

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LOKOJA JUDICIAL DIVISION
HOLDEN AT LOKOJA

ON THURSDAY, THE 19TH DAY OF MAY, 2016
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE PHOEBE M. AYUA

JUDGE

CHARGE NO: FHC/LKJ/59C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

VS

WAHEED YUSUF.....DEFENDANT

JUDGEMENT

This is a judgement on an amended charge against the Defendant, herein, who was alleged to have illegally had in his possession one prohibited locally-made pistol. To be precise, the one-count charge reads as follows:

That you Waheed Yusuf, Male, 30 years, on 08/06/2014 at Kabba Junction in Adavi Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally hand in your possession one locally-made pistol and thereby committed an offence contrary to section 3 and punishable under section 27(1)(a)(i) of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

The amended charge, dated the 13/05/15 was filed on the same date. The amended charge was filed to replace the original charge which was dated the 25/06/2014 and filed on the 26/06/2014. The only issue amended in

JUDGEMENT
RANK
SIGN
DATE
FEDERAL HIGH COURT LOKOJA

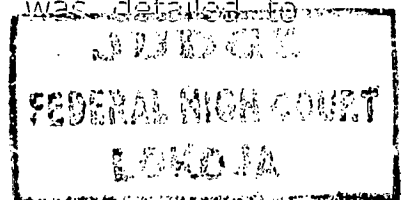
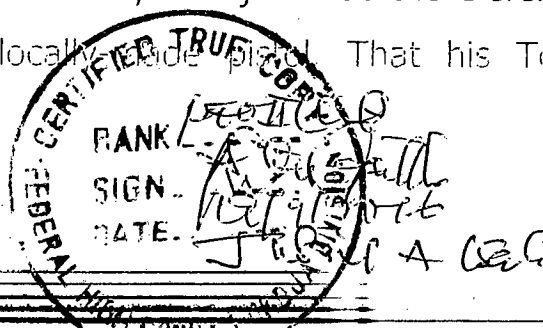
FEDERAL HIGH COURT
LOKOJA

the charge was the date of arrest of the Defendant which was amended from 16/06/2014 to read 08/06/2014.

The Defendant was arraigned before this Court on the 17/07/2014. The original charge was read over to him in English language. The charge was interpreted and explained to the Defendant in Ebira language, the language he said he speaks and understands, by Agbaje Matthew Foregan, the Court Interpreter in Ebira language. The Defendant said he understood the charge. He pleaded not guilty to the charge.

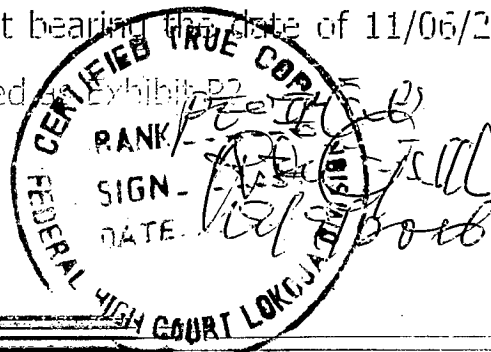
Trial of the Defendant began on the 16/09/2015. The Defendant was represented in Court by his Counsel, H. O. Abbas, Esq., (with T. U. Odoma, Esq.). The Prosecuting Counsel, S. I. Ikutanwa, Esq., called two witnesses, Corporal Maji Victor (PW1) and Woman Corporal Cecilia Ochigbo (PW2).

When led in examination-in-chief, the PW1 introduced himself as a Corporal working with the Nigeria Police Force, attached to the State Criminal Investigation and Intelligence Department (SCIID), Lokoja as an Investigating Police Officer (IPO). PW1 admitted that he knows Woman Cpl. Cecilia Ochigbo. He also admitted that he came to know the Defendant in the course of investigation of the allegation against that Defendant. PW1 testified that he was at his office at the SCIID, Lokoja with his Team mates, on the 11/06/2014 at about 1600 hours and their Team Leader was Sergeant Alidu Wada, when the case of assault and unlawful possession of firearm was transferred from Adavi Divisional Police Headquarters to the SCIID, Lokoja. That the Defendant was transferred alongside with a locally made pistol. That his Team was detailed to



investigate the case and that he, PW1, was assigned to record the statement of the Defendant. That the Defendant was taken to the interrogation room by PW1. That the Defendant said he could not write and that the Defendant authorised the PW1 to record his statement for him.

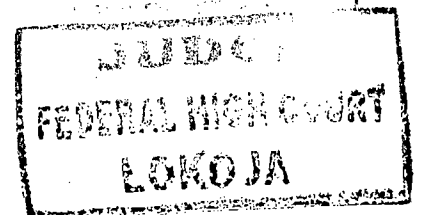
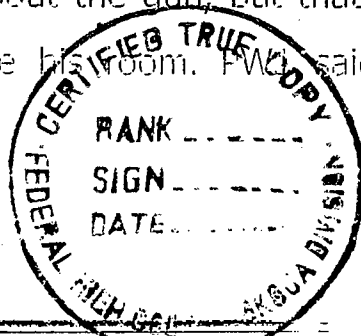
PW1 said he then cautioned the Defendant in English language and that he read over the caution to the Defendant in English language. That the Defendant said he understood the caution and then thumb-printed under the caution and then volunteered his statement. That he recorded the statement of the Defendant in English language. That at the end of the recording of the statement, the PW1 read the statement to the Defendant in English language and that the Defendant confirmed it to be his statement and the Defendant thumb-printed it. The PW1 said he then signed the statement as the writer. The PW1 also stated that he took the locally-made pistol to the Exhibit Keeper who then registered it and assigned a registration number to it as CER/248/2014. The PW1 said he would be able to recognise the locally-made pistol by its registration number CER/248/2014. The PW1 also said he would be able to identify the statement. The PW1 identified the locally-made pistol shown to him by the Prosecuting Counsel as the same one that was transferred to the SCIID along with the Defendant. The PW1 also identified the Defendant's statement made on the 11/06/2014. The Prosecution applied to tender the pistol and the statement in evidence. The Defence did not object. The one locally-made pistol was admitted in evidence and marked as Exhibit P1 and the statement of the Defendant bearing the date of 11/06/2014 was also admitted in evidence and marked as Exhibit P2.



The PW1 further testified that the Defendant could not tender any licence for the locally-made pistol, throughout the investigation of the case.

When cross-examined by the Defence Counsel, the PW1 reiterated that he PW1, conducted investigation in the charge against the Defendant and that he found out that Woman Cpl. Cecilia Ochigbo, the Divisional IPO of the Adavi Divisional Police Headquarters arrested the Defendant and had also conducted a search on the premises of the Defendant and recovered one locally-made pistol. The PW1 admitted that he was aware that the Defendant was also standing trial at the Senior Magistrate's Court 1, Lokoja on a charge of alleged assault, but that he was not detailed to investigate the allegation of assault but to only investigate the allegation of unlawful possession of firearms against the Defendant. PW1 stated that the Defendant was arrested by the IPO at Adavi Divisional Police Headquarters on the 08/06/2014 and was transferred to the State CIID, Lokoja on the 11/06/2014 alongside the locally-made pistol and that all he, PW1, told the Court during examination-in-chief was based on his investigation of the case. PW1 further stated that when the Defendant was transferred to the SCIID, he, PW1, re-arrested the Defendant at the State CIID, though the State CIID was not the scene of the crime.

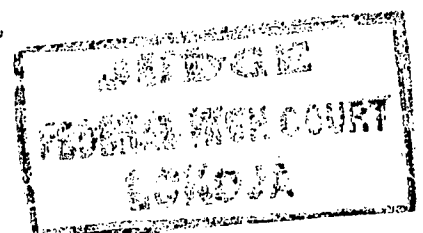
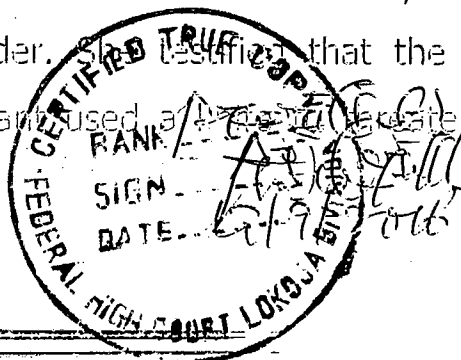
The PW1 admitted that he recorded Exhibit P2, the statement of the Defendant on behalf of the Defendant because the Defendant told him that he could not write and not that he could not speak English language. PW1 also admitted that the Defendant had told him that he, the Defendant, did not know anything about the gun, but that the gun was recovered in his room and not outside his room. PW1 said he verified the Defendant's



statement through a reliable source who was an eye witness to the fact that this Defendant owns a gun. That the eyewitness did not make any statement to the Police even though he is alive. PW1 also stated in answer that he is not the Exhibit Keeper at the State CIID, Lokoja. That Exhibit P1, the locally-made pistol was kept in the custody of the Exhibit Keeper and that the Exhibit Keeper is alive.

In the absence of any re-examination of PW1, he was discharged from the witness box on the application of the prosecuting Counsel.

PW2, Woman Cpl. Cecilia Ochigbo, in her examination-in-chief told the Court that she was formerly of the Adavi Divisional Police Headquarters, Ogaminana but that now she serves at Okene Divisional Police Headquarters. PW2 stated that she knows Cpl. Maji Victor, the PW1 that had testified in this case. She also admitted knowing the Defendant. She said on the 08/06/2014, at about 2130 hours (at night), a case of criminal conspiracy, intimidation and causing grievous hurt reported at the Police Station by one Zainab Aliyu, a female of Kabba Junction against the Defendant and his mother. That the case was referred to her, the PW2, for investigation and that she recorded a voluntary statement from the nominal complainant. PW2 said she cautioned the Defendant in English language. The Defendant signed the caution. That she also recorded a caution statement from the Defendant in English language. That she read the statement back to the Defendant in the same English language. The Defendant signed the statement and that she, PW2, also signed the statement as the recorder. She testified that the nominal complainant alleged that the Defendant used a ~~pistol~~ (carabine) to threaten her. That a search



warrant was signed and was executed in the Defendant's house. That in the process, the PW2 recovered one knife and one short locally-made pistol from the heap of clothes on the Defendant's bed. That based on the fact that a case of gun is beyond the Divisional level for proper investigation, that she PW2, transferred the case to the State CIID, Lokoja. That she had recorded the statement of the Defendant first on the 09/06/2014 and that the Defendant told her (PW2) that he had no problem with the nominal complainant. That on the 10/06/2014, she, PW2 also recorded an additional statement from the Defendant under caution. The PW2 said she would be able to identify the caution statement recorded on the 9/06/2014 and the additional caution statement she recorded on the 10/06/2014 on behalf of the Defendant after execution of the Search Warrant and the Search Warrant she executed by her handwriting and signature. The documents were shown to the PW2 and she identified the statements that she wrote on behalf of the Defendant on the 09/06/2014 and 10/06/2014, respectively. The PW2 also identified the Search Warrant she said she executed in the room of the Defendant.

The Prosecution applied to tender the documents in evidence. The Defence did not object to the tendering of the Search Warrant but vehemently objected to the tendering of the statement said to have been recorded on behalf of the Defendant by PW2 on the 09/06/2014 and the statement of 10/06/2014, said to have been recorded on behalf of the Defendant after the Search Warrant on the ground that the Defendant denied making any such statements. That the Defendant said he made only one statement at the State CIID on the 11/06/2014, which has already been admitted in evidence and marked

EXHIBIT 2
PROSECUTING COUNSEL
RANK -
SIGN -
DATE - 6/7/2014

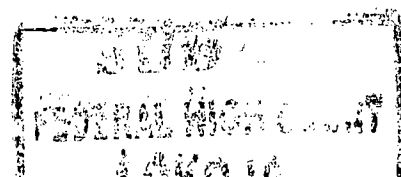
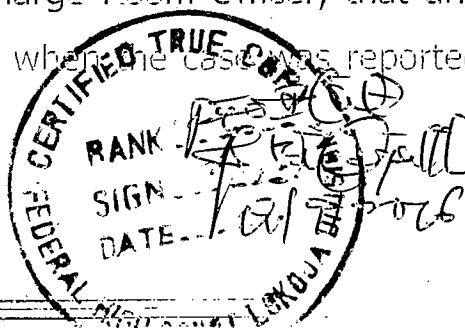
CERTIFIED TRUE COPY
FEDERAL HIGH COURT LOKOJA

JUDGE
FEDERAL HIGH COURT
LOKOJA

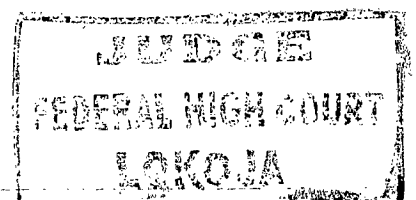
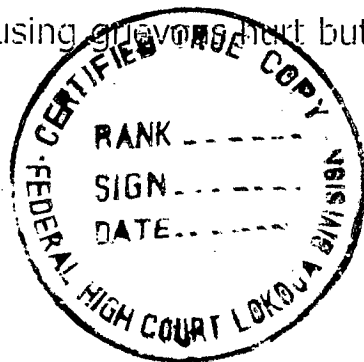
Court to admit the Search Warrant in evidence as there was no objection to its admissibility. The Prosecution argued that the statements sought to be tendered are relevant to the fact in issue and that relevancy is the yardstick of admissibility. That the Defendant merely retracted the statements but since the statements were made under caution after due preliminary investigation, the same are admissible at law. He urged the Court to admit the statements in evidence. The Search Warrant was admitted in evidence and marked Exhibit P3. The statements of the Defendant made on the 09/06/2014 and 10/06/2014, respectively, were also admitted in evidence as the Court found the statements to have been made under caution and are relevant to the fact in issue. The law is that retraction of a statement of a Defendant does not preclude the Court from admitting such statement in evidence. It is the value to be placed on such statement that ought to be carefully considered by the Court. See the case of ***Dele v. State (2011) 1 NWLR (Pt. 1229) 508.***

Accordingly, the caution statements of the Defendant were admitted in evidence and the statement made on the 09/06/2014 was marked Exhibit P4 while the statement made on the 10/06/2014 was marked Exhibit P5.

Under cross-examination, the PW2 said she did not conduct detailed investigation into this matter. That her investigation was only preliminary and inconclusive. That the nominal Complainant, Zainab Aliyu reported the case of criminal conspiracy, criminal intimidation and grievous hurt to the Station at about 9.00pm on the 08/06/2014. That the PW2 did not go to arrest the Defendant but that it was one Inspector Bello, now retired but still alive, the then Charge Room Officer, that arrested the Defendant on the same 08/06/2014 when the case was reported against him. PW2 said



she did not know the exact time the Defendant was arrested. PW2 admitted that she executed a Search Warrant at the Defendant's house but that at the time of the Search, the Defendant was in detention at the Police Station. That four (4) persons executed the Search Warrant, namely, the nominal Complainant, Zainab Aliyu, Mrs. Hadizat Alabi, the Defendant's mother, Alhaji Bello Musa and the PW2, Woman Cpl. Cecilia Ochigbo. That each of the four persons signed the Search Warrant and that before the execution of the Search Warrant, that PW2 searched the persons present for the search but that nobody searched her, PW2. That she, PW2, recorded Exhibit P4, the statement of the Defendant on the 09/06/2014 and there was no issue of gun at all in that statement. That PW2 also recorded Exhibit P5, the Defendant's Statement recorded on 10/06/2014 and that in Exhibit P5, the Defendant denied the ownership of Exhibit P1, the pistol. That in Exhibit P4, the Defendant said he had no problem with the nominal Complainant, Zainab Aliyu. PW2 admitted that she knows PW1, Cpl. Maji Victor of the State CIID, who earlier testified in this matter. PW2 also agreed that she had seen Exhibit P1 and that what shows that it belongs to the Defendant is because it is locally-made in nature and it bears Exhibit registration number CER/248/2014. But that it was not the Defendant that wrote the said Exhibit number or made the gun to be locally-made. PW2 said she went at 4.30pm to execute the Search Warrant on the 10/06/2014 and that she returned to the Police Station at 5.00pm. PW2 admitted that she was aware that the Defendant was arraigned at the Chief Magistrate's Court, Lokoja, in a case of criminal conspiracy, criminal intimidation and causing grievous hurt but that she, PW2, did not testify in that case.

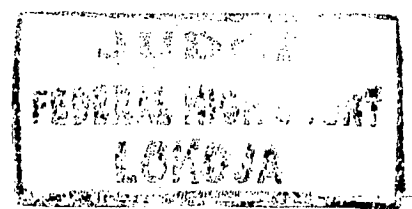
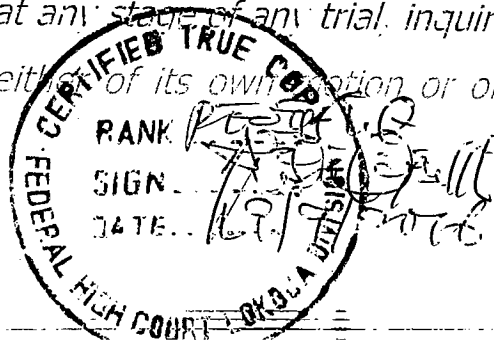


The Prosecution did not ask the PW2 any question by way of re-examination. On the application of the Prosecuting Counsel, the PW2 was discharged from the witness box.

The Prosecution submitted that though they had earlier informed the Court that they had three (3) witnesses to call, the Prosecuting Counsel has had a rethink and was okay with the evidence of PW1 and PW2. He then applied to close the case of the Prosecution. The Defence Counsel did not object and asked for a return date to open their defence. The application by the Prosecution to close its case was granted and the application by the Defence for another date to open their case was also granted.

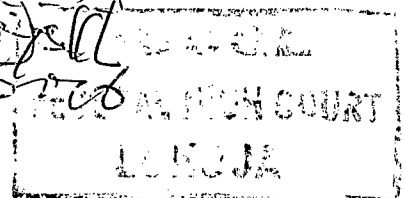
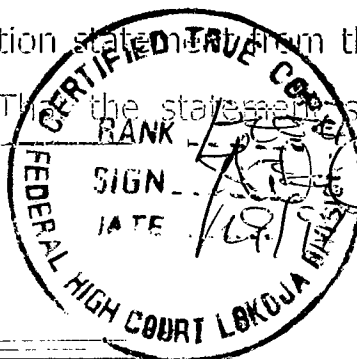
On the 08/12/2015, the Defence came to Court ready to open their defence. The Prosecuting Counsel submitted that they had a Motion before the Court dated the 04/12/2015 which he sought to substitute with his earlier application dated the 17/11/2015 and filed on the 18/11/2015, because of errors on the earlier filed Motion. The Defence Counsel objected to that application. The objection was overruled by the Court. The Prosecuting Counsel was allowed to move his Motion. The Motion was opposed to by the Defence, but the Court granted the application in a Ruling delivered on the 01/02/2016, vacating the Order of Closure of the Prosecution's case. The Court also made an Order permitting the Prosecution to recall the PW2 and call one other witness in this case, pursuant to section 256 of the Administration of Criminal Justice Act, 2015. The said section provides as follows:

The Court may, at any stage of any trial, inquiry or other proceedings under this Act, either of its own motion or on application of either



party to the proceeding call a person as a witness or recall and re-examine a person already examined where his evidence appears to the Court to be essential to the just decision of the case.

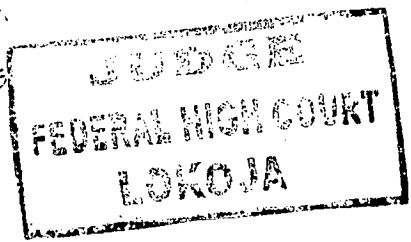
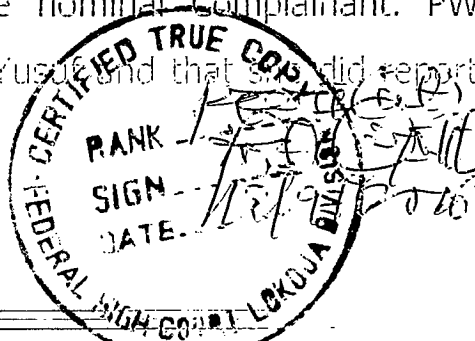
On the 25/02/2016, PW2 was recalled and she testified that she had given evidence earlier in this case on the 16/09/2015 whereby she told the Court that she searched the house of the Defendant. PW2 stated that she knows one Hadizat Alabi, a suspect at Adavi Police Station and mother of the Defendant, herein. PW2 testified that the Defendant was exhibiting rude and violent behaviour and that her boss, the DPO, and others observed that unruly behaviour and that the Divisional Police Officer (DPO) decided that instead of the Defendant, the Defendant's mother go with PW2 for the search, since the Defendant and her mother stay in the same house. That PW2 went with the Defendant's mother, Mrs. Hadizat Alabi, the nominal Complainant, Mrs. Zainab Aliyu and the Landlord, Alhaji Bello to the compound to search the Defendant's house. That the Defendant's mother searched the PW2, the Complainant and the Landlord before the Defendant's mother opened the door for the search of the Defendant's room. PW2 said in the course of the search, she saw a heap of clothes on the Defendant's bed and that she, PW2, recovered the gun and knife from the heap of clothes. That they went back to the Police Station and PW2 brought out the Defendant from the Cell and showed the Defendant the gun and knife and questioned him about the items. PW2 stated that the Defendant denied ownership of the gun and refused to sign the Search Warrant. That the Defendant's mother signed the Search Warrant. PW2 said she then recorded a caution statement from the Defendant's mother and the Defendant himself. That the statement she recorded from the



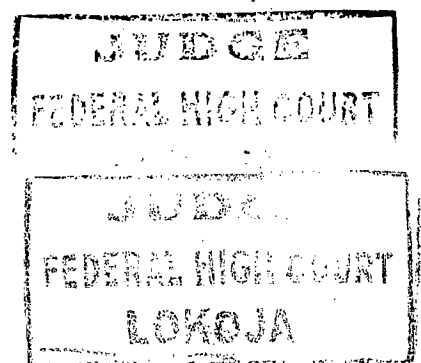
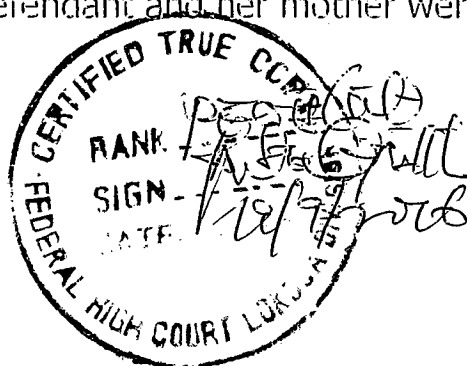
Defendant's mother was an additional statement. PW2 said she would recognise the Defendant's mother's statement by her own signature and handwriting. The PW2 was shown the Search Warrant, Exhibit P3 and she identified it as the Search Warrant which she executed and was signed by the four persons who participated in the search and signed the Search Warrant. The additional statement of the Defendant's mother, Hadizat Alabi, recorded for her by the PW2 on the 10/06/2014, was tendered in evidence. The Defence did not object to it. The said additional statement of the Defendant's mother, Hadizat Alabi was admitted in evidence and marked as Exhibit P6.

Under cross-examination, the PW2 admitted that she conducted a search in the room of the Defendant but that the Defendant was not present during the search. That the Defendant's mother told PW2 that the bed on which the gun was recovered amongst the heap of clothes belongs to the Defendant and that the Defendant was standing trial based on the statement of the Defendant's mother that the Defendant is the owner of the gun. PW2 said she was the one that recorded the additional statement of the Defendant's mother but that there is nowhere in the said additional statement stated by the Defendant's mother, the maker of the said additional statement, Exhibit P6, that the gun found on the bed in the Defendant's room belonged to the Defendant. The PW2 also admitted that the Defendant's signature is not on the Search Warrant, Exhibit P3.

The additional witness called by the Prosecution, PW3 introduced herself as Zainab Aliyu, the nominal Complainant. PW3 said she knows the Defendant, Waheed Yusuf and that she did report the Defendant at Adavi

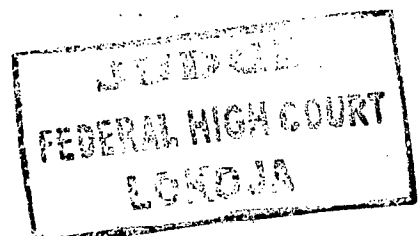
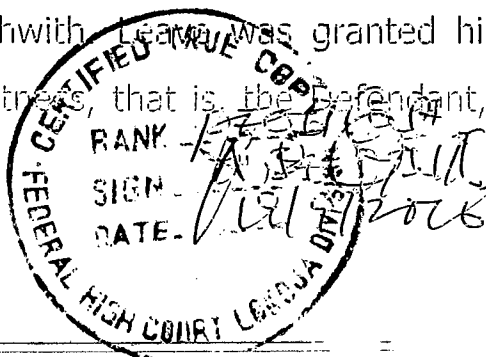


Police Station because the Defendant fought with the mother of PW3 and injured her and her grandson Samad, whom she was carrying on her back at the time of the attack. PW3 also testified that the Defendant brought out a knife and threatened to kill her mother. That the mother and her grandson were rushed to a hospital for treatment. That before the PW3 came back from the Adavi Police Station, some neighbours invited the Patrol Team around that area and that the Policemen who came with the nominal Complainant were helped by the Patrol Team to arrest the Defendant who was then taken to the Police Station. That the Defendant was arrogant and was fighting with everybody at the house and even at the Police Station so the DPO instructed that the Defendant's house should be searched. PW3 testified further that she went along with the Defendant's mother, one Alhaji and PW2 to execute the Search Warrant. That at the house, the mother of the Defendant searched the PW2 and PW3 before she opened the Defendant's room for the search. PW3 stated that during the search, PW2 found a gun and a knife on the Defendant's bed. That the Defendant's mother said the bed on which the gun and knife were found belongs to the Defendant. PW3 stated that after the search, all of the four persons who participated in the search of the Defendant's room signed the Search Warrant. PW3 said she would be able to identify the Search Warrant she signed. The Search Warrant, Exhibit P3 was shown to the PW3 and she identified it as the Search Warrant which she had signed. PW3 also testified that the Defendant's mother had a quarrel with the mother of PW3 and that she, PW3 reported the fight at the Adavi Police Station and that the Defendant and her mother were arrested as suspects.



Under cross-examination, PW3 stated that she is a true Moslem and that she knows the implication of not telling the truth. PW3 also testified that her complaint at the Adavi Police Station was about the fight between her mother, the Defendant's mother and the Defendant himself and that it was not about the issue of a gun. PW3 admitted that she does not stay with her mother at the place where the fight ensued. That she lives in a different part of the Kabba Junction and not in the same house where her mother stays. That she was not there when the fight started. That she was called on phone and told about the fight. PW3 also stated again that the Defendant's mother said the bed on which the locally-made gun was found belongs to the Defendant, but that the Defendant was not with them at his house for the execution of the Search Warrant. PW3 also testified that she was aware that the complaint she had lodged at the Adavi Police Station was later transferred to Lokoja. That she was also aware that the Defendant was arraigned before the Senior Magistrate's Court 1, Lokoja, but that she, PW3, did not testify in that Magistrate's Court because the day she went there, the Defendant was not in Court and that she was aware that the Defendant was discharged at the Senior Magistrate's Court 1, Lokoja. PW3 admitted that she knows the four persons that signed the Exhibit P3, the Search Warrant but that the Defendant was not one of them and that the Defendant's name and signature are not on the Search Warrant, Exhibit P3.

The Prosecution had no question for the PW3 in re-examination. The Prosecution then closed its case. The Defence Counsel applied to open their defence forthwith. Leave was granted him to do so. The Defence called only one witness, that is, the Defendant, Waheed Yusuf, the DW1.

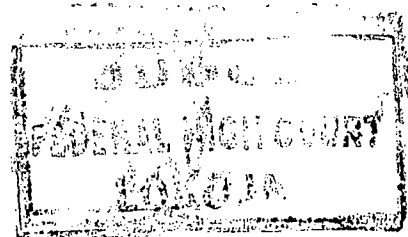
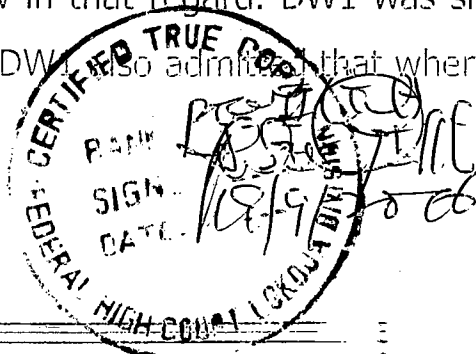


DW1 testified in Ebira language and the Court interpreter, Mrs. Precious Ajagun, affirmed to interpret the proceedings, truthfully. She interpreted the Court proceedings from English language to Ebira language and vice versa.

The DW1 testified during Examination-in-chief that he lives at Kabba Junction, Okene Road. He admitted that he was in Court when PW1, PW2, and PW3 testified in this case. DW1 also testified that he knew that the allegation for which he was standing trial in this Court is possession of one locally-made gun which was found in his room but that he does not know anything about the said pistol. That he, DW1, was arrested and taken to the Adavi Police Station because of the issue between him and the brother of PW3 whereby the elder sister of PW3 called the Police to come and arrest him, DW1. That the person he DW1 fought with is Saheed. That he was shown the Exhibit P3, the Search Warrant but that he was not among the persons who went to search his room. That at the time his room was searched, he was at the State Criminal Investigation and Intelligence Department (SCIID), Lokoja and that his name and signature are not on the Search Warrant.

That when he, DW1 was asked about a gun at the SCIID, Lokoja, he told the Police there that he, DW1, was not the owner of the gun and that he did not know anything about the gun.

Under cross-examination, DW1 admitted that he attended Primary School but that he did not complete the Primary School education, so he has no Certificate to show in that regard. DW1 was shown Exhibit P4. He denied thumb-printing it. DW1 also admitted that when he was arrested and taken



to the Adavi Police Station, he made a statement there in reaction to the allegations against him. That in that statement, the Court interpreter read lines 5 and 6 thereof and interpreted and explained to him that it is written there that he attended Primary School and that he obtained a First School Leaving Certificate. DW1 said he never completed his Primary School education. DW1 agreed that he lived in the same house with his mother but that he stays in a separate room and that it is not true that whenever he was going out he would hand over the key of his room to his mother. DW1 testified that it is not true that he was arrested on the 09/06/2014 together with his mother. He said he was arrested alone on a date he could not remember. That he did not resist arrest when Patrol Team came to arrest him but that he followed them. DW1 said he did not know whether he was transferred to the State CIID, Lokoja together with the pistol in question, the statement DW1 made at the Adavi Police Station and the Search Warrant. That he only saw the Police with a bag on that date. That he DW1 did not make a statement when he was transferred from Adavi Police Station to the SCIID, Lokoja. DW1 stated that he did not know whether it was after or before the search of his room that he was transferred from Adavi Police Station to the SCIID, Lokoja. He said he knows Cpl. Maji Victor, PW1, because he was the person that took his statement. That he DW1 was in the Police cell so he would not know whether PW1 went to his house at Adavi to conduct a search. DW1 also admitted that PW2, Cpl Cecilia Ochigbo took his statement at the Adavi Police Station and that she, PW2, never confronted him, DW1, with the gun said to have been found in his room during the search. That he does not have a gun and that he was aware that it is an offence for a person to have a gun on his person or possession in his house without a licence.

CERTIFIED TRUE COPY
RANK
SIGN.
DATE
FEDERAL HIGH COURT LOKOJA

FEDERAL HIGH COURT
LOKOJA

DW1 said he did not admit in his statement at the SCIID, Lokoja, Exhibit P2 that Exhibit P1, the gun, was planted in his room to implicate him. That his mother did not tell him, DW1, that Exhibit P1 was recovered from his room on the bed.

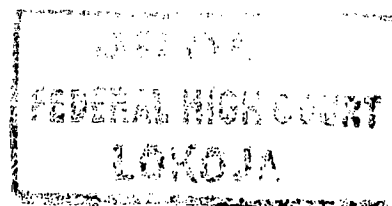
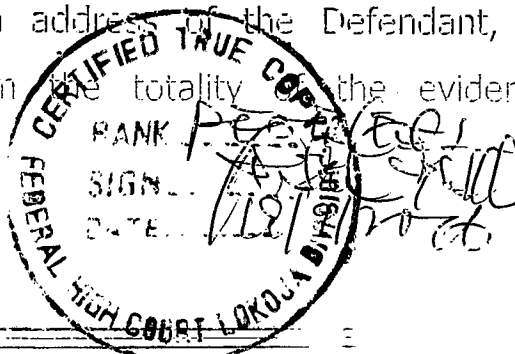
The Defence Counsel did not re-examine the DW1. He applied for DW1 to be discharged from the witness box and to return to the dock. The application was granted and the matter was adjourned to enable the Counsel to file their final written addresses and return for the adoption of the said written addresses.

On the 14/04/2016, the Defence Counsel, H. O. Abbas, Esq., submitted that their final written address was dated the 10/03/2016 and filed on the 15/03/2016. He submitted that in the said address, they formulated two issues for determination by the Court. The Defence Counsel then adopted their written address and urged the Court to discharge and acquit the Defendant.

The Prosecuting Counsel, S. I. Ikutanwa, Esq., also adopted his final written address dated the 13/04/2016 and filed on the 14/04/2016. He urged the Court to uphold the written address as their argument in this trial.

DEFENDANT'S ARGUMENT IN DEFENCE OF THE CHARGE AGAINST HIM

In the final written address of the Defendant, the learned Counsel submitted that from the totality of the evidence adduced by the



Prosecution, oral and documentary and the oral testimony of the Defendant, there are two issues that call for the determination of this Court, to wit:

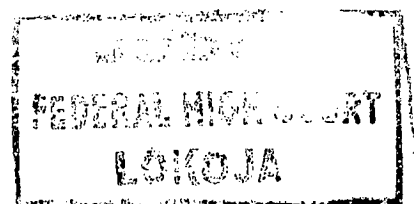
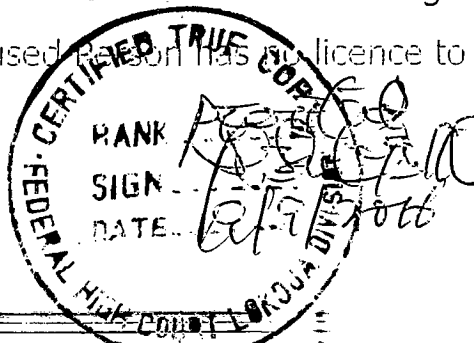
1. Whether the Prosecution has proved the case of unlawful possession of one locally-made pistol against the Defendant.
2. Whether there was a proper search at the premises of the Defendant within the contemplation of sections 149(3)(4) and 150 of the Administration of Criminal Justice Act, 2015.

ISSUE 1

On issue One, the learned Counsel submitted that section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, as amended (the 1999 Constitution) presumes a person charged with an offence to be innocent until he is proved guilty. He submitted that the burden of proving the guilt of the Defendant is on the Prosecution and that such duty has to be discharged beyond reasonable doubt. He relied on section 138 (it should be section 135) of the Evidence Act, 2011 and the cases of ***Ebeinwe v. State (2011) 7 NWLR (Pt. 1246) 402 at 407 Ratio 6 and Ochiba v. State (2011) 17 NWLR (Pt. 1277) 663 at 669 Ratio 4.***

Furthermore, the learned Counsel submitted that in the present charge, the Prosecution has to prove the following ingredients:

- a. That the Accused was found in possession of firearm.
- b. That the firearm was within the meaning of the Act.
- c. That the Accused Person has no licence to possess the firearm.

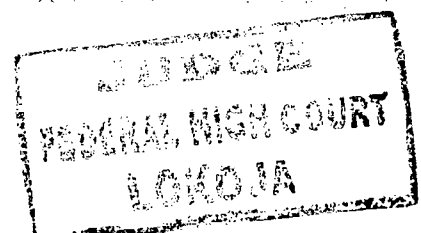
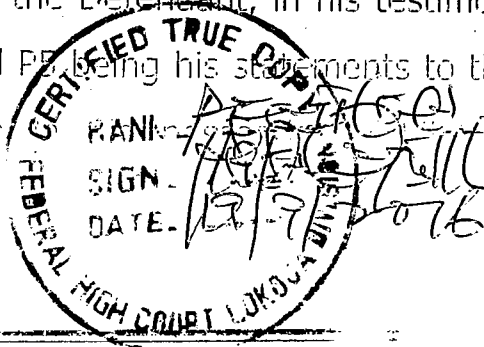


He cited and relied on the case of *State v. Oladotun (2011) All FWLR 39 at 401 Ratio 1, S.C.*

Learned Counsel argued that from the testimony of the Prosecution witnesses, PW1 and PW2, it is clear that they stated in examination-in-chief and cross-examination that the Defendant told the PW1 and PW2 that he knew nothing about the gun of which it was alleged he illegally had in his possession. That the PW1 testified that he did not recover anything from the Defendant and that the Defendant equally denied the ownership of the Exhibit P1 in Exhibit P5, being the additional statement of the Defendant.

He also submitted that the PW3 had testified under cross-examination that the issue of gun, Exhibit P1 was not part of her complaint. That her complaint was on the fight between her mother and the Defendant.

Learned Counsel also submitted that the DW1 in his defence had stated that he did not know anything about the locally-made pistol, Exhibit P1. He submitted that from the pieces of evidence before the Court, it is not in doubt that the Defendant was not found in possession. That the key word in the charge against the Defendant is "possession". Learned Counsel referred to the Black's Law Dictionary, 7th ed. West Group 1999 by Bryan A. Garner for the definition of possession and submitted that there was no credible evidence from the Prosecution witnesses to show that Exhibit P1 was found in the possession of the Defendant. He argued that the evidence of DW1, the Defendant, in his testimony on the 25/02/2016 and Exhibit P2, P4 and P5, being his statements to the Police, to the effect that he did not have



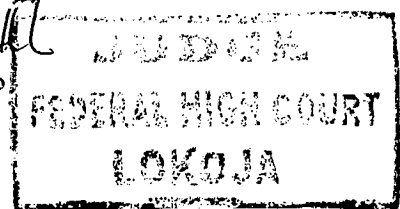
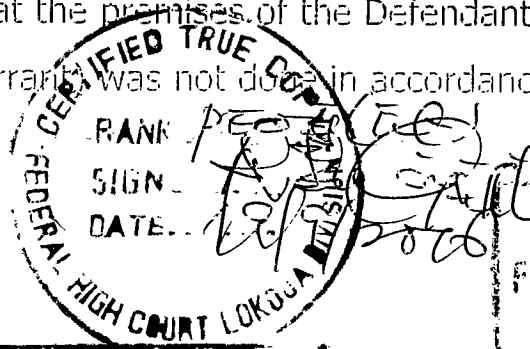
unchallenged by the Prosecution and that it remains good evidence. He again relied on the authority of ***Ebeinwe v. State (2011) 7 NWLR (Pt. 1246) 402 at 408.***

Learned Counsel also submitted that both the PW1 and PW2 did not carry out detailed investigation of the alleged crime with which the Defendant is charged. That PW1, Cpl. Maji Victor of the State CIID, Lokoja said all he did in the investigation of the case against the Defendant was to record his statement, Exhibit P2. That Woman Cpi. Cecilia Ochigbo stated under cross-examination that her investigation of the case was inconclusive. Learned Counsel referred to the case of ***Fajemirokun v. C.B. Nig. Ltd. (2009) 5 NWLR (Pt. 1135) 588 at 595-596, Ratio 10.***

It was the submission of Counsel that the Prosecution has failed to establish via credible evidence that the Defendant was in possession of a firearm and so the issue of the firearm being within the meaning of prohibited arms and not having a licence cannot arise. He relied on the case of ***FRN v. Muhammed Dada, unreported charge No. FHC/LKJ/9C/2014, delivered by this Court on the 30/09/2015.***

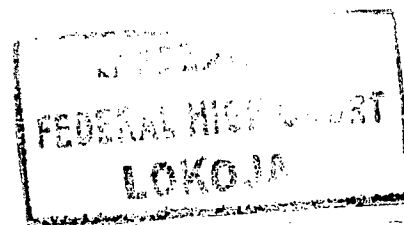
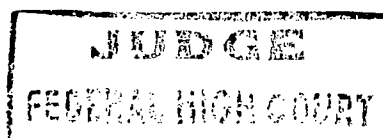
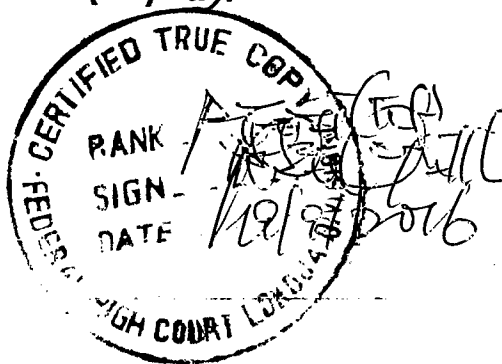
He urged this Court to discharge and acquit the Defendant on the allegation against him.

On Issue Two: Whether there was a proper search at the premises of the Defendant. Learned Counsel argued that the Search Warrant allegedly executed by the PW2 at the premises of the Defendant which gave birth to Exhibit P3 (Search Warrant) was not done in accordance with the law or as



The Defendant's Counsel quoted sections 149(3) and (4) and 150 of the Administration of Criminal Justice Act, 2015 and submitted that from the testimony of PW2 and PW3 under cross-examination, the Defendant was not present when his room was searched. The Defendant himself testified in his defence and stated that he was not there when his house was searched. That he, the Defendant, was at the State CIID, Lokoja when he was told that his house was searched. That his name is not on Exhibit P3, the Search Warrant, because he did not follow them for the search in his house. That the absence of the Defendant during the search of his house as well as absence of the Defendant's signature on the Search Warrant, Exhibit P3 run foul of the requirements of the law regarding the procedure set out in sections 149(3) and (4) and 150 of the Administration of Criminal Justice Act, 2015. The learned Counsel urged this Court to hold that Exhibit P3 is a nullity and is not acceptable at law.

In conclusion, learned Counsel submitted that the Prosecution has failed to establish the first ingredient of the offence with which the Defendant is charged, which is, possession of a firearm and as such has also failed to establish the other ingredients of the offence about licence, etc. That in essence, the Prosecution has failed to prove beyond reasonable doubt the ingredients of the alleged offence. He referred to the case of **Atiku v. State (2010) NWLR (Pt. 1199) 241 at 247**. He urged the Court to discharge and acquit the Defendant. He again relied on the case of **FRN v. Muhammed Dada (supra)**.



PROSECUTION'S REPLY TO THE DEFENCE

In his final written address in Reply to the Defendant's Written Address, the learned Prosecuting Counsel, S. I. Ikutanwa, Esq., stated that the Defendant was arraigned before this Court on an amended charge dated the 13/05/2015 for the offence: Illegally had in his possession one prohibited locally-made pistol contrary to section 3 and punishable under section 27(1)(a)(i) of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

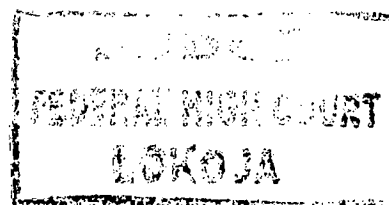
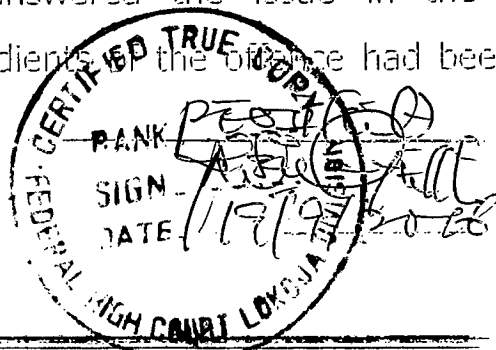
He listed the ingredients to sustain the said one-count charge which are the same as those stated in the final written address of the Defendant, already copied above in this Judgement.

Learned Counsel gave a summary of the testimonies of the three Prosecution witnesses, PW1 - Cpl. Maji Victor, PW2 - Woman Cpl. Cecilia Ochigbo and PW3 - Zainab Aliyu, and submitted that their evidence pointed to the fact that the gun was found on the Defendant's bed and therefore in his possession and the Defendant did not have a licence for it. He also stated that the Defendant opened his defence, testified and called no witness.

The Prosecuting Counsel then raised a lone issue for determination, to wit:

Whether the Prosecution has proved the case of illegally had (sic) in possession of one locally-made pistol against the Defendant beyond reasonable doubt.

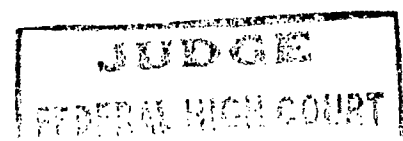
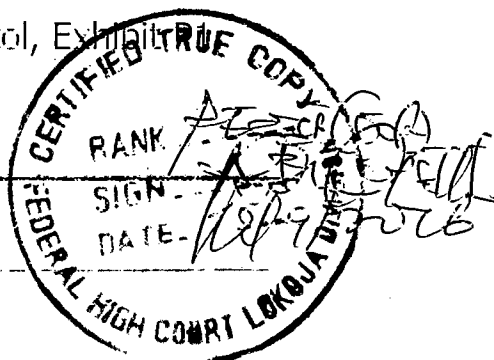
He answered the issue in the affirmative and submitted that the ingredients of the offence had been established evidentially and that the



offence has been proved beyond reasonable doubt. He relied on the case of ***Akinyemi v. State (2001) ACCLR 32 at 36 Ratio.***

Learned Counsel also submitted that cases are proved either by direct evidence, real evidence or circumstantial evidence. He added that the standard of proof in criminal trial is proof beyond reasonable doubt and not proof beyond the shadow of doubt. He relied on the case of ***Miller v. Minister of Pension (1947) All E.R. 372.***

The Prosecuting Counsel further submitted that PW1, PW2 and PW3 all testified that a case of criminal conspiracy, intimidation and assault was initially reported against the Defendant and in the process of arresting him he became violent and the Arresting Team had to ask for re-enforcement which propelled the search of his house to recover the said jack knife he used to injure the Complainant's brother and the pistol, Exhibit P2 (it is Exhibit P1) with the assistance of the Defendant's mother. That the Defendant's mother led the IPO, PW2 and others to their house where Exhibit P1, the pistol was recovered on the bed of the Defendant and that PW2 confronted the Defendant's mother with the Exhibit P1 and that the Defendant's mother made a statement that the pistol was recovered from the Defendant's bed. He referred to Exhibit P6, being the Defendant's mother's statement made after the search at their house. That the Defendant also made a statement to the effect that he has no licence for the Exhibit P1. That the Defendant came to Court and surprisingly, denied knowledge of the pistol, Exhibit P1.



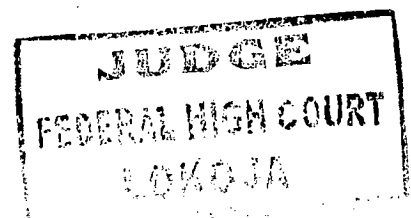
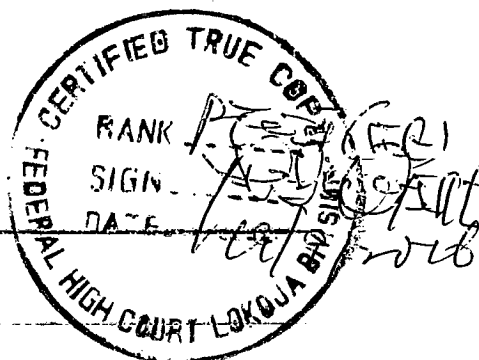
Learned Counsel submitted that circumstantially, the Defendant and the Defendant's mother live under the same roof and that the mother saw when Exhibit P2 was recovered on the bed of her son, the Defendant. That circumstantial evidence will sustain a conviction when:

The circumstantial evidence is consistent with the guilt of the Accused Person but inconsistent with his innocence.

The Counsel urged this Court to, in the light of the foregoing, resolve the lone issue in favour of the Prosecution.

Learned Prosecuting Counsel submitted further that it is settled that the law does not insist that there must be no contradiction in the evidence called by a party on any issue in contention. That the important point to note is that the contradiction between the testimonies of the witnesses should not be material to the extent that they can cast serious doubts on the case presented as a whole by the Prosecution or as to the reliability of its witnesses. He cited in aid the case of **Raji v. State (2013) 20 WRN page 82 at 87 Ratio 1.**

It was the submission of Counsel that in the present case, there was no contradiction in that it is the law that when a Defendant is violent or is in a mental asylum, the Court may dispense with his attendance in the Court. That in the same vein, the Defendant in this case was violent and the mother who was a co-Defendant led the Investigating Police Officer, PW2, and others into their house and the Exhibit P1 was recovered from the Defendant's bed.

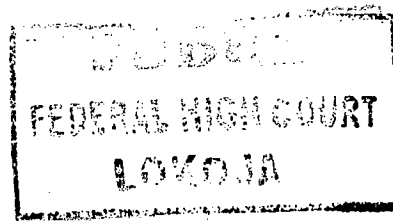
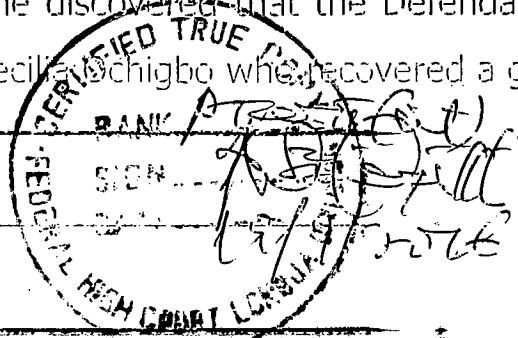


He also submitted that all the cases cited by the Defence Counsel are not relevant to the case in hand and urged the Court to disregard them. On the other hand, learned Counsel urged the Court to convict the Defendant to serve as a deterrent to others who may have such character.

RESOLUTION OF THE ISSUES BY THE COURT

The charge against the Defendant herein is that he illegally had in his possession a prohibited firearm, one locally-made pistol. The Defendant pleaded not guilty to the one-count charge.

The Prosecution called three witnesses in order to prove the allegation against the Defendant. The one locally-made pistol was tendered in evidence and with no objection from the Defence, the same was admitted and marked as Exhibit P1. The Statement of the Defendant made to the Police at the State Criminal Investigation Department (SCIID), Lokoja on the 11/06/2014 was also tendered in evidence and with no objection from the Defence was admitted and marked as Exhibit P2. Exhibit P1 and Exhibit P2 were tendered by the Prosecution through PW1, Cpl. Maji Victor, who works at the SCIID. PW1 stated that the case of assault and unlawful possession of firearms was transferred from Adavi Divisional Police Headquarters to the SCIID, Lokoja on the 11/06/2014 and his Team led by Sgt. Alidu Wada, was detailed to investigate the case. That he, PW1, was detailed to take the statement of the Defendant which he did. See Exhibit P2. That he took Exhibit P1 to the Exhibit Keeper who registered the Exhibit P1 with registration No.CER/248/2014. That in the course of his investigation, he discovered that the Defendant was arrested at Adavi by Woman Cpl. Cecilia Achigbo who recovered a gun from the Defendant.



The PW2, Woman Cpl. Cecilia Ochigbo testified that on the 08/06/2014 at 2130 hours (at night), one Zainab Aliyu, the nominal Complainant reported a case of criminal conspiracy, intimidation and causing grievous harm to Aliyu's mother and grandson of the said mother against the Defendant and the Defendant's mother. That she recorded a statement from the Defendant on the 09/06/2016 as well as a statement from the Defendant's mother, Hadizat Alabi. That she also obtained a Search Warrant and executed the Search Warrant on the 10/06/2014 at the house of the Defendant and his mother. That the Defendant did not participate in the search because his violent and rude nature informed the Divisional Police Officer to advise that the Defendant's mother who stays in the same house as the Defendant should go with the PW2, the nominal Complainant and the Landlord of the compound for the search. That the Defendant's mother unlocked the room of the Defendant and upon the search, a jack knife and one locally-made pistol was found on the Defendant's bed. That the Defendant's mother identified the room as that of the Defendant and also stated that the bed on which the pistol was found hidden in a heap of clothes was the Defendant's bed. The Defendant's mother made an additional statement after the search on the 10/06/2014 and that the Defendant was also shown the pistol at the Police Station and that the Defendant also made an additional statement on the 10/06/2014, denying any knowledge about the gun. The Defendant's statement made on the 09/06/2014 was admitted in evidence and marked as Exhibit P4 while the Defendant's additional statement made on the 10/06/2014 was admitted in evidence and marked as Exhibit P5 and the Defendant's mother's

CERTIFIED TRUE COPY
RANK _____
SIGN _____
DATE 10/06/2016

JUDGE
LOKOLA

additional statement made on the 10/06/2014 was also admitted in evidence and marked as Exhibit P6.

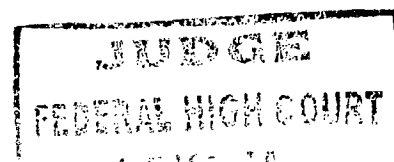
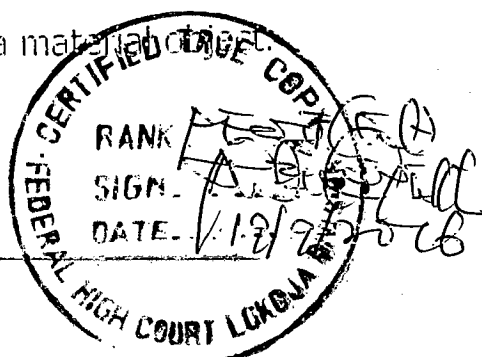
Based on the testimonies of PW1, PW2 and PW3 and the Exhibits P1, P2, P3, P4, P5, and P6, the Prosecution has submitted that they have adduced relevant circumstantial evidence before the Court to show that the Prosecution has proved the case against the Defendant beyond reasonable doubt.

In a case of illegal possession of firearm, the material ingredients which the Prosecution must establish in order to prove the case against the Defendant beyond reasonable doubt are as follows:

1. That the Defendant was found in possession of firearm.
2. That the firearm was within the meaning of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.
3. That the Defendant has no licence for the firearm.

Possession has been defined in the Black's Law Dictionary, Eight Edition, Bryan A. Garner (Editor-in-chief) at page 1201, as:

1. The act of having or holding property in one's power, the exercise of dominion over property.
2. The right under which one may exercise control over something to the exclusion of all others, the continuing exercise of a claim to the exclusive use of a material object.



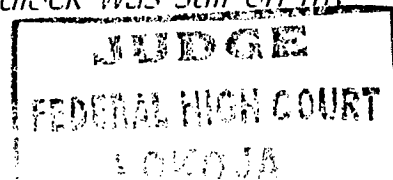
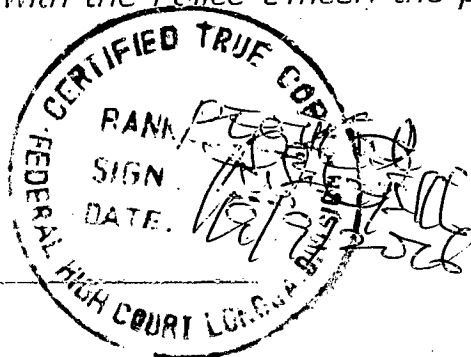
3. Civil law. The detention or use of a physical thing with the intent to hold it as one's own.
4. Something that a person owns or controls.

In the same Dictionary on the same page, there is a quotation from Frederick Pollock and Robert Samuel Wright, "An Essay on Possession in Common Law 1 – 2 (1888)" which further explains the word "possession" as follows:

As the name possession is.... one of the most important in our books, so it is one of the most ambiguousIn common Speech, a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others.....

From the testimony of PW2 and PW3, a search was conducted in the room of the Defendant in the presence of his mother and a pistol was found in the room on the bed which the mother said belongs to the Defendant. Before the search, the room was locked. The Defendant's mother unlocked the door before the search was executed. In Exhibit P6, the Defendant's mother stated that:

"The Police Officer searched my room but nothing was seen in my room. When my son's room was searched, the Police Officer discovered one stainless knife and locally-made pistol inside the clothes on top of his bed. I personally collected padlock from my neighbour, named Hauwa Musa (f) of the same address and as at the time I came with the Police Officer, the padlock was still on my door."

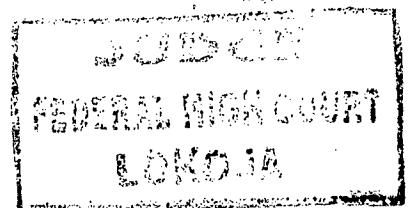
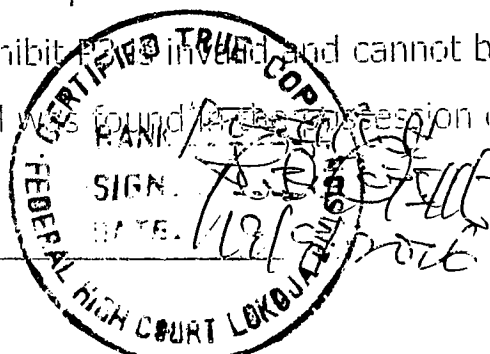


The PW3, who had also been part of the search of the Defendant's room testified that a knife and one locally-made pistol, Exhibit P1 were recovered from the bed of the Defendant which was inside his room. That it was the Defendant's mother that told them that the bed on which the knife and pistol were found was the Defendant's bed.

PW1 had earlier testified that the Defendant was transferred to the State CIID, Lokoja, from the Adavi Divisional Police Headquarters along with one locally-made pistol. The Search Warrant which was executed by Woman Cpl. Cecilia Ochigbo, in the presence of PW2, the Defendant's mother and one Mr. Momoh Bello was signed by the four persons and it was tendered in evidence and admitted and marked as Exhibit P3.

The Prosecution heavily relied on the Exhibit P3 which led to the recovery of Exhibit P1 and the statements made thereafter, Exhibit P5 by the Defendant and Exhibit P6 by the Defendant's mother who was a Co-Defendant with the Defendant in the earlier complaint of Criminal Conspiracy, Intimidation and Grievous Hurt, to submit that they had established and proved that the Defendant was in possession of the pistol and had no licence to show for it.

The Defence, however, stated that pursuant to the provisions of section 149(3) and (4) and section 150 of the Administration of Criminal Justice Act, 2015, the Exhibit P3 was not signed by the Defendant since the Defendant did not participate in the execution of the Search Warrant and therefore the said Exhibit P3 is invalid and cannot be relied on by the Court to hold that the pistol was found in the possession of the Defendant.



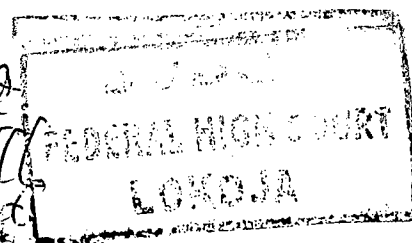
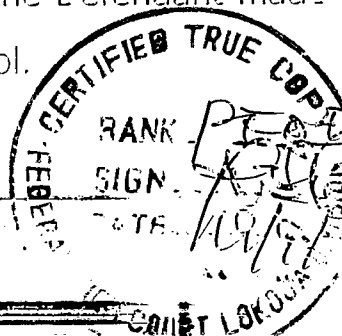
Going by the definition of possession as given by the Blacks' Law Dictionary copied above, I find that the Defendant possessed the locally-made pistol in that it was found on his bed in his room as attested to by PW2, PW3 and the statement of Defendant's mother, Exhibit P6. This shows that the Defendant had apparent control of the pistol and had apparent power in excluding others from the use of it.

The argument that the Defendant cannot be said to have been in possession of the pistol because he denied knowing anything about the pistol, more so that he was not there when the search of his room was carried out, is untenable. I say so because the provisions of section 150 of the Administration of Criminal Justice Act, 2015 permit that:

The occupant of a place searched or some persons on his behalf shall be permitted to be present at the search and shall, if he so requires, receive a copy of the list of things seized there, signed or sealed by the witnesses, if any.

Section 150 of the Administration of Criminal Justice Act, 2015, implies that the occupant of the place searched must not be present before a valid search can be executed.

In the instant case, the Defendant was not present during the search of his room but his mother, on his behalf was present at the search and was one of those who signed the Search Warrant. PW2 also testified that the Defendant was shown the knife and the pistol which were recovered from his bed in his room and that the Defendant made an additional statement denying knowledge of the pistol.

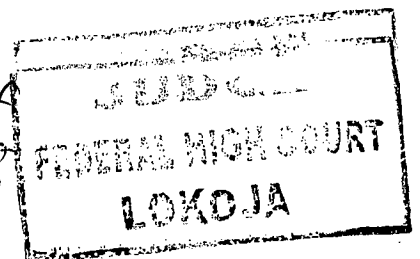
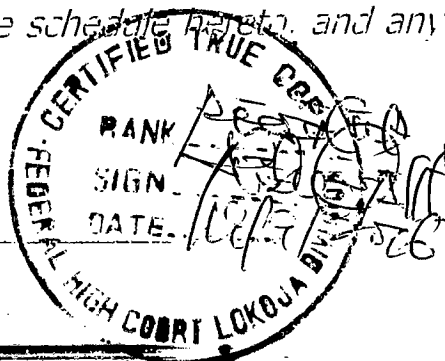


The Defendant also denied making that additional statement, Exhibit P5 wherein he denied owning the knife and pistol. But in the Exhibit P2 which he admitted is his statement which he made on the 11/06/2014 at the SCIID, Lokoja, he stated that:

The gun that was recovered from my room I know nothing about it. I believed the gun was planted in my room.

The Defendant did not mention the person he suspected could have planted a gun in his room. I also find that the Defendant's mother in her statement, Exhibit P6 stated that the room was under lock and key before she left for the Police Station and that when she came back to the house for the search, the padlock was still on the door. It is, therefore, not reasonable to my mind to believe that the pistol was planted in the Defendant's room by another person. It is apparent that the Defendant had possession of the pistol and the firearm was under his control but he did not produce a licence for it contrary to sections 2 and 3 and item 7 of Part 1 of the Schedule to the Firearms Act, 2004. The pistol is also a firearm within the meaning of section 2 of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004, which states as follows:

"Firearm" means any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, and includes a prohibited firearm, a personal firearm, and a muzzle loading firearm of any of the categories referred to in Part I, II and III, respectively, of the schedule hereto, and any component part of any such firearm.



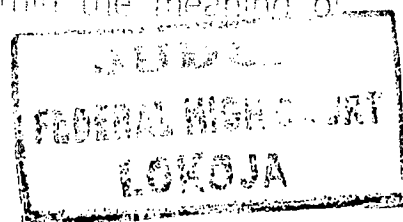
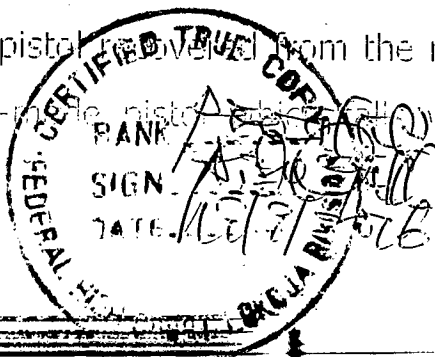
In Item 7 of Part 1 of the Schedule to the Firearms Act, which falls under the subtitle: "Prohibited Firearms," "Revolvers and Pistols..." are mentioned as prohibited firearms for which under section 3 of the Firearms Act, it is provided:

No person shall have in his possession or under his control any firearm of one of the categories specified in Part 1 of the Schedule to this Act [in this Act referred to as "prohibited firearm"] except in accordance with a licence granted by the President acting in his discretion.

Based on the totality of the evidence placed before this Court vis-à-vis the provisions of sections 2 and 3 and Item 7 of Part 1 of the Schedule to the Firearms Act, 2004, I find that the Defendant had possession of the locally-made pistol which was found on the bed of the Defendant in his bedroom and which was apparently under his control, and I so hold.

I find aid, in so holding in the decision of the Supreme Court of Nigeria in the case of ***Omoshola v. C.O.P. (1977) NSCC 158 S.C.*** In that case, the Supreme Court of Nigeria held that a submachine gun was a type of machine gun which is prohibited under the Firearms Act, even in the absence of a ballisticians report. So, it appears that once a certain firearm is described as falling under Part I, Part II or Part III of the Schedule to the Firearms Act, it will not be necessary to bring an expert or ballisticians to establish or prove that it is a firearm within the contemplation of the meaning of firearm as given in the Firearms Act.

In the present case, the pistol recovered from the room of the Defendant is described as a locally-made pistol which falls within the meaning of



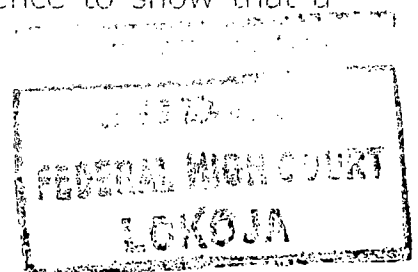
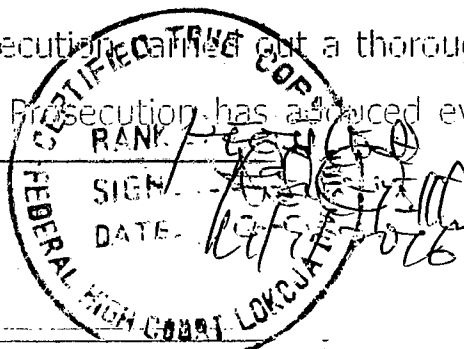
firearm given in section 2 of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

I, therefore, hold that the Prosecution has proved ingredient No. 1 of the offence with which the Defendant is charged: Illegal possession of firearm. The Prosecution has also proved through the testimony of PW1 and PW2 that the Defendant had no licence authorising him to possess the pistol or have it under his control and I so hold.

The Defendant's defence was that he was not in possession of the said pistol. That he knew nothing about that pistol or how it came to be on his bed as alleged. This is a mere denial not backed by material evidence to contradict the Prosecution's evidence via the Search Warrant (Exhibit P3) and the endorsement and signatures on it. The testimonies of PW1, PW2 and PW3 as well as Exhibit P6, the additional statement of the Defendant's mother.

The Defendant's Counsel contended that the Prosecution did not carry out a thorough investigation of the allegation against the Defendant in that PW1 had stated under cross-examination that all he did in the investigation of the case when the case was transferred to the SCIID, Lokoja from Adavi Divisional Police Headquarters was to record the statement of the Defendant on the 11/06/2014, Exhibit P2. That the PW2 also said under cross-examination that her investigation of the case was inconclusive.

Well, whether the Prosecution carried out a thorough investigation or not, it is apparent that the Prosecution has adduced evidence to show that a

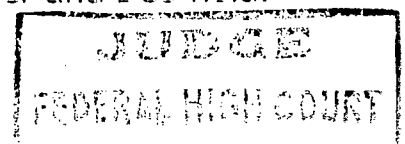


locally-made pistol was found on the bed of the Defendant in his room and apparently he had possession of it or it was under his control and that he had no licence for it. The pistol also falls under the definition of "Firearms" as defined in section 2 of the Firearms Act.

I don't know of any contradiction in the testimony of the Prosecution witnesses. I have only noted that the PW1 said in his testimony before the Court stated that he found out from investigation of the case that it was PW2, Woman Cpl. Cecilia Ochigbo that had arrested the Defendant and recovered a gun from him. PW2, however, in her testimony, stated that it was one Inspector Bello that effected the arrest of the Defendant on the night of 08/06/2014, though it was she, Woman Corporal Cecilia Ochigbo, PW2, that searched the house of the Defendant and recovered the pistol from his bed. This, to me is a discrepancy, and not a contradiction in the testimonies of the Prosecution witnesses, and certainly not serious enough to affect the credibility of the evidence.

In the case of **Michael Ebeinwe v. State (2011) 7 NWLR (Pt. 1246) 402 at 407 Ratio 5**, it was held that it is not every discrepancy, contradiction and inconsistency that will affect the substance of a criminal case that has been proved with credible and unchallenged evidence.

In the present case, there is no discrepancy or contradiction in the evidence of the Prosecution witnesses that is of great magnitude that would destroy the credibility of the witnesses altogether and I so hold.



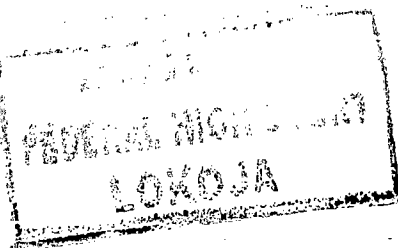
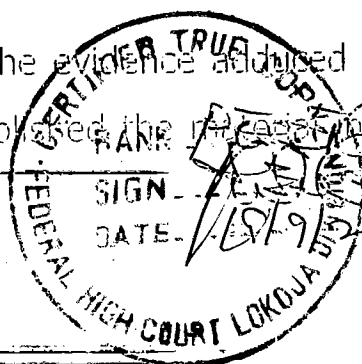
This Court is satisfied that the Prosecution has proved the ingredients of the offence with which the Defendant is charged beyond reasonable doubt and it is settled law that proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. See the case of ***Ebeinwe v. State (supra) P. 407 Ratio 6.***

In the case of ***Kayode Babarinde & 2 Ors. v. The State***, the Court of Appeal held that:

"Proof beyond reasonable doubt does not entail proof beyond iota of doubt, otherwise it will be akin to allowing fanciful possibilities to defeat the course of justice. If proof beyond reasonable doubt is achieved when evidence against the accused personis strong and compelling leaving only a remote possibility in his favour.

I must say, the defence of the Defendant in this case is weak and not sufficient to contradict the credible evidence presented before this Court by the Prosecution to prove the case against the Defendant beyond reasonable doubt. Even though the pistol was not found on the person of the Defendant, it was found on his bed in his room which was under lock and key until opened by the Defendant's mother on the date the Search Warrant was executed. This is circumstantial evidence which is consistent with the guilt of the Defendant but inconsistent with his innocence and I so hold.

Considering the totality of the evidence adduced before this Court by the Prosecution which has established the necessary ingredients of the offence



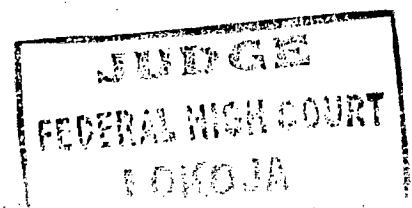
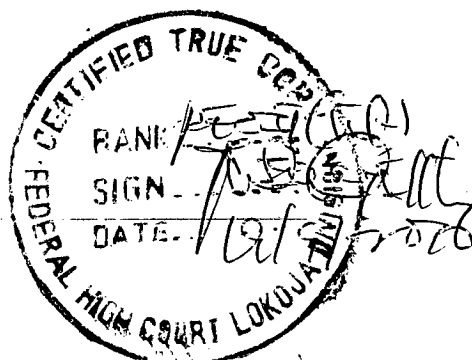
that the Defendant illegally had in his possession or under his control, a locally-made pistol, this Court is satisfied that the Prosecution has proved the allegation against the Defendant beyond reasonable doubt. The Defendant is, therefore, found guilty of the offence with which he is charged before this Court. The Defendant, WAHEED YUSUF is found guilty of the said offence. He is convicted of the said offence as charged.

The offence for which the Convict has been convicted is punishable on conviction to a term of imprisonment for a minimum of 10 years on conviction.

Under the Administration of Criminal Justice Act, 2015, the Court is enjoined to have the following objectives in mind in determining a sentence, namely:

1. Prevention
2. Restraint
3. Rehabilitation
4. Deterrence
5. Education of the public
6. Retribution, and
7. Restitution

The offence of which the Convict is convicted is prevalent in the community. There is need to deter the Defendant from committing similar offences in future and also to serve as a warning to others not to commit such offences.



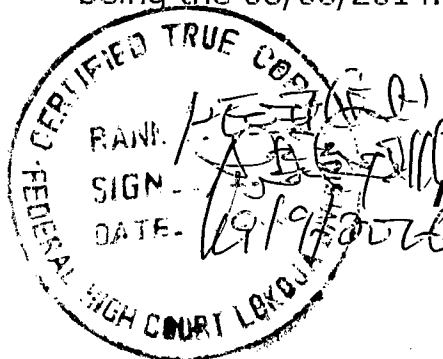
The Convict is, however, a young man of about 30 years. He showed diligence in attending Court for his trial. The Convict has shown remorse. The Convict is also a first offender as there is no record of his previous conviction before this Court. See sections 401 and 416(2)(d) of the Administration of Criminal Justice Act, 2015.

Section 416(2)(a) enjoins the Court to treat each case on its own merit in sentencing. In the special circumstances of the present case, this Court is inclined not to impose the minimum of 10 years. The Court will pass a sentence of less than 10 years, in the interest of justice.

I find aid to do this in the provision of section 492(3) of the Administration of Criminal Justice Act, 2015. The said section 492(3) provides as follows:

Where there are no express provisions in this Act, the Court may apply any procedure that will meet the justice of the case.

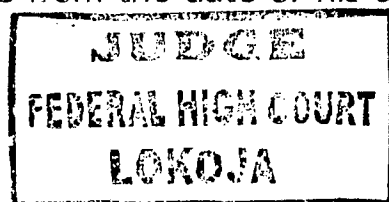
In the result, I hereby make an order sentencing the Convict to a term of imprisonment for four (4) years to commence from the date of his arrest, being the 08/06/2014.



Handwritten signature of Hon. Justice Phoebe MsueanAyua

Hon. Justice Phoebe MsueanAyua
Judge

Thursday, the 19th day of May, 2016

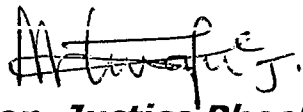


Court: The one locally-made pistol shall be handed over to the State Criminal Investigation and Intelligence Department, Kogi State Police Command, Nigeria Police Force, through the Prosecuting Counsel, S. J. Ikutanwa, Esq for destruction if there is no

appeal against the Judgement of this Court in this case thirty (30) days from today.

Parties: The Defendant is present in the Court.

Appearances: H. O. Abbas, Esq., for the Defendant and the Prosecuting Counsel is absent from Court.



Hon. Justice Phoebe Msuean Ayua
Judge

Thursday, the 19th day of May, 2016

JUDGE
FEDERAL HIGH COURT
LOKOJA

