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ARMED ROBBERY AND NATIONAL SECURITY

By

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*I*ntroduction

The prevalence of armed robbery in Nigeria is fast becoming an epidemic. It is being blamed on the dwindling economic fortunes of majority and the widening gap between the affluent and the poor in our society leading to violent crimes especially armed robbery. In Nigeria at present, no place is safe from the ravages of the armed robbers. They attack homes, offices, shops, restaurants and churches to rob, rape, maim and kill. They operate at the banks with dynamites, strike at filling stations and swoop on victims at traffic jams. The security situation in Nigeria today is so appalling that armed robbers operate on a daily basis, leaving sorrow, tears and blood in their trail. Armed robbers no longer operate only at night they also operate brazenly in broad daylight. Brigandage has become the order of the day. The robbers operate in large numbers sometimes as much as 20 persons with sophisticated arms and accessories that will facilitate their operation like gas cylinders, welding tools, hammer, powerful beam lights and explosives for blowing up safes. The robbers have expanded their armory to the use of biological materials including powder which they blow to hypnotize and make their victims and security agents who

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might threaten them go to sleep while they carry out their operations.¹

Travellers on the highway are equally unsafe. Commuter commercial luxury buses especially in the night are hijacked, taken to the bush, and the passengers robbed, raped and the bus burnt in some cases. Many have lost their lives and property worth millions of naira has been stolen. Homes of the big and small have been invaded; even embassies have not been spared. Prominent Nigerians have been murdered in cold blood. Governor's convoys have also been attacked despite heavy security attachment.²

This situation coupled with some other inadequacies has earned the country several unsavory descriptions. Nigeria has been called a country in "descent into the dark," a "country beset with insecurity across the land," and a "failed state." The Washington based Fund for Peace founded by Professor Susan Rice in its publication of the *Failed State Index of 2009*, placed Nigeria as among the 15 most vulnerable nations on the globe.³

The US Department of State in a travel guide about Nigeria posted in the web stated:

Violent crime committed by individual criminals and gangs, as well as by some persons wearing police and military uniforms, is a problem throughout the country, especially at

1. Kahal A.: "The Police and Armed Robbers" in *Daily Champion*, posted on 5 January 2007. Available at: <http://allafrica.com/stories/200701050528.html>. Visited on 13/7/2010.
2. Available at: <http://www.nasarawastate.org/newsday/news/nasara06/NewArticle312.html>. Visited on 13/7/2010.
3. Available at: <http://www.focusnigeria.com/war-against-robbery.htm>. Visited on 13/7/2010.

night. Visitors and resident U.S. citizens have experienced armed muggings, assaults, burglary, carjacking, rape, kidnappings and extortion, often involving violence. Home invasions remain a serious threat, with armed robbers accessing even guarded compounds by scaling perimeter walls; following, or tailgating, residents or visitors arriving by car into the compound; subduing guards and gaining entry into homes or apartments. Armed robbers in Lagos also access waterfront compounds by boat. U.S. citizens, as well as Nigerians and other expatriates, have been victims of armed robbery at banks and grocery stores, and on airport roads during both daylight and evening hours. Law enforcement authorities usually respond slowly or not at all, and provide little or no investigative support to victims. U.S. citizens, Nigerians and other expatriates have experienced harassment and shakedowns at checkpoints and during encounters with Nigerian law enforcement officials.⁴

This widespread occurrence of armed robbery and kidnapping in Nigeria, has the potential to destabilize the peace and security of the Nigerian people; upset economic activities, discourage both foreigners and indigenes from investing; disrupt industry and economic development and progress, and lead to greater unemployment, and in general, to the restriction of governance. The above security situation

4. Available at: http://travel.state.gov/travel/cis_pa_tw/cis/cis_987.html. Visited on 12/6/2010.

should bother any serious minded government. This scenario among other security concerns, prompted late President Umaru Musa Yar'Adua to highlight security as one of its top priorities in his administration's Seven-Point Agenda. In his inaugural address, President Yaradua, noted that an unfriendly security climate precludes both external and internal investment into the nation.⁵

This chapter focuses on the offence of armed robbery as it affects the security of the nation, Nigeria. It examines the legal regime for the offence of armed robbery and also peers into the knotty complexity of proving the offence of armed robbery by examining the essential ingredients of the offence with the aid of decided cases. The chapter goes further to reflect on some empirical studies and data on the prevalence of armed robbery and the death and injury as a result of this societal glitch. The response by the police to the armed robbery menace is considered and then the punishment for armed robbery is scrutinized.

The Legal Regime for Armed Robbery

Armed robbery in Nigeria is prohibited and criminalized in Nigeria under three laws, namely:

The Criminal Code⁶, the Penal Code⁷ and the Robbery and Firearms (Special Provisions) Act.⁸

The Criminal Code

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5. http://www.nigerianmuse.com/spotlight/?Governance_Forum_Yar_Adua_Seven_Point_Agenda_Plus_Two_Special_Issues_.htm.
 6. Cap. C 38 Laws of the Federation of Nigeria, 2004.
 7. Cap. 89, 1963 Laws of Northern Nigeria.
 8. Cap. R11 Laws of the Federation of Nigeria, 2004.

The Criminal Code Act is the governing law as far as substantive criminal law is concerned for the Southern States of Nigeria. Various States of Nigeria have enacted their own State Criminal Code Laws, which is basically an adoption of the Criminal Code Act. Chapter 36 of the Criminal Code Act is captioned “Stealing with Violence: Extortion by Threats”. The offences of robbery and armed robbery are situated in this chapter. The line between robbery and armed robbery is very tenuous; hence, the definition of armed robbery is tied to that of robbery. The definition of armed robbery is subsumed in the punishment section for the offence of robbery. Section 401 of the Criminal Code Act declares that any person who steals anything and, at or immediately before or immediately after the time of stealing⁹ it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of robbery. Section 402 which is the punishment section states that any person who commits the offence of robbery shall upon conviction be sentenced to imprisonment for not less than twenty-one years.

If the offender is armed with any firearms or any offensive weapon or any obnoxious or chemical materials or is in company of any person so armed; or at or immediately before or immediately after the time of robbery the offender wounds any person, the offender shall upon conviction be sentenced to death¹⁰. The death sentence was introduced by No. 47 of 1970, which replaced the former section 402 of

9. Section 383 of the Criminal Code Act defines stealing as: “A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing”.

10. Section 402 (2) (a) & (b).

Cap. 42 of 1958, which earlier made the offence of armed robbery punishable with imprisonment for life.¹¹

Attempted Robbery/Armed Robbery

Section 403(1) of the Criminal Code Act creates the offence of attempted robbery. The offence of attempted robbery is committed where any person with intent to steal anything, assaults any other person and at or immediately after the time of assault, uses or threatens to use actual violence to any other person or any property in order to obtain the thing intended to be stolen. A person found guilty of this offence is liable upon conviction to be sentenced to imprisonment for not less than fourteen years but not more than twenty years. Where the offender has attempted to rob with any firearms or any offensive weapon or was in company of any other person so armed; or at or immediately before or immediately after the time of the assault, the offender wounds or uses any other personal violence to any person, the offender upon conviction, is liable to be sentenced to imprisonment for life with or without whipping.¹²

Being in Possession of Firearms

Any person found in any public place in possession of any firearms whether real or imitation and in circumstances reasonably indicating that the possession of the firearms is with intent to the immediate or eventual commission by that person or any other person of the offence of robbery or armed robbery, is liable upon conviction to be sentenced to imprisonment for not less than fourteen years or more than twenty years.⁹

11. See Guobadia D. A.: *NIALS' Laws of Nigeria (Annotated) Criminal Justice Administration, Vol. 1*, (Lagos: NIALS, 2008), p. 760.

12. Section 403 (2).

Conspiracy to Commit Robbery

Section 403A of the Criminal Code Act provides that:

any person who conspires with any person to commit an offence under section 402 of this code whether or not he is present when the offence is committed or attempted to be committed, shall be deemed to be guilty of the offence as a principal offender and shall be punished accordingly.

Section 403B of the Criminal Code Act defines “firearms” to include any canon, gun, flint-lock gun, revolver, pistol explosive or ammunition or other firearm, whether whole or in detached pieces; while offensive weapon” means any article apart from a firearm made or adapted for use for causing injury to the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and arrow, spear, cutlass, matchet, dagger, cudgel, or any piece of wood, metal, glass or stone capable of being used as an offensive weapon. It was held in *Golden Dibia v. The State*¹³ that whether it was a real pistol that was pointed at PW1 is immaterial. What is material is that either an actual pistol or what looked like a pistol was used to threaten her which induced fear in her. It is the use made of an object and the manner it is made use of that qualifies it to be an offensive weapon. In our present case, an object which is either a pistol or what looked like a pistol was used.

13. S.C. 103/2005. Judgment delivered on 9th day of March 2007.

The Penal Code

The Penal Code applies to the Northern States of Nigeria and The Federal Capital Territory Abuja. The offence of robbery and armed robbery under the Penal Code emanates from the offences of theft and extortion. Hence, it is needful here to first define the offences of theft and extortion. Section 286 of the Penal Code states that:

- (1) Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to take it is said to commit theft.
- (2) Whoever dishonestly abstracts, diverts, consumes or uses any electricity or electric current is said to commit theft.

The offence of theft is punishable with imprisonment for a term which may extend to five years or with fine or both.¹⁴

Extortion is defined in the following terms:

Whoever intentionally puts any person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or document of title or anything signed or sealed which may be converted into a valuable security, commits extortion.¹⁵

14. Section 287 of the Penal Code. See also *Sele v. State (1993) 1 NWLR (Pt 269) 276*.

15. Section 291, *ibid*.

The offence of extortion is punishable with imprisonment for a term which may extend to five years or with fine or with both.¹⁶ Now that we have considered the definitions of the offences of theft and extortion, we turn to the definition of robbery and armed robbery as rendered under the Penal Code. Section 296 (2) says that theft is robbery if in order to commit the theft or in committing the theft or in carrying away or attempting to carry away property obtained by the theft, the offender for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint. Section 296 (3) says that extortion is robbery if the offender at the time of committing the extortion puts the person or some other person in fear of instant death, of instant hurt or of instant wrongful restraint, thereby inducing the person put in fear to deliver up the thing extorted.

The Penal Code like the Criminal Code subsumes the definition of armed robbery to the punishment of the offence of robbery. Robbery is punishable under section 298 of the Penal Code with imprisonment for a term which may extend to ten years and the offender shall also be liable to fine. If the robbery is committed between sunset and sunrise on the highway; or between sunset and sunrise from a person sleeping or having lain down to sleep in the open air, then the imprisonment may extend to fourteen years with fine. If the robbery is committed by any person armed with any dangerous or offensive weapon or instrument, such a person is liable to imprisonment for life or any less term with fine.¹⁷

The Penal Code expands the scope of the offence of robbery by creating the offence of “Brigandage”. Section 297

16. Section 292 *ibid.*

17. Section 298 (c) of the Penal Code.

of the Penal Code states that when five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting or aiding is said to commit brigandage. The offence is punishable with imprisonment for a term which may extend to fourteen years in addition to fine.¹⁸

Section 303 of the Penal Code contains provisions which contradict the seriousness attached to the offence of robbery and armed robbery as already provided for under section 298 of the Code. Section 303 is captioned "Robbery or brigandage with attempt to cause death or grievous hurt". The section provides that:

if at the time of committing or attempting to commit robbery or brigandage, the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years

The implication of this provision is that where a group of five or more persons commits or attempts to commit robbery with any deadly weapon, and not just that they were in possession of the deadly weapon, they actually used the weapon to cause grievous hurt or even attempts to cause death of any other person, the person will merely be punished with imprisonment that shall not be less than seven years.

18. Section 301, *ibid.*

This is contradictory to 298 of the Penal Code which punishes armed robbery with life imprisonment or any less term, in addition to fine. Robbing with arms is a very serious offence; it should even be more serious if the robbery is committed by a group of persons. But here, section 303 treats the offence of brigandage which is actually group armed robbery, very lightly.

The Robbery and Firearms (Special Provisions) Act¹⁹

The Robbery and Firearms (Special Provisions) Act²⁰ states categorically that any person who commits the offence of robbery shall upon trial and conviction be sentenced with imprisonment for not less than 21 years.²¹ If the offender is armed with any firearms or any offensive weapon or is in company with any person so armed; or at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender is liable upon conviction to be sentenced to death.²² The Section goes on to specify that the sentence of death imposed under the section may be executed by hanging the offender on the neck till he be dead or by causing such offender to suffer death by firing squad as the Governor may direct.²³ The punishment for the offence of attempted armed

19. Cap. R11 Laws of the Federation of Nigeria, 2004.

20. The Act first came into being as Decree No. 47 of 1970 and was repealed as Decree No. 5 of 1984 and No. 28 of 1986.

21. Section 1 (1) *ibid.*

22. Section 1 (2), *ibid.*

23. Section 1 (3), *ibid.*

robbery under the Act is imprisonment for life.²⁴ Just like the punishment prescribed in the Criminal Code.²⁵

Section 2 (3) of the Act like the Criminal Code Act makes it an offence for any person to possess in a public place, any firearms, real or imitation in circumstances reasonably indicating that the possession of the firearms is with intent to the immediate or eventual commission by that person or another person of the offence of robbery. This is punishable with imprisonment for not less than 14 years but not more than 20 years.²⁶

One of the unique provisions of the Robbery and Firearms Act is that it makes it an offence for any person to knowingly house, shelter or give quarters to any person who has committed an offence of armed robbery.²⁷ It is also an offence under the Act for any person, hospital or clinic that admits, treats or administers any drug to any person suspected of bullet wounds to fail to immediately report the matter to the police.²⁸

Another unique provision of the Act is that it provides for the forfeiture of all the assets, both movable and immovable, including motor vehicles of any person convicted of an offence under the Act to the Government of the State where the asset or property is situated or found.²⁹ The offences under the Act are triable in the High Court of the State concerned.³⁰

24. Section 2, *ibid*.

25. Section 403 of the Criminal Code.

26. Section 2 (3), Robbery and Firearms Act and section 403 (3) Criminal Code Act.

27. Section 4 (1) *ibid*

28. Section 4 (2), *ibid*.

29. Section 7 *ibid*.

30. Section 9 *ibid*.

Proving a Case of Armed Robbery

It is a daunting task to apprehend and arrest a crime suspect and a more overwhelming undertaking to prosecute and prove that the person actually committed the offence stated. In the adversary system of criminal justice which we operate, the prosecution is locked in a “battle” with the defence in trying to declare to the conviction of the judge that the offence could not have been committed by any other person, if not the accused. The accused person on his own part with the help of his counsel will seek through every available means to show that he did not commit the offence. The well established principle of criminal law that the prosecution is required to prove all the facts in the case beyond reasonable doubt applies in the case of armed robbery. The prosecution must prove all the elements of the offence against the suspect.³¹ Reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is a doubt which reasonable man or woman might entertain and it is not fanciful doubt, and is not imagined doubt as would cause prudent men to hesitate before acting in matters of importance to themselves.³²

Niki Tobi JSC in *Golden Dibia v. The State*³³ explained that proof beyond reasonable doubt does not mean proof beyond any shadow of doubt. Once the proof drowns the presumption of innocence of the accused, the court is entitled to convict him, although there could exist shadows of doubt. The moment the proof by the prosecution renders the presumption of innocence on the part of the accused useless and pins him down as the owner of the *mens rea* or the *actus*

31. *Bakare v. State* (1987) 1 NWLR (Pt. 52) 579.

32. Black H. C.: *Black's Law Dictionary* (Minnesota West Publishing Co., 6th ed., 1990), p. 1265.

33. S.C. 103/2005. Judgment delivered on 9th day of March 2007.

reus or both, the prosecution has discharged the burden placed on it by section 138(3) of the Evidence Act.³⁴ The courts have held severally as in *Martins v. State*³⁵, that in order to sustain a conviction for a charge of armed robbery the prosecution must prove the following beyond reasonable doubt:

1. that there was a robbery;
2. that the robbery was an armed robbery;
3. that the accused person was the robber;
4. that the accused threatened to use violence or actually used violence immediately before or immediately after the time of stealing the thing.³⁶

It is necessary at this point to discuss these ingredients *seriatim*.

That there was a Robbery

The definition of the offence of armed robbery flows from that of robbery. Hence, before you talk of armed robbery, there must be first and foremost, a robbery. As we have seen from the definitions of robbery under the Criminal Code Act and the Penal Code already given above, for there to be a case of robbery, there must be stealing with threat of violence or actual violence to any person or property in order to obtain or retain the thing stolen³⁷ or theft and extortion done with attempt to cause or actually causing any of the following:

34. Cap. E 14 Laws of the Federation of Nigeria, 2004.

35. (1997) 1 NWLR (Pt. 481) 355.

36. See *Bozin v. State* (1985) 2 NWLR (Pt. 8) 465; *Henry Otti v. The State* (1991) 8 NWLR 103 and *Ogba v. State* (1992) 2 NWLR (Pt.222) 164.

37. Section 401 of the Criminal Code Act.

death of any person; hurt or wrongful restraint; fear of instant death or of instant hurt or of instant wrongful restraint.³⁸

For the offence of robbery to be proved, there must be proof that the accused person stole something.³⁹ A person is said to steal a thing where s/he fraudulently takes anything capable of being stolen, or fraudulently converts to his/her own use, or to the use of another person anything capable of being stolen.⁴⁰ For the offence to be grounded, the thing capable of being stolen must be fraudulently taken or converted and a person is deemed to have done so if s/he does it with any of the following intents:

- (a) an intent permanently to deprive the owner of the thing of it;
- (b) an intent permanently to deprive any person who has any special property in the thing of such property;
- (c) an intent to use the thing as a pledge or security;
- (d) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
- (e) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
- (f) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.⁴¹

38. Section 296 of the Penal Code.

39. See *Obiode v. State* (1970) 1 All NLR 35 and *Kalu v. The State* (1988) 4 NWLR (Pt. 90) 503.

40. Section 383 of the Criminal Code Act.

41. Section 383 (2), *ibid.* See *Chianugo v. State* (2002) 2NWLR (Pt 750) 225 at 235-236.

That the Robbery was an Armed Robbery

Armed robbery is the aggravated form of robbery. To migrate to the level of armed robbery after establishing that there was a robbery, it is essential that the prosecution must prove that the accused person was armed or in company of an armed person. In the case of *Okosun v. Attorney-General Bendel State*⁴² it was held that the presence of the accused person and evidence of being in concert with others to violently commit robbery even if it was only one person that was armed with offensive weapon was enough to find him guilty of the offence of armed robbery.⁴³ What is important here is that there was a common intention to prosecute the unlawful purpose.⁴⁴ To invoke common intention, it must be proved that: 1. that there are two or more persons; 2. who have formed a common intention; 3. towards prosecuting an unlawful purpose jointly; 4. an offence was committed in the process; and 5. the offence is of such a nature that its commission was a probable consequence of the prosecution of such a purpose.⁴⁵

It has to be established that what the accused person had in his possession is a firearm or an offensive weapon. Section 403 (B) of the Criminal Code, defines “firearms” to include any canon, gun, flint-lock gun, revolver, pistol explosive or ammunition or other firearm, whether whole or in detached pieces, while “offensive weapon” means any article apart from a firearm made or adapted for use for causing injury to

42. (1985) 3 NWLR(Pt. 13) 429.

43. See also *Ikemson v. the State* (1989) 3 NWLR (Pt. 110) 458.

44. See section 8 of the Criminal Code Act on “offences committed in prosecution of an unlawful purpose”.

45. *Adesujo Akinkunmi & Ors. v. the State* (1987) 1 NWLR 608, *Christopher Okosi & Anor v. The State* (1989) ANLR 170. See Guobadia D. A.: *NIALS’ Laws of Nigeria (Annotated) Criminal Justice Administration, Vol. 1, op. cit.* note 11, pp. 464-465.

the person or intended by the person having it for such use by him and it includes an air gun, air pistol, bow and arrow, spear, cutlass, matchet, dagger, cudgel, or any piece of wood, metal, glass or stone capable of being used as an offensive weapon.⁴⁶ In the case of *Bolanle v. State*,⁴⁷ the Court of Appeal in affirming the conviction and dismissing the appeal, amongst other things took into consideration the fact that there was evidence that in the course of the robbery, dangerous weapons were used in breaking into the house of the complainant such as guns, butt of guns, coca-cola bottles, iron rods and cutlasses, and that these offensive weapons were used in physically and indecently assaulting the victims. It was held in *Abubakar Ibrahim v. The State*⁴⁸ that where the weapon used in committing a robbery is not an offensive weapon, a conviction for armed robbery cannot be sustained. It was also declared in that case, that offensive weapon cannot be construed to include a horsewhip.

That the Accused Person was the Robber

In *Bozin v. The State*,⁴⁹ Oputa JSC held that for there to be a conviction for armed robbery, there must be proof beyond reasonable doubt that there was a robbery or series of robberies; that the robbery was an armed robbery and that the accused person was one of those who took part in the robbery. It is very important to identify the accused person by leading evidence tending to show that the person charged with the offence is the same person who was seen

46. Section 11 of the Robbery and Firearms (Special Provisions) Act, contains a verbatim definition of "offensive weapon".

47. (2005) 7 NWLR (Pt. 925) 431.

48. (1991) 4 NWLR 399. See also *Sunday Kajubo v. The State* (1988) 1 NSCC 475 S.C.

49. *Op. cit.* note 36. See also the dictum of Onu JSC in *Alabi v. State* (1993) 7 NWLR (Pt. 307) 511 at 523.

committing the offence. Where the trial court is faced with identification evidence, it should be satisfied that the evidence of identification proves beyond reasonable doubt that the accused person before the court was the person who actually committed the offence charged.⁵⁰ When in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example, when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the judge should direct an acquittal unless there is other evidence which goes to support the correctness of the identification.⁵¹

In his effort to establish that he was not the armed robber, the accused person could raise a defence of *alibi*, by trying to show that he was elsewhere at the time of the commission of the offence. Once an accused person raises a defence of *alibi*, a duty is immediately cast on the prosecution to investigate the truth or otherwise of the statement made by the accused person. This may be as early as the interrogation stage. Diligent investigation requires that an investigating police officer should go the extra mile in tightening all the loop holes at this point. He should diligently investigate the truth or falsehood of the alibi before handing the case file to the Attorney-General. Many otherwise good cases are destroyed simply because of lack of or ineffective investigation of *alibi*. Where the accused person has discharged the evidential burden on him to give the details of the alibi he sets up, the trial judge would weigh this against the evidence by the prosecution and decide whether the prosecution had proved its case against the accused person. The failure of the prosecution to investigate

50. *Ikemson v. the State op. cit.* note 43, p. 478.

51. *Zekeri Abudu v. The State (1985) 1 NWLR (Pt. 1) 55 at 62.*

the facts and circumstances given by the accused person, renders the *alibi* unrebutted and the doubt would of course be resolved in favour of the accused.⁵²

That the Accused Threatened to use Violence or Actually used Violence Immediately before or Immediately after the Time of Stealing the Thing

By the definition of the offence of robbery, it is important for the prosecution to prove the use or the threat of violence immediately before or immediately after the time of stealing.⁵³ The violence could be on either a person or on a property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained.⁵⁴ In *Babalola & Anor. v. The State*⁵⁵ it was held that to establish the meaning of “threaten to use actual violence to any person”, the test must be whether the threatened person reasonably believed in the apparent circumstances that the threat was likely to be carried out and so handed over his money or other goods demanded. The Court of Appeal in *Nwomukoro v. The State*⁵⁶ held that for an act to constitute robbery, there must be that experience by the victim of fear

52. Chukwu C.: “Legal Pre-Requisites for the Defence of Alibi”, in *Justice Journal*, Vol. 7, No. 5, (FMOJ Lagos, 1993), pp. 88-91. See *State v. Ozaki & Ors.* (1986) 5 NWLR 258 at 259; *Okosi v. State* (1989) 1 NWLR (Pt. 100) 642 and *Madagwa v. State* (1987) 4 NWLR (Pt. 78) 524.

53. In the English case of *R v. Lockley* [1995] *Crim LR* 656 the Court in upholding the decision in earlier case of *R v. Hale* [1978] 68 *Cr App R* 415, held that force used in order to escape is thus treated as force used in order to steal and his conviction was upheld.

54. See section 401 of the Criminal Code Act. See also *Rex v. Obi Bekun & Ors.* 7 WACA 45.

55. (1970) NSCC 27. See the English case of *R v. Dawson and James* [1976] 64 *Cr App R* 150, where it was held that the word force is to be given its ordinary meaning and requires no direction to the jury.

56. (1995) 1 NWLR (Pt. 372) 432.

and intimidation brought about by apprehension of possible violence to his person before the robbery. The intimidation or constructive force includes all other means of administration of force or menace by which the victim is put in fear sufficient to sustain at the material time free exercise of his will power to make it awfully difficult or near impossible for him to offer any resistance to any one taking his property.⁵⁷ Proof of actual violence is not necessary to prove a case of robbery.⁵⁸ Stealing by putting a person in fear of violence is enough to constitute the offence.⁵⁹ It was held in *Golden Dibia v. The State*⁶⁰ that whether or not it was a real pistol that was pointed at PW1 is immaterial. What is material is that either an actual pistol or what looked like a pistol was used to threaten her which induced fear in her. It is the use made of an object and the manner it is made use of that qualifies it to be an offensive weapon. In our present case, an object which is either a pistol or what looked like a pistol was used.⁶¹

Prevalence of Armed Robbery and Casualty Statistics

Doctors H. Umaru, A. Ahidjo and A. Madziga of the University of Maiduguri Teaching Hospital⁶² carried out a retrospective study of patients with extremities gun shot injuries (GSI) between January 2001 and December 2004. The study area includes the six states in the Northeastern Nigeria. Out of a total of seventy patients with GSI that were

57. See the dictum of Pats Acholonu, JCA at p. 439.

58. *Nwachukwu v. The State* (1986) 2 NWLR (Pt. 25) 765 and *Gbadamosi v. State* (1991) 6 NWLR (Pt. 196) 182.

59. *Nwamukoro v. The State op. cit.* note 56 at 443.

60. S.C. 103/2005. Judgment delivered on 9th day of March 2007.

61. *Sele v. State op. cit.* note 14.

62. University of Maiduguri Teaching Hospital is the level 1 tertiary health institution in the North East sub-region.

studied, sixty-four were males, while only six were females. The ages of the patients ranged between 12 and 60 years, and majority 53 (75.7%) of the patients were aged 21 – 40 years. Children below the age of 10 years and females above the age of 30 years were not involved in the GSI.

While the reasons for GSI in most parts of the world especially the developed countries are accidental discharge, suicide attempts and assault; their study like others⁶³ from different parts of the country and Africa indicates that armed robbery was the dominant reason. In their report, 80% of the GSI were due to armed robbery, but peculiar in their findings compared to others were that majority of the victims of armed robbery, 65.7% were attacked and sustained injury while traveling on the highways on legitimate businesses. The study revealed that the victims were mostly traders and other commuters. The armed robbers often ambush their targets at late evenings, night or early morning hours. The men of underworld often spray bullets with sophisticated weapons on vehicles. This is done to scare their victims and get them to fully surrender, but serious injuries are sustained in the process despite the fact that the missile pass through the body of the vehicle before hitting the victims.⁶⁴

In robbery events, the incidence of death affects the robber, bystanders, and the law enforcement agents. In

63. Yinusa W, Oginma M.: "Extremity Gunshot Injuries in Civilian Practice" *West Afr. J Med.* 2000; 19, pp. 312 -316; Onuminya J.: Ohwohiagbese E.: "Pattern of Civilian Gunshot Injuries in Irrua, Nigeria". *S Afr J Surg.* 2005; 43, pp. 170 – 172; Orakwe J.: "Civilian Gunshot Injuries in Onitsha". *Orient J med.* 1992; 4: pp. 24 – 27 and Saidi HS, Nyakiamo J. Foyas: "Gunshot Injuries as been at the AgaKhan Hospital, Nairobi, Kenya", *East Afr. Med Jour.* 2002; 79 pp. 188 - 192.

64. H. Umaru, A. Ahidjo & A. Madziga: Highway Armed Robbery: A Major Cause Of Extremity Gunshot Injury in Northeastern, Nigeria . *The Internet Journal of Orthopedic Surgery.* 2006 Volume 3 Number 1.

another study carried out in 2005 by doctors, Edeaghe Ehikhamenor and Mike Ojo, they discovered that during a period of five months examined, a total of 511 people were killed during armed robberies in Nigeria. Of these, 134 were bystanders (26%), 348 were the robbers (68%); and 29 were police officers (5.67%). Thus, for 5 cases reported by the police, 1 bystander was killed, for every 2 cases reported, 1 robber was killed; and for every 23 incidents reported, 1 police officer was killed. All of the robbers killed were males, and 80% of the bystanders were male. All of the police officers killed were male. Most of the robbers killed were in the age range of 16–30 years,⁶⁵ but the bystanders who were killed were of wider age range (20–56 years). The range of ages of the police officers killed was 21–32 years. It must be noted that some of the ages reported were estimated at the scene of the event. The total number of robbers arrested was 844: more than one robber was arrested in many of the events.⁶⁶ The age group and gender involved in robbery cases and the age and gender groups are very active and mobile.

The high rate of casualty in armed robbery cases can be partially attributed to the capitalization of armed robbery. The reason for this is that the robber is impelled by the death penalty provision of the law, to consider it a life and death

65. This statistics of robber's profile is correlated with the robber's given by Professor Adeyemi as " male unemployed youth between 18 and 25 years of age..." see Adeyemi A. A.: "The Death Penalty in Nigeria: The Criminological Perspective" *Nigerian Current Law Review*, 1988/91, pp.1 – 34, p. 13.

66. Edeaghe E. and Ojo M.: "Comparative Analysis of Traumatic Deaths in Nigeria", Web publication: 03 May 2005, available at: <http://pdm.medicine.wisc.edu>. Visited on 23/7/2010. The data for the study was provided by the Nigerian Police.

struggle between him and the victim/witnesses, who must not stay alive to identify him or give evidence against him.⁶⁷

Annual Incidents of Armed Robbery in Nigeria

YEAR	ARMED ROBBERY
1994	2,044
1995	2,088
1996	2,414
1997	2,166
1998	2,291
1999	2,422
2000	2,693
2001	2,925
2002	3,271

67. See Adeyemi A. A.: *The Death Penalty in Nigeria: The Criminological Perspective*, *op. cit.* note 65, p. 14.

2003	3,497
2004	4,363
2005	2,657
2006	2,000
2007	1,981
2008	1,956
2009	2,147
OVERALL TOTALS	40,915

Source: NPF Crime Abstracts, 1994-2005; NPF Annual Reports, 2006-2009⁶⁸

From the table above, the incidents of armed robbery, with the exception of the slight decrease in 1997, consistently increased and reached its highest ever peak in 2004; but it thereafter decreased from 2005 till 2008, and rose slightly again in 2009.⁶⁹

Penalty for Armed Robbery

Presently in Nigeria, the punishment for armed robbery is death. It is immaterial whether the offender is a participant, aided, abetted, counseled or procured the commission of the offence or a conspirator with a person who has committed the offence.⁷⁰ Studies have revealed that despite the capital punishment reserved for armed robbery convicts, the rate of

68. Adeyemi A. A.: "Revisiting the Death Penalty in Nigeria" Keynote Address delivered at the One-Day Round Table on Revisiting the Death Penalty in Nigeria, organized by the Nigerian Institute of Advanced Legal Studies, held at the Institute's Lagos Campus, on 10 August, 2010.

69. *Ibid.*

70. See section 7 of the Criminal Code Act for the liability of principal offenders.

occurrence of the offence has continued to increase. The statistical evidence of a study by A. A. Adeyemi which spanned the pre-capitalization period 1967-1970 and the post-capitalization period 1971-1986, showed that the empirical study in no way supported the claim that the death penalty is efficacious as a deterrent for armed robbery offence. Whereas, the figures and rates for the pre-capitalization period showed decreases from the overall mean average, those for the post-capitalization period showed increases over and above the overall averages.⁷¹ Several arguments have been proffered in the debate on the abolition or retention of the death penalty. Whilst it is not the focus of this chapter to regurgitate those arguments, it suffices to say that at a Roundtable organized recently by the Nigerian Institute of Advanced Legal Studies, on "Revisiting Death Penalty in Nigeria", it was observed amongst other things that it is significant that there were no executions of condemned convicts in Nigeria during the period 1999 – 2009, except for the year 2002, when there was only 1 execution for culpable homicide in Kaduna, which was carried out on 3rd January, even though there were 475 condemned convicts in the prisons in that year; whilst there were only 7 executions in 2006 as follows: 1 for culpable homicide in Jos, carried out on 15 January, 2 for armed robbery in Kaduna, carried out on 30 May, and 4 for armed robbery in Enugu, which were carried out on 12 July, even though there were 739 condemned convicts in the prisons in that year.

The Roundtable also observed that the number of condemned convicts in the Nigerian prisons have steadily increased from 2002 to 2009, with the peak being reached in

71. See Table 3, in Adeyemi A. A.: "The Death Penalty in Nigeria: The Criminological Perspective", *Nigerian Current Law Review*, 1988/91, pp.1 – 34, at p. 8.

2009 (852). These increases can be attributed to the stoppage in the executions of condemned prisoners in thirty-three (33) States and the Federal Capital Territory, whose governors have refused to sign execution warrants since the enthronement of democracy in Nigeria in 1999.⁷² It is evident from the foregoing that State Governors are not willing to sign the warrant of execution, so why do we still retain the death penalty for many offences⁷³ when there is no will to execute convicts? The Roundtable recommended that while it is not in the best interest of the nation at this point to carry out a total abolition of capital punishment from our statutes, it is however, imperative that capital punishment as it relates to certain offences should be reviewed with a view to incrementally and progressively explore the prospect for reverting to lighter punishment, that is, life imprisonment.⁷⁴

72. See particularly, Adeyemi A. A.: "Revisiting the Death Penalty in Nigeria" *op. cit.* note 68.

73. The offences that attract the death penalty under our law presently are: Murder (sections 319 of the Criminal Code and 221 Penal Code); Treason (sections 37 and 38 of the Criminal Code and section 411 of the Penal Code); Treachery (section 49A of the Criminal Code); Giving False Evidence leading to the conviction and execution of an innocent person (section 159 of the Penal Code); Robbery with Firearms or Offensive Weapons (section 1 of the Robbery and Firearms Act); Trial by Ordeal Resulting in Death (sections 208 of the Criminal Code and section 214 of the Penal Code); Abatement of Suicide by a Person Below 18 years of Age Or by an Insane or Intoxicated Person (section 227 of the Penal Code); Adultery for a *Muhsin* and Allied Offences such as Incest or Rape (Shari'a Penal Codes such as Zamfara's); Homicide where the relations of the deceased elect that the offender be put to death (Sharia Penal Statutes); Homicide Committed at an Attempted Robbery (Sharia Penal Statutes); Homicide under Islamic law where the Victim was Lured by his Assailant (*Gheelah*); Aiding the Enemy and Cowardly behaviour by Members of the Armed Forces (sections 45, 46 and 47 of the Armed Forces Act).

74. See the *Communiqué* issued at the end of the One-Day Roundtable on "Revisiting the Death Penalty in Nigeria", organized by the Nigerian

The position of this chapter differs slightly from the proposal of the Roundtable. While agreeing that Nigeria is not yet ripe for a total abolition of the death penalty, it is the considered view here that rather than placing a term of life imprisonment for all cases of armed robbery, imprisonment for a minimum of twenty (20) years can be considered for cases where the robbery does not result in death, while the death penalty should apply to cases of armed robbery which results in death. This will hopefully reduce the fatality rate in armed robbery incidents and if backed with rigorous and consistent law enforcement, will certainly address the fear factor implicit in the insecurity posed to citizens by the armed robbers.

Police Response to Armed Robbery

The police is the government agency directly in charge of law enforcement. Section 214 (1) of the *Constitution* establishes the Nigeria Police Force as the only police force for Nigeria.⁷⁵ Part of their functions include: Preventing and detecting crimes, apprehending offenders, detaining suspects, interrogating suspects, drawing up charges and prosecuting

Institute of Advanced Legal Studies, held at the Institute's Lagos Campus, on 10 August 2010 in *The Nation*, Tuesday, August 17, 2010, pp. 42-43.

75. For the history and evolution of the Nigerian Police Force, see the following texts: Tamuno, T.: *The Police in Modern Nigeria, 1861-1965*, (Ibadan: University Press), 1970; *A Short History of the Nigerian Police Force. A Handbook of General Information* (The Nigerian Police Force Headquarters Lagos) 1981; Olurode L.: *The Law and Order Question in Nigeria*, (Lagos: Nigerian Law Publishers Ltd.), 1989 pp. 31-32 and *Policing a Democracy. A Survey Report on the Role and Functions of the Nigerian Police in a Past Military Era*. (Centre for Law Enforcement Education (CLEEN) and the National Human Rights Commission), 1999, pp. 10 -11.

cases⁷⁶. To do this job, the Police personnel are supposed to receive proper training and to be well equipped with adequate tools necessary for effective performance of their duty. Former Inspector General of Police, Mr. Sunday Ehindero told members of the National assembly that his mobile police men are ill-equipped to match the sophistication of armed robbers today. He mentioned lack of vehicles and spare parts, logistic problems, recruitment of criminals into the force, refusal of his men to carry out orders and the proliferation of arms in the country, especially by politicians as some of the problems confronting the police in the fight against robbery⁷⁷. Lack of vehicles and poor equipment has remained constant features of our police. Corruption within the police administration is one of the reasons why these problems have continued to plague the police.

A survey conducted by the CLEEN Foundation in 2005, shows that many people lost confidence in the police and as a result do not either report criminals or do not want to deal with the police because they have no money to give and in some instances resorted to self help measures. From Table 1 presented earlier, it is evident that the rate of armed robbery increased consistently during the periods 1994-1997, 1998-2001 and 2002-2005; but reduced significantly from 2005-

76. See sections 10, 11, & 55 of the Criminal Procedure Act; *Cap. C 41* Laws of the Federation of Nigeria, 2004; sections 4, 19 & 20 of the Police Act, *Cap. P 19*, Laws of the Federation of Nigeria, 2004. See also Article 1 of the United Nations Code of Conduct for Law Enforcement Officials (General Assembly Resolution 34/169 of 17. December 1979), which states that law enforcement officials at all times must fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

77. Available at:
<http://www.nasarawastate.org/newsday/news/nasara06/NewArticle312.html>. Visited on 12/7/2010.

2008 and increased again in 2009.⁷⁸ Recently, there has been a remarkable reduction in the rate of crime in Lagos State. The Lagos State Commissioner of Police, Mr. Marvel Akpoyibo, said the success of his command in fighting crime is directly linked to the support of the Lagos State government⁷⁹. As part of its constant support of the Police, the Lagos State government on Tuesday, February 23, 2010, presented 10 Armoured Personnel Carriers (APC) bought from the contributions of the local governments in the state to the Lagos State Police Command to improve security in the state. Governor Fashola acknowledged that:

the results are clear that security and protection of lives and property have improved in the state because the police are now better equipped. This proves that with the right equipment, the police can compete with police anywhere else in the world.⁸⁰

Besides injecting funds in the police and provision of equipments at both the Federal and State level, the creation of agencies like the Lagos State Traffic Management Agency (LASTMA), and at the federal level, the establishment of National Drug Law Enforcement Agency, (NDLEA); the Independent Corrupt Practices Commission, (ICPC); the Economic and Financial Crimes Commission (EFCC), the National Agency for the Prevention of Traffic in Persons, (NAPTIP), and the National Civil Defence have relieved the

78. Adeyemi A. A.: "Revisiting the Death Penalty in Nigeria" *op. cit.* note 68, p. 6.

79. Available at: <http://234next.com/csp/cms/sites/Next/Home/5530927-146/story.csp>. Visited on 12/7/2010.

80. *Ibid.*

police of some of their previous responsibilities and made them more focused in regular crime prevention and detection.⁸¹ Other factors responsible for the improvement of police efficiency in Nigeria include: the massive recruitment of personnel into the police; cooperation with the international community in the provision of modern training programmes for the police personnel; considerable increase in the remuneration of police personnel and massive improvement of welfare packages for police personnel.⁸²

Though statistics show a reduction in the rate of armed robbery for some years as seen above, the question is: was this statistical reduction actually felt by the populace? Reports of armed robbery incidents in the media will tend to answer the question in the negative, corroborated by the 2009 statistical report suggesting an increase in the rate of armed robbery despite the measures enumerated above. This definitely suggests that a lot still needs to be done and calls for more concerted efforts in crime prevention. Armed robbery as the definition suggests is the crime of taking or attempting to take something of value by force or threat of force and or by putting the victim in fear while armed. Besides the types of armed robbery known hitherto like highway robbery or "mugging"; carjacking, bank robbery, home robbery, etc, armed robbery has now evolved in the past two years into a worrisome mix of armed robbery and kidnapping. Armed robbers now kidnap innocent citizens with arms and ask for ransom from the victims friends and relatives, sometimes running into millions of naira. Kidnapping started in the Niger Delta, and the targets were foreigners. Later it was used as a means to protest the

81. See Adeyemi A. A.: "Revisiting the Death Penalty in Nigeria" *op. cit.* note 68, p. 6.

82. *Ibid.*

political imbalance in the country. Presently, it has been taken over by criminals/armed robbers as a money-making venture, less risky and more profitable.⁸³

The Nigerian Police on 2nd August 2010 began the recruitment of additional 40,000 policemen. This move has been criticized by proponents of State police who believe that more recruitment into the police force is not the solution to the worsening problem of insecurity in Nigeria. They proposed that the government should test run the enduring call for state police with about three states, to show how effective it could be in solving the security situation in Nigeria and that recruiting more men to the police without addressing the many woes the force faces will only increase the volume of rot facing the Nigeria Police Force.⁸⁴ Recruitment of more police men is not a bad idea, but absolute care should be taken in screening the applicants in order not to worsen the already bad image of the police by employing criminals and “area boys” into the force.

Conclusion

The growing sophistication of the armed robbers requires urgent security measures to address the menace both at the individual, community and national level. Lagos State no doubt has done a lot in crime prevention and detection, which has naturally led to a decline in the incidents of armed robbery in the State. This can not be said of the other States

83. See the observations in the *Communiqué* issued after a one day Roundtable on “Kidnapping and Abduction: Challenges for National Security” on the 2nd of March 2010, organized by the Nigerian Institute of Advanced Legal Studies, Lagos.

84. Bunmi Awolusi: “AC wants police recruitment halted”. Posted on August 5, 2010. Available at: <http://nigerianbulletin.com/2010/08/05/ac-wants-police-recruitment-halted-the-guardian/>. Visited on 9/8/2010.

who still depend wholly on the Federal Government to fund and equip the police. Such States should realize that though the present structure designates police as a federal matter, the governors still remain the Chief Security Officers of their respective States. The safety of their States lies in their hands. It need not be said that no meaningful development or governance can take place where there is palpable fear for life and property. A case in point is that of Aba, the commercial city of Abia State, where dare-devil robbers robbed banks for days without resistance. These bandits carried out a daily sustained terror on the city with great impunity that banks have no other option than to close business, paralyzing economic activities for some days.⁸⁵

The training police personnel is receiving is commendable, nevertheless this is still a far cry from what is actually needed considering the number of police men in the country who are still poorly trained. In the same vein, the equipments the police have received can best be seen as a drop in the ocean going by the population of Nigeria and the vast land mass that requires to be policed. Evidence of the kind of sophisticated weapons used by armed robbers, which in some instances are superior to what our police have in their armory, should be enough compelling reason to equip our police with the most modern weapons and equipments.

It has to also be stressed that until corruption is eradicated in the police through impeccable leadership; until the police is well armed, well equipped, well educated, well paid, well housed and well motivated, our police men and women cannot tackle and arrest the worsening armed robbery situation in Nigeria.

85. Available at: <http://news2.onlinenigeria.com/news/top-stories/28620-Armed-Robbery-Attacks-Banks-still-under-lock-Aba.html>. Visited on 9/8/2010.

Though the rise in armed robbery and other violent crimes has been attributed to poverty, unemployment and unequal distribution of wealth,⁸⁶ the unstable political environment in very close neighboring African countries with many armed groups may also be an important factor in the highway robbery. Our borders should be better policed to avoid migration of potential criminals into the country.

A conscious effort should be made to engage the large number of Nigerian youths in productive activities by creating employment opportunities and a conducive environment for financially empowering Nigerians. It is essential to reduce the incidence of poverty and massive deprivation that exist in our society by substantial socio-economic development and the overall development of society as the first step to dealing with the occurrence of armed robbery in our society.

86. Yinusa W. Oginma M.: "Extremity Gunshot Injuries in Civilian Practice" *op. cit.* note 63.