

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

V

BORBORDEEN BANGURA

COUNSEL:

R S FYNN ESQ (now THE HON MR JUSTICE R S FYNN) and F W O CAMPBELL ESQ, and on today's date, JOEL DEEN -TARAWALLY ESQ for the State
U KOROMA ESQ (now Deputy Minister of Justice) for the accused during trial.
Accused unrepresented today

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

JUDGMENT DELIVERED THE 26 DAY OF APRIL, 2021

THE INDICTMENT

1. The accused person was charged together with 2 other persons, Solomon Gbassay Sesay and Mohamed Abayomi Tejan, on a 7 Count Indictment dated 13 August, 2013, with offences under the Anti-Corruption Act, 2008. Counts 3, 4, 5, 6 and 7 were amended on 1 October, 2013 in a minor respect: Transport was inserted between Road and Authority to reflect the correct name of the Authority. The other 2 accused persons pleaded guilty during the course of the trial, and were duly sentenced. Borbordeen Bangura, who was the 1st accused at the trial, continued to resist the charges.
2. He was charged in Counts 1 - 4 of the Indictment. In Count 1, the charge was Soliciting an advantage, contrary to section 28(2) of the Anti-Corruption Act, 2008 - ACA, 2008. The particulars allege that on a date unknown between 25th and 30th July, 2013 at Freetown, the accused, being a Traffic Warden, solicited an advantage in the sum of Le5m from Mohamed Mahoi as an inducement on account of abstaining from reporting the clamping of a motor vehicle with registration number AGI 462 to authorities of the Sierra Leone Road Transport Authority, SLRTA, now known as the Sierra Leone Road Safety Authority, SLRSA. Count 2, charges the offence of Accepting an Advantage contrary to section 28(2) of the ACA, 2008. The particulars allege that between 25th and 30th July,

2013 at Freetown, the accused, being a Traffic Warden, accepted an advantage in the sum of Le2m from Mohamed Mahoi as an inducement on account of abstaining from reporting the clamping of the same vehicle as in Count 1. Count 3 charges the offence of Obstructing the Course of Justice contrary to section 127(1)(a) of the ACA, 2008. The particulars allege that the accused, being a Traffic Warden, on 20th July, 2013 at Freetown, without lawful excuse, assaulted Mohamed Jah, an officer of the Anti-Corruption Commission, ACC in the performance of his lawful duty under the ACA, 2008, to wit: effecting the arrest of the said Borbordeen Bangura. In Count 4, the charge is the same as in Count 3: Obstructing the course of Justice contrary to section 127(1)(a) of the ACA, 2008. The particulars allege that on 30th July, 2013, being a Traffic Warden of the SLRTA, the accused without lawful excuse, assaulted Moses Alusine Massaquoi, an OSD officer attached to the ACC in the performance of his lawful duty under the ACA, 2008, to wit: effecting the arrest of the said Borbordeen Bangura. The facts of this case gave rise to another one, The State v James Aiah Dauda, in which the accused was charged with two offences under the same section 127(1)(a) ACA, 2008. The accused was found guilty in that case.

3. The then Anti-Corruption Commissioner, Mr J F Kamara, on 3 April, 2014, pursuant to section 89(1) of the ACA, 2008, authorised Messrs Fynn, Ady Macauley, and Campbell and other Counsel to prosecute the matter on behalf of the State. 6 witnesses were listed at the back of the Indictment: Abdulai Barrie, Mohamed Mahoi, Mohamed Jah, Moses Alusine Massaquoi, Saidu Marrah, and Salia Kpaka.

THE TRIAL

4. The prosecution called 8 witnesses in all. One of them, PW4, Salia Kpaka, at the time, an officer at the ACC, could not be cross-examined after he had testified in-chief. It was reported by prosecuting counsel that he was no longer working for the ACC, and that he had gone up to the Provinces soon after testifying, and had not returned to Freetown. During his testimony in-chief, he tendered as exhibit A, the cautioned recorded interview of the accused; and as exhibit B pages 1 -14 copies of the money which was given to PW3, Mohamed Mahoi, to facilitate the 'sting' operation at the SLRTA.

2ND AND 3RD ACCUSED PLEAD GUILTY AND ARE SENTENCED

5. After the accused had testified on oath, and had called all of his witnesses, his co-accused Solomon Gbessay Sesay and Mohamed Abayomi Tejan, both of them also Traffic Wardens, changed their respective pleas to guilty. They had been charged with offences under section 127(1)(a) in separate Counts of the Indictment. They were not charged together with the accused herein in any one Count. As such, I proceeded to sentence them at once, as their circumstances were most unlikely to alter, during the rest of the trial of the sole accused person.

THE PROSECUTION'S CASE

6. The central allegation against the accused is that on or about 29th July, 2013, he solicited an advantage, ordinarily known as a bribe from a vehicle owner, one Mohamed Kuyateh, the owner of a tipper truck registration number AGI462 through Kuyateh's driver, Abdulai Barrie. At the instigation of a journalist, Saidu Marrah, Kuyateh reported the act of soliciting to the ACC. At the ACC's office at Gloucester Street, he was given the sum of Le2m, and told to go with officers to the SLRTA compound and offer the amount requested to the accused. The bank notes were photocopied at the ACC before Kuyateh and the ACC team left for Kissy Road. At Kissy Road, the driver Barrie handed over the money to the accused, who counted it out, and returned it to the paper packet from which it had been taken. There and then, ACC personnel tried to arrest the accused. The personnel were set upon by the accused, the two co-accused who pleaded guilty, and some other wardens; some of the personnel were injured in the scuffle which ensued. It appears that the accused was also injured and had to seek treatment at the Connaught hospital. Video recordings of what transpired were made by two witnesses, PW3, Mohamed Charlie Mahoi; and PW6, Saidu Marrah. Marrah tendered the CD plate with the recording as exhibit D. It was played back in Court, and it depicted in graphic detail the oral evidence which had been given by PW1- PW6. After the scuffle, the accused was eventually arrested, and taken to the ACC, and thereafter to the hospital. for treatment.
7. Apart from cross-examination of the prosecution witnesses which tried to establish that the transaction relating to the money changing hands at Kissy Road, was entirely proper, the accused testified on oath and called 4 witnesses to support this version of events. He does not bear the legal burden of proof, but if he wishes, as he clearly did, to explain his own

version of events, he was, and is clearly entitled to do so. Even if I disbelieve the version of events put forward by the accused and his witnesses, I can only find him guilty of the offences charged if the prosecution has led evidence, probative of the guilt of the accused, beyond all reasonable doubt.

THE EVDIENCE

8. PW1 was Moses Massaquoi, an officer at the ACC. At the time the offence was committed, he was an officer in The OSD division of the Sierra Leone Police. On 30 July, 2013 he embarked on a Sting operation along Kissy Road, together with Mohamed Jah, Salia Kpaka and Elvira Pratt. He saw Jah being beaten by the accused with an umbrella. This was during the rainy season. He tried to put an end to the beating. He arrested the accused. The accused said he would go nowhere. Other Traffic Wardens (TWs) came to the scene. They tried to obstruct the witness and his team. Some of them hit members of his team. The former 2nd and 3rd accused persons were in this group of attackers. So also was the accused in the separate trial, James Dauda. He denied that he hit the accused.
9. PW2 was Mohamed Alhaji Jah, another officer of the ACC. He was at the office on 30 July, 2013 when Kuyateh made a report of soliciting an advantage. He was directed to join the group proceeding on the sting operation. At Kissy Road, close to the SLRSA, they were met by Kuyateh and Barrie. Kuyateh showed them the envelope containing the sum of Le2m; Kuyateh then handed over the envelope to Barrie to do the payment. He saw Kuyateh and Barrie enter a hut close by the SLRSA compound. He saw Mahoi standing close by. Barrie, the driver, handed over the envelope with the money to the accused. He saw the accused counting the money. The notes were all Le10,000 denomination. After counting the money, the accused put the same back into the envelope. The accused came out of the hut, the envelope containing the money in his hand, and moved towards the entrance to the SLRSA compound. PW2 went after him, and tried to arrest him. Some of the money fell from the envelope, and passers-by scrambled for it. Both of them got into a struggle. Other TWs including the two who were sentenced by the Court pounced on him. They were saying at the same time: "*ACC don pass mark.*" PW2 held on to the accused, and consequently, they were dragged together into the SLRSA compound. PW2 was being beaten by colleagues

of the accused. The witness was forced to release his grip on the accused. The accused ran into an office in the compound, and he and others with him, forced the door close. However, with the assistance of others who came to his aid, PW2 was able to push the door open. PW2 succeeded in arresting the accused. PW2 emphasised that he told the accused that he was an officer of the ACC.

10. PW3 was Mohamed Charlie Mahoi, a journalist. He got to know the accused in July, 2013. On 29 July, 2013 he received a call from his friend Mohamed Kuyateh, aka Awuah who said he had a problem with the accused. Awuah gave him a mobile number, which, he, Awuah claimed belonged to the accused. The witness called that number, but his call was not taken. The witness then used Awuah's number to call this other number. Somebody took the call. That person said Le5m should be paid before the vehicle was released. Later, it was agreed that Le2m should be paid. PW3, Awuah and the driver of the truck, went to the ACC to make a complaint. Money was put in an envelope and given to the driver to take with him, when meeting with the accused. PW3 narrated the sequence of events leading up to the handing over of the envelope to the accused at a baffle near the SLRTA office. PW3 took photographs of the handing over, and counting of the money. It was at the stage of handing over the money, when an ACC officer tapped the accused's shoulder, and said to him, *'you are under arrest'*. 1st accused was heard to say: *"U too pas mark; una don pass mark pan we."* The accused held on to the money, and tried to drag the officer into the SLRTA compound. The officer (I.E., Jah), was beaten up by some of the Traffic Wardens who were present. A scuffle ensued involving the accused, the OSD Officer, during which the money in the envelope which was in the hands of the accused, fell out. PW3 picked up a few of these notes himself. Someone threw a helmet at Massaquoi.
11. He was cross-examined by both Mr Koroma, on behalf of the accused, and by Mr Saquee- Kamanda, Counsel for his co-accused. His story remained very much the same. In fact, he confirmed that he gave the unedited version of the video recording he had made, to the ACC. At the end of cross-examination, I directed that the video be brought to Court, to be played. Eventually, it was not produced as it was said to no longer be available.
12. PW4 was Salia Kpaka, an investigator at the ACC. He was on duty on 30 July, 2013 when the report made by a complainant, Mr Kuyateh was

assigned to him for investigation. He led a team and accompanied by Mr Kuyateh, to the SLRTA premises at Kissy Road. They took along the sum of Le2m in cash. Copies of these notes were also made. At Kissy Road, he observed what was going on close by the SLRTA. He saw Abdulai Barrie hand over the brown envelope in which the money had been put at the ACC office, to the accused. The accused took four bundles in Le10,000 denomination, out of the envelope. He counted out one bundle, and thereafter returned the bundles of money to the envelope. He was about to go into the SLRTA compound when he was arrested by PW2, Mr Jah. There was a scuffle involving the accused and Mr Jah. Other Traffic Wardens came to the scene. He saw the Traffic Wardens and the accused, drag Jah into the SLRTA compound. He saw the accused hitting Jah with an umbrella. He saw the helmet being thrown at the ACC officers. It was after Massaquoi had threatened to discharge his weapon, that the crowd dispersed. They were able to subdue and arrest the accused, and to bring him to the ACC. At the office, they watched the video recorded by Marah. He took down the statement made by the accused. He tendered in evidence the statement of the accused as exhibit A pages 1 -15; and photocopies of the Le10,000 notes as exhibit B pages 1 -14. He could not be cross-examined for a while as he had cause to go to the Provinces. Mr Campbell for the State, applied to interpose a witness so as to avoid further delay.

13. PW5 was Momodu Sittar, an Investigations Officer at the ACC. He tendered in evidence the statement of the then 2nd co-accused.
14. PW6 Saidu Marrah was also interposed. He also witnessed the handing over of money to the accused, and the violent confrontation which ensued thereafter. He video recorded the whole episode. The CD Rom on which it was recorded was admitted as exhibit D. It was replayed in Court. This was a visual display of all the witness had said before. It also provided support for the narratives of the various incidents on that day, given by other witnesses. Even under cross-examination by both Mr Koroma, and Mr Saquee-Kamanda, the witness remained consistent and assertive. He was not really contradicted in any material respect, nor was the recording he made shown to be faulty or partial in any respect.
15. PW7 was Musa Ballah Jawara, an investigator at the ACC. He tendered in evidence the recorded interview of the 3rd co-accused as exhibit E pages 1 - 5.

16. PW8 was Regina Barrie, an Investigations Officer at the ACC. She recounted the events of 30 July, 2013 when, she and other officers embarked on a sting operation at the SLRTA, Kissy Road. Her evidence was corroborative of that of the other witnesses. I found her to be truthful and accurate in her narration of what transpired that day. She saw the accused take the money out of the envelope, count the same, and put it back in the envelope, and then walked out of, in her own words, the makeshift structure where all of this had been going on. As soon as Jah pronounced the arrest, the accused threw the money on the ground. She witnessed the assault on Jah by the accused. She also saw Massaquoi being hit on the head with a helmet by James Dauda. As stated above, he has already been convicted for that assault.
17. PW8 explained further that she had to make a statement about the various incidents that day and that that was routine. She was called to give evidence because Saidu Kpaka was no longer available for cross-examination. She was cross-examined extensively by Mr Koroma as recorded on pages 43 - 44 of my minutes; but not so intensely by Mr Saquee-Kamanda, as appears on page 45 of my minutes. But such cross-examination did not adversely affect the evidence she had given in chief. I found her to be a truthful witness.
18. At the close of her testimony, Mr Campbell did say that the prosecution intended to call Mr Abdulai Barrie, the driver of the truck which had been seized by the accused. But, he was unable to do so before closing the prosecution's case.
19. After several adjournments for the reasons stated in pages 46 & 47 respectively, the prosecution closed on 4 March, 2015. Mr Koroma, Counsel for the accused sought a direction as to how PW4 Salia Kpaka's evidence should be treated as he had not been cross-examined. I gave my direction at pages 48 & 49. Where a witness has testified in chief, but has not been subjected to cross-examination, his evidence forms part of the record of the Court and ought not to be expunged for that reason alone. It should be treated with caution, and this is something I have borne in mind in delivering this judgment. In any event, the prosecution called Regina Barrie to more or less buttress the evidence of PW4 which had not been subjected to cross-examination. And as I have stated above, she was a credible witness.
20. Mr Campbell also applied for leave to dispense with calling Mr Barrie, the vehicle driver, whose name appeared on the back of the Indictment. I

called upon defence Counsel individually to state whether they wished to cross-examine this witness. Mr Koroma said that after reading the summary of his evidence, he would wish to cross-examine him. Mr Saquee-Kamanda on his part, said he would not wish to do so. In the circumstances, and as recorded by me at the bottom of page 49 of my minutes, I directed Mr Campbell to seek further directions and advise from his supervisor at the ACC. I also said, as appears at the top of page 50 of my minutes, that if at the end of the day, it appeared that this witness's attendance could not be procured without much delay, the Court would then decide whether it was necessary to dispense with his appearance.

21. On the adjourned date, Mr Campbell referred the Court to an affidavit deposed and sworn to by Mr Ibrahim Bangura, Court Officer at the ACC. In his affidavit, Mr Bangura deposed that he had been informed that Abdulai Barrie had been taken to the Provinces for traditional treatment. He could not be procured without undue delay. Upon reading this affidavit, I was satisfied in my mind, and I accepted that this was indeed the situation. But as defence Counsel were absent at the hearing, I adjourned the hearing to hear from them. There were several other adjournments over a period of five months because of the absence of one Counsel or the other. Finally, on 16 November, 2015, with the prosecution still being unable to procure the attendance of Abdulai Barrie, I had no alternative but to accede to Mr Campbell's application. I thus ordered that the prosecution could dispense with calling Mr Barrie.
22. It transpired that same day, that an additional witness, Mohamed Kuyateh, the owner of the vehicle at the centre of the prosecution's case, in respect of whom, a notice to call an additional witness had been filed and served, was unavailable and could not be traced. As his name was not at the back of the Indictment, the prosecution were not duty bound to call him, or, to explain the reasons for his absence; nor was there a need for the Court to make a specific order to dispense with calling him.

PROSECUTION CLOSES & IST ACCUSED PUT TO HIS ELECTION

23. At this stage, Mr Campbell closed the prosecution's case. I proceeded to put the accused, then the 1st accused, to his election in the manner provided for in section 194 of the Criminal Procedure Act, 1965 as amended. The accused elected to give evidence on oath, and said he would be calling four witnesses to testify on his behalf.

DEFENCE CASE - ACCUSED AND FOUR WITNESSES TESTIFY

24. The accused gave his testimony on 7 December, 2015. He identified his statement, exhibit A pages 1 - 15. He said he knew PW3 Mohamed Mahoi. He said he received Le2m from PW3 and that this sum of money was paid in respect of vehicle AGI 462 which was to be towed. He was allowed to receive money on behalf of the SLRTA. His explanation of the encounter with PW3 was that it was entirely innocent. A co-worker, Clarissa had directed PW3 to pay the money to him. He had directed PW3 to pay the money to the desk officer. According to him, PW3 went to the desk officer's office, but came back saying the desk officer was not at this desk. The accused then asked him for the money. PW3 opened a plastic bag, took the money out. He, the accused began counting the money. He had counted the first bundle amounting to Le500,000 when he saw the desk officer coming towards them from the direction of the mosque. They were then at the gate of the SLRTA. The accused said he then asked PW3 to accompany him to the desk officer to make payment. It was at this stage he was grabbed by the back by PW2, Jah. The others including Massaquoi joined in the melee. None of them identified themselves as ACC personnel. He was beaten mercilessly. Massaquoi hit him on the head with the butt of his gun. He tendered in evidence 12 photographs as exhibit F1-12, depicting the injuries he suffered. His uniform was tendered as exhibit G; his under-vest as exhibit H; and his reflector gear and top tunic as exhibit J. He was only told one of the persons involved in the attack on his person was from the ACC after the beating. He thought they were criminals. He said he was dragged like a goat outside the compound. He said that part of the scene was later played on SLBC TV. He was pushed into a car and driven to the ACC. Later, he was taken to Connaught hospital where he was treated for his injuries; ACC bore the cost of his treatment. He was later detained for 21 days at CID Headquarters. He denied talking to Kuyateh; he also denied asking Kuyateh for Le5m. The vehicle in question had been clamped and towed to the office. The sum of Le2m was the fine imposed for this. According to him, he went through the proper procedure when a vehicle is towed. He denied all of the allegations made by the prosecution.
25. He was cross-examined by Mr Campbell. He stuck to his story. The CD exhibit D was about to be played over to him, when it was discovered that it was broken. A date had to be taken to procure a copy. Two months

later, Mr Campbell came to Court with the copy. The manner in which it was obtained was explained to the satisfaction of the Court as appears on page 63 of my minutes. It was admitted into evidence and marked exhibit D1. The accused identified himself in the clip shown. As I have stated earlier, the recording was graphic, and really required no explanation or interpretation. The rest of his cross-examination consisted of denials of the accusations levied against him.

26.DW2 was Alimamy Sesay, Administrative Secretary at the SLRTA. He confirmed that the accused was entitled to collect fines from defaulters. But that he could do so when banks are closed and the defaulter wishes to make payment. He, the accused would issue a temporary receipt, and after payment into the bank account, a proper receipt would be issued. The temporary receipt book issued to the accused was tendered and marked exhibit K. Now, as the accused had not claimed that he had issued a receipt whether temporary or permanent to Mahoi, or to anyone else, this piece of evidence is irrelevant, and was perhaps intended to distract the Court's attention. He continued that for a truck the size of that said to be the one in question, the towing fee would be Le2m. He was asked specifically by Mr Koroma, Counsel for the accused whether he received a report that the truck AGI 462 had been clamped and towed by the accused. He said he had received such a report. He said the owner had paid for the release of the vehicle. As proof of this, he tendered in evidence as exhibit L1&2, two receipts issued by SLRTA. These were permanent receipts. They could have been issued at any time. And, in any event, it has not been suggested that they were issued by the accused. The accused's Counsel, Mr Koroma explained that he had obtained the receipts in 2013, the year the crime was alleged to have been committed. The vehicle was released after payment. He said he was not invited to the ACC to make a statement. He concluded his evidence in chief by saying he was not present when the incidents involving the accused took place on 30 July, 2013. He was cross-examined by Mr Campbell but he did not depart from what he had said before.

27.DW3 was Arthur Kenneth Leigh, a Traffic Warden at the SLRTA. He said he was on duty that day. He placed a call to the accused in respect of tipper registration number AGI 462. He saw the vehicle with the clamps on. He said he had not received any complaint that the accused had demanded money.

28.DW4 was Desmond Nathaniel Raymond Taylor. He worked for Capital Insurance Company but was stationed at the SLRTA. He knew the accused, as he would render assistance in his line of business, the insurance business. He witnessed what happened on 30 July, 2013. He actually saw money changing hands between an unknown gentleman and the accused. He saw accused checking the money. He heard the accused tell the gentleman that they should go into the office for a receipt to be issued. Whilst the accused and the unknown gentleman were heading towards the office, he had shouts of 'fet, fet.' He saw four people grab hold of the accused. He saw the accused being injured by one of his attackers. This was all he knew about the matter. Cross-examination did not elicit anything new.

29.DW5 was Alie Sankoh, bike riders' chairman. His evidence was to the effect that the accused had insisted that the man who had handed over the money to him, i.e. Mahoi, should go inside the SLRTA compound with him to make payment, but the man had said he did not want to go into the office. Later, he saw the accused being treated roughly by some other men. This evidence was given on 6 June, 2016, nearly three years after the incidents of 30th July, 2013. After this witness' testimony, the accused closed his case. I had to adjourn the hearing in order to put his co-accused to their election.

THE CO-ACCUSED PLEAD GUILTY AND ARE SENTENCED

30.I was able to do so eventually on 20 July, 2016. At this hearing, both 2nd and 3rd accused elected to change their respective plea to guilty. Guilty verdicts were accordingly entered against them in respect of the offences with which they had been charged, save for those in respect of which the prosecution offered no further evidence, and in respect of which each of them was accordingly acquitted and discharged. Each of them was sentenced accordingly. These proceedings are at pages 77 - 82 of my minutes. The rest of my minutes record the number of adjournments taken for written addresses to be submitted by the prosecution.

BURDEN AND STANDARD OF PROOF

31. This Court is sitting both as a Tribunal of Fact, and as the Tribunal of Law. I must thus, keep in mind and in my view at all times, the legal requirement that in all criminal cases, it is the duty of the Prosecution to

prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which an Accused person is charged. If there is any doubt in my mind, as to the guilt or otherwise of an Accused person, in respect of the charge in the Indictment, I have a duty to acquit and discharge that Accused person of that charge. I must be satisfied in my mind, so that I am sure that an Accused person has not only committed the unlawful act charged in the Indictment, but that he did so with the requisite Mens Rea: i.e. the act was, or the acts were done with the requisite intent. I am also mindful of the principle that even if I do not believe the version of events put forward by the accused, I must give him the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. No particular form of words are "sacrosanct or absolutely necessary" as was pointed out by SIR SAMUEL BANKOLE JONES, P in the Court of Appeal in KOROMA v R [1964-66] ALR SL 542 at 548 LL4-5. What is required is that it is made clear by or to the tribunal of fact, as the case may be, that it is for the prosecution to establish the guilt of the accused beyond a reasonable doubt. A wrong direction on this most important issue will result in a conviction being quashed: see also GARBER v R [1964-66] ALR SL 233 at 239 L27 -240 L14 per AMES, P; SAHR M'BAMBAY v THE STATE Cr. App 31/74 CA unreported - the cyclostyled Judgement of LIVESEY LUKE, JSC at pages 11-13. At page 12 LUKE, JSC citing WOOLMINGTON v R says, inter alia, that "*if at the end of the whole case, there is a reasonable doubt created by the evidence given either by the prosecution or the prisoner.....the prosecution has not made out the case and the prisoner is entitled to an acquittal.*" KARGBO v R [1968-69] ALR SL 354 C.A. per TAMBIAH, JA at 358 LL3-5: "*The onus is never on the accused to establish this defence any more than it is upon him to establish provocation or any other defence apart from that of insanity.*" There, the accused pleaded self-defence. See further: BOB-JONES v R [1967-68] ALR SL 267 per SIR SAMUEL BANKOLE JONES, P at 272 LL21-39; SEISAY and SIAFA v R [1967-68] ALR SL 323 at 328, LL20-23, and at 329 LL12-18; and SAMUEL BENSON THORPE v COMMISSIONER OF POLICE [1960] 1 SLLR 19 at 20-21 per BANKOLE JONES, J as he then was. The point was again hammered home by AWOONOR-RENNER, JSC in FRANKLIN KENNY v THE STATE Supreme Court Cr App 2/82 (unreported) at pages 6-7 of her cyclostyled judgment. I must also bear in mind that though the

accused person was originally jointly indicted and jointly tried with the other two co-accused have been convicted and sentenced, I must treat the case brought against him on its own. I can only find the accused guilty on the basis of the evidence led against him.

LAW RELATING TO THE CHARGES

32. I shall now turn to the law relating to the charges the accused is facing.

In Count 1, as recorded above, the charge is one of Soliciting an Advantage, contrary to section 28(2) of the ACA, 2008. The particulars of offence allege that on a date unknown between 25 and 30 July, 2013 the accused solicited an advantage from Mohamed Mahoi as an inducement on account of abstaining from reporting the clamping of a motor vehicle with registration number AGI 462 to authorities of the SLRTA.

33. Section 28(2) states: *"Any Public Officer who solicits, accepts, or obtains or agrees to accept or attempts to obtain for himself without lawful consideration, or for a consideration which he knows or has reason to believe to be inadequate, any advantage as an inducement to, or reward for or otherwise on account of his - (a) performing or abstaining from performing or having performed or abstained from performing any act in his capacity as a public officer.....(b).....(c)..... commits an offence."* The statement of offence stops short at 28(2) without specifying which of the several ways enumerated in paragraphs (a), (b) or (c) the accused could have committed the offence. This was an omission which would have, had the objection been taken at the trial, rendered the charge bad for uncertainty. As it was, the particulars of offence clearly indicated that that the allegation fell within paragraph (a) of section 28(2).

34. But do the facts support this charge? It seems not. The sum of Le2m does constitute an "advantage" in terms of section 1(1) ACA, 2008. But that sum was not paid for the accused to abstain from reporting the clamping of the vehicle. The evidence of the prosecution witnesses seems to suggest in total, that the money was paid directly to the accused for the improper release of the vehicle. But the evidence of the defence witnesses, DW2, Alimamy Sesay, and DW3, Arthur Leigh, employees of the SLRTA suggest that the clamping was indeed reported, and that receipts were issued for payment for the vehicle's release. I have expressed misgivings above, about the authenticity of these receipts, but in the absence of any evidence to the contrary, I have to accept them as

evidence that the required sum was paid before the vehicle was released. In other words, the evidence does not support the particulars of the offence charged in Counts 1 and 2.

35. On the evidence led, Mahoi, PW3, was not the owner of the vehicle in question. Neither the owner, nor the driver of the vehicle testified. Both were unavailable and had to be dispensed with. PW2, Mohamed Jah's evidence on this point is that on 30 July, 2013 he was on duty at the ACC, when Mohamed Kuyateh made a report of soliciting an advantage. Based on the nature of the complaint, the ACC decided to carry out a sting operation at the SLRTA at Kissy Road. It was at Kissy Road that he came across Mohamed Mahoi, the journalist who testified as PW3. After the brown envelope containing the sum of Le2m had been handed over to the accused by Abdulai Barrie, the driver, he effected the arrest. The accused threw the envelope on the ground, and some of the notes spilt out and were scattered by the wind. PW3 Mahoi's evidence is that on the 29th July, 2013 he was informed by his friend Mohamed Kuyateh that he had a problem with the accused. He said he used Kuyateh's phone to speak to the person who he claimed was the accused. He did not say he had known the accused before, or, that he recognised the accused's voice. But the person with the voice agreed that he would accept the sum of Le2m for the release of the vehicle. On 30 July, 2013, he was present at Kissy Road and observed what was going on, and even took pictures of the goings-on. The accused asked the driver to go with him to a bafra where the driver, Abdulai Barrie handed over the envelope containing the sum of Le2m to the accused. He heard the accused say he would release the vehicle after payment had been made. It was at this point PW1 tapped the accused on his shoulder, and effected the arrest.
36. PW3's evidence was good so far as it went, but would not constitute proof beyond any reasonable doubt that the accused solicited the sum of Le2m from him. The accused was not somebody he knew. He believed he had spoken to him on the phone, but that does not constitute conclusive evidence that the voice belonged to the accused. With all the recent developments in technology, it is rather difficult to say with any degree of certainty that the voice at the other end of the phone line belongs to a particular person. Hence, the upsurge in the 'mobile phone scams' in which a voice calls and says I am so and so, and I am stranded; please send money by orange money for me; or, please top up my credit line, I'll settle with you when we meet again. I know as a fact that quite a few

people have been 'scammed' into parting with money thinking I was the one who had requested it. The best evidence to support the charge of soliciting should have come from either the driver, Abdulai Barrie, or, the vehicle owner, Kuyateh.

37. In *THE STATE v ALHAJI ALIEU BADARA SESAY*, Judgement delivered 3 March, 2009 by me, the facts led inexorably to the conclusion that the accused had solicited and accepted an advantage, in that he had and asked for the sum of Le300,000 to be paid to him for the preparation of a passport for the victim-complainant's niece. The niece never attended an interview which was, and still is a requirement for any applicant for a passport. Yet, still, on the appointed day, Alhaji Sesay presented the victim-complainant with a passport and demanded the sum of money he had requested. As soon as he took possession of the money, which had been provided by the ACC, he was arrested. There was evidence beyond all reasonable doubt that Alhaji Sesay had committed the offences with which he was charged.

38. The same default affects Count 2 of the Indictment. The evidence led at the trial contradicts the particulars of offence. The accused did not receive the sum of Le2m from PW3 as an inducement for abstaining from reporting the clamping of a motor vehicle AGI 462 to authorities. The evidence of DW2 and DW3 is that the clamping was reported, and the penalty for the release of the vehicle was indeed paid in the proper manner. The probability is that he may have wanted to hold on to the said sum, rather than pay the same into the SLRTA's coffers. That probability, had it been realised, would have supported a charge under section 36 ACA, 2008. The conclusion I have reached is that the absence of evidence from both Kuyateh and Barrie, is detrimental to the case presented by the prosecution. If either of them had testified, either of them may have been able to testify as to the true nature of the transaction with the accused. PW3 did testify as to the handing over of the money to the accused in the presence of others. But that alone would not suffice to support a charge of accepting an advantage based on the particulars of offence. As it is, I have only the accused's version of his dealings with Kuyateh and Barrie. In exhibit A pages 1 - 15, he explains to his own advantage of course, what transpired between the three of them. But as I have not had the benefit of listening to their version, I have no alternative but to accept the accused's version of events.

39. In the result, I find the accused not guilty on Counts 1 and 2, and he is therefore acquitted and discharged.
40. I have reached a different conclusion in respect of Counts 3 and 4 of the Indictment. There is abundant evidence which I accept and believe, and proof beyond any reasonable doubt, that the accused assaulted both Mohamed Jah and Moses Alusine Massaquoi in the performance of their lawful duty under the ACA, 2008. Counts 3 & 4, charge consecutively, the offence of Obstructing the course of justice contrary to section 127(1) ACA, 2008. The particulars in Count 3 allege that on 30 July, 2013 the accused, without lawful excuse, assaulted Mohamed Jah, officer of the ACC in the performance of his lawful duty under the ACA, 2008, to wit, effecting the arrest of the said Borbordeen Bangura. In Count 4, the charge is the same, but the particulars allege that the accused assaulted Moses Alusine Massaquoi in the performance of his lawful duty, to wit, effecting the arrest of the said Borbordeen Bangura.
41. Section 127 ACA, 2008 provides as follows: "(1) No person shall - (a) without lawful justification or lawful excuse, obstruct or hinder or assault or threaten, a person acting under this Act." Preferably, the statement of offence should have been more specific as there are four categories of offences within that statutory provision. Section 127(1) has four subsections. Nevertheless, the particulars averred point to an offence under paragraph (a) alone, rather than to the other paragraphs in the section. The punishment for contravening these provisions is a minimum fine of Le5m or imprisonment for a term not less than 3 years, or, to both such fine and imprisonment. Section 94 ACA, 2008 applies to an offence charged under this section. Section 94 states: "In any proceedings against a person for an offence under this Act, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused." In my judgment, the prosecution still bears the burden of proving the assault; but once it has done so, the accused has the evidentiary burden of showing that he had lawful authority or excuse to do so. In all the circumstances of this case, the accused had no such lawful authority or excuse. In his statement made at the ACC, and during his evidence in Court, the accused alleged that he thought PW1 and PW2, the victims named in both Counts were criminals. I do not accept this explanation, and it bears very little resemblance to the sequence of events on the day in question. At the time of the alleged crimes, PW1 was an armed police officer, and he had his weapon with him that day. The

incidents occurred in broad daylight. It was most unlikely that any reasonable man in the accused's position would believe or think for a moment that PW1 was a criminal and that it was necessary for him, i.e. the accused, to defend himself by assaulting the officer. The accused person's own actions give the lie to his lame excuse. According to the prosecution witnesses, he threw the envelope containing the money on the ground, thereby letting go of its contents. With money flying about, it was inevitable there would be much running around and confusion; and this is exactly what happened. The scattered bank notes provided a diversion for a moment, but PW1 and PW2 were vigilant and held on to the accused. I believe PW2 when he said at page 14 of my minutes that the accused punched him in the face. At page 9 of my minutes, PW1 said he saw the accused hit PW2 with an umbrella. In the case of PW1, the assault took the form of physically resisting arrest. He said he wasn't going anywhere. The fact that the accused testified that he was himself injured does not absolve him. He was responsible for the scene degenerating into a wild west brouhaha and melee. PW3 confirms that the accused tried to drag PW1 into the SLRTA compound. Above all else, the video recording of the happenings that day provide 'ocular' proof that the accused did assault both PW1 and PW2. In my judgment, he had no reasonable or lawful excuse to do so. Attacking any law enforcement officer, at any time of the day or night is conduct which ought not to be encouraged; it is conduct which deserves punishment. I therefore find him guilty of the offences charged in Counts 3 and 4 of the Indictment.

42. I'll now listen to the allocutus and to the plea in mitigation.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

SENTENCING:

After hearing the allocutus and plea in mitigation from the accused, the sentence is as follows:

Count 3 - A fine of Le5m; alternatively, a term of imprisonment of 5 years

Count 4 - A fine of Le5m; alternatively, a term of imprisonment of 5 years

Fines are cumulative, ie. Total fines amount to Le10m. Prison sentences are concurrent.

The fines should be paid against Monday 3rd May, 2021.

A handwritten signature in black ink, appearing to be 'N C Browne-Marke', written in a cursive style.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT