

IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION
HOLDEN AT NNEWI
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE CHUKWUDI C. OKAA
ON WEDNESDAY THE 25TH DAY OF JANUARY, 2017
SUIT NO. HN/18C/2012

BETWEEN:

THE STATE

-----PROSECUTION

AND

1. SAMUEL OKORIE

2. ELIJAH IKEBUDU

3. CHUKWUKA ANEKE

} ----- DEFENDANTS

JUDGMENT

In an information filed on 2/5/2012 and amended on 27/10/2016, the Defendants were charged for conspiracy and armed robbery contrary to Section 6(b) and 1(2) (a) respectively of the Robbery and Firearms (Special Provisions) Act, Cap R1, Vol. 13 Laws of the Federation, 2004. The Defendants were initially charged alongside one John Eze, now deceased. His death certificate is dated 29/10/2013 and is in the Court file. The Defendants all pleaded "not guilty" to the amended charge.

Five witnesses testified for the Prosecution, while three witnesses testified for the Defence. Documents were tendered and admitted in evidence.

CHIEF OKECHUKWU CHIKWELU, a transporter, was PW1. He knew the Defendants at Jalingo, Taraba State. He testified that on 3/12/2009, he loaded his 608 truck with tyres, both new and old for delivery at Owerri, Imo State. The truck left Nkpor, Anambra State around 6.30 - 7.00pm. That on getting to Awka-Etiti/Otolo Road, the truck was attacked by armed robbers, using a bigger truck to double-cross same. His driver, Ephraim Nwankwo was shot. Both the driver and conductor were tied and dragged to a nearby bush while the armed robbers made away with his vehicle.

He testified that his driver and conductor succeeded in extricating themselves. They met a good Nigerian who gave them lift to a hospital at Awka Etiti from



where they called him. He rushed down to the hospital and on the advice of the doctor he took the driver and the conductor to Nnewi Teaching Hospital.

He reported the incident at the Otolu Nnewi Police Station. The Policemen accompanied him to the hospital and to the site of the incident alongside the conductor. The truck was later recovered where it was parked at the Obosi flyover along Onitsha - Owerri Road. He then circulated information on the missing tyres nationwide.

A week later, he got information from Jalingo that tyres were being offloaded at a tyre shop on a Sunday morning. He left for Jalingo and at Jalingo, he made a report at the Police Area Command. He was assigned some Police officers who accompanied him to the shops where the tyres were packed and the tyres were recovered. The Policemen arrested the shop owner who led them to the hotel where the three Defendants and the late Eze lodged and they were arrested.

He testified that the truck which his driver and conductor described was used in double-crossing them was parked at the said hotel premises. Upon the arrest of the Defendants, the GSM phones of his driver and conductor were recovered from them. He reported the arrest to the Police at Otolu. The Otolu Police transferred the matter to the State C.I.D., Awka who went to Jalingo. He made written statements to the Police at Otolu, Nnewi, Jalingo and State C.I.D., Awka.

Cross-examined, PW1 testified that the driver and conductor informed him of what happened at the scene of the robbery. That the incident took place between 7.00-8.00pm in a lonely place, where there were neither houses nor street lights. He would not know if the driver and conductor identified any of the Defendants. His driver did not tell him the person who fired the shot at him.

He testified that he went to Jalingo without the driver and conductor. That the Police did not recover any weapon from the Defendants at Jalingo. Himself and the Police did not recover any weapon at the scene of the crime, they only recovered the blood-stained clothes of the driver at the scene. He stated that there was no identification parade. That they arrested the Defendants because they were in possession of his missing items. He knew and identified the tyres because he personally loaded the tyres. There was no re-examination.



PW2 was EPHRAIM NWANKWO, a driver. He knew the Defendants when they were brought from Jalingo to State C.I.D., Awka. He testified that on 3/12/2009, his vehicle was loaded with tyres and they left at about 7.30pm. On their way, they saw a lorry with container body at Uke hill and around St. Joseph Catholic Church, Awka-Etiti. When they noticed where he was going, they moved and diverted to the same route.

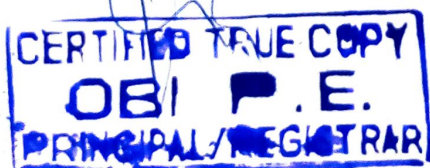
When he got to Otolu Nnewi, the same vehicle was zigzagging on the road. He thought the vehicle saw something in front and he slowed down. Suddenly, about four men came out of the vehicle and asked him to stop. While he was trying to see if he could continue to drive, one of the men came to the conductor's side and shot him at the stomach. They dragged him into their vehicle, tore his clothes and used it to tie his hands and legs. They collected his phones and nine thousand (N9,000.00). They carried him to the bush and tied his mouth with clothes. They also left his conductor in same condition in another place and left.

He testified that he untied himself. That blood was gushing out of his body. He came out, saw his conductor and untied him. When they came out, the two vehicles and tyres were no more. They trekked to Awka-Etiti where they met a good Nigerian who took them to a hospital. At the hospital, they borrowed a phone and called their master who came and took them to the Teaching Hospital, Nnewi where they were admitted.

He stated that their master reported the incident to the Police. He made statement to the Police. The owner of the vehicle he drove was Okey Chikwelu. The vehicle's registration number is AP 648 KTU.

At cross-examination, PW2 stated that all he said in Court was what he witnessed on his own. He did not recognize the registration number of the vehicle that overtook him at Awka-Etiti Road. He recognized the vehicle when it was brought down from Jalingo with the tyres and his handset. His handset is a Nokia handset. He does not know its model but he handed over the purchase receipt to the Police.

PW2 stated that he did not recognize any of the three Defendants on the day he was robbed and shot. He did not recognize any of the Defendants when they were brought from Jalingo to Awka. His master did not travel with him. He stated that it



was not his master that told him that it was the Defendants that robbed him. The witness was not re-examined.

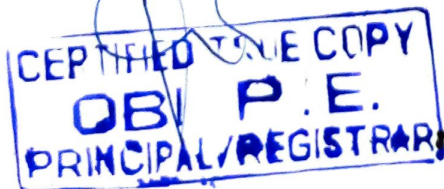
GODWIN EZENNA, the conductor, was PW3. He testified that on 3/12/2009, he accompanied his driver, Ephraim Nwankwo from New Tyres, Nkpor to Owerri. As they left Awka-Etiti to Otolo Nnewi, they met a lorry blocking the road, they got through and continued. The said lorry tried to block their lorry, his driver tried to move again, but the lorry blocked their path.

He testified that as this was happening, four men, two standing on his side and two on the driver's side. They asked them to come down and the next thing he heard was a gunshot and the driver screamed "my stomach". They took them to their vehicle, used cellotape to cover their mouth and dragged them to the bush. They tied his hands and legs and stuffed his mouth with clothes. They also took the driver to another side of the bush and tied him.

PW3 gave evidence that when the noise of the vehicle subsided, he turned and heard the driver crying. With the help of the driver, he removed the material used in tying his hands and he then untied the legs of the driver. They trekked to Awka-Etiti and when they got to a store, they requested for help and were taken to a hospital. Because of the driver's injury the doctor referred them to another hospital. A good Nigerian gave them his phone with which they called the vehicle owner, Okey Chikwelu.

He testified that the armed robbers collected their money, wrist watch, phones and the vehicle, together with the tyres. Their vehicle is a big container with blue front and dark red body. They reported the matter to the Police at Otolo Nnewi and State C.I.D., Awka. When the Defendants were arrested at Jalingo and brought down to State C.I.D., Awka, the Police invited them and showed them the vehicle, the tyres and their handsets recovered from the Defendants.

PW3 was cross examined. He does not know the registration number of the vehicle used to block them. He did not see any of the Defendants at the scene of the robbery because it was night time. It was when they were brought from Jalingo to Awka that he saw them and his handset recovered from them. The model of his phone is Zain.



He testified that he does not know the person who shot the driver as it was dark. He did not hear their voices very well as he was lying down and they placed their legs on his head and told him not to raise his head. He stated that there was no identification parade. He denied that it was Chikwelu that told him that the Defendants were the robbers, stating that he saw the Defendants when they were brought with the vehicle, tyres and phones recovered from them.

PW4 was OBIEKEZIE ISAAC with Force Number CPL 46 1923, attached to the Otolu Division, Nnewi. He is the I.P.O. in this matter. He testified that he was on night duty at their office on 3/12/2009 when a case of armed robbery was reported and the report was referred to him. PW3 was the complainant. The following morning, PW3 identified the driver at the hospital and the statements of PW3 and the driver were taken. The complaint was that a truck which was following them overtook them at a point at Otolu Nnewi, blocked them and the driver was shot in the rib.

It was his testimony that they compiled their report and sent to State C.I.D., Awka. They received a report that the truck was abandoned at Obosi and they recovered same. They visited the scene and recovered cellotape. The case was transferred to State C.I.D.

Cross examined, PW4 stated that they recovered the vehicle. He denied saying that any arrest was made.

NWATU CHARLES, A.S.P. with Force Number 97341, attached to Force Headquarters, Abuja testified as PW5. He knew the Defendants and PW1. As at 3/12/2009, he was serving at State C.I.D. Awka, Anambra State. He was one of the I.P.Os. who investigated the instant case.

He testified that on 3/12/2009, a case of armed robbery and conspiracy was transferred from Nnewi Police to State C.I.D. Awka. PW1 reported that on 3/12/2009, his truck, a Mercedes Benz container truck, loaded 387 tyres at Nkpor to be delivered by his driver and conductor to customers at Owerri. On their way to Owerri, along Awka-Etiti/Nnewi Road, armed men attacked the driver and conductor, shot the driver, tied them up and put them in a bush. The robbers numbering about eight (8) zoomed off with the truck.



The witness testified that the matter was first reported at Obosi. PW1 sent messages to several Police Divisions across the country. On receipt of the case file from Otolu Nnewi Police, the complainant made statement confirming his earlier statement. They visited the scene of the crime as well as the driver and conductor at the hospital and their statements were recorded.

Armed with authority from the Commissioner of Police, they travelled to Jalingo, Taraba State where they saw the accused persons arrested by men of Area Command. Their statements were recorded by one Victor Alfred, a sergeant in his PW5's presence. Later, the goods, a total of 333 tyres, five handsets, the 1219 model Mercedes truck with a blue face and dark red back, together with the four suspects were released to them. Pictures of the Exhibits and vehicle were taken at Jalingo. The pictures were handed over to him. They could not get the negatives of the pictures as the photographer is now dead. He stated that on arrival at Awka, the statements of the accused persons were recorded by his team.

The statements of the accused persons taken at Taraba State were admitted through PW5 as follows:

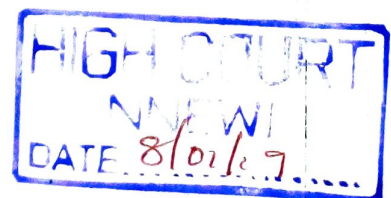
1. Statement of Chukwuka Aneke dated 14/12/2009 – Exhibit B.
2. Statement of Samuel Okorie dated 14/12/2009 – Exhibit B1.
3. Statement of Elijah Ikebudu dated 14/12/2009 – Exhibit B2.

The statements of the accused persons taken at State C.I.D. Awka were admitted through PW5 as follows:

1. Statement of Elijah Ikebudu dated 18/12/2009 and 7/1/2010 – Exhibit C
2. Statement of Samuel Okorie dated 22/12/2009 and 28/12/2009 – Exhibit C1
3. Statement of Chukwuka Aneke dated 28/12/2009 – Exhibit C2

Photographs of the blue and dark red truck and the tyres were admitted in evidence as Exhibits D, D1, D2 and D3.

The witness testified that out of the five handsets recovered from the suspects, now accused persons, two belonged to the driver and conductor. They were registered as exhibits but the exhibit keeper could not lay hands on them as the initial exhibit keeper who kept them had been transferred and every effort to trace them proved abortive. The witness remembered one Nokia Torch valued at N1,800.00, Samsung and other Nokia phones and Zain phone.

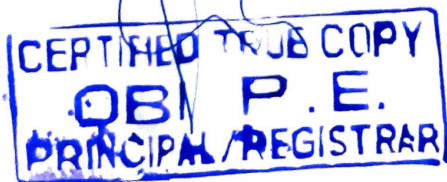


Cross-examined, PW5 testified that four suspects were handed over to him. That it was the men of the Area Command Jalingo that arrested the suspects. He does not know the number of suspects they arrested. He stated that he heard of Abu Lion but does not know him. That Abu Lion was one of the complainants who reported the matter to the Area Command, Jalingo. That Abu Lion made statements but in the course of their investigation, they thought that Abu Lion should know more than he said at the Police at Jalingo because he acted as a middleman between the kingpin of the robbery gang and the receivers of the tyres. That the Area Commander, Jalingo, thinking that the tyres were stolen and they made report to the Police, they were treated as complainants. They searched for Abu Lion and the two receivers but could not get them.

PW5 testified that nothing incriminating i.e. weapons were recovered from the accused persons in Jalingo. That the Ugochukwu he knew in this case is the one at large. That all the accused persons, the complainant, the driver and conductor made statements. The driver and conductor described the model of their phones in their statements. The two phones were recovered from Samuel Okorie and Elijah Ikebodu who told the investigators in their statements that the phones were given to them by Ezekwesili, the kingpin of the robbers to sell.

He testified that the conductor and driver could not identify the registration number of the vehicle that overtook them. That the driver said he was shot and he lost consciousness and was unable to get the vehicle number. He stated that it was impossible to go after the vehicle used in the robbery as the complainants could not identify its registration number. The driver and conductor also said that they could not identify the people that robbed them.

The witness stated that identification parade is necessary where a complainant identified the people that robbed him. He could not remember any Echezona. The vehicle in which the tyres were found was released on bond to one Elijah Chidera, the boss of the 1st accused person. The witness also testified that he never said that the exhibit keeper on transfer left with the phones but that there were many phones in the exhibits room and it will be very difficult for him, PW5 to trace the two phones. There was no re-examination.



Case for the Defence was opened on 3/5/2016 with SAMUEL OKORIE, 1st Defendant testifying as DW1. He is a driver to Echedon Investment Ltd and has been their driver for six months plus. He has an identification card which is at the Onitsha Prisons and a Drivers' log book which he identified in Court and was admitted as Exhibit E. He knew the 2nd Defendant, his conductor. He does not know the 3rd Defendant.

He gave evidence that he was in his house on 8/12/2009 at 32 Immaculate Avenue, Aba when he was summoned to their office at Aba. He was informed that he had to travel to Jos to deliver goods, tyres, to a customer. He was dispatched together with a way bill as was the custom. He requested for the customer/owner of the goods, whose name was on the back of the way bill and was informed that he went to bring loaders. He was informed that the vehicle carrying the tyres got stuck at Owerrinta and that he would have to go and do a transload. He called the 2nd Defendant to proceed to Owerrinta.

On getting to Owerrinta, he met the vehicle with two men who introduced themselves as the driver and conductor. A few minutes later, the owner of the tyres drove in in a Peugeot car with the 3rd Defendant and John Eze (deceased). The vehicle was transloaded and they left for Jos while the owner travelled ahead of them in his vehicle.

When they got to Jos, they called the owner and he informed them that his warehouse in Jos was filled and that they should proceed to Jalingo. He told the owner that their agreement was Jos and since it was the company that scheduled the trip, he had to inform the company. The owner made calls to their manager, Echezona, who called him, DW1 and asked him to proceed to Jalingo once he is given money for gas. He, DW1, told the owner, Ezekwesili that his phone had run down and he had no means of communication and he gave him a cell phone and he inserted his sim card to enable him communicate with Abu Lion, the owner's man at Jalingo.

At Jalingo, they met Abu Lion on a Friday night and offloaded the tyres. He was supposed to return to Aba that night but Abu insisted he had no cash for gas and asked him to delay to the next morning. He was taken to a hotel by Abu, where he lodged with the 2nd and 3rd Defendants and the vehicle.



He testified that while he was warming his vehicle the next morning, some men in mufti entered the hotel and arrested all of them. They were taken to the Area Command, Jalingo where they met Abu Lion with one other person already arrested. He stated that it was in the cell that the other person spoke in Igbo, telling him that they were under arrest for stealing and that Abu Lion sold the goods to him. They made statements to the police and were granted bail, but before they could fulfill the bail conditions, the Police from Anambra came and re-arrested them.

When they got to State C.I.D., Awka, they made statements and were taken to the Commissioner of Police who asked them about Ezekwesili's phone number. Ezekwesili was called and he said he would not report at the Police. The Area Command was asked to produce Abu Lion but they said Abu Lion was on the run. He, DW1 was taken to Jalingo to look for Abu Lion but all attempts to get him at Jalingo proved abortive. He stated that his vehicle was used to convey the tyres to Awka from Jalingo and that the vehicle was released to his company.

Cross-examined, DW1 testified that the Echedon vehicle is blue in front and red at the back. It was at the State C.I.D. Awka that he called the owner of the vehicle and he came. Ezekwesili gave him two phones, Zain and Nokia. Ezekwesili did not come to Jalingo as he had earlier detailed someone in Jalingo. When they were arrested they called Ezekwesili but he refused to surface.

He denied having a gang or being involved in shooting the driver. He denied that himself and the other Defendants were involved in snatching tyres at Nkpor market. He stated that it was his first time of going to Jalingo with tyres. He denied that they were lodged in a hotel in order to be paid for the transportation to Jalingo. He stated that Ezekwesili had already settled with the company and that he was lodged in a hotel to be paid for gas to travel down to Aba, the cost of which is N20,000.00 for 200 litres. He testified that he never knew Ezekwesili except the time they met at Owerrinta. The questions put to the witness at re-examination were overruled.

DW2 was ELIJAH IKEBUDU, a conductor. He had been a conductor for three months before his arrest. He had an identification card now lost. He knew the 1st Defendant, his driver. He does not know the 3rd Defendant as he met him for the



first time in this case. He testified that on 8/12/2009, he was at his house when DW1 called him, informing him that he secured a load for transloading. DW1 asked him to meet him at Owerinta. At Owerinta, he met them already transloading the goods and they left for Jos. He stated that DW1 called somebody on phone and the person, whose name is unknown to him, came and told DW1 to proceed to Jalingo, Taraba to off load the tyres.

He stated that DW1 refused to proceed unless he was so ordered by his company. That the company manager later called DW1. That DW1 told Ezekwesili that his phone was down and Ezekwesili brought two phones from his car which he gave to DW1. Ezekwesili asked DW1 to put his sim card inside the phone and use same to communicate with Abu Lion. DW1 gave him one of the phones. They then left for Taraba communicating with Abu Lion.

When they got to Taraba, it was on a Friday night, they were taken to a warehouse. The 3rd Defendant and John Eze (deceased) offloaded the vehicle. Abu Lion lodged them in a hotel as he had no money to pay for their gas and asked them to wait till Monday to enable him get to the bank.

On Monday morning, they were arrested by the Police and taken to Area Command, Jalingo. They met Abu Lion and one other person in the cell. They made statements to the Police. The Police called Ezekwesili on phone but he refused to turn up. They were granted bail and Abu Lion found a surety. They were later re-arrested by the Police from Anambra State. At the State C.I.D., Awka, they made statements.

At cross examination, he stated that when they called Echedon, he told them that he was on his way. A day later, they were brought down to Awka and Echedon came to Awka. Echedon requested for their bail but bail was refused and they were charged to Court.

He denied being a member of any armed robbery gang. He denied robbing anybody of a handset or being involved in the shooting of the driver. He denied knowing Ezekwesili except when he met him at Jalingo. He stated that when they were arrested and detained at Jalingo, they informed their employers that they were arrested for carrying stolen goods. He testified that they delivered the tyres to Abu Lion. That he was in the cell and would not know to whom the tyres were released.

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He stated that there were no sim cards in the phones given to them. That DW1 gave him the phones and he kept them.

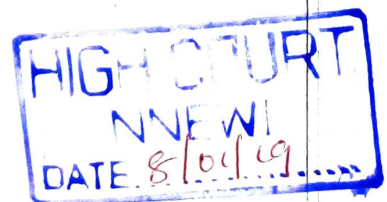
The 3rd Defendant, CHUKWUKA ANEKE, was DW3 He is a job man (loading and offloading). He does not know the 1st and 2nd Defendants prior to the instant case.

He testified that he was at Aba on 8/12/2009 when one Mr. Okafor employed him and late John Eze to transload goods from a vehicle to another. They travelled to Owerrinta where they met Ezekwesili, the owner of the goods. He told them that he was expecting a vehicle on which to transload the goods. The vehicle came and they agreed on the sum of N4,000.00 for the transload. They also agreed on N6000.00 for offload at Jos.

When they got to Jos, they could not offload the vehicle as the owner had problems with the vehicle owner. They were told that they would no longer offload the goods in Jos but at Jalingo. The owner promised to add more money and they travelled to Jalingo where they met an Hausa man, Abubakar who took them to where they offloaded the tyres and packed them in a warehouse and he paid them.

DW 3 testified that they did not leave Jalingo immediately as they had to wait for the vehicle owners to be paid so they could travel back with them on Monday. As they were waiting for the vehicle owners, the Police came and arrested them and detained them at the Area Command, Jalingo. They met Abubakar and an Igbo man at the Police cell and the Igbo man told them that Abubakar supplied the tyres to him. They volunteered statements and were granted bail. Abubakar and the Igbo man left. Before his brother could come for his bail, they were brought down to State C.I.D., Awka, Anambra State.

Cross-examined, DW3 testified that they transloaded the tyres from a 911 vehicle. The tyres were transloaded to a "big motor – a container truck, back was coloured red, front coloured dark". They met Ezekwesili with a 504 Peugeot car. He travelled to Jos in his own vehicle. He does not know why Ezekwesili did not come to their help as the Police called him but he refused to turn up. DW3 denied being a member of a gang with Ezekwesili.



He witnessed when Ezekwesili handed over two phones to the driver as the driver complained that his battery was down and the charging point in the car was spoilt. Ezekwesili instructed them to use the phones to communicate with the receiver of the goods at Jalingo. They stayed in a hotel from Friday night to Monday morning. There was no re-examination.

At the close of trial, parties filed final written addresses. The Prosecution's final written address was dated 27/10/2016 and raised four issues for determination, to wit:

1. "What is the evidence put forward by the prosecution for the court to rely in convicting the defendants?
2. Are the evidence of the prosecution so far led one that the honourable court could convict?
3. What are the defence(s) put forward by the defendants?
4. Are the defence(s) put forward sufficient to return a verdict of not guilty in favour of the defendants?

Defendants' final written address was dated 4/7/2016 while the Reply on Points of Law was dated 3/11/2016. Defendant's Counsel raised a sole issue for determination, to wit:

"Whether the Prosecution proved his case beyond reasonable doubt as required by the law in relation to conspiracy and armed robbery".

In his written submission D. E. Ejiabukwa, prosecuting Counsel submitted after having reviewed the evidence of Prosecution witnesses that the duty of the prosecution in criminal cases is to prove the guilt of an accused person beyond reasonable doubt. Secondly, that the guilt may be proved either by confessional, circumstantial or direct evidence. Counsel submitted that from the nature and totality of the evidence adduced, that the guilt of the accused persons in the instant case could be proved by a combination of confessional, circumstantial and direct evidence.

Counsel submitted that the statements of the accused persons - Exhibits B, B1 B2, C, C1 and C2 are partly confessional and partly denial, and therefore implicative. That from the evidence of the prosecution witnesses, PW1 – PW4, there was no doubt that there was a robbery and that the robbery was an armed robbery since



PW2 was treated with gun wounds. That the Defendants were those who took part in the armed robbery having been arrested with the stolen items.

Counsel referred to the statement of DW1 – Exhibit B1 made on 14/12/09 wherein he stated that his director informed him of goods they were going to load from Oba in Anambra State and Exhibit C the statement which he made two weeks later at Awka, both of which are diametrically opposite and different. DW1's admission that the vehicle he used in carrying the goods to Jalingo is painted blue in front and red at the back (same description with PW3 and PW5); his admission that Ezekwesili gave him two phones, a Zain and a Nokia phone, contrary to his evidence that he was given one phone; his evidence that he transloaded at Owerrinta in Imo State contrary to his earlier statement that he transloaded at Oba Anambra State; his statement in Exhibit B1 that at Oba when he was loading the goods Elijah was bringing the tyres through and a mini bus, together with the other two arrested persons contrary to his evidence that they were transloaded at Owerrinta from a 911 lorry.

Counsel also compared the statement of DW2 and DW3 in their statement to the Police and their evidence in Court and pointed out several contradictions in both and submitted that there was a strong conspiracy between the three defendants to fabricate a story and to narrate the same story. He urged the Court to disregard the inconsistent and contradictory stories as unreliable, citing DIBIE VS STATE (2008) 6 ACLR 307, 312 and STEVEN VS STATE (1986) NSCC 1421.

Counsel submitted that the prosecution had proved its case beyond reasonable doubt by the combined effect of the evidence of PW1-PW5, exhibits A, B1, D1, D2 and D3, the evidence of possession of stolen handsets of PW2 and PW3 found with the Defendants and the discredited statements of the accused person in Exhibits B, B1, B2, C, C1 and C2 which are in conflict with their oral testimonies.

On the offence of conspiracy, Counsel submitted that the actus reus of the offence of conspiracy is the agreement between at least two persons to do an act or a lawful act by unlawful means and there is no need to prove that parties actually met. That all the Defendants admitted that they were in the same big container lorry painted dark red at the back and blue in front, which vehicle colour the PW2 and PW3 described double-crossed and eventually robbed them of the goods and handsets,



both of which were found with the Defendants. The inconsistencies in their oral and written statements all points to the fact of *mens rea* of conspiracy. The oral testimonies of DW1-DW3 that the stolen handsets were exchanged and handed over to DW3 are all within the purview of the exceptions in Section 8(2) of the Evidence Act 2011.

Counsel further submitted, relying on Section 167(a) of the Evidence Act, Counsel set out the conditions under which the section will apply and relied on the case of UDOH VS STATE (1993) 5 NWLR (PT295) 556 namely:

- (1) That the recent possession is not directly traceable to the offence.
- (2) That there is no valid account or reasonable explanation for the possession.
- (3) That the goods must have been stolen
- (4) That the goods were recently stolen.
- (5) The degree of proximity of the time of the act of stealing.
- (6) The nature of the goods and the method by which ownership of the goods can be transferred.
- (7) The explanation must be at the earliest opportunity to attract credibility and to enable the Police to investigate the truth.

Counsel submitted that from the evidence of PW1 - PW5, Exhibits D1-D3, B, B1 and B3, there was an interval of six to seven days between the day of robbery 3/12/09 and 10/12/09 or 9/12/09 when the defendants came into possession of the goods. That the recent possession of the said goods was traceable to the defendants as the PW2 and PW3's description of the lorry used to double-cross and rob them were found in the possession of the defendants. He referred to Exhibits D1 - D3. That the same number of people DW3 told the Court he saw on the date of robbery, four persons who jumped down from the vehicle, the same number was found in the vehicle upon arrest.

On whether the defendants gave a satisfactory account of their possession and whether the account or explanation ~~was~~ reasonable and credible, Counsel submitted that the defendants' story were concocted and fabricated. He referred to Exhibits D1-D3 and stated that the material facts stated were at variance with the evidence in Court and urged the Court to hold that the defendants failed to give any reasonable explanation for being in possession of the stolen goods.

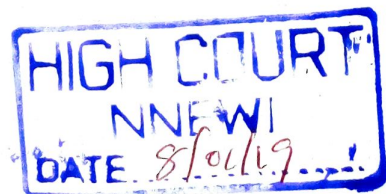


In her written submission, P.O. Onubogu, for the Defendants, submitted that the Prosecution failed to prove the offence against the defendants. Counsel submitted that the defendants were not in any agreement to commit any offence and referred to the evidence of DW1, DW2 and DW3 which she stated were not contradicted by Exhibits B, B1, B2, C1 and C2.

On the count of robbery, Counsel submitted that prosecution witnesses PW2 and PW3, victims of the robbery could not identify those who robbed them and the prosecution having failed to connect the identity of the 1st, 2nd and 3rd defendants to the charge. That the defendants through DW1 - DW3's story as to how they came about the stolen tyres and phones, the way bill receipt, drivers log book - Exhibit E, the explanation of how the two phones were given to DW1 were all corroborated.

Counsel submitted that the circumstantial evidence relied upon by the prosecution failed to link the defendants with the offence as the evidence was not cogent, complete or lead to irresistible conclusion.

On the presumption under Section 396 of the Criminal Code or doctrine of recent possession under Section 167 of the Evidence Act, Counsel submitted that a Court may infer guilty knowledge where the accused gave no explanation as to how he came to be in possession of the goods recently and if the Court is satisfied that the explanation he has given is untrue, he will convict, but where the Court is left in doubt as to whether the accused person knew or does not know that the goods were stolen, the Court shall acquit. She submitted that the defendants explained how they came about the stolen tyres and phones at the earliest opportunity in Exhibits B, B1 and B2, C, C1 and C2. That the defendants gave account of how the stolen tyres and phones came into their possession and that they do not have the knowledge that the tyres and phones were robbed from PW2 and PW3. That the police having released the vehicle, the defendants were arrested with to the owner and master of 1st and 2nd Defendants and the manager having not made any disclaimer as to the movement of the 1st and 2nd defendants, the simple conclusion any reasonable man will draw will be that Echedon Investment Ltd dispatched the driver to convey the tyres and that the defendants were neither the robbers nor the persons that received the stolen goods.



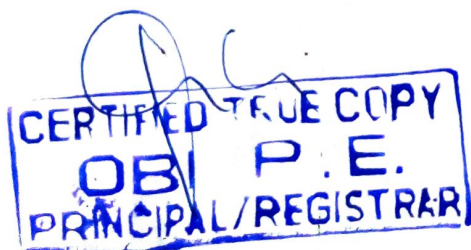
In her reply on points of law, Counsel submitted that the oral evidence of DW1-DW3 were not inconsistent. She referred to the records. On circumstantial evidence, Counsel submitted that the evidence of the prosecution left ground for reasonable doubt as the PW2 and 3 did not recognize the people that robbed them or the registration number of the vehicle that double-crossed their vehicle.

The defendants were charged with conspiracy to commit felony - Armed Robbery and Armed robbery.

PW2 and PW3 were the driver and conductor of a tyre loaded vehicle properties of the PW1. PW2 gave evidence that at about 7.30 pm while they were on their way, a container body lorry overtook them and four men came out of the vehicle and said stop and as he was trying to stop, one of them came to the conductor's side and shot him in the stomach, dragged him out of the vehicle and into their vehicle, tore his clothing, used same to tie his hands and legs, collected cash and their phones and carried them into the bush. He later untied himself and the conductor who suffered the same fate. When they came out to the road, the two vehicles were gone. They trekked to the next village and a good Nigerian took him and the conductor to a hospital.

Cross-examined, he stated that he did not recognize the registration number of the vehicle that overtook them, but that he recognized the same vehicle when it was brought down with the tyres and his handset from Jalingo at Awka. He did not recognize any of the three defendants on the day of the robbery; he saw them when they were brought to Awka. He described his handset as a Nokia model.

PW3 gave similar evidence only adding that his wrist watch was stolen. Cross-examined, PW3 stated that he did not know the registration number of the vehicle that was used to block their vehicle. He did not recognize any of the defendants at the scene of the robbery as it was night time. That it was when they were brought from Jalingo to Awka that he saw their handsets (his handset was Zain model), the defendants, the vehicle that was used in the robbery, the tyres and his phone and money. He denied that it was PW1 that told him that it was the defendants that was the robbers.



PW5 was the IPO, he inherited the case file from Nnewi, received statement from complainant, visited the scene of crime and hospital where the PW2 and PW3 made statements. He travelled to Jalingo where he saw the accused persons already arrested and statements obtained from them. Later the tyres, five handsets, 1219 model Mercedes truck with blue face and dark red back were released with four suspects. At Awka the suspects made statements, two out of the five handsets recovered belonged to the driver and conductor PW2 and PW3.

Cross-examined PW5 stated that four suspects were handed over to him already arrested at Jalingo by the Police Area Command, Jalingo. He heard of Abu Lion but does not know him. Abu Lion made statements but in the course of the investigation by his team, they thought that Abu Lion should know more than he said at the Police at Jalingo, having acted as a middle man between the kingpin of the robbery gang and the receivers of the tyres. He testified that no weapons were recovered from the accused persons in Jalingo, that the Ugochukwu he knew with this case is the one at large, that two phones were recovered from DW1 and DW2 and both made statements that the phones were given to them by Ezekwesili the kingpin of the robbers to sell.

He testified that PW1 and PW2 could not identify the registration number of the vehicle that overtook them. That PW1 said he was shot and lost consciousness and was unable to get the vehicle number. He stated that it was impossible to go after the vehicle used in the robbery as the complainants could not identify its registration number. That PW1 and PW2 also said they could not identify the people that robbed them. He released the vehicle in which the tyres were found on bond to one Elijah Chidera, the boss of 1st accused person. On the two phones said to have been found on the 1st and 2nd defendants, PW4 stated that the Exhibit keeper was not available and that there are many phones in the Exhibit room and it was difficult for him to trace the two phones.

Robbery generally is the illegal taking of property from the person of another or in the person's presence by violence or intimidation, while armed robbery is robbery committed by a person carrying a dangerous weapon regardless of whether the weapon is revealed or used. See *AGBOOLA VS. STATE* (2013) 5 SCNJ 683.

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PRINCIPAL/REGISTRAR

HIGH COURT
NNEWI
DATE 2/11/12

For the prosecution to establish the offence of armed robbery, the following are required to be proved:

- (a) That there was in fact a robbery,
- (b) That the robbery was an armed robbery; and
- (c) That the accused persons were the armed robbers.

See BOZIN VS STATE (1985) 2 NWLR (PT8) 465 at 467 and ALABI VS. STATE (1993) 7 NWLR (PT307) 551.

In the case before me, there was overwhelming evidence that there was a robbery on the 3rd day of December 2009. PW2 and PW3, driver and conductor who were conveying tyres belonging to PW1 gave unchallenged evidence as to how their vehicle was double-crossed on the road and four men came out of the big container lorry and shot PW2, how they tied them up and dragged them into the bush.

On the second ingredient of whether the robbery was an armed robbery, PW2 and PW3 also gave evidence that the robbers were armed and that PW2 was shot and wounded in his stomach and was later taken to a hospital. The only ingredient that was hotly in issue is whether the accused persons were the armed robbers.

Armed Robbery as earlier stated is stealing with violence and the standard required is proof beyond reasonable doubt. See Section 138(1) of the Evidence Act. It is settled however that it is the duty of the prosecution to prove their case beyond reasonable doubt and this entails calling material witnesses to establish the essential elements of the crime and in the instant case that the three accused persons before me were the armed robbers who violently robbed the PW2 and PW3 on the 3rd day of December 2009.

PW2 and PW3 were the only eye witnesses called by the prosecution. PW2's evidence was that four men robbed them, he however did not recognize the registration number of the vehicle that double crossed them. He did not recognize any of the accused persons on the day he was robbed and shot. He also did not recognize any of the accused persons when they were brought from Jalirgo to Awka.

PW3, the conductor also did not know the registration number of the vehicle used to block their vehicle. He also did not see any of the accused persons at the scene



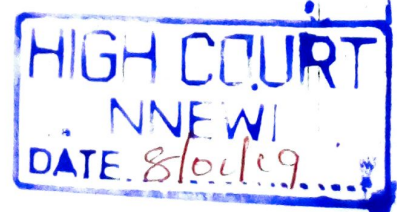
of the robbery because it was night time; it was only when they were brought from Jalingo to Awka that he saw them and his handset that was recovered from them.

PW5, the IPO's evidence was that the stolen tyres, five handsets and a 1219 model Mercedes truck with a blue face and dark back with four suspects were handed over to him at Jalingo by the Police Area Command. That two of the handsets belonged to PW2 and PW3; the handsets were never tendered. His evidence was that it was the Area Command, Jalingo that arrested the accused persons.

The defence called the DW1, DW2 and DW3, the three accused persons and they gave evidence. DW1, driver and DW2, conductor gave evidence that their employer Echedon Investment employed them to transload tyres from a vehicle at Owerrinta to Jos for one Ezekwesili, while the DW3 stated that he was employed by Ezekwesili to load the new vehicle and offload same at Jos with late Eze. It was DW1 and DW2's evidence that on getting to Jos, Ezekwesili asked them to go to Jalingo. DW1's evidence was that he insisted that he would not do so until his employer gives him the go ahead. That he was given the go ahead and he proceeded to Jalingo to deliver the said tyres to one Abu Lion also called Abubakar by DW3.

DW1 and DW2 gave evidence that after delivering the tyres to Abu Lion, he could not ante up money for fuel and had to book them into a hotel for the weekend. That it was at the hotel that they were arrested by the Police and taken into custody, where they met Abu Lion and one Igbo man who told them why they were arrested. It was also their evidence that the Area Command gave all of them bail, but while Abu Lion and the Igbo man were taken on bail, they could not provide sureties. That the Anambra State Police took them from the Police custody. DW1 and DW2 also gave evidence that Ezekwesili gave them the two phones as the battery in the phone of DW1 had run out and that it was for the purpose of being in contact with Abu Lion who was in Jalingo.

The PW5, the Police officer who investigated the case was asked about Abu Lion and he stated that Abu Lion made statement but in the course of their investigation i.e. investigation by himself and his team, they thought that Abu Lion should know more than he said at the Police at Jalingo because he, Abu Lion acted as a middle man between the kingpin of the robbery gang - Ezekwesili and the receivers of the



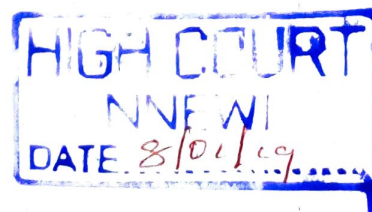
- tyres, but the Area Command Jalingo thinking that the tyres were stolen treated Abu Lion as complainant. That his team searched for Abu Lion and the two receivers but could not get them. That no incriminating weapons were recovered from the accused persons in Jalingo.

From the evidence of prosecution witnesses, the accused persons were not identified by PW2 and PW3 as the persons who robbed them. PW5, the IPO clearly in cross-examination stated that the conductor and driver could not identify the registration number of the vehicle that overtook them; that the driver lost consciousness and was unable to get the vehicle number; that it was impossible to go after the vehicle used in the robbery as the complainants could not identify its registration number; that the driver and conductor said they could not identify the people that robbed them.

Prosecution's Counsel in his written submission argued that from the statements of accused persons, exhibits B, B1, B2 and C, C1 and C2 and the evidence of the accused persons in Court, there exists a strong conspiracy between the accused persons to fabricate a story. That the accused persons having put up a defence in their extra judicial statements, which is different from the defence raised in their oral evidence in open Court, the trial Judge cannot pick and choose which defence to believe but must reject both and treat same as unreliable. He cited DIBE VS THE STATE (2008) ACLR 307, ratio 9.

The Prosecuting Counsel with the utmost respect is reminded that it is settled law that no onus of proof lies on an accused person and that the primary onus of establishing the case or guilt of the accused is always on the prosecution except in very special and limited circumstances. See ONAFOWOKAN VS STATE (2008) 6 ACLR 411 SC. The charge before me is that of Armed Robbery. The primary onus of proof is on the prosecution and from the evidence before me, there is no proof that the four men that robbed the PW2 and PW3 were the accused persons as none of the accused persons was identified by any of the prosecution witnesses.

The tyres that were violently robbed at gun point on 3/12/09 was found with the accused persons together with the two phones that were also stolen from PW2 and PW3. The accused persons did not deny that they were found with the tyres and the two phones, a prima facie case of being in possession of the stolen goods. The



accused persons have to explain how the stolen goods got to be found in their possession, as there exists a presumption that a person who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen.

DW1 gave evidence that he and DW2 were employed by Echedom Investment, Aba to transload the tyres from Owerinta to Jos and that the vehicle was the property of their employer. DW1 tendered a Driver's Log Book - Exhibit E. I have examined Exhibit E, which contained only date, journey to and fro, oil purchase and time out.

DW1 and DW2 also gave evidence that on getting to Jos, Ezekwesili asked them to proceed to Jalingo, which they did on getting the go ahead of their employer. That Ezekwesili gave them the two phones of PW2 and PW3.

I do not believe DW1, DW2 and DW3's evidence. Common sense shows that a driver whose employer was paid to deliver goods to Jos cannot on getting to Jos be asked to proceed to Jalingo without payment for the new destination. That DW1-3 were not telling the truth was confirmed by their evidence that on getting to Jalingo and offloading the tyres to Abu Lion, they were asked to wait till Monday to enable Abu Lion source money to fuel their vehicle home. It was not in evidence as to how their employer was paid for their trip from Jos to Jalingo. Thirdly, the so called employer who employed them to transload the tyres did not give evidence, receipt of payments for the transloading was also not in evidence.

I also do not believe DW1-3's evidence that Ezekwesili gave them the two phones for the purpose of communicating with Abu Lion in Jalingo. DW1's evidence was that his own phone was down and he was asked to put his sim card in the new phone. DW1 and DW2 failed to tender or give evidence as to what happened to their own phones. DW1 gave evidence that his employers dispatched the tyres with a waybill as was the custom. He and his employers failed to tender a copy of the said waybill.

DW2 contradicted DW1 as to what happened at Jos. While DW1 said that Ezekwesili met them at Jos and pleaded with them to proceed to Jalingo and gave them two phones.



DW2 stated that on getting to Jos, somebody called DW1 on the phone and told DW1 to proceed to Jalingo. DW2 made two statements. In the statement he made at Awka, he stated that at Jos, when DW1 refused to go any further Eze brought out some money and two handsets and gave to DW1 to sell and get some money. Later, DW1 gave him one of the phones to insert his sim card as he did not have a phone. DW1 in his statement of 28/12/09 also confirmed that the phones were given to him to sell. At the trial however, DW1 contradicted himself and stated that the phones were given to him as his phone was down and he had no means of communication; he had to insert his sim card to enable him communicate with Abu Lion in Jalingo.

It is settled law that if a theft has been committed and shortly afterwards the property is found in possession of a person who can give no account of it, it is presumed that he is the thief. That is what is generally referred to as the doctrine of recent possession. See KWASHIE VS R 13 WACA 86.

The provision of Section 167(a) of the Evidence Act that "a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession" is not a presumption of law but an inference which the Court may draw from the facts of a case after taking into consideration the circumstances of the case. See AREMU VS STATE (1991) 7 NWLR (PT201) 1SC.

From the totality of the evidence before me, I am convinced beyond reasonable doubt that the accused persons knew that the tyres were stolen. They also knew that the phones were stolen as it is unbelievable that an owner of goods whom the DW1 and DW2 met for the first time will give away two phones to them for free. Common sense would have put the accused persons on alert that there is no free garri in Free town. For the DW1 and DW2 to agree to continue from Jos which they said was the original destination to Jalingo, a distance of over two hundred kilometres without payment for the new destination, and on getting to Jalingo to be told that they will be given money for fuel is quite a cock and bull story concocted by the accused persons. I do not also believe the DW3 that he was engaged with late Eze to transload tyres at Owerri from one vehicle to another and was then asked to follow the vehicle to Jos to offload. The story is unbelievable.

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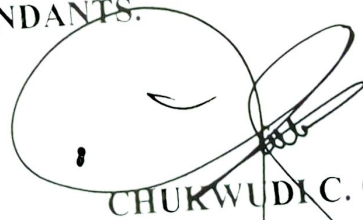
HIGH COURT
NEWI
DATE 8/01/19

I hold that **the** accused persons failed to offer satisfactory explanation as to how they came to be in possession of the tyres which were robbed from the PW2 and PW3. I therefore find the accused persons not guilty of armed robbery and conspiracy. I however find the accused persons guilty of being in possession of stolen goods.

ALLOCUTUS: P.O. Onubogu prays the Court to temper justice with mercy as the accused persons have been in prison for nine (9) years and 1st Defendant is suffering from diabetes.

SENTENCE: The 1st, 2nd and 3rd Defendants/accused persons are sentenced to seven (7) years imprisonment with hard labour, counting from the day they were arrested.

D. E. EJIABUKWA, ESQ. FOR THE PROSECUTION.
P.O. ONUBOGU, ESQ. FOR THE DEFENDANTS.


CHUKWUDI C. OKAA

JUDGE
25/1/2017



*Certification also
Certified 23 Folios entered
per Fio 560
Jd on CA No 1086705
8/1/2017*

