

**IN THE HIGH COURT OF JUSTICE
CRIMINAL DIVISION
HOLDEN AT FREETOWN**

BETWEEN

THE STATE

VS.

ALHAJI AMADU BAH

JUDGEMENT

MR YI Sesay Esq (State Counsel) for the State

MP Fofanah, M Sesay, CI Pateh Bah and Z Dainkeh for the accused.

Introduction

1. The accused person is arraigned on four counts on an amended indictment for offences of Robbery contrary to section 23(2) of the Larceny Act 1916 as repealed and replaced by section 2 of the Imperial Statutes (Criminal Law) Adoption (Amendment) Act No 16 of 1971. It was alleged that the accused on the 12th June 2022, at Freetown in the Western Area of the Republic of Sierra Leone, robbed Francess Wilson of the sum of Two million and ninety thousand Leones. The prosecution further alleges that the accused person on the same day robbed Ishmail Kamara and Christiana Koroma of the sum of four million two hundred thousand Leones and one million six hundred thousand leones respectively.
2. The accused is also charged with one count of Inflicting Grievous Bodily Harm, contrary to section 20 of the offences Against the Person Act 1861. It is alleged by the prosecution that the accused

on the 12th day of June 2021 at Freetown, maliciously inflicted grievous bodily harm on Musa Mansaray.

3. It is expedient that I set out the amended indictment upon which the accused is arraigned:

COUNT I

STATEMENT OF OFFENCE: ROBBERY, CONTRARY TO SECTION 23(2) OF THE LARCENY ACT 1916 AS REPEALED AND REPLACED BY SECTION 2(2) OF THE IMPERIAL STATUTES (CRIMINAL LAW) ADOPTION (AMENDMENT) ACT 1971 ACT NO. 16 OF 1971.

PARTICULARS OF OFFENCE: ALHAJI AMADU BAH Alias LAJ on the 12th day of June 2022 at Freetown in the Western Area of the Republic of Sierra Leone robbed FRANCES WILSON the sum of Two Million and Ninety Thousand old Leones (Le2,090,000.00).

COUNT II

STATEMENT OF OFFENCE: ROBBERY, CONTRARY TO SECTION 23(2) OF THE LARCENY ACT 1916 AS REPEALED AND REPLACED BY SECTION 2(2) OF THE IMPERIAL STATUTES (CRIMINAL LAW) ADOPTION (AMENDMENT) ACT 1971 ACT NO. 16 OF 1971.

PARTICULARS OF OFFENCE: ALHAJI AMADU BAH Alias LAJ on the 12th day of June 2022 at Freetown in the Western Area of the Republic of Sierra Leone robbed ISHMAIL KAMARA the sum of Four Million Two Hundred Thousand old Leones (Le4,200,000.00).

COUNT III

STATEMENT OF OFFENCE: ROBBERY, CONTRARY TO SECTION 23(2) OF THE LARCENY ACT 1916 AS REPEALED AND REPLACED BY SECTION 2(2) OF THE IMPERIAL STATUTES (CRIMINAL LAW) ADOPTION (AMENDMENT) ACT 1971 ACT NO. 16 OF 1971.

PARTICULARS OF OFFENCE: ALHAJI AMADU BAH Alias LAJ on the 12th day of June 2022 at Freetown in the Western Area of the Republic of Sierra Leone robbed CHRISTIANA KOROMA of one (1) Techno Mobile Phone Valued One Million Six Hundred Thousand old Leones (Le1,600,000.00).

COUNT IV

STATEMENT OF OFFENCE: INFLECTING GRIEVOUS BODILY HARM, CONTRARY TO SECTION 20 OF THE OFFENCES AGAINST THE PERSON ACT 1861.

PARTICULARS OF OFFENCE: ALHAJI AMADU BAH Alias LAJ on the 12th day of June 2021 at Freetown in the Western Area of the Republic of Sierra Leone maliciously inflicted grievous bodily harm on MUSA MANSARAY.

Arraignment

4. At the arraignment of the accused, the prosecution applied to amend the indictment pursuant to section 148 of the Criminal Procedure Act 1965, to add an additional count by way of an amendment to the said indictment. The application was predicated on the basis that the matters for which the amendment to the indictment sought are already contained in the depositions from the Magistrates court which were obtained during the preliminary investigation.
5. Mr MP Fofanah of counsel for the accused did not specifically object to amendments which I have dealt with above. At the start of the prosecution's case, Mr YI Sesay State counsel applied for the accused to be tried by judge alone, pursuant to an application by the Director of Public Prosecutions dated the 17th October 2022 for the accused to be tried by judge alone instead of by judge and jury. I granted the application suo moto.

The prosecution's case in outline.

6. The prosecution's case as advanced through its witnesses can be summarized as follows in the manner set out below.
7. On the 12th day of June 2022, the Accused person and his friends were on board an unregistered black ford jeep, which entered the Leonco Filling Station at Water Street Freetown, in order to purchase fuel. One Ishmail Suma was the driver of the said jeep. The Accused was sitting at the front passenger's sit while one Buju and others were sitting at the back seat of the said jeep. They arrived at the Filling station at Water Street, Freetown on the pretext of buying some fuel. Immediately they arrived at pump two where Fracess Wilson was and was counting some of

the money she had sold from the sales of fuel, Buju told Fracness wilson to get up and he uttered the following statement **“wuna den raray tin den ya. Way wuna don go raray whole net una dae tire en wuna nor able woke. Bo grap kam sell gee we”**.

8. Fracness Wilson replied that because there were no customers to buy fuel that was why she was sitting and checking the money she had sold from the fuel. She asked Ismail Suma the driver to park the vehicle properly. Ishmael Suma then came down the vehicle and told Fracness Wilson that they needed Five Hundred Thousand old Leones (Le500,000.00) fuel. Fracness Wilson then turned to Musa Mansaray, her colleague who was also on duty on that day and asked Musa how much Five Hundred Thousand old Leones (Le500,000.00) in litres was. Musa replied Fracness Wilson that it is 27 Litres and some points.
9. Fracness Wilson then told Ishmail Suma that she was about to pump the fuel into the jeep. Ishmael Suma told Fracness Wilson to wait and Ismail suma went to the Accused person who was still sitting in the jeep and spoke to him. After that Ishmail Suma then told Fracness Wilson to pump the fuel. As Fracness Wilson started pumping the fuel, Ismail Suma then told hervthat she will kill the timberland boot that she was wearing. Fracness Wilson then replied Ishmail Suma that the Timberland boot is hers and that if she kills it that’s her business.
10. Ismail Suma then called the Accused person to come down the vehicle and interpret to Fracness Wilson what he was saying. It was at this point the Accused person came down from the vehicle and stood close to fracness and leant on the vehicle where Fracness was pumping the fuel. Ishmail Suma then told Fracness that she has disrespected his boss and he ordered Fracness Wilson to “Fuck off” the nozzle from the car and that they are not going to pay for the fuel.

11. By then Frances Wilson had already pumped 27 litres of fuel into the Jeep. Frances Wilson removed the nozzle from the vehicle while Ismail Suma moved the jeep forward. The accused then told Frances Wilson that she is a fucking public servant that doesn't know how to speak to customers. The accused Person then pushed Frances Wilson and she hit her back on the machine. Frances Wilson felt pain. Immediately the accused pushed Frances Wilson, the Accused took the sum of One Million two Hundred and Sixty Thousand old Leones which was the money Frances Wilson had made from sales of the fuel and was left lying on the machine.
12. The accused person gave the said money to someone sitting in the jeep. The accused came back towards Frances Wilson and that was the time Musa Mansaray intervened. Musa Mansaray stood in front of the accused and told him that Frances is a woman. Musa said to the Accused "Sam nor do a woman so" The accused person then said to Musa Mansaray that he sat there all along and said nothing while Frances Wilson was speaking now he wants to intervene.
13. The accused then grabbed Musa Mansaray by the throat and punched him in the face. Musa Manasaray fell on the ground and accused was still holding onto Musa Mansaray while also trying to take Musa Mansaray's sales bag from him. Ishmail Suma, Buju and another man joined the accused person all were trying to remove the sales bag from Musa Mansaray. But Musa Mansaray was still holding the bag. Whilst the accused person and three others were trying to removing the sales bag from Musa Mansaray who was on the ground, the manager of Leonco Filling Station at Water Street, Daniel, together with Christiana Koroma came outside from the Manager's office.
14. The Manager immediately came to the rescue of Musa Mansaray and took the sales bag from Musa Mansaray. Christiana

then took out her mobile phone to video the scene. Immediately the accused saw Christiana was about to video him, he left Musa Mansaray and rushed at Christiana Koroma. The accused then grabbed Christiana Koroma by the neck and tried to remove the phone from her. As the accused was overpowering her, Christiana sent the mobile phone to her colleague Ishmail Kamara who was at pump one.

15. Immediately Ishmail Kamara received the phone, he opened the sales bag and put the phone inside and closed the bag. The accused again left Christiana Koroma and rushed at Ishmail Kamara to take the phone from him. The accused then grabbed Ishmail Kamara's throat while trying to remove the sales bag from him. Ishmail Suma, Buju and another man who were with the accused joined him and together they overpowered Ishmail Kamara. As Ishmail was tired, he let go of the bag. The accused then took the sales bag, opened it and removed the mobile phone and the sum of Four Million Two Hundred Thousand old Leones (Le4,200,000.00) from the sales money from the bag. The accused then threw the sales bag at Ishmail Kamara and together with Ishmail Suma, Buju and the other man, they all went back to the vehicle.
16. The Accused person then said that he will come back to burn the fuel station and they drove off. By that time Musa Mansaray had already gone to Congo Cross police station and reported the matter. Musa Mansaray later came back with a police van to the fuel station and Ismail Kamara joined Musa Mansaray and the police officers in the police van and together they traced the accused across Freetown. The vehicle the accused was in was intercepted at up gun in the eastern part of Freetown.
17. The police alighted their vehicle and told the Accused person and his friends to accompany them to Congo cross police station. But the accused and his friends refused. After an hour, another

police van came and the accused and his friends went to Ross Road police station with the police and later they were taken to Congo Cross police station. At Congo cross police station the Accused paid the sum of Le490,000.00 for the 27 litres of fuel which they never paid for at the filling station. The Accused person (According to him further paid the Four Million Leones) that was previously taken and gave the Techno mobile phone to the police.

The burden and standard of proof

18. In every criminal trial where an accused person is arraigned for trial, the prosecution has the burden of proving the case against the accused. This is in accordance with the well-known dictum of Lord Sankey in the leading case of WOOLMINGTON V DPP (1935) AC at 462, in which he described the burden of proof in these terms:

“Throughout the web of the English criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt... If at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether the offence was committed by him, the prosecution has not made out the case, and the prisoner is entitled to an acquittal...No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England, and no attempt to whittle it down can be entertained.”

19. In the case of R v Hunt (Richards) (1987) A.C. 352 at 374, Lord Griffiths stated inter alia that:

“Parliament can never lightly be taken to have intended to impose an onerous duty on the Defendant to prove his innocence

in a criminal case, and a court should be very slow to draw any such inference from the language of a statute..."

20. In Sierra Leone, the courts have applied similar principles in cases such as AMARA V R. (1968 - 1969) ALRSL 220 at 225 where Sir Samuel Bankole Jones, delivering the judgment of the Court of Appeal held as follows:

"Our next comment is that there is no onus cast upon an Accused person 'to put up a defence' ... self defence or provocation, or that he did not commit the act at all.' The onus remains throughout the case on the prosecution to prove the guilt of the Accused. The only exception is where insanity is raised by the defence. The burden of proof is then imposed by law on the Accused, which involves his making out a prima facie case at least."

The standard of Proof

21. In determining the standard of proof, the prosecution is required to establish the guilt of the accused beyond a reasonable doubt. Lord Denning explained the meaning of proof beyond reasonable doubt in the case of Miller v Minister of Pensions (1947) ALL ER 372 where he had this to say:

"...it need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt...if the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence, of course it is possible, but not in the least probably, the case is proved beyond reasonable doubt, but nothing short of that will suffice..."

22. The above authorities clearly show that the prosecution has the burden of proving the case and that burden remains with them throughout the trial.

The Trial

23. At the trial of the accused, the prosecution called eight witnesses, who testified as follows:

1. ISHMAEL KAMARA who testified as PW1.
2. FRANCES WILSON who testified as PW2.
3. CHRISTIANA KOROMA who testified as PW3.
4. CHIEF INSPECTOR BRIMA SAMA who testified as PW4
5. SYLVIA MACAULEY who testified as PW5
6. D/INSPECTOR SELLU, M.A. who testified as PW6
7. DPC 15221 TURAY, A.M. who testified as PW7
8. DR. MAGARETTE RUTH GHANDI who testified as PW8

24. In addition, the prosecution tendered a number of exhibits during the trial of the accused which were adduced as evidence. The following exhibits were tendered in evidence.

1. A Receipt for the sum of Le1,600,000.00 made in the name of Alusine Sesay, for a tecno spark 7 mobile phone, marked Exhibit A.
2. A subpoena addressed to MUSA MANSARAY of 8 York Road, Goderich, Freetown dated 12th October 2022, marked "Exhibit B"
3. Another subpoena addressed to MUSA MANSARAY of 8 York Road, Goderich, Freetown dated 19th October 2022, marked "Exhibit C"
4. The deposition containing the testimony of MUSA MANSARAY from pages 23-52 of the magistrate court records marked "Exhibit D1-15"
5. The endorsed medical form of Frances Wilson marked "Exhibit E".
6. The endorsed medical form of Christiana Koroma marked "Exhibit F".
7. The endorsed medical form of Ishmail Kamara marked "Exhibit G".

8. The endorsed medical form of Musa Mansaray marked "Exhibit H".
9. The Voluntary Caution statement of the accused dated the 12th day of June 2022 marked "Exhibit J1-5.
10. The further Voluntary caution statement of the accused dated the 14th day of June 2022 marked "Exhibit K1-15.
11. The charge statement of the Accused person dated the 14th day of June 2022 marked "Exhibit L1-4.
12. The sum of Four Hundred and Ninety Thousand old Leones marked "Exhibit M"
13. The Techno Mobile Phone marked "Exhibit N".

The Law

Robbery Counts 1, 2, and 3

25. The accused is charged with three counts of robbery, contrary section 23 (2) of the Larceny Act 1916 on counts 1,2 and 3, with respect to different individuals. Robbery is defined in section 23(2) of The Larceny Act 1916 as repealed and replaced by Section 2(2) of The Imperial Statutes (Criminal Law) Adoption (Amendment) Act 1971 Act No. 16 of 1971, as follows:

"every person who robs any person shall be guilty of a Felony...". The Abolition of the Death Penalty Act 2021 Act No.6 of 2021 now provides that the said person shall be liable on conviction to imprisonment to a term not exceeding 15 years".

26. Paragraph 1761 at page 644 of Archbold pleading, Evidence and practice in Criminal Cases 36 Edition defines "Robbery as consisting of the felonious and forcible taking of money or goods

of any value from the person of another, or in his presence against his will, by violence or putting him in fear.”

27. Paragraphs 1762, 1763, 1764, 1765 at pages 644 - 646 of Archbold pleading, evidence and practice in Criminal Cases states the elements the prosecution must prove. In addition, the provisions of section 23 (2) requires proof of the following:

1. The actual taking either by force, or, by putting the victim in fear, must be proved by the prosecution.
2. That the property stolen must have been taken either from the person of the victim, or, in his presence and against his will of any value.
3. That the taking was done by force and violence, or was delivered up by the victim to the accused persons because of fear and/or the apprehension of violence.
4. That there was a carrying away/Asportation.

28. Further to the above elements, the doctrine of recent possession is relevant. The doctrine of recent possession relates to a situation where items stolen in a robbery are seen with the suspect or accused within a short time of the robbery in the possession of the accused. In R v Fallon, 1963 47 Cr.App.R 160, the court of criminal appeal held that the doctrine applies to a charge of robbery where an appellant was charged alone.

29. Further, section 1(iii) of the Larceny Act 1916 defined “owner” as follows: “the expression owner includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

30. In simple terms the law requires that robbery consists of the felonious taking of money or goods of any value from the person of another, or in his presence against his will by violence or

putting him in fear. Taking by either of these means against the will of the party is sufficient to constitute robbery.

Count 4 Inflicting Grievous Bodily Harm

31. Section 20 of the offences against the person's Act 1861 states:

"Whosoever shall unlawfully and Maliciously wound or inflict any Grievous Bodily Harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude ..."

32. This offence requires the prosecution to prove:

- a. *That the Victim suffered grievous bodily harm.*
- b. *That the Accused inflicted the grievous bodily harm on the Victim*
- c. *That the grievous bodily was malicious or unlawful.*

The Trial

33. At arraignment the prosecution called eight witnesses. The evidence of these witnesses are set out in full on the record of proceedings. It is necessary for me to set out the evidence, albeit in summary form, of these witnesses in a bid to give greater clarity to this judgment.

PW1

34. This witness was Ishmail Kamara who gave the following evidence:

1. That he is a pump attendant at the Leonco Filling station, water street Congo Cross.
2. That he knows Frances Wilson and Christiana Koroma as coworkers and he also knows the accused as a musician.
3. That on the 12th June 2022, he was on duty at the filling station with Frances Wilson and Musa Mansaray occupying

pump no 1 with Musa Mansaray. Francess Wilson was at pump 2.

4. He then saw a black jeep with no number plates parked by the pump where Francess Wilson was at pump 2.
5. Sitting inside the jeep was the driver Ishmail and the accused was sitting in the front seat. One Buju was at the back with others.
6. That Buju had a discussion with Francess Wilson asking her why she was sitting down to which she replied there were no customers, at which Buju told her she was not permitted to sit down.
7. Francess Wilson told the driver to move forward a bit. Whilst Francess was pumping the fuel Buju rained insults at her and called her a “raray girl” and said “ you don go raray all net now you nor able work now” meaning she had been selling sex all night and now she was unable to work.
8. That Ishmail (the driver) then went on to tell Francess Wilson that the Timberland boots she was wearing will kill her to which she responded that she bought it with her money.
9. That Ishmail then called the accused come down from the vehicle to “interpret” to Francess Wilson what he meant at which point, the accused who was sitting in the vehicle alighted from it and leant by the vehicle where Francess Wilson was pumping the fuel.
10. That Ishmail the driver then said “fucking pull the nozzle from the car we are not paying for the fuel”. The driver then moved the car forwards. The driver then rushed towards Francess Wilson, which caused Musa to then stand

in his way. He then told the driver not to treat women like that.

11. At that point the accused then pushed Frances Wilson who fell down and he then grabbed Musa Mansaray. He then asked Musa why he was getting involved and then punched Musa on the face causing him to fall down. The driver and Buju then rushed at Musa whilst he was on the floor and sought to take his sales bag.
12. That the manager Daniel Kailey ran outside with one Christiana, a co worker. The manager managed to get hold of the bag. Christiana then took out her phone to film the incident. The accused then said so you want to film me? The accused then rushed at Christiana in a bid to remove the phone from her. Buju and Ishmail then joined in the attack. She struggled and then sent the phone to him. He then put the phone in his sales bag and closed it.
13. That the accused then rushed at him and grabbed his throat, and tried to remove the bag from him. He was tired at that stage and left the bag with the accused who opened the bag and took the phone and the sales money (Le4,200,000.00) and flung the bag at him. He then went back into his vehicle and said he will come back to burn down the station.
14. At that time Musa had gone to Congo Cross Police station to report the incident. The police subsequently attended the scene and they went looking for the accused. A report was made to the police and a medical report was issued for treatment. He then made a statement to the police.
15. Under cross examination, he admitted testifying at the Magistrates court. He admitted that the argument was

between Buju and Ishmail and the accused was in the vehicle. He went through the process of the sales of fuel and confirmed that the CCTV was not working. The CCTV was previously working. He confirmed that Christiana sent the phone to him and the accused grabbed his throat.

16. Subsequent to the earlier cross examination by M Sesay for the accused, MP Fofanah of counsel sought leave to cross examine on behalf of the accused. Leave was given and in that cross examination, he confirmed the incident took place at around 3pm.

17. That Christiana's phone was a tecno spark 6 and he reiterated that the phone was in his bag and it was the accused who took it. Christiana was called to identify her phone at the police station. He confirmed that it was the accused who took the sales bag and flung it at him. He however did not take all of the money and he subsequently took the bag and money to police station. They subsequently discovered after an audit that Le4,400,000.00 was missing. He further told the court that Buju came back with the phone.

18. He confirmed that the accused rushed at Christiana. He further confirmed that accused rushed at Christiana as she tried to video him. He confirmed that he did testify in the Magistrates Court. He confirmed he was not aware if the stolen money was returned to the police. He maintained his evidence is truthful on all fronts.

PW2

35. This witness was Francess Wilson. Her evidence was similar to the evidence of PW1 in material respects. She testified and her evidence can be summarized as follows:

1. That she knows the accused as a popular musician and she is a pump attendant and she also knows Pw1 and Christiana Koroma as co workers.
2. That on the 12th June 2022, she was on duty counting money at pump 2 when she saw a black unlicensed jeep, with the accused sitting in the front passenger seat and one Buju and others she doesn't know, but could be identified.
3. As the jeep approached the pump, Buju said to her *"You raray thing den ya way una don go raray all net una tire and unable to work, bo grap cam sell gi we"* meaning you prostitute, you have been selling sex all night and now you're tired and unable to work. Get up and sell to us".
4. That she told the driver Ishmail to park the vehicle properly. He then told her they needed Le500,000.00 worth of fuel. Ishmael then went to the accused and told him something and he then told her to pump the fuel. As she continued to pump the fuel she then asked how many liters was required and he then responded that they wanted 27 litres. Ishmail then uttered the same insulting words he had used previously and added that the timberland boots she was wearing will kill her.
5. She retorted that the boots belong to her and it was her business if the boot killed her. At that point Ishmail then called upon the accused to come and interpret what he was saying to her. The accused then alighted from the vehicle and stood close to her. Ishmael then said she had disrespected his boss and told her to "fuck off the nozzle from the car" and they were not going to pay her. He then moved the vehicle forward.

6. That the accused then told her that “she was a fucking public servant who did not know how to speak to customers. The accused then pushed her and she fell on her back and felt pain. As he pushed her he took the money she had kept as part of the sales and gave it to someone in the car. It was Le1,260,000.00.
7. That the accused then came back towards him and Musa intervened and told him “Sam no do woman so”. He then told Musa he had sat there and heard what I said but did nothing, now he wanted to intervene. He then collared Musa and punched him in the face. The manager and Christiana came rushing outside and rushed at Musa. The manager then took Musa’s bag away.
8. That Christiana then took out her phone to video the scene. The accused then left Musa and rushed at Christiana and collared Ishmael to take the phone from him. He then put his hand into Ishmael’s sales bag and took the phone and cash. One of them said they will burn the station.
9. That Musa who had gone to the police station later returned with police officers. She later went to the police and made a statement, and she was subsequently issued with a medical report, which she later returned to the police. She explained to the LUC what happened, and he gave her back the sum of Le490,000,00. She then left the money with him.
10. Under cross examination, she admitted knowing the accused as a musician and Ishmael buys fuel from them. She denied having a sister dating Buju.
11. She maintained they came to the station with the black jeep around 3pm. She maintained accused punched her and not a group of persons and she denied that Musa and

Ishmael never attacked accused. She maintained that the accused took the money and gave it to someone in the car. It was Buju who sparked the insults.

PW3 -Christiana Koroma

36. This witness is also a pump attendant at the said filling station. Her evidence is similar to the evidence of PW1 and 2 in material respects. I have taken it fully into account and I have summarized the relevant parts of the evidence.

1. That she is a pump attendant at the Leonco Filling Station, Water Street Congo Town, with Frances Wilson and Ishmail Kamara who are co workers. That she heard a noise outside and saw the accused had Musa by the neck and punched him on the face, causing Musa to fall down. Two of the men Ishmail and Buju rushed at Musa. The manager then rushed out to help.
2. That she took her phone to record and when the accused saw her he rushed at her having released Musa. The accused then collared her and put her in a choke hold, whilst trying to take her phone. She then sent the phone to Ishmael as she could not fight him. The accused then went back to Ishmael and collared him as Ishmael had put the phone in his sales bag, Buju and Ishmael grabbed the bag from Ishmael and tried to remove the bag from him.
3. The accused grabbed Ishmael with one hand and tried to the take the bag with the other hand. Subsequently the accused took the bag containing her phone and some cash and threw the bag at Ishmael. They boarded the vehicle which had no number plates. He then threatened to burn the station down. A report was subsequently made at the Congo Cross police station.

4. That she was subsequently called to identify her phone at the police station and she subsequently made a statement to the police. She was given a medical report which she later returned to the police station, endorsed.
5. Under cross examination, she stated she had the phone for about a month. She maintained that four persons attacked Ishmael, namely the accused, Ishmael the driver, Buju and another. She stated she was present when the accused attacked Ishmael and took the bag and the phone and some cash. She confirms that the accused held Ishmael with one hand. She stated that the accused rushed at her as she wanted to video him. The police subsequently retrieved the phone from the accused. She confirmed the accused punched Musa. She however could not tell how much cash the accused took away.

PW4 – Brima Sana

37. This witness is a process servicer attached to the Law Officers Department. His evidence was to the effect that he received a subpoena to serve upon one Musa Mansaray, who could not be reached to effect service. He was informed upon arrival at his address that the said Musa Mansaray had moved away. On the 19th October 2022, he went back to the said address. He was informed that the witness had never lived at that address, and they were unaware of his address.

PW5 – Sylvia Grace Macauley

38. This witness is the registrar of this court and her evidence was to the effect of tendering the deposition of Musa Mansaray who had testified in the Magistrate Court, in the case of The Inspector General of Police v Alhaji Amadu Bah. There was no opposition to the tendering of the deposition.

PW6 - Maurice A Sellu

39. This witness is a police inspector attached to the Congo Cross police station. On the 12th June 2022, he was on duty at the police station when complainant and three others arrived at the station and made a report. The three persons were Christiana Koroma, Musa Mansaray and Ishmael Kamara. A report was made against the accused in the dock and the matter was allocated to him for investigation. Medical reports were issued to the complainants. Statements were obtained from them and the endorsed medical reports were endorsed and returned to the police station. He also obtained a voluntary caution statement from the accused person who admitted the statement to be true and correct. Exhibits in the form of the mobile phone and cash was recovered as part of the investigation.

40. Under cross examination he maintained the complainant Frances Wilson did make a complaint of robbery against the accused, who had robbed her of money, which was her sales money and her mobile phone.

PW7 - Alimamy Turay

41. This witness is the exhibit clerk attached to the Congo Cross police station. He testified that he received a tecno phone and Le 490,000 as exhibits in the case, which he registered in his court exhibit book.

PW8 - Dr Margaret Ruth Ghandi

42. This witness is a medical doctor attached to the Lumley Government Hospital. On the 13th day of June 2022, she was on duty when she examined and treated one Musa Mansaray, following a referral from Congo Cross police station. The said Musa Mansaray told her she was attacked and robbed by the

accused and others. Upon examination she observed that he had a swelling on the lower eyelid and a swelling on the forehead. He complained of pain in the head and the face. She then administered treatment to cool down the swelling and to relieve the pain. She then endorsed the report.

43. Under cross examination, she admitted that she endorsed what Musa Mansaray told her however injuries were sustained. She had met the accused previously but his name was mentioned in the medical report. She stated that there were many names she could not put them all in the report because of space. There were other names including one Ismail Sumah. Musa had told her the accused and others assaulted him. She confirmed Musa Mansaray had injuries on his left lower eyelid and as the police are not medics they may not be able to locate with precision, any injuries sustained. She documented what she observed. The names Musa mentioned were already on the medical reports.

44. At this stage of the proceedings, the prosecution having tendered the committal warrant by which the accused was committed, closed its case.

45. The accused was put to his election by law and following on from advise from his lawyers, the accused elected to rely upon his statement to the police and would call no witnesses. The defence then closed their case. Written addresses were ordered to be provided by both parties, which they duly submitted.

The accused statements upon which he relied.

46. The accused person made two statements to the police which were tendered as Exhibit J1-5 and K1-15 respectively. He also gave a statement to police when he was charged to court. In the light of the fact that the accused relied upon these statements as part of the defence case, I need to consider them specifically.

Exhibit J1-5, voluntary caution statement of the accused dated 12th June 2022

47. The said statement was obtained at the Criminal Investigation Department at the CID Congo cross police station and it indicates he was cautioned, and he confirmed that he understood the caution. He further confirmed that he was happy to make a statement in the absence of his lawyer.

48. The accused denied the allegation of robbery. He admitted that they were at the station and whilst there to get fuel, one of the pump attendants got into an argument with his friends. They therefore left the scene at the station without paying for the fuel. It was put to him at J4 that they went to the station to buy fuel and they put on argument with the pretext not to pay for the fuel and they did not pay for the fuel by using force on the staff at the filling station. The accused admitted that it was true.

Exhibit K1-15 A voluntary caution statement obtained on Tuesday 14th June 2022 at CID Congo Cross.

49. It was suggested to him that the allegations against him were robbery and assault occasioning actual bodily harm. He confirmed he understood the allegations. He further confirmed that he had a legal representative but was happy to make a statement in the absence of his legal representative.

50. The accused denied the allegations. He confirmed that on the 12th June 2022, he was with four of his friends including Ishmael Sumah and four others, in a black jeep whose registration he could not tell. He was heading to Guinea and on the way they stopped to purchase fuel at Congo Cross. At the station they met a lady and three men whose names were unknown. Ishmael Sumah called their attention that they were there. The lady uttered a statement that the driver should not talk to her like that and they remonstrated with the staff as they were not quick

to serve them having seen them. The lady did say there was fuel but that Ishmael should not talk to her like that.

51. The lady however continued to address them in that manner. He stood off from the vehicle and moved closer to the lady and pleaded with her to calm down and attend to them as they were on their way to Guinea to watch the Leone Stars football match. He then saw an unnamed man holding his phone and videoing them and he went to stop him. He later enquired if the man was a worker and he confirmed he was. He then told him that he should have asked the lady to put stop to her conduct instead of videoing him and it was not correct to use a phone near a filling station.
52. The man continued to film him nonetheless and that led to him holding on to the phone by putting a stop to him. However, the man did not allow him to remove the phone from him. However, his other friends came around and the later the man gave up the phone to him and he subsequently told him he will hand over the phone to the owner of the station.
53. The driver Ishmael Sumah then called him to onboard the vehicle. He was not aware that the fuel was not paid for nor was he aware of the quantity of fuel pumped. They then left the scene and continued their journey to Guinea. On their way to Guinea at Kissy Rd, a police van parked in front of them and told them they should return to Congo Cross police station. Police officers came to the scene and they were taken to Ross Road police station. He then took out his mobile phone and did some live facebook postings on social media as to the manner in which the police stopped him and he later sent it viral through his facebook account.
54. Himself and co suspects were arrested including the driver Ishmael Suma and taken to Ross Road police station and subsequently to Congo Cross police station. On arrival at the

station the complainants alleged that he took their phone and cash of up to Le4,000,000.00 and the money for the fuel which was pumped into the vehicle. He stated he then paid for the fuel and the Le4,000,000.00 and the phone which was taken from the unknown man hoping that the matter would be settled.

55. In answer to questions put by detectives, he denied they had no intention to pay for the fuel which was pumped into their vehicle. (page 11). He further denied assaulting anyone during the incident. He stated that he would be surprised to know that one of the staff was assaulted during the incident and sustained injuries on his face as none of them assaulted him.

56. He was asked what would be his reaction if someone did wrong to him and whether to use force to gain what he wanted to gain or to peacefully avoid. He replied that it is best to peacefully avoid. (page 14) He was asked why he failed to avoid peacefully when the lady started using negative words against him. He replied that she was already pumping the fuel into the vehicle. He told police that he did not want the matter to be charged to court when he was informed that the police were contemplating charging him to court based on the evidence gathered. He however stated that should the complainant resist, it is best the matter goes to court as that is where it could be resolved properly.

57. With respect to the charges, he made no further comment when the charges were read to him.

58. Having considered oral evidence in this case, I need to outline the exhibits tendered in this court as evidence. I shall start with exhibit D 1-15 which is the deposition of Musa Mansaray which was tendered in this court. The said deposition was tendered pursuant to the provisions of section 65 of the Criminal Procedure Act 1965, which provides as follows:

“65. Where any person has been committed for trial for any offence, the deposition of any person taken before the committing Magistrate may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set or circumstances, as that offence. The conditions hereinbefore referred to are the following—

- a. the deposition must be the deposition of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 127, or of a witness who cannot be found, or whose attendance cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case, the court considers unreasonable, or who is proved at the trial by the oath of a credible witness to be dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf.
- b. it must be proved at the trial either by a certificate purporting to be signed by the Magistrate before whom the deposition purports to have been taken or by the clerk to such Magistrate, that the deposition was taken in the presence of the accused and that the accused or his advocate had full opportunity of cross-examining the witness;
- c. the deposition must purport to be signed by the Magistrate before whom it purports to have been taken: Provided that the provisions of this section shall not have effect in any case in which it is proved—
 - i. that the deposition, or, where the proof required by paragraph (b) is given by means of a certificate, that the certificate was not in fact signed by the Magistrate by whom it purports to have been signed; or
 - ii. where the deposition is that of a witness whose attendance at the trial is stated to be unnecessary as aforesaid, that the witness has been duly notified that he is required to attend the trial.

59. The said deposition was signed by the presiding magistrate on the 30th day of June 2022. The evidence of PW4 reveals that the witness Musa Mansaray could not be located after attempts were

made to serve the subpoena on him to attend and give evidence. The conditions of section 65a of the Criminal Procedure Act 1965 are therefore satisfied. With respect to section 65(b) of the said Act there is no evidence before the court that the presiding magistrate did not sign the deposition. In those circumstances, the conditions for admissibility were therefore satisfied and the deposition was duly admitted without objection.

60. I have reviewed the said deposition of Musa Mansaray and in summary the evidence given in the Magistrates court can be set out as follows:

1. That he is a pump attendant at Leonco filling station Congo cross.
2. That he knows Frances Wilson who is a co colleague as well as Christiana Koroma as well as Ishmael Kamara.
3. That he knows the accused as a popular musician. On the 12th June 2022, he was on duty at the filling station when something happened between himself and the accused person. A black jeep without number plates arrived at the station and the accused was sitting in the frontseat. One Ishmail and Buju were also in the car. They stopped at pump 2 where Frances Wilson was sitting in front of the machine.
4. That Buju enquired who was the pump attendant and Frances Wilson replied she was. Buju then asked why she was sitting down and told her she had no right to sit down. Frances Wilson replied that customers had not come to her machine. The driver Ishmael came down and said they wanted Le500,000.00 worth of fuel. He told her it was 27 litres and some points. Frances then told the driver to park properly.

5. Fracess Wilson then told the driver to hurry up as there was another car behind them needing fuel. Buju then complained that Frances Wilson did not know how to speak. Fracess then asked him how he wanted her to speak. Buju then said Fracess “ don commot raray whole net and now is unable to work” meaning she has been selling sex all night and had no energy left to work. Fracess Wilson did not respond and continued to pump the fuel. She then called the attention of the driver that she has pumped the fuel and Buju told Fracess Wilson that the Timberland boot will kill her. Buju then told the accused that Fracess Wilson was not understanding what he was saying and the accused should go ans interpret to her.
6. That the accused then alighted from the front passenger seat and went to the back of the vehicle. He then told Fracess Wilson that she was a public servant and should know how to talk. Fracess then asked how she was speaking. Ishmael the driver said Fracess Wilson had molested the accused in his presence and in fact they are not going to pay for he “fucking fuel” and that she should “fuck off “ the nozzle from the car and let them move on.
7. Fracess then removed the nozzle from the car. The driver drove off and then parked. Buju alighted from the vehicle and joined the accused opposite Fracess Wilson. The accused told Frances that she is a fucking server and should know how to talk to them. Frances then asked what she had said bad. Ishmail the driver then came down from the vehicle and started insulting Fracess Wilson telling her she was nasty and alhaki.
8. The accused then pushed Frances Wilson who fell down and hit herself on the side of the machine. He came down and said he was not expecting the whole issue to take a

different dimension and looking at what the accused had done in pushing Frances Wilson. He told them the accused had no right to push Frances Wilson.

9. The accused then collared him and Buju also collared him. There was money under the machine and the accused took it and gave it to someone in the car. Both of them held him whilst he was with the sales bag. Ishmael and the unknown man were trying to wrestle the bag from him but he resisted, whilst the accused and Buju were still holding on to him.
10. Whilst they were fighting over the bag, accused hit him on the left eye with his fist, causing him to fall down. He had asked the accused what he had done to him and accused told him he wanted to burst his eye. His manager Daniel and Christiana came to the scene and the manager held on to the bag and he released it to him.
11. Christiana had taken out her phone and was trying to video the scene. The accused rushed at her and held on to Christiana by her throat and was trying to take the phone from her but she sent it to Ishmael, who took the phone and placed it inside his sales bag. The accused then rushed at him and collared him on his throat. Buju, Ishmael and another man also rushed at Ismail, overpowered him. The accused then took the bag from Ishmael, took the phone and money from the sales bag. He then sent the bag to Ishmael after he had taken the phone and some money. He then took a motor bike to the police and made a report.
12. The police provided a vehicle and they chase the accused who had left the scene. They found them at Kissy Road. The police blocked their path and asked them to come down the vehicle and to go to the nearest police station. The accused and others refused to do so. The

accused and Buju and the Ishmael remarked that they were not going anywhere. They started to altercate with the police and a team of officers came to the scene. The accused and others continued to insist that they were not going to the police station. They were later referred to the Congo Cross police station. Statements were obtained from them by the police and medical reports were issued for treatment at hospital.

13. Under cross examination, he maintained that Francess and Buju were initially arguing. He maintained the accused told Francess she was a fucking public officer. He maintained that the accused held him with one hand and hit him with the other. He maintained the accused hit him on the left eye. Having reviewed the deposition, I find that it is consistent in material respects with the live evidence of the witnesses which have been given before the court.

Medical evidence

61. A number medical reports were tendered. Exhibit E was the medical report of Francess Wilson. The report mentioned the name of the accused as one of the assailants who robbed and assaulted her. The clinical findings were set out as follows:

1. Generalized body pain
2. No external injuries.

62. The medical report of Musa Mansaray was exhibited as Exhibit F. The report mentioned the name of the accused as one of the assailants who robbed and assaulted him. The clinical findings were set out as follows:

1. Swollen left lower eyelid and forehead.
2. Pain in the head and face.

63. The medical report of Ishmael Kamara was exhibited as Exhibit G. The report mentioned the name of the accused as one of the assailants who robbed and assaulted him. The clinical findings were set out as follows:

1. Pain in the right side of the body and neck.
2. No external injuries.

64. The medical report of Christiana Koroma was exhibited as Exhibit H. The report mentioned the name of the accused as one of the assailants who robbed and assaulted him. The clinical findings were set out as follows:

“Generalized Muscoskeletal pain, severe on the neck”.

65. Attached to the deposition of Musa Mansaray is a photograph which was attached to it. This photo was tendered as exhibit B in the magistrates Court (page 17) of the deposition. The said photo depicts a swelling on the lower eyelid of Musa Mansaray.

66. The sum of Le490,000 was tendered in evidence as part of the prosecution’s case, as well as one tecno mobile phone.

67. At the close of the trial, the solicitors for the parties were ordered to provide closing addresses in written form which they did. Mr YI Sesay submitted a written closing address on the prosecution as did Mr MP Fofanah for the accused. I have taken the said addresses fully into consideration. It is expedient that I set out some of the salient points in the said addresses starting with the closing address of the prosecution.

Prosecution closing address

68. With respect to counts 1, 2 and 3 which charges offences of robbery, counsel set out what was required to be proved by the prosecution which he summarized as follows:

a. *The actual taking either by force, or, by putting the victim in fear, must be proved by the prosecution.*

b. *That the property stolen must have been taken either from the person of the victim, or, in his presence and against his will.*

c. *That the taking was done by force and violence, or, was delivered up by the victim to the accused persons because of fear and/or the apprehension of violence.*

d. *That there was a carrying away/Asportation*

69. With respect to count 1, he submitted that with respect to the first element requires the taking either by force or by putting the victim in fear which must be proved by the prosecution, he submitted that the evidence of PW1, PW2, and the Deposition of Musa Mansaray which was tendered as Exhibit D 1-15 are relied upon. He submitted that PW2, stated in evidence inter alia that she recognised the accused person. She recalled on the 12th day of June 2022, after she had pumped 27 litres of fuel into the jeep and Ishmael Suma had moved the vehicle forward, the accused person then told PW2 that she was a fucking public servant who did not know how to speak to customers.

70. It was after that point that the Accused person pushed PW2 and she fell on her back. After he had pushed PW2, the Accused person then took PW2's sales money and gave it to someone in the car. At page 15 of the court records PW2 told the court as follows: "The Accused then told me I was a fucking public servant who did not know how to speak to customers. The Accused pushed me and I fell on my back and felt pain. As he pushed me, he took the money I had pumped and he gave it to someone in the car. It was Le1,260,000.00. He came back towards me and my colleague Musa intervened".

71. He submitted that before taking the money, the Accused applied force on PW2 by pushing her so that PW2 fell on her back

and felt pain. This act by the Accused enabled him to get access to the sales money of PW2. PW2 confirmed during cross examination that she was pushed by the accused. She stated at page 16 of the court records thus: *"It was the Accused person who pushed me not a group of persons"*. At page 17 of the court records PW2 continued: *"The Accused took the money away and gave it to someone in the car"*. This piece of evidence was corroborated by PW1 when he told the court that the Accused pushed PW2 and she fell. At Page 8 of the court records PW1 states: *"At that point the accused pushed Francess who fell and later grabbed Musa"*.

72. In the deposition of Musa Mansaray which was tendered as exhibit D1-15, MUSA MANSARAY confirmed the evidence of PW2 and PW1. At page 28 of Exhibit D1-15 Musa Mansaray stated as follows: *"The Accused pushed Francess Wilson and she eventually hits herself on the side of the machine"*. At page 29 of Exhibit D 1-15, Musa Mansaray continued as follows: *"There was money under the machine. The Accused took the money under the Machine and gave it to someone in the vehicle but I did not see the person who he gave the money to"*.

73. Counsel argued that the evidence of PW1, 2 and Exhibit D 1-15 clearly show that that Francess Wilson (PW2)'s sales money was actually taken by the use of force by the Accused person. He therefore submitted that this element has been proved beyond reasonable doubt.

74. With regard to the second requirement that property stolen must have been taken either from the person of the victim, or, in his presence and against his will, he submitted that Francess Wilson's sales money was taken by the accused in her presence and against her will. He relied on the evidence of PW2, PW1 and Exhibit D1-15. PW2 told the court inter alia that, it was after the Accused pushed her that the Accused took the money. PW2

states at page 15 of the court records as follows: “As he pushed me, he took the money.

75. This was clearly against the will of PW2. PW2 told the court that on the day in question she was counting and sorting out the money she has sold from the fuel while placing the said money at the machine. It was at this point the Accused and his friends arrived at the station. In order to take the money, the Accused Pushed PW2. As a result, PW2 could not withstand the Accused as she was feeling pain. The Accused then had access to the money and took it. PW1 supported this piece of evidence that indeed the Accused pushed PW1. MUSA MANSARAY in exhibit D1-15 told the court after the Accused had pushed PW2 he intervened and told the Accused that he was not expecting the issue to take different dimension.

76. Musa further told the Accused that he has no right to push and take Francess Wilson’s Sales Money. He submitted therefore, that the application of force/violence on PW2 by the Accused Person, clearly shows that the money was taken against the will of PW2 and it was in her presence because the sales money was under PW2’s immediate and personal control. Therefore, this element has also been proved by the prosecution without any challenge or lawful excuse by the defence. The proof of these factors is beyond reasonable doubt.

77. With respect to the requirement that the taking was done by force and violence, or, was delivered up by the victim to the accused persons because of fear and/or the apprehension of violence, he submitted that the accused applied force and violence on PW2. He relied on the evidence of PW2, PW1 Exhibit D1-15 and exhibit E, which is the endorsed medical form of PW2. The testimony of PW1, the deposition of Musa Mansaray and Exhibit E all support the evidence of PW2 that she was pushed by the Accused (which is a forceful act) and as a result, PW2

suffered generalised body pain. These actions were done by the accused to achieve the end product – which is the taking of the sales money of PW2. This piece of evidence has remained unshaken throughout cross examination by the defence.

78. With respect to the requirement that there was a carrying away, he submitted the prosecution there was a carrying away. He relied upon the definition in section 1(2)(ii) of the Larceny Act 1916 to include any removal of anything from the place it occupies, but in the case of a thing attached, only if it has been completely detached. PW2 told the court that the Accused took the money and gave it to someone in the vehicle. The money was at the machine when the Accused took it from there. During cross examination, at page 17 of the court records PW2 states thus: “The Accused took the money away and gave it to someone in the car”. The place the money occupied was at the machine.

79. The Accused took it from there and gave it to someone in the car. The deposition of MUSA MANSARAY further supports this evidence. He stated at page 29 of the said deposition thus: “There was money under the machine. The Accused took the money under the Machine and gave it to someone in the vehicle...” My lord, we submit therefore that by taking the money from its place (at the Machine) and giving it to someone in the car that amounts to carrying away by the accused person. Therefore, this element has also been proved beyond reasonable doubt.

80. With respect to count 2 and the elements that are required to be proved, he submitted that the prosecution relies upon the evidence of PW1, PW2, PW3 and exhibit D1-15. PW1 (ISHMAEL KAMARA) stated in evidence that he recognised the Accused Person. He recalled on the 12th day of June 2022, he was on duty at Pump 1 and her colleague Frances Wilson (PW2) was at pump 2 at the Leonco Filling station at Water Street. It was around 3pm

when the Accused Person and his friends arrived at the said filling station. After the Accused rushed at his colleague PW3 (CHRISTIANA KOROMA) and tried to remove the phone from her, PW3 sent the phone to him and he then opened his sales bag and put the phone inside and closed the bag. The accused then left PW3 and rushed at PW1 and grabbed his throat. PW1 stated at page 8 of the court records as follows: *“The Accused then rushed at me and grabbed my throat. He tried to remove the bag from me. Ishmail, Buju and another man came and held me with the Accused and tried to remove my bag. I was tired and I left the bag with the Accused. He opened the bag and took the phone and Le 4,200,000.00 of the sales Money and threw the bag at me”* PW1 further confirmed this evidence during cross examination at page 11 of the court records that: *“The Accused took my sales bag with phone inside including money.”*

81. This evidence is corroborated by the testimony of PW2 (Francess Wilson) when she told the court at page 15 of the court records that: *“the Accused left Christiana and ran to ISHMAIL and collared ISHMAIL to take the phone from him. He then collected the bag from ISHMAIL. He put his hand into Ishmael’s sales bag and took the phone and cash”* PW2 further confirmed during cross examination that PW1 had a bag before him where he kept the money. To further confirm this evidence, PW3 told the court that the Accused grabbed PW1 with one hand and used the other hand to take the bag. PW3 stated at page 18 of the court records as follows: *“the Accused took the bag and took my phone and some cash. He sent the bag back to Ishmael”*.

82. It is evidently clear therefore that the accused actually took PW1’s sales money from the sales bag and that was because the Accused grabbed PW1’s throat until he became tired and left the bag with the accused. The actual taking of the money is by the

force used by the accused person. He therefore submit that this element has been proved.

83. PW1's sales Money (being the property stolen) was taken from him and against his will by the Accused Person. They relied on the evidence of PW1, PW2, PW3 and the deposition of Musa Mansaray. PW1 told the court that when the Accused grabbed his throat and he became tired, he left the sales bag to the accused Person. That was the time the Accused opened the said bag and took the phone and the money from the bag. PW1 stated at page 8 of the court records that: "I was tired and left the bag with the Accused. He opened the bag and took the phone and Le4,200,000.00 of the sales money and threw the bag at me". PW1 confirmed this evidence during cross examination that the Accused took his sales bag and the phone inside including the money.

84. We submit that PW1 was not willing to let go of the bag. When the Accused grabbed his throat and was trying to remove the bag from him he was still holding the bag. It was when Ishmael Suma, Buju and another man came and join the Accused by holding PW1, that he subsequently became tired and left the bag to the Accused Person. PW2 supported the evidence of PW1 when she told the court that the Accused left PW3 and ran to PW1 and collared him to take the phone from him. PW2 went on to tell the court that the Accused collected the sales bag from PW1 and then took the phone and the money.

85. PW3 further corroborated this evidence that Buju, Ishmael and another guy including the Accused grabbed PW1. PW3 further told the court that the Accused grabbed PW1 with one hand and used the other hand to take the bag. The Accused then took the phone and the money from the sales bag. In the deposition of Musa Mansaray, he told the court that the Accused rushed at PW1 collared him on this throat. Buju, Ishmael Suma, and

another guy also rushed at PW1 and overpowered him. That was the time the Accused took the bag from Ishmael and took the phone and sales money from the bag.

86. The application of force/violence on PW1 by the Accused Person, clearly shows that the money was taken against his will and it was in his presence because the sales money was under PW2's immediate and personal control. Therefore, this element has also been proved by the prosecution beyond reasonable doubt.

87. With respect to the third element, the prosecution submits that because it was against his will, the taking of the money from PW1 was done by force and violence. PW1 told the court that the accused grabbed his throat. Ishmael Suma, Buju and another man joined the accused and held him. PW1 became tired as a result of grabbing his throat and gave up the bag to the Accused. PW1 confirmed this during cross examination that the accused grabbed his throat. The accused subdued PW1 by applying force and violence in order to take his sales bag and then the money from him. PW2 confirmed this by telling the court that after the accused left PW3 (CHRISTIANA KOROMA), he rushed at PW1 and grabbed him. PW3 also told the court that the Accused grabbed PW1 with one hand and used the other hand to take the bag.

88. PW3 told the court during cross examination thus: "The Accused, Buju, Ishmael and another guy attacked Ishmael". In Exhibit D1-15, Musa Mansaray stated that the Accused rushed at PW1 and grabbed him. The Accused overpowered PW1 and took the phone and the money from the sales bag. My lord we submit that as a result of the force and violence used by the Accused, PW1 (the victim) suffered pain in his side (right) and neck. My lord we refer you to Exhibit G which is the endorsed medical report of PW1. The said medical report is consisted with the

testimony of PW1. He therefore submitted that this element has been proved by the prosecution beyond reasonable doubt.

89. With respect to fourth condition, the prosecution submitted that the carrying away of the property stolen is another element which the prosecution must prove. Carrying away is defined by section 1(2)(ii) of the Larceny Act 1916 to include any removal of anything from the place it occupies, but in the case of a thing attached, only if it has been completely detached. In the instant case, PW1 told the court that after the Accused has taken the bag from him, the Accused took the phone and the money from the bag and then threw the bag at PW1 and entered their vehicle and the accused left the scene with the money. PW2 also told the court that the accused put his hand into Ishmael sales bag and took the phone and the money and the Accused and his friends all ran into the car. To further support this evidence, PW3 told the court that the Accused grabbed PW1 with one hand and used the other hand to take the bag. PW3 went on to tell the court that it was then when the Accused took the phone and the money from the bag and the Accused sent the bag back to PW1. The Accused went back to the car and left with his friends.

90. In exhibit D 1-15, Musa Mansaray stated at page 3 as follows: "The Accused took the bag from Ishmael and took the phone and money from the sales bag. The accused sent the bag to Ishmael after he has taken the phone with some amount of money from the bag". These consisted evidence of PW1, PW2, PW3 and Exhibit D 1-15 have disclosed that the money was removed from the sales bag of PW1 by the Accused after the Accused has forcefully removed the said Sales bag from PW1. The Accused later left the scene. The money has been removed from its place (which was the bag where it was placed) and the Accused took it away. It is therefore his submission that this element has been proved by the prosecution beyond reasonable doubt.

91. PW1 was the owner of the money which was robbed by the Accused Person, because he was in direct control and was in immediate possession of the money which was carried away by the Accused Person. The definition of “owner” in section 1 (iii) of the Larceny Act 1916, Ishmael Kamara is the owner of the money which was robbed.

Count 3

92. With respect to this count prosecution relies on the evidence of PW3 (who is the victim), PW1, PW2 and exhibit D1-15 and exhibit K1-15, which is the further Voluntary caution statement of the Accused Person dated the 14th day of June 2022. PW3 in her testimony in court, stated that she recognised the Accused. She recalled the 12th day of June 2022. On that day she was at the manager’s office at Leonco Filling station water Street, Freetown when she heard the noise outside. When she came outside together with the manager, she saw the Accused holding Musa Mansaray on the neck and then punched Musa Mansaray on the face. PW3 took her phone to record the incidence. Immediately the Accused saw her trying to video, the Accused left Musa Mansaray and rushed at PW3.

93. The Accused grabbed PW3 who couldn’t fight the accused and as the Accused has overpowered her, she sent the phone to PW1. PW1 immediately placed the phone inside his sales bag. The Accused immediately released PW3 and rush at PW1. PW3 went on to tell the court that the Accused grabbed PW1 and later took the bag from him. The Accused then removed the phone from the bag. At page 18 of the court records PW3 stated as follows: “The Accused took the bag and took my phone and some cash”. PW1 also told the court that PW3 came out from the manager’s office and took out her phone to film the incident and as soon as the Accused saw PW3 was trying to film the incident, the Accused rushed at PW3.

94. The accused grabbed PW3 to take the phone from her. PW3 then struggled with the accused and she later sent the phone to PW1. PW1 stated at page 8 of the court records as follows: *“She struggled and sent her phone to me. I put the phone in my sales bag. I closed it. The Accused then rushed at me and grabbed my throat...I was tired and I left the bag with the Accused. He opened the bag and took the phone...”* PW2 also told the court when PW1 came outside the Manager’s office, she took her phone to video the scene. The Accused then left Musa Mansaray and rushed at PW3 and tried to remove her phone from her. PW2 further told the court that the Accused grabbed PW3 and later PW3 sent the phone to PW1. PW1 then placed the phone in his sales bag.
95. The Accused immediately left PW3 and rushed at PW1 and grabbed him. The Accused then took the bag from PW1 and put his hand inside the bag and removed the phone. To further support this evidence is Exhibit D¹⁻¹⁵. At page 30 of Exhibit D¹⁻¹⁵, Musa Mansaray stated as follows: *“During that process, Christiana took out her phone and was trying to video the scene. The Accused rushed at Christiana. The Accused held Christiana on her throat and was trying to take the phone from her but she sent it to her colleague Ishmael. Ishmael took the phone opened the sales bag and puts the phone inside it. The Accused rushed at Ishmael and grabbed him on his throat. Buju, Ishmael the driver and another also rushed at Ishmael and overpowered him. The Accused took the bag from Ishmael, took the phone and money from the sales bag”.*
96. The prosecution argues that this evidence clearly shows that there was actual taking of the phone by force, is further corroborated by the very statement of the Accused to the police. At pages 6-8 of Exhibit K¹⁻¹⁵ the Accused had this to say:

“I saw an unknown name man in a white and black dress holding on his mobile phone videoing us and I stop him not to video me and I later asked him if he is a worker at the said (Leonco fuel) station. He replied me yes he is one of them and I told him that you would have asked the lady to stop her action instead of you using your phone to video me and that do you know that you don’t have the right to use a phone at a fuel station right? He replied to me that he has the right to do that and he turned the phone directly on me videoing me. Which led to my action to hold on to the phone by putting stop to him but he never allowed me to removed the phone from him until other friends came around and he later give up the phone to me and I told him that I am going to hand over the said phone to the owner of the fuel station because I know the woman who is the owner of the station and report them to her. Just after that, I was called by the driver Ishmail Suma to on board the vehicle...”

97. The prosecution argues that this statement of the Accused is consistent in material respects with the testimony of PW1. It is evidently clear therefore that the phone was actually taken by the Accused by the use of force. Therefore, this element has been proved by the prosecution beyond reasonable doubt.

98. With respect to the second requirement, the prosecution submits that the Mobile Phone (being the property stolen) was taken in the presence of CHRISTIANA KOROMA - PW3 (the victim) and it was against her wish. To establish that, the prosecution relies on the evidence of PW3, PW1, PW2 and the deposition of MUSA MANSARAY. PW3 told the court that because she could not fight the Accused (and truly so as woman) she sent the phone to PW1. The Accused left her and rushed at PW1 and grabbed him and then took the sales bag where the phone was from PW1. At

page 18 of the court records PW3 states as follows: "The Accused took the bag and took my phone and some cash". PW1 confirmed this evidence when he told the court: "The Accused rushed at Christiana to remove the phone from her. ...She struggled and sent the phone to me". It was after PW3 has sent the phone to PW1 that the Accused released her and rushed at PW1.

99. The Accused with the help of his friends, overpowered PW1 and took the phone from the sales bag. The fact that PW3 sent the phone to PW1 was an effort to prevent the Accused from taking the phone from her. That effort became meaningless when the Accused rushed at PW1 and forcefully took the phone from him. PW2 confirmed this when she told the court that the Accused collared PW3 and tried to remove the phone from her. PW3 then sent the phone to PW3. The Accused then later took the phone from PW1. In Exhibit D¹⁻¹⁵ Musa Mansaray further support this evidence. At page 30 of the Exhibit D¹⁻¹⁵ Musa Mansaray stated as follows: *"The Accused held Christiana by her throat and was trying to take the phone from her but she sent it to my colleague Ishmael..."*. Musa Mansaray further stated that it was after that point that the accused rushed at PW1 and forcefully removed the phone from him.

100. With respect to the third requirement, the prosecution submitted that what the accused did was against the will of PW3, the accused having applied force and violence in order to take the phone. *The prosecution relies on the evidence of PW3, PW1, PW2 and the deposition of Musa Mansaray to establish this element. PW3 suffered violence when the accused rushed at her and grabbed her throat. The accused applied force on her which made PW3 to send her phone to PW1. PW1 also told the court that the accused rushed at PW3 to remove the phone from her. PW3 struggled and sent the phone to him. In addition, PW2 told*

the court that the Accused grabbed PW3 by the throat and tried to remove the phone from her.

101. *Musa Mansaray in Exhibit D¹⁻¹⁵ stated at page 30 as follows: "The Accused held Christiana on the throat and was trying to take the phone from her but she sent it to my colleague Ishmael." By rushing to PW1, the accused also applied force and violence on PW1 and finally took the phone of PW3. My Lord also in evidence is the endorsed medical report of PW3 - Christiana Koroma marked Exhibit F. The said medical report disclosed that PW3 suffered "Generalized Musculoskeletal. Pain severe on the neck observed" This, counsel submits, was as a result of the force and violence applied by the Accused in the process of taking the phone. PW1 from whom the phone was finally taken also suffered same. It is our submission therefore that this element has been proved beyond reasonable doubt.*

102. With respect to the final element that is required to be proved, the prosecution must prove that there was carrying away of the property stolen, in this case the mobile phone. In proving this element, the prosecution relies upon the evidence of PW3, PW1, PW2, the deposition of Musa Mansaray and Exhibit K¹⁻¹⁵ which is the further voluntary caution statement of the accused dated the 14th day of June 2022. Carrying away is defined by section 1(2)(ii) of the Larceny Act 1916 to include any removal of anything from the place it occupies, but in the case of a thing attached, only if it has been completely detached. PW3 in her testimony told the court that when she sent the phone to PW1, PW1 put phone in his sales bag. The accused then rushed at PW1 grabbed him on the throat and later took the sales bag from him. The Accused then removed the mobile Phone and some money from the bag. At page 18 of the court records PW3 stated: "The Accused took the bag and took my phone and some cash. He sent the bag back to Ishmael. They went back to the car. The car had no plate on it.

They entered the car and drove away". PW1 told the court that after the Accused has forcefully taken the bag from him, the Accused took the Mobile phone from the bag and threw the bag at PW1. The Accused then went back into the Vehicle and they drove off. This evidence is further supported by the testimony of PW2 when she told the court that after the Accused has taken the bag from PW1, he put his hand into PW1's sales bag and took the phone and the money. PW2 stated at page 15: "They all ran into the car...".

103. Further corroboration can be seen from the evidence of PW3, PW1 and PW2. The Accused person at pages 7-8 of Exhibit K¹⁻¹⁵ who told the police as follows: "**...he never allowed me to remove the phone from him until other friends came around and he later give up the phone to me and I told him that I am going to hand over the said phone to the owner of the fuel station because I know the woman who is the owner of the station and report them to her. Just after that, I was called by the driver Ishmael Suma to on board the vehicle...**".

104. The accused the accused left the scene with the phone until he was intercepted at Up gun by the police van. Clearly, even from the version of the accused himself, the phone was carried away by him. Further reference is made to the accused leaving the scene with the phone until he was intercepted at Up gun by the police van. Clearly, even from the version of the accused himself, the phone was carried away by him.

105. The prosecution further relied upon Exhibit K1-15 at page 10 which is the statement of the accused, in which he told the police the following:

"On arrival at Congo cross police station, complainants in this matter alleged that we took their phone and money sum up to Four million Leones (Le4,000,000.00), and the money for the said

fuel which was pumped into our vehicle of which I paid the money for the fuel and the alleged four Million Leones with the phone which was taken from the unknown name guy for videoing me hoping that the matter has been put on solution.”

106. The prosecution submitted that it was now clear that *the Accused surrendered the mobile phone and he paid the sum of Four Hundred and Ninety Thousand old Leones at Congo Cross Police station which was the cost of the 27 litres. The said money is in evidence marked Exhibit M and the mobile Phone was identified by PW3 to be her Techno Mobile Phone which was forcefully taken and carried away by the Accused. The said Mobile Phone is also in evidence marked Exhibit N.*

107. The prosecution relied upon Paragraph 1762 at page 645 of Archbold pleading, Evidence and practice in Criminal Cases, which states:

“...if the property is once taken, the offence will not be purged by the robber’s delivering it back to the owner.”

108. The prosecution further relied upon section 1 of the Larceny Act 1916 and further submitted that Christiana Koroma PW3 was in law, the owner of the phone, as she was in direct control and was in immediate possession of the said phone. The prosecution submitted that they have established all the elements of robbery on all three counts against the accused person beyond reasonable doubt.

109. With respect to the mens rea, the prosecution argued that they prove the guilty mind (MENS REA) of the accused person for these offences. In proving the guilty mind of the Accused Person, the prosecution submits that, it is not capable of positive proof but by inference from overt acts of the Accused person. As a general rule, every man is taken to intend the natural and probable consequences of his own acts. The prosecution relies on

the statement of the law at paragraph 1010 of the 36th edition of Archbold pleading, Evidence and practice in criminal cases.

110. The mens rea is clearly an intention to do the acts he set out to do. The mens rea for robbery is the same as the mens rea for larceny which requires an intention to take and carry away. The accused must be shown to have intended the consequences of his actions. As a general rule, every man is presumed to intend the natural and probable consequences of his own acts. In some cases, intent can be inferred as a necessary conclusion from the act done. The prosecution would succeed where it can show that the accused intended the natural and probable consequences of his actions.

Count 4

111. With respect to this count, the prosecution's case is that *the Accused* on the 12th day of June 2022 at Leonco Fuel station at water street in the Western Area of the Republic of Sierra Leone maliciously inflicted grievous bodily harm on Musa Mansaray a pump attendant at the said fuel station.

112. The prosecution must prove the following in a charge of inflicting grievous bodily harm under section 20 of the Offences Against the Persons Act 1861.

1. That the victim suffered grievous bodily harm, which was inflicted by the accused, which given its ordinary and natural meaning, means serious bodily harm. The said harm is not permanent or dangerous.
2. That the accuse unintentionally injured the victim or was reckless as to whether injury is caused to the victim.

113. The prosecution relied upon a number of matters, in particular the cases of R v Smith 1961 AC 290 and R v Burstow 1998 Cr. App R 177. They submitted thar the Victim Musa Mansaray

suffered serious bodily harm. They relied upon the evidence of Musa Mansaray which is contained in Exhibit D1-15 and the photographic evidence and the evidence of DR. Margaret Ruth Ghandi (PW8) *and* Exhibit H which is the endorsed medical report of MUSA MANSARAY.

114. They relied upon exhibit D1-15 in which Musa Mansaray testified that he was hit by the accused with his fists on his left eye and he fell down. He therefore sustained a swollen eye. They further relied upon the evidence of PW8 Dr Ghandi, who testified that she is a medical doctor attached to the Lumley Government hospital and her duties include treating patients and receiving assault case referrals from the police. She recalled on the 13th day of June 2022 she was on duty at the Lumley Government Hospital when she examined and treated MUSA MANSARAY who was referred from the CID Congo Cross Police Division. PW8 further told the court that upon physical examination of Musa Mansaray, had a swollen on the left lower eye lid and a swelling on the forehead. PW8 went on to tell the court that Musa Mansaray complained of pain on the head and on the face.

115. She then administered treatment for the swelling and to relieve the pain. She later reduced her findings into a medical report which she stamped and dated. She identified the medical report which was marked "Exhibit F" During cross examination Dr Ghandi told the court that Musa Sustained injuries on his left lower eye lid. This testimony of PW8 together with her endorsed medical report, is consisted with the testimony of Musa Mansaray and the photograph showing his image. All of which show serious physical injury on Musa Mansaray. We therefore submit that this element has been proved beyond reasonable doubt by the prosecution.

116. The prosecution admitted that they need to prove beyond a reasonable doubt that the serious bodily harm suffered by the

Victim (MUSA MANSARAY) was inflicted by the Accused. They submitted that it was the Accused who inflicted the serious bodily harm on MUSA MANSARAY. In proving this element, the prosecution relies on the evidence of Musa Mansaray contained in Exhibit D¹⁻¹⁵, PW1, PW2, PW3 all of whom positively identified the accused as the one who punched Musa Mansaray on the face. The evidence of PW8 and Exhibit F also further support the evidence. They referred to exhibit D1-15 in which Musa Mansaray testified at page 30 that he was still holding the bag and I asked the accused person what I did he do to him. The accused responded that he wants to burst his eye.

117. During cross examination, MUSA MANSARAY stated that the Accused held him with one hand and hit him with the other hand. He further stated at page 44 of Exhibit D1-15 as follows: "It was the Accused that hit me on my eye." MUSA MANSARAY confirmed that he told the police that it was the Accused and others that assaulted him. In Exhibit F, the police request in the medical form indicates that Musa Mansaray was attacked and robbed by Alhaji Amadu Bah Alias LAJ, Ishmail Suma, Baba Dumbuya and others.

118. In her testimony in court, Dr. Margaret Ruth Ghandi (PW8) stated that because of space she did not directly indicate the name of Accused person in her endorsement, but the Accused name has already been indicated in the police request as one of those who assaulted the Musa Mansaray. She said because of space she could not mention the accused person's name. She said Musa Mansaray alleged that he was assaulted by a group of people including the Accused. This evidence is further corroborated by the testimony of PW1- Ishmael Kamara when he stated at page 8 of the court records as follows: "At that point the accused pushed Frances who fell and later grabbed Musa. He then asked Musa why he was getting involved. He then punched Musa on the face and he fell."

119. PW2- Francess Wilson also told the court that the Accused grabbed Musa Mansaray and punched him on the face and MUSA MANSARAY fell down. PW3 - CHRISTIANA KOROMA supported this evidence when she also told the court at page 17 of the court records as follows: "The Accused held Musa by the neck and punched him on the face, Musa fell down." The accused was identified by all these witnesses. They submitted that from the evidence of Musa Mansaray and the corroborative evidence of PW1, PW2, PW3, PW8 and Exhibit F clearly show that the serious bodily harm suffered by the victim MUSA MANSARAY was inflicted by the Accused Person. We submit further that this element has also been proved by the prosecution beyond reasonable doubt.

120. The prosecution also submitted that the grievous bodily harm must be shown to be malicious and unlawful. They relied upon para 2257 Page 836 of Archibold pleading, Evidence and practice in Criminal Cases 36th Edition where word maliciously is describe dint he following terms as:

"Where the word "Maliciously" is used in any statutory definition of a crime, malice must be taken not in the old vague sense of wickedness in general, but as requiring either: (1) an actual intention to do the particular kind of harm that is in fact done; or (2) recklessness as to whether such harm should occur or not, i.e. the Accused must have foreseen that the particular kind of harm might be done and yet gone on to take the risk of it".

121. The above denotes that the prosecution should show either intention or recklessness on the part of the Accused. We submit that the Accused person was reckless and even intended to cause serious bodily harm on Musa Mansaray.

122. On the available evidence the prosecution submits that it is clear from the conduct of the Accused person that he was reckless and at the same time he intended causing damage to Musa Mansaray's eye. They therefore submitted that the accused

was malicious in inflicting the grievous bodily harm on Musa Mansaray. The act of the accused was unlawful because there was no lawful excuse or justification to do what he did on Musa Mansaray. The accused was also acting consciously, knowing what he was doing. They therefore submitted that this element has been proved beyond reasonable doubt.

123. I shall now proceed to consider the defence closing address.

Defence closing address

124. The defence submitted its closing address. In response to the prosecution's case against the accused. Mr Fofanah started his submissions on count four of the indictment.

125. He submitted that the accused repeats he did not inflict any grievous bodily harm on Musa Mansaray at any point in time. He further argued that contrary to the amended Indictment, the offence of assault or grievous harm alleged by Musa Mansaray, in the information taken out against the Accused herein at the Magistrate Court dated the 14th June, 2022 and in his (Musa's) testimony during committal proceedings at the Magistrate Court as well as the endorsed medical form given to him after the incident, was said to have taken place on Sunday, 12th June, **2022**, and not on 12th June, **2021**, as stated in the amended Indictment.

126. This is a matter I need to address at this point, I have reviewed the amended indictment to which the accused took his plea. Mr Fofana is correct that the amended indictment, refers to a date of 12th June 2021 as opposed to 12th June 2022. Having regard to the submissions made the indictment is defective. The question for the court to determine is how to proceed in the light of the issue having being raised by the defence.

127. The prosecution have not sought to amend the indictment. They have now closed their case. The defence have also closed their case and both parties have addressed the court. Mr Fofanah rightly points out that the evidence before the court indicates the date of occurrence of these offences is the 12th day of June 2022 and not 2021. The medical reports which have been tendered in this court relate to the date 12th June 2022. The date on counts 1, 2 and 3 have been indicated to be the 12th June 2022. The evidence that was led by witnesses relate to the 12th June 2022. The date of occurrence in the deposition of Musa Mansaray relates to the 12th June 2022.

128. In the light of the matters mentioned above, the amended indictment that has a date of 12th June 2021 as the date of occurrence of the offence It appears to this court that the indictment is defective. Section 148 of the Criminal Procedure Act 1965, provides as follows:

148. (1) Where, before trial upon indictment or at any stage of such trial, it appears to the Court that the indictment is defective, the Court shall make such order for the amendment of the indictment as the Court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required amendments cannot be made without injustice. All such amendment shall be made upon such term as the Court shall seem just.

129. The primary question for consideration is how to proceed with the matter when the prosecution have not sought to amend the indictment, neither has Mr Fofanah on behalf of he accused sought to do so. He has simply raised the issue. Applying the literal meaning of interpretation of statutes, the literal meaning of the said provision can be summarized as follows:

1. That before trial or at any stage of the trial;

2. It appears to the court that the indictment is defective;
3. The court shall make such order for the amendment of the indictment as the court thinks necessary to meet the judgement of the case; unless
4. Having regard to the merits of the case, the required amendments cannot be made without injustice.

130. The trial is yet to be concluded and the submissions made by Mr Fofanah for the accused has brought it to the attention of the court that the indictment is defective by reason of the date on it. In those circumstances the court shall make an order for the amendment of the indictment unless it is of the view that having regard to the merits of the case the amendments could not be made without injustice.

131. I have applied my mind to whether there is injustice to the accused if an order for the amendment of the indictment is made. As I have pointed out at para 124 (above) the prosecutions case has clearly been put on the basis that these events that have led to charges occurred in the 22nd June 2022. Counsel for the accused has cross examined witnesses extensively on the basis of the events having occurred on the 12th June 2022 and not on the 12th June 2021. The preliminary investigations in the Magistrates court were conducted on the basis of these events upon which the accused is charged, occurred on the 12th day of June 2022. The defence have not challenged counts 1,2, and 3 as having occurred on a date other than the 12th June 2022.

132. I have reviewed all the voluntary caution statements made by the accused to the police and the medical reports tendered. In the circumstances I consider that the amendment to the indictment can be made without injustice to the accused. In all of the accused's statements exhibits j1-5 and K1-15it was

suggested to him that the occurrences for which he was being interviewed occurred on the 12th day of June 2022. When asked if he understood, he never once said the date was wrong. He acknowledged that he understood what he was being asked and that thread runs across the other statements he made to the police. Further, there is no discrepancy amongst the witnesses as to the date of occurrence of the matters for which the accused is charged. No defence of alibi has been put by the accused with regard to the alleged date of occurrence.

133. The medical reports which were tendered as exhibits F G and H were all have the 12th June 2022 as the date of occurrence of the events. There can be no injustice to the accused if the amendments to the indictment are made at this stage of proceedings. This was the case in *R v Radley* 58 Cr. App R 394 CA. where it was held that the court ought to give a literal meaning to the language of section 5(1) of the Indictment Act 1915 which is exactly the same as section 148 of the Criminal Procedure Act 1965 in Sierra Leone.

134. The current position of the law in relation to the exercise of discretion to permit amendments to the indictment is set out in *R v Johal and Ram* 56 Cr. App. R 348 where the court concluded that an indictment is defective when it does not accord with the evidence before the Magistrates and does not accord with the evidence given at trial as was the case in *R v Hall* 1968 2 QB 787. I am satisfied that there is no need to recall witnesses in this case if the amendments were granted.

135. In the case of *Wright v Nicholson* 1970 1 WLR 142, the court was of the view that when an amendment is made to an information (which the court has the power to do) the central question is whether the amendment will cause injustice to a defendant. An injustice will be said to have occurred when the amendment hinders or prevents a defendant from putting

forward a defence. An amendment sought without giving the accused an opportunity to present further information would be unfair where the amendment prejudiced the accused where the date was particularly relevant to his defence. In this case there is no such relevance, having regard to the defence advanced by the accused.

136. In *R v Bonner* 1974 Crim Lr 479, the Court of Appeal held as follows:

“If a court felt that the interests of justice required the amendment of the indictment it should only be done after particular care had been taken to ensure that the defence had had ample opportunity, by way of adjournment, to consider whether witnesses should be recalled, or further evidence called. Only when that had been done could it be said with any safety that the risk of injustice had been avoided.”

137. In *Johal and Ram* the court held as follows:

“...this court shares the view expressed in some of the earlier cases that amendment of an indictment during the course of a trial is likely to prejudice an accused person. The longer the interval between arraignment and amendment, the more likely it is that injustice will be caused, and in every case in which amendment is sought, it is essential to consider with great care whether the accused person will be prejudiced thereby.” (Emphasis added).

138. In the case of *Joel Campbell v R* 2021 JMCA Crim 22, the Court of Appeal for Jamaica having reviewed the existing authorities at para 18 of the judgement had this to say:

“Granting an amendment without allowing the defence an adjournment might be permissible if the nature of the amendment is minor – for example to correct the spelling of a name, where that is not a matter in issue. Where there is an

amendment to change the date on which an offence is alleged to have been committed, on the other hand, or another amendment of a substantial nature, we would expect: first, for the defendant to be re-pleaded to the amended information."

139. In *R v Radley* (1974) 58 Cr App Rep 394, the English Court of Appeal had this to say:

*"We can see no possible reason for saying that to arraign the accused again after the amendment is made can be prejudicial or irregular in any way. By arraignment, we refer of course strictly to the putting of the charge to the accused and asking him to plead to it. It is not suggested that when that has been done he has to be put in charge of the jury a second time or that a jury have to be empanelled again. It is perfectly permissible, if an amendment is made of a substantial character after the trial has begun and after arraignment, for the arraignment to be repeated, and we think that it is a highly desirable practice that this should be done wherever amendments of any real significance are made. It may be that in cases like *HARDEN* [(1962) 46 Cr. App. R. 90; [1963] 1 Q.B. 8.] where amendments are very slight and cannot really be regarded as in any way introducing a new element into the trial a second arraignment is not required, but judges in doubt on this point will be well advised to direct a second arraignment."*

140. *R v Ashton, R v Draz and R v O'Reilly* [2006] EWCA Crim 794, [2007] 1 WLR 181,, The Court of Appeal held as follows:

*"4. The outcome of each of these cases essentially depends on the proper application of the principle or principles to be derived from the decision of the House of Lords in *R v Soneji* [2006] 1 AC 340, together with the earlier decision of this court in *R v Sekhon* [2003] 1 WLR 1655. Indeed, these three applications demonstrate how far-reaching the effect of those authorities is likely to be whenever there is a breakdown in the procedures*

whereby a defendant's case progresses through the courts (as opposed to the markedly different situation when a court acts without jurisdiction). In our judgment it is now wholly clear that whenever a court is confronted by failure to take a required step, properly or at all, before a power is exercised ('a procedural failure'), the court should first ask itself whether the intention of the legislature was that any act done following that procedural failure should be invalid. If the answer to that question is no, then the court should go on to consider the interests of justice generally, and most particularly whether there is a real possibility that either the prosecution or the defence may suffer prejudice on account of the procedural failure. If there is such a risk, the court must decide whether it is just to allow the proceedings to continue.

141. I have had regard to Archbold para 115 *and* other authorities on this point. Para 115 stipulates that it was never necessary that it should be laid according to the truth unless time was of the essence of the offence. The said para makes the point that if the time stated were prior to the finding of the indictment, a variance between the indictment and the evidence in the time when the offence was committed was not material as was the case in Sir H Vane's case 1662.

142. It is therefore not necessary for the date shown to be proved by the evidence unless time is of the essence of the offence. In *R v Dossi* 13 Cr.App.R 158 CCA, the Court of Appeal held that a date specified in an indictment is not a material matter unless it is an essential part of the alleged offence. The defendant may be convicted although the jury finds that the offence was committed on a date other than that specified in the indictment. Amendment of the indictment is unnecessary although it will be good practice to do so (provided there is no prejudice) where it is

clear on the evidence that if the offence was committed at all it was committed on a day other than that specified.

143. The prosecution would be prevented from departing from an allegation that an offence was committed on a particular day in reliance on the Dossi principles if there is a risk that the defendant has been misled as to the allegation he has to answer.

144. The issues raised in this case by Mr Fofanah for the accused requires the court to exercise a discretion conferred upon it by statute, ie section 148 of the Criminal Procedure Act 1965. Where the court is satisfied that there is no injustice to the accused, the amendments can properly be made and I so hold.

145. I would therefore amend court 4 on the amended indictment by deleting the figure (“1”) after 2021 and replacing it with (“2”), to read 2022.

146. Mr Fofanah raised the issue of the evidence of PW5, Miss Macauley who testified in this court, which he raised at para 5 to 7 of the closing address. AT para 7 he makes the point that the Prosecution at all material times failed to produce **the phone** from which Musa took the fresh picture of his alleged grievous injury, even though the said phone was tendered in the Magistrate’s court as “Exhibit A” and ought to have formed part of the court records as required by section 124 of the Criminal Procedure Act, 1965, just like it was done with Christiana Koroma’s Techno phone, which remained in custody and was tendered at the High Court as an exhibit.

147. Even more disturbing is that the Prosecution only tendered the impugned picture in Court purported to have been printed by Musa from his phone, and not the phone itself. It is submitted that for the reasons stated below, and because Musa was absent to be examined and cross-examined so that the High Court can

assess his testimony and demeanour in court, Musa's tendered deposition ought to be treated with a pinch of salt, and should not be believed by this Court. The Prosecution materially excluded an exculpatory evidence from the committal record that was to be used by the Accused.

148. He further argued that At pages 46 to 48 of the committal record, Musa firstly confirmed during cross examination that the assault picture was taken from his Samsung phone on the 12th June, 2022 (the date of the alleged incident) and that he had been using the said phone for four months. He agreed that some phones, including his Samsung phone, give dates and time of pictures taken on the phones. Musa even confirmed the date and time on his phone at the time of the cross examination as 3:57pm on the 30th June, 2022, and that it was correct. Musa was then confronted with the picture he said he had printed out from his phone, and stated the date and time of the picture as 11:54 am done on 22nd June, 2022.

149. This piece of evidence is crucial, when compared with the date on the picture tendered in Court by the Prosecution during the High Court trial. The date on the picture tendered is "12 June, 2022", and not the time and date Musa admitted in evidence at the Magistrate's Court as "11:54am on the 22nd June, 2022". This is fundamental as it shows that the picture of Musa tendered at the High Court was glaringly doctored, or at least the date thereon was changed or altered. This is untenable on the part of those who tendered the impugned picture, to say the least, and it is submitted that such conduct must resolve the above doubt in favour of the Accused.

150. Furthermore, at the committal hearing, since the above event was fresh in Musa's mind at that time, Counsel for the Accused, Madieu Sesay Esq., put it to him that the date on the phone was not that of the 12th June, 2022 when he alleged that the Accused

assaulted him, and his response was “That is what the phone shows”. He eventually agreed that the phone shows that the photo he presented to the Court was taken on 22nd June, 2022 at 11:54 am.

151. It is averred that the foregoing (the phone and the picture bearing 11:54 am done on 22nd June, 2022) were a material and germane evidence that the Prosecutor, who was custodian of the exhibits at committal, failed and/or refused to tender in Court, and therefore seriously undermined and prejudiced the case of the Accused against Musa Mansaray, especially considering that the Prosecution seeks to use the untested deposition of Musa to convict the Accused. It is also submitted that the absence of this exculpatory evidence before the Court firstly, suggests that Musa could have been assaulted by someone else (and not the Accused); and secondly that if at all, the incident occurred on a different date and time removed from the alleged date of the incident before the Court, to wit, Sunday, 12th June, 2022. The Accused therefore prays and submits that the above piece of evidence should, in the circumstance, be weighted and determined in favour of him.

152. He argued that contrary to claim by Musa that he was hit in the left eye by the Accused, PW2 Francess Wilson, in her deposition in the committal record at page 69 thereof, testified under cross examination that Musa [PW2 at the committal hearing] was hit in the right eye.

153. In the case of *Amara vs. Reginam* (1968-69) ALR SL 220 at 225, the Court of Appeal held that ‘no burden is placed on the Accused to establish a defence, the burden rests on the prosecution to disprove all defences save insanity’. This is consistent with the finding that PW8 testified that Musa alleged that he was assaulted by “a group of people” including the Accused, as well as the fact that Musa said in his testimony to

the Magistrate Court at page 44 of the deposition that he did not tell the Police that it was the Accused that assaulted him at the time he was issued the Police medical request form. Similarly, he did not tell the male Medical Doctor (he, and not the female PW8) who examined him, that it was the Accused that assaulted him, referring to his assailants merely as “a group of people” – see both page 45 of the deposition and the endorsed medical form. All of these inconsistencies, it is submitted, ought to be weighted in favour of the Accused against Musa and the State.

154. He argued that the Accused should be acquitted and discharged on Count Four of the Indictment regarding the offence of “inflicting grievous bodily harm”. The Prosecution has failed to prove, beyond reasonable doubt, that Musa was assaulted by the Accused in particular and essentially so, on the date in question.

Count 1, 2, and 3.

155. With regard to these counts, Mr Fofanah argued that there is a sharp contrast with the sum of money for which the Accused stands charged under Count One and the location of the money at the time of the theft, on the basis that Francess Wilson is alleged to have been **robbed** of the sum of Le. 2,090,000/= by the Accused on the 12th June, 2022 in Freetown. Firstly, it is contended that during cross-examination, Francess Wilson, as complainant, was confronted with the fact that at the Magistrate’s Court during the committal hearing, and when the facts of the case were quite fresh in her mind, she had inter alia testified in that Court as follows: “The accused took the money that was on top of the fuel machine and gave it to somebody that was in the vehicle. The accused came towards me but my colleague, Musa, jumped down and he came between us. The money the accused took on top of the machine is One Million, Two Hundred and Sixty-Six Thousand Leones”. See pages 57 to 58 of the committal records.

156. The Accused is alleged to have stolen from Francess Wilson the sum of Le. 2,090,000/= (old Leones), and not the sum of Le. 1,266,000/= that Francess in fact claimed was robbed from her. Besides, she testified at the High Court that the said currency was in old Leones, and not the currency tendered in Court, which included new Leone notes as well. Moreover, contrary to the testimony of Francess at the High Court that the money stolen from her was "under the pumping or fuel machine", she had consistently testified at the Magistrate's Court that the money was "on top of the fuel machine" when she was allegedly robbed.

157. With respect to count 2, Ishmael Kamara is alleged to have been robbed of the sum of Le. 4,200,000/= old Leones by the Accused on 12th June, 2022 in Freetown. Notwithstanding this allegation, Ishmael Kamara could not, and consistently too under cross-examination, tell how much was in his bag at the time of the alleged robbery, even after he claimed to have balanced the sales account with the Station Manager for that day at the close of business; he could also not tell how much money remained in the bag after the incident. he had initially testified at the Magistrate's Court during the committal hearing that: "*when we went to the Police Station, I was asked for the amount that got missing in my bag. Since I don't know, I went to the manager at the filling station to balance my account and he gave me the actual amount that was taken from my bag.*" - He referred to page 22 of the committal record. Interestingly, the amount claimed as stolen was the only amount he could recall from the stock taking. Ishmael Kamara could not tell the overall sale for that day.

158. Counsel further argued that by the accounts of Francess and Ishmael Kamara in Counts One and Two respectively, they were each in fact the persons who stole the sales monies from their principal, Leonco Fuel Station, on the 12th June, 2022, and then

pretended thereafter that it was the Accused who stole the said monies. Consequently, they each created scenes which they logically rehearsed to support their respective stories, and then had their sales agent colleagues try to corroborate their false accounts of the alleged theft/robbery. This is why Francess changed her account of the amount stolen from her, if any, and lied about the location of the money at the time it was said to have been stolen. And similarly, this is why Ishmael Kamara became dumb when he was asked the total sale amount for the day.

159. Francess also could not tell how much money she had as balance for the day after the alleged robbery, and why their principal and actual owner of the monies alleged to have been stolen, Leonco Fuel Station, was not involved in the entire prosecution. Simply put, Leonco did not want to be part of a prosecutorial charade.

160. Counsel submitted that it is for the Prosecution to prove its case beyond reasonable doubt against the Accused, and not to take the Accused's Witness Statement tendered in Court out of context. The Prosecution, in their written Closing Address, have submitted that the fact that the Accused admitted to have returned to the Police the phone allegedly owned and "robbed" from Christiana under Count Three, together with the sum of Le. 4,000,000/= old Leones alleged to have been stolen by the Accused and the money for the fuel that was pumped into his vehicle, the Accused was guilty of the offences of robbery, inclusive of the alleged theft from the complainants. It is submitted that this approach not only defeats the established principle on the guilt or otherwise of an accused person in criminal trials as set out in Woolmington vs. DPP and Miller respectively, but that as stated in Amara vs. Reginam herein, '*no burden is placed on the Accused to establish a defence, the*

burden rests on the prosecution to disprove all defences save insanity'.

161. He submitted as well that if any, the Accused, by returning the phone and paying the monies outlined in his Statement and the Prosecution's written closing address, firstly did so "*hoping that the matter has been put on solution*", considering that the phone was taken from an "*unknown named guy for videoing me*". Secondly, it shows that the asportation in the crime of robbery was never completed, to wit, that no one was permanently deprived of the phone or money. It therefore begs the question as to why the Accused was never charged with the offence of receiving fuel from the Leonco Fuel Station and not paying for it after speeding off from the said Station with the fuel. As a matter of fact, this was the offence that was put to the Accused at the time he was investigated by the Police.

162. Section 23(2) of the Larceny Act, 1916 as repealed and replaced by Act No. 16 of 1971 states that "*Every person who robs any person shall be guilty of felony (...)*". Whilst it is admitted that the definition of "owner" under the Larceny Act, 1916 covers or includes "*a person having possession or control of, or a special property in, anything capable of being stolen*", it is equally stated in Archbold's Criminal Pleading, Evidence and Practice (1995 Reprint) at para. 1469 page 545 under the rubric: "The "intent" - Animus Furandi" - "Claim of Right" that "In all cases of larceny, the question whether the prisoner took the goods knowingly or by mistake - whether he took them bona fide under a claim of right, or otherwise, and whether he took them with an intent to return them to the owner, or fraudulently with an intent to deprive the owner of them altogether, and to appropriate or convert them to his own use - are questions entirely for the consideration of the jury, to be determined by

them upon a view of the particular facts of the case: R v. Farnborough (1895) 2QB 484.”

163. He argued that as soon as the Accused and his friends were brought to the Police Station, they handed in the phone and cost of the fuel plus Le. 4,000,000/= old Leones hoping that that will be a “solution” to the matter. They did this of their own free volition, without being harassed by the Police or anyone to do so. It turned out, however, that it was only the Accused, among three or so other friends present at the Filling Station at all times, who was charged with robbery and grievous assault. This respectfully portrays malice and prejudice against the Accused, considering that even with the flawed evidence the Prosecution had, the others were not even charged with conspiracy for any of the offences charged.

164. The scene created by the Prosecution does not show the mind-set of a robber. Apart from the fact that the amounts of money said to have been stolen are vehemently contested, it is averred that the mens rea for robbery is entirely lacking. None of the monies said to have been stolen by him were ascertained as truly stolen; the complainants merely used the situation at the Fuel Station to contrive ways of stealing sales money from Leonco Fuel Station and then attribute the theft of such monies to the Accused. It is repeatedly averred herein that a convincing case against the Accused would have been for Leonco Fuel Station to have been involved in the prosecution, both as principal and owner of the allegedly stolen monies. In fact, even when the name of the Manager of the Station was repeatedly mentioned by the complainants in their testimonies at the committal proceeding, he was never called by the Prosecution as a witness. Leonco was thus happy that the cost of the fuel pumped into the vehicle was finally paid for and the matter ended there, it was ‘settled’ as the Accused stated in his Witness

Statement. It was thus the Prosecution itself that created the complainants and used them during trial against the Accused.

Count 3

165. With respect to count 3, counsel argued that Christiana Koroma is alleged to have been robbed of one Techno mobile phone valued at Le. 1,600,000/= by the Accused also on the same date (12th June, 2022) in Freetown. The complainant herein neither made a report to the Police for her allegedly stolen Techno phone nor did she testify at the Magistrate's Court during the committal proceeding there. She was not listed as a Witness at the back of the Indictment and was brought in as an afterthought as an "additional Witness" (PW 3) during the trial.
166. Counsel raised a jurisdictional issue with respect to count 3 and argued that there was no committal proceeding conducted at the Magistrate's Court in respect of Count Three. Similarly, there was no section 136 proceeding applied for to try Count Three, considering that it is an entirely new scheme brought up during trial through an "additional Witness". Pursuant to section 136 of the Criminal Procedure Act, 1965, Count 3 should be dismissed.
167. The Accused will adopt all of the arguments made on Counts One and Two above regarding the respective claims of Francess Wilson and Ishmael Kamara. In particular, apart from the contention that the said Techno phone was not "owned" by Christiana as she wanted the Court to believe during her testimony to the Court, it is submitted that the asportation required of the offence of robbery or theft is missing in this Count charge. The Techno phone was voluntarily returned by Buju, one of the friends of the Accused, to the Police on the same date that the incident occurred.

168. He argued that the only reason why the accused and his friends took the phone was because Christiana and the other pump attendants were trying to video him, a popular artist, on the alleged date. The videoing was itself abundantly confirmed by Prosecution Witnesses during the committal proceedings at the Magistrate's Court. It is averred that the Accused does not have the mind-set of a robber or a thief.

169. The purchase receipt for then phone tendered by Christiana herself in Court (as PW3) under cross examination, the Techno phone was bought and owned by somebody else, contrary to Christiana's testimony that the phone was hers. The contents of the receipt regarding the person who bought and owned the phone came as a surprise to her (PW3). It is therefore submitted that the test for ownership required of section 23(2) of the Larceny Act, 1916 as repealed and replaced by Act No. 16 of 1971 has not been met or achieved by the Prosecution under Count Three. He argued that the accused should be discharged.

170. Having considered the evidence as adduced in this court as part of the prosecution's case, and the defence case, I have to consider a number of matters as advanced by both parties. As this is a criminal trial in the light of the fact that the defence has raised the issue of other potential assailants being involved in these offences, this court needs to consider the issue of identification.

Identification

171. In response to widespread concern over the problems posed by cases of mistaken identification, the English Court of Appeal in *Turnbull* [1977] QB 224 laid down important guidelines for judges in trials that involve disputed identification evidence.

172. Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused – which the defence alleges to be mistaken – the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification(s).

173. In a case such as this where I sit alone in a trial by judge alone, I need to remind myself of the Turnbull guidelines, where the issue of identity is raised. The following points need to be considered:

1. caution is required to avoid the risk of injustice.
2. a witness who is honest may be wrong even if they are convinced they are right.
3. a witness who is convincing may still be wrong
4. more than one witness may be wrong
5. a witness who recognises the defendant, even when the witness knows the defendant very well, may be wrong.

174. The court must have regard to the circumstances in which the identification by each witness can be made and should consider the following matters:

1. the length of time the accused was observed by the witness
2. the distance the witness was from the accused;
3. the state of the light;
4. the length of time elapsed between the original observation and the subsequent identification to the police.

175. It is commonly accepted that recognition is more reliable than identification of a stranger; however, even when the witness

appears to recognise someone he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

176. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger. When, in the judgment of the trial judge, the quality of the identifying evidence is poor, the judge should withdraw the case from the jury and direct an acquittal, unless there is other evidence which supports the correctness of the identification. The trial judge needs tell the jury which evidence they believe is capable of supporting the evidence of identification.

177. I have reminded myself of these guidelines in assessing the evidence of identification. I have come to the conclusion on all the evidence before the court, that the quality of the identification evidence is good and remains good at the close of the accused's case, and the danger of a mistaken identification is lessened significantly for the following reasons:

1. The accused is well known in this country.
2. At the first opportunity the complainants identified the accused.
3. The witnesses who testified in this case PW1,2 and 3 identified him as the assailant on the day of the incident.

178. I am satisfied that the accused has been sufficiently identified at the earliest opportunity even before the commission of these offences, he had been identified as sitting in the front passenger seat and the evidence of identification is in my judgement unassailable.

Analysis of the evidence

179. I have reminded myself that the burden of proving this case rests on the prosecution and remains with them throughout the trial. The standard of proof I have to apply is that set out in *Miller v Minister of Pension* [1947] 2 ALL ER 372, 373, in which Lord Denning enunciated the principles of what is required by the words proof beyond reasonable doubt. Proof beyond reasonable doubt however does not mean proof beyond the shadow of doubt. Lord Denning explained the principles in this way.

“Proof beyond reasonable doubt does not mean proof beyond shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice if the evidence is so strong against a man as to leave only a remote possibility in his favour..... the case is proved beyond reasonable doubt but nothing short of that will suffice.”

180. This is the test I shall apply in this case. As this is a criminal trial I have to remind myself constantly that the burden of proving these offences rests on the prosecution and remains so throughout the trial. In line with established authorities, the prosecution do not have to make the jury or in this case the trial judge feel certain of the accused’s guilt as was stated by Lord Denning in in the *Miller* case. Similarly in *R v Bracewell* 68 Cr.App.R the court held that the prosecution must satisfy the court, upon the whole of the evidence called by all parties of the accused’s guilt beyond all reasonable doubt, which is the standard advocated for in *Woolmington v DPP* 1935 AC462 HL.

181. In *R v Summers* 36 Cr.App.R Lord Goddard CJ expressed the view that before a court can convict they must be “satisfied so that they are sure” of the guilt of the accused. Applying these principles, I have to step back and take a look at the entirety of the evidence before me including the strength of the identification evidence in relation to the counts on the indictment.

182. I must comment upon the evidence of witnesses for the prosecution, in the light of comments made by Mr Fofanah at para 25 of his closing address. PW1 2, and 3 are all employees of Leonco oil, where they are employed as pump attendants. Their employer did not seek to prevent them from coming to court to testify in these proceedings. I had the opportunity of seeing and listening to the witnesses give their evidence. I find them to be credible witness. Mr Fofanah has sought to impugn their credibility and the prosecution by boldly stating that it was the prosecution that created the complainants and used them during the trial. Such a bold assertion has no evidential foundation and I reject it as being an unfounded conspiracy theory.

183. The accused has not denied being at the scene of these offences, He has not denied the fact that there was an altercation between himself, Buju and staff at the station, which is entirely consistent with the evidence given by these witnesses in court. To suggest that the witnesses used the situation at the station to contrive ways of stealing money from Leonco fuel Station, has no evidential foundation in the light of the accused person's own admission that he thought the matter was settled after he had returned the phone and money at the police station. This is the sort of defence Lord Denning refers to in the Miller case as where the evidence is so strong *against a man as to leave only a remote possibility in his favour*.

184. Lord Denning went further to says that "The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice"

185. The suggestion by Mr Fofanah that the accused merely took the phone because he was being videoed is clear evidence of the robbery with which he is charged. He was clearly spoiling for a fight that day and the suggestion that taking a phone forcefully that does not belong to you simply because you were being

videoed is wholly unjustifiable and without merit particularly where the phone was taken by the use of force.

186. Upon arrival at the station, it is noted that all the witnesses that testified observed the accused was being driven in a vehicle that had no registration plates, which is an act of lawlessness in itself. Upon entering the fuel station, one of the associates of the accused named Buju embarked upon unprovoked abuse of defenceless pump attendants whose only crime was to be on duty on that day. They were subjected to abuse of the vilest form in a manner that was wholly unjustifiable.

187. The evidence reveals that the accused was called by his driver to “interpret” to the staff what he was saying, which was a call to the infliction of violence on members of staff, including female pump attendants. The evidence further reveals that the sustained attacks on the pump attendants by punching them in the face in a terrifying ordeal that lasted for a period of time.

188. I do not accept that the accused took money and the phones by mistake. It was part of the demonstration of lawlessness and abuse of power he thought he wielded on that day. His driver clearly told Frances Wilson that she had disrespected his boss meaning she had to be taught a lesson by taking the law into their own hands. The accused had been quoted as saying that he took the phone to hand it over to the owner of the station as he knows that person. He did not complain to the owner about the apparent disrespect he had suffered at the station but decided to dish out justice in his own way to the staff at the station.

189. I do not accept the accused had the intention to return the phone to the owner, He was on his way to Guinea with the phone in his hand. But for the fact that he was intercepted at Kissy Road some 6 miles away from the scene, I have no doubt in my mind that he would not have returned the phone nor the money. Contrary to Mr Fofanah’s assertion at para 15, no new notes were

tendered in court. The quantum of money taken is not relevant to the question of guilt or innocence, only a matter for sentence or mitigation or otherwise.

190. Having reviewed the entirety of the evidence, I am satisfied that the accused is guilty on counts 1,2, and 3 as charged. In relation to count 4, I have noted Mr Fofanah's arguments that the picture of Musa Mansaray is unreliable for the reasons given with regard to the date. Regardless of the authenticity or otherwise of the picture in terms of whether it was doctored or not, I do not see any evidential basis to suggest the picture was doctored. It is not uncommon for dates on phones to be erroneous. In any event, PW8 testified as to her clinical findings which are entirely consistent with what is depicted in the photograph and is entirely consistent with the evidence of witnesses who testified. The medical evidence from PW8 is not controverted in anyway and I am satisfied that he suffered the injuries complained of and that these injuries were inflicted by the accused when he carried out the vicious assault on the Musa Mansaray.

191. Whilst it is accepted the evidence of the depositions were not tested in the High court, they were tested in the Magistrates Court before the Magistrate and counsel had an opportunity to cross examine the witness.

192. The evidence in this case points only one way and I would accordingly convict the accused on count four.

193. I therefore will pronounce the accused as guilty on all counts, ie counts 1,2,3 and 4.

DATED THIS 13th day of March 2023.

The Hon Justice A Fisher J

