has also formulated two issues thus:

- “1. Whether on the facts and evidence led the Prosecution has proved its case beyond reasoned (sic) doubt
2. Whether pursuant to S223 and 229 ACJA, 2015 this Court can convict the Accused person for the alternative offence of stealing not specifically charged.”

I think that two positions are canvassed here. The first is that the first issue for the Prosecution (supra) is in reality an adoption of the first issue for the Accused although on different grounds. The second position is that the second issue for the Prosecution may arise if and only if the first issue for both is determined in favour of the Accused. Thus, the Court will proceed head on into their common issues; which unarguably represent what the entire trial was all about. In so doing, both issues will be considered and determined together without forsaking the worth of any submission in both.



The gist of the submissions of both learned counsel on their common issue is derived mainly from the decision in **Onwudiwe vs. FRN 92006) 10 NWLR Pt 998, 382** where the Supreme Court outlined the ingredients that the Prosecution shall prove in a charge of obtaining by false pretense as is the charge in this case. Both learned counsel have listed same as the making of a pretense by the Accused while knowing it to be false with the intention to defraud thereby inducing the victim to transfer property or interest therein. They however argued and submitted differently on whether or not these ingredients have been proved by the Prosecution. For the Accused, it was submitted that the evidence of PW1 is unreliable as it did not disclose the element of pretense by the Accused. On the evidence of PW2, I have not found any specific argument or submission on it by the learned counsel to the Accused because after summarizing the testimony of PW2, the learned counsel concluded thus:

"The PW2 who is a Police officer gave evidence that in their investigation they discovered that the Complainant gave money to the Accused person. Strangely under cross examination, the PW2 refused to answer the lone question put to him on how the Complainant allegedly gave money to the Accused person."



The Court is not in a position to hazard a guess on what exactly the learned counsel seeks the Court to do here.

On the evidence of PW3, it is the submission for the Accused that his evidence is hearsay and that at any rate, it is self contradictory and also shows the whole case as a civil transaction between the Accused and PW3.

In further arguments on the failure of the Prosecution to prove fraud or pretense by the Accused, the learned counsel referred to the provisions of section 20 of the Advance Fee Fraud Act which defines false pretense. On the whole, learned counsel urged the Court to discharge and acquit the Accused.

On his part, the learned counsel for the Prosecution submitted that the Prosecution has proved the elements for the offence charged firstly by the fact that the Accused held himself out to the PW3 as a trustworthy person and by which pretense he collected the sum of seven thousand dollars from the PW3 for a business mission that never was. It is also his submission that the intention of the Accused to defraud the PW3 has also been clearly established by the Prosecution because the Accused neither utilized the money he collected from PW3 for the



purpose he represented to the PW3 nor returned the money to him; adding further that the two civil suits instituted by the Accused at the Magistrate Court Onitsha against the Warehouse owners whom he claimed failed to deliver the goods he purchased for the PW3 money and thereafter abandoning those suits strengthen the proof of the intention by the Accused to defraud the PW3. On the whole, it is his submission that the Prosecution has proved the issue under consideration and thus urged the Court to convict and sentence the Accused accordingly.

Learned counsel for the Accused canvassed arguments and submissions on two fronts; namely reply submissions on those by the Prosecution and secondly raising an issue of law by which he challenged the competence of the charge, although muddled up together not under distinct heads or subheads. Nevertheless, the Court understood both. On the first front, I find his arguments and submissions substantially the same with those in his earlier written address. It is thus unnecessary to indulge in a repetitive exercise of recounting the same arguments and submissions.



On the second front by which he raised the issue of jurisdiction, it is his submission in the main that this Court lacked jurisdiction ab-initio to try the Accused on the imperfect charge of the Prosecution because firstly, the charge as filed did not contain the stamp and seal of the learned Prosecuting counsel who filed it and secondly that the transactions which formed the charge did not occur within the territorial jurisdiction of this Court. On the first ground, the learned counsel has referred the Court to "the case of **APC v YAKI SC/227/2015. Rule 10 1 Rules of professional conduct of the legal profession (sic)**".

On the first ground of the jurisdictional challenge, let me remind learned counsel for the Accused that he was, until very recently, not the learned counsel for the Accused in this case. It is my hope that he was transmitted the complete records filed by both parties long before he stepped in as the learned counsel for the Accused. This reminder becomes necessary because in the records before me, I have seen two separate documents attached to the processes filed for the Prosecution each being a photocopy of a receipt by the NBA Umuahia branch, one issued on the 27th of October 2016 and the other issued later on the 6th



of June 2016, both carrying with them also Access Bank Plc's deposit slips numbers 0785272 and 17758458 respectively, in the name of Mathew Abemaje Agene whom I can safely presume to be the learned counsel who filed and prosecuted the charge herein, appearing in the proceedings consistently as Agene M.A. I do not with all due respects think that a serious charge such as the one before me shall be defeated by such unnecessary technical cum jurisdictional objections. The second ground of the objection also falls in the same boat because firstly, the charge itself alleged the commission of the offence at Onitsha and the evidence led for the Prosecution all through maintained that position. Secondly, I find it a little proestrous for the Accused who himself resides in and carries on his life and business in Onitsha just like the Accused to now plead some strange China connection in order to challenge the territorial jurisdiction of this Court to try him. I draw the attention of his learned counsel to the provisions of sections 93 to 94 of the Administration of Criminal Justice Act 2015. In effect both jurisdictional grounds are discountenanced and the objections on them overruled.



Having thus resolved the jurisdictional issues raised by the Accused, the Court is now properly placed to proceed in to the substantive determination on the charge. As reproduced earlier herein, both issues for determination formulated as the first by both learned counsel seek an answer to their question on whether or not the Prosecution has proved the charge beyond reasonable doubt. Directly subsumed in the issue but more importantly deserving of prior determination is, in my humble view, an answer to the simple question: did the Accused commit the offence? It is only after this simple question is answered that the question of whether or not the Prosecution proved the commission beyond reasonable doubt will arise. In otherwords, did the Accused "by false pretence and with the intention to defraud, obtain from Mr. Onyekachi Eberечи the sum of seven thousand United States dollars...."? The answer to this question calls for a careful consideration of the facts for both parties and the provisions of section 1(1) of the Advance Fee Fraud Act; which provides that:

- "1. Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud-



- a. obtains, from any other person, in Nigeria or in any other country, for himself or any other person; or
- b. induces any other person, in Nigeria or in any other country, to deliver to any person,
- c. any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, commits an offence under this Act."

By now, the facts for both parties on the charge are clearly understood. What follows therefore will be to apply those facts to these provisions in order to determine whether or not the Accused committed the offence charged.

To begin with, was there any money that passed from the PW3 to the Accused. The oral evidence of the PW3 and the Accused on this question has remained irreconcilable. While the PW3 has continued to maintain that it did, the Accused has maintained at the trial that the PW3 paid the money to the Chinese supplier which position has however been upset under cross examination. The truth lies in some other pieces of related evidence. For example, in exhibit "2" which is the Statement the Accused made to the Police during the investigation, he stated inter alia:



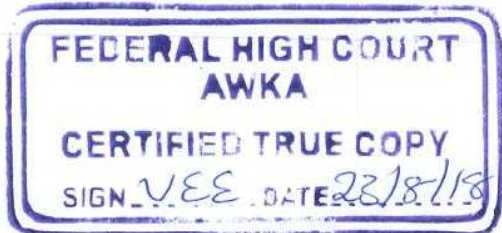
"After the production of the cloth Eberechi sent a total sum of \$5,980 to me in China and asked me to go and pay for the goods....."

Again, in paragraphs 2 and 3 of the affidavit in support of the suit no.HID/MISC/63/2014 which the Accused instituted earlier in the High Court Ogidi, now exhibit "6" in this suit, the Accused deposed to similar facts; which are further repeated in paragraph 4 of yet another related in suit no. MO/557/2014 filed by the Accused at the Chief Magistrate Court Onitsha attached also to exhibit 6. There are other similar pieces of evidence in the record before me showing distinctly that the Accused did collect money from the PW3; and whether it was received directly in cash or by bank transfer and whether in Nigeria or in China is less important here. It is foolhardy for the Accused to deny this fact in his oral evidence as he did.

Did the Accused collect or receive the money in question from the PW3 under the false pretense alleged in the charge? The contentions of the Prosecution and the Defence are all too clear by now in the manner elaborately reproduced earlier herein; which in a nutshell is that the Prosecution alleges he did while he (the Accused) denies so. The avalanche of evidence on



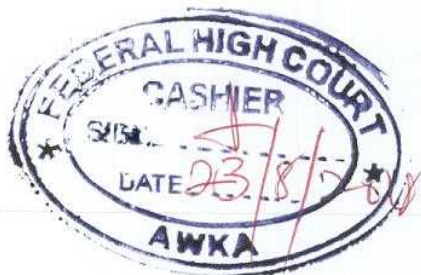
the issue seem to be rooted in circumstantial evidence; which is not unusual since it is the intention of the Accused that is sought to be exposed. I have thus considered all the evidence on this issue. Even as a circumstantial evidence, it must be proved beyond reasonable doubt like any other piece of evidence relied upon to establish the guilt of the Accused. My considered finding on this issue is however negative; because I have not identified any or collection of evidence by which it can be safely ascertained or even reasonably inferred that the Accused had fraudulent intention or purpose when he collected the money from the PW3 nor is there any consistent evidence which shows that the Accused might have adopted the fraudulent intention after he collected same or while he was in faraway China. The overall evidence in the case tends to show the contrary. The contention of the Prosecution that the Accused neither delivered the goods to the PW3 nor returned the money PW3 paid for the goods does not by itself prove fraudulent intention when one considers the subsequent dimension of the facts as played out in relation to the delivery of the goods to the PW1's company, the role played by PW1's company Expert Customise Ltd on the delivery and subsequent disposal of the goods which the



Prosecution now alleges were never delivered or supplied. The PW3 himself knows that the goods he paid for were delivered to PW1's company in the name of PW3 for the collection of PW3 himself. The PW3 also knows exactly what happened to the goods while in the hands of the PW1's company and the reason for his inability to take delivery of the goods from the PW1's company. The entire facts surrounding the role of the PW1's company in the non delivery of the goods of the PW3 to him seem to contradict any rational, reasonable, credible allegation on the fraudulent intention of the Accused in the manner disclosed in the charge. It is rather unfortunate that the PW3 resorted to chasing shadows instead of the real object; which the facts show to be PW1's company and the Chinese supplier in China.

It is clear that the totality of the evidence of the Prosecution does not extend to proof any offence against the Accused; more particularly in the manner disclosed in the charge. The charge fails and the Accused is thus discharged and acquitted.

(Signed)
I.B. GAFAI
JUDGE
02/05/18



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HW-260240320518

Vincent Eworg (Sgt. Scott)

