

SUPREME COURT OF NIGERIA  
FRIDAY 8<sup>TH</sup> MARCH, 2013. SC. 256/2010  
CORAM:- M. MOHAMMED, J. A. FABIYI,  
B. RHODES-VIVOUR, M. U. PETER-ODILI,  
K. B. AKA'AH, JJSC

GBENGA STEPHEN ..... APPELLANT  
V  
THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Confession - Conviction - Without corroboration a confession can sustain conviction - Provided court is satisfied of the truth therein (H1)

CRIMINAL PROCEDURE - Sentence - Statutory provision - S. 11(1) of the Cultism Prohibition Law - Does not give court discretion - To reduce the punishment provided therein (H2)

FACTS

Accused/appellant until his arrest was a student of the Federal Polytechnic Offa, Kwara State. He was arraigned before the High Court of Kwara State on a three count charge of attempted robbery, unlawful possession of firearms contrary to section 1(2) of Robbery & Firearms (Special provision) Act Cap R11 LFN 2004 and being a member of a secret cult and secret society contrary to section 11 of Secret Cult & Secret Societies in Higher Institutions (Prohibition) Law No. 6 of Kwara State 2004. At the trial, PW2 and PW5 testified that appellant came to their house at Offa and pointed a locally made pistol at PW2 which he PW2 later wrestled from appellant who escaped only to be later arrested and taken to the Police Station, Offa. A Buccaneer's sticker which was allegedly recovered from the house of appellant was tendered and admitted as Exhibit 2. A confessional statement of appellant was admitted as Exhibit 5, wherein he confessed of having been initiated into the cult group. He also confessed to have gone to the house of PW2 with a pistol (Exhibit 1).

At the end of trial, appellant was found guilty of being in

unlawful possession of firearms and being a member of a secret cult. He was thus convicted and sentenced to three years imprisonment with option of fine for the unlawful possession of firearms. Appellant was also sentenced to ten years imprisonment and N50,000.00 fine for being a member of a secret cult. Not satisfied, appellant filed appeal at the Court of Appeal Ilorin Division. The court dismissed the appeal and upheld the conviction and sentence passed by the trial court. Aggrieved further, appellant appealed to Supreme Court.

#### ISSUES FOR DETERMINATION

“1. Whether on the facts placed before the trial judge, the Court of Appeal was right to have upheld the conviction of the Appellant for the offence of being a member of a secret cult contrary to Section 11 of Secret Cult and Secret Societies in Higher Institutions (Prohibition) Law, No.6 of Kwara State, 2004.

2. Whether the Court of Appeal was right to have upheld the learned trial judge’s decision that it had no discretion to exercise when imposing punishment under Section 11 of Secret Cult and Secret Societies in Higher Institution (Prohibition) Law No. 6 of Kwara State, 2004.”

**HELD** (Unanimously dismissing the appeal per PETER-ODILI JSC)

CRIMINAL PROCEDURE - Confession - Conviction

1. It needs be reiterated that where the conditions are right a conviction can be founded solely on a confessional statement. My thinking is that this is one of such occasions. This is because Exhibit 5 is comprehensive in the details given by the Appellant himself thereby settling the joint requirement of actus reus and mens rea. This is in keeping with the provision of Section 27 of the Evidence Act. This position of things in relation to confessional statements has been given the necessary approval by no less a court than this court.

The other way around to what I have stated above is that it is now even trite law that a confession alone without corroboration is good enough to support a conviction as long as the court is satisfied that the confession is true. Indeed in this instance nothing has happened to impinge on the integrity of the confessional statement of the appellant. Therefore even standing alone a conviction can be sustained,

on the confessional statement. (p. 1425 A)

CRIMINAL PROCEDURE - Sentence - Statutory provision

2. Indeed the case of *Kayode v. State* (supra) effectively settles the question raised here and I do not hesitate in agreeing with the two Courts below that the section of that law Section 11 (1) of the Cultism Prohibition Law for short does not admit a discretion in the court to reduce the punishments as provided, that is the 10 years imprisonment with the N50,000.00 fine.

(p. 1428 D)

### REPRESENTATION

M. J. Onigbanjo, Onairi Otokunrin, for the Appellant

A. U. Mustapha, J. A. Mumini DPP Kwara State, Mike Enahoro, Olupitan Adesola, M. B. Alaya (Mrs.) PSC, for the Respondent

### CASES REFERRED TO

*NEPA v. Ososanya* (2004) 5 NWLR (pt. 867) 601

*Ezemba v. Ibeneme* (2004) 14 NWLR (pt. 894) 617

*Oche v State* (2007) 5 NWLR (pt. 1027) 235

*Dogo v State* (2001) 3 NWLR (pt. 699) 206

*Aigbadion v. State* (2000) 7 NWLR (pt. 666) 701

*Orji v. PDP* (2009) 14 NWLR (pt. 1161) 310

*Egboghonome v. State* (1993) 7 NWLR (pt. 306) 388

*Okeke v. State* (2003) SCM 131

*Ogoala v. State* (1991) 2 NWLR (pt. 175) 509

*Queen v. Obiasa* (1962) 2 SCNLR 402

*Achbua v. State* (1976) 8 NWLR 714

*Offorlete v. State* (2002) 2 NWLR (pt. 681) 451

*Okereke v. State* (1998) 3 NWLR (pt. 540) 75

*Musa v. State* (2006) 1 CLPR (pt. 78) 91

*Obasi v State* (1992) 8 NWLR (pt. 260) 383

### STATUTES REFERRED TO

Robbery & Firearms Act Cap R11 LFN 2004, s. 1(2)

Secret Cult & Secret Societies in Higher Institutions (Prohibition) Law  
No. 6 of Kwara State 2004, ss. 11, 17

LEAD JUDGMENT BY PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal, Ilorin Division in a lead judgment delivered by Sotonye Denton-West JCA on 10-12-09. In that judgment the Court below upheld the conviction of the Appellant for the offences of being found in possession  
B of a locally made pistol and for cult activities. Dissatisfied further the Appellant has come before this court vides Notice of Appeal dated 8th February, 2010.

## FACTS:

By an application for leave to prefer a charge in the High  
C Court dated 2nd October, 2007, the Appellant was arraigned on a three count charge of attempted robbery, unlawful possession of firearms contrary to Section 1(2) of Robbery & Firearms (Special provision) Act Cap R11, LFN 2004 and being a member of a secret cult and secret society contrary to Section 11 of Secret Cult and Secret Societies in Higher Institutions (Prohibition) Law No. 6 of Kwara State 2004.  
D

In a considered judgment S. M. Akanbi J of the Kwara State High court delivered on 7th July 2008, the Appellant was found guilty  
E of being in unlawful possession of firearms and being a member of a secret cult. The learned trial judge sentenced the appellant to a term of 3 years imprisonment with option of N10,000.00 fine for the offence of unlawful possession of firearms while the same appellant was also sentenced to 10 years imprisonment and N50,000.00 fine  
F for being a member of a secret cult.

The background to this appeal is that the Appellant until his arrest was a student of the Federal Polytechnic Offa, Kwara State as an HND 1 student in the Department of Marketing.

The Appellant was charged and tried for the offences of attempted robbery, unlawful possession of firearms and being a member  
G of a secret cult. The prosecution called 5 witnesses and tendered five exhibits marked Exhibits 1, 2, 3, 4 and 5 while the Appellant was his only witness.

In the course of that trial PW2 and PW5 testified that the appellant came to their house at Offa and pointed a locally made  
H pistol at PW2 which he PW2 later wrestled from the appellant who escaped only to be later arrested and taken to the Police Station, Offa. A Buccaneer's sticker which was allegedly recovered from the

house of the Appellant was tendered and admitted as Exhibit 2.

A confessional statement of the Appellant was admitted as Exhibit 5 in which appellant said he was initiated to the Buccaneer cult group along with other persons whose names he stated. That the initiation took place sometime in 2003 at a bush in Offa by one B  
Wale, Niyi and others. That he was contracted by Sunday Adeniran to intimidate PW2 and on getting to the house of pw2, on knocking at the door and the door being opened he, Appellant pointed the locally made pistol (Exhibit 1) at pw2 who wrestled the said exhibit from him while he ran off but later apprehended. C

On his arrest a search was conducted in his house by the police led by PW3 and the two Buccaneer stickers (Exhibit 2) were recovered. The appellant was convicted as charged by the trial court which conviction was upheld by the Court of Appeal.

On the 10th day of January 2013 when this appeal was D  
heard, the learned counsel for the Appellant adopted the Brief of argument settled by M. J. Onigbanjo filed on 11/8/11 and deemed filed on 24/10/12. In the Brief were couched two issues for determination stated as follows:-

“1. Whether on the facts placed before the trial judge, the E  
Court of Appeal was right to have upheld the conviction of the Appellant for the offence of being a member of a secret cult contrary to Section 11 of Secret Cult and Secret Societies in Higher Institutions (Prohibition) Law, No.6 of Kwara State, 2004. (Relates to Grounds F  
1, 2, 3 and 4 of the Grounds of Appeal).

2. Whether the Court of Appeal was right to have upheld the learned trial judge’s decision that it had no discretion to exercise when imposing punishment under Section 11 of Secret Cult and Secret Societies in Higher Institution (Prohibition) Law No. 6 of Kwara G  
State, 2004.” (Relates to Ground 5 of the Grounds of Appeal).

Learned counsel for the Respondent adopted their Brief settled by J. A. Mumini Esq. and filed on 8/1/13. He adopted the issues as formulated by the Appellant. I would also utilize those issues as H  
framed.

#### ISSUE 1:

This is an issue that has to do with whether the facts placed before the trial court, the Court of Appeal was right to have upheld the conviction of the Appellant for the offence of being a member

of a secret cult contrary to section 11 (1) of Secret Cult and Secret Societies in Higher Institutions (Prohibition) Law No.6 of Kwara State, 2004.

On that question above, learned counsel for the Appellant submitted that there was a paucity of evidence provided by the prosecution in support of the charge. That from the statement of the appellant to the police the Appellant never said he attended Buccaneer meetings and so the perverse decisions of the two Courts below should be reversed by this court. He cited NEPA v. Ososanya (2004) 5 NWLR (Pt.867) 601 at 54; Ezemba v Ibeneme (2004) 14 NWLR (Pt.894) 617 at 689.

For the Appellant was further stated that though the appellant confessed to being a member of Buccaneer confraternity he stated in evidence that he left the association and so this retraction should weigh on what should be done with the statement. He cited Oche v State (2007) 5 NWLR (Pt.1027) 235.

That the doubt that is created on the status of the appellant being a member or not should be resolved in his favour. He referred to Dogo v state (2001) 3 NWLR (Pt.699) 206 - 207; Aigbadion v. State (2000) 7 NWLR (pt.666) 701.

Learned counsel for the Appellant went further to state that it was not established that Appellant belonged to any secret cult and also that the prosecution had not proved that the said Buccaneer cult was a secret cult or society. He said the failure to so prove of the nature of the Society was fatal to the prosecution's case. He relied on Orji v PDP (2009) 14 NWLR (pt.1161) 310 at 402- 403.

For the Respondent it was contended that having regard to the evidence led by the prosecution before the trial court, the Court of Appeal was right to have upheld its conviction of the Appellant. That even the confessional statement of the appellant, Exhibit 5 was enough to ground the conviction. He cited Sections 7 and 11 of the secret cult and Secret society in Educational Institution (Prohibition) Law 2004; Egbogbonome v The State (1993) 7 NWLR (Pt.306) 388 at 433; Okeke v The State (2003) SCM 131 at 189; Ogoala v The State (1991) 2 NWLR (Pt.175) 509; Queen v Obiasa (1962) 2 SCNLR 402; Achbua v. The State (1976) 8 NWLR 714.

He stated on, that the Appellant claiming to have renounced the secret society was not enough just by merely saying so in court. He

ought to have supplied sufficient materials from which it can be said the renunciation did in fact take place. He cited *Offorlete v. The State* (2002) 2 NWLR (pt.681) 451 at 437; *Okereke v The State* (1998) 3 NWLR (pt.540) 75 at 94; *Adeboye Musa v The State* (2006) 1 CLPR (Pt.78) 91; Section 17 of the Secret Cult Law of Kwara State.

That the proof beyond reasonable doubt is not synonymous with proof beyond every shadow of doubt. He cited *Bakare v. The State* (1987) 3 SCNJ 9. B

For a clearer view, I shall quote the three counts upon which the Appellant was charged which are, viz:- C

Count One:

That you Gbenga Stephen on or about the fifth day of December, 2005 at about 9.00pm at a house beside Avalon Hotel Offa Kwara State within the jurisdiction of this honourable court did commit an illegal Act; to wit attempted robbery in that while armed with a locally made pistol, you attempted to rob one Abdul Kayode and his sister Fatima Abdullahi and you thereby committed an offence punishable under Section 1 (2) of the Robbery and Firearms (Special Provisions) Act Cap R11 Laws of Federation of Nigeria 2004. D

Count Two: E

That you Gbenga Stephen on or about the 5th day of December, 2006 at about 9.00pm at a house beside Avalon Hotel Offa, Kwara State within the jurisdiction of this honourable court did commit an illegal Act to wit being found in possession of an unlawfully locally made pistol and you thereby committed an offence punishable under Section 3 (1) of the Robbery and Firearms (Special Provisions) Act Cap R11 Laws of the Federation of Nigeria 2004. F

Count Three:

That you Gbenga Stephen on or about the 5th day of December, 2006 at Offa Kwara State within the jurisdiction of this honourable court did commit an illegal Act; to wit being a member of a Secret Cult (i.e. Buccaneer Confraternity) and you thereby committed an offence punishable under Section 11 of Secret Cult and Secret Societies in Higher Institutions (Prohibition) Law No.5 of Kwara State 2004. G

The finding in respect of Count one of attempted robbery, the learned trial judge held thus:

“Even though the suspect went to the house of PW2, pointed H

a dane gun without pellet, and no expended shells in its chamber (sic) his intention was to intimidate, the best he could be convicted for his criminal intimidation or criminal force or assault since there was no actual violence to establish this also with is like chasing shadow; having regard to the evidence and the reason which I have adduced  
 B above, it will be difficult to convict the accused on this count of attempted robbery in all the definitions both of attempt in the penal code and robbery and firearms act, intention is very crucial to conviction, since there was no intention as inferred from the pieces of evidence  
 C adduced. It will be difficult to sustain this count...”

The Court of trial jettisoned this first count of attempted robbery the ingredients of actus reus and mens rea not going conjunctively as only the actus reus was available. He however found the other two counts of unlawful possession of firearms and being a member of a secret cult proved in accordance with the standard of  
 D proof required precisely proof beyond reasonable doubt in place.

On appeal, the Court below was at one with the trial court and dismissed the appeal on the ground that it was unmeritorious. This brought about the umbrage of the Appellant’s counsel who holds the view that there was paucity of evidence and that the Appellant had  
 E in evidence renounced the membership of the cult group. Taking the above stance the learned counsel for the appellant seemed to take a selective stand point. Firstly, the Appellant had made a confessional statement admitted as Exhibit 5, excerpts there from being thus:

“On the 6th December, 2006 when the officers from the State  
 F CID Ilorin came to my house along complex road for the execution of search warrant, two stickers (sic) were recovered which of course were given to me at Buccaneer party which I attended early this year.”

Again in the same confessional statement, the Appellant admitted going to the house of PW2 and pointed the locally made  
 G pistol at his sister and PW2 who was around rushed at him. He further accepted in Exhibit 5 having gone there on the directive of his Buccaneer associates. For a fact, what appellant said in the extra-judicial statement and in court belied a position of a non-member of the secret society namely Buccaneer Confraternity or a member who had renounced membership and no longer connected. This is all the  
 H more compelling considering that the Fraternity symbols or stickers were still in his possession.



It needs be reiterated that where the conditions are right a conviction can be founded solely on a confessional statement. My thinking is that this is one of such occasions. This is because Exhibit 5 is comprehensive in the details given by the Appellant himself thereby settling the joint requirement of actus reus and mens rea. This is in keeping with the provision of Section 27 of the Evidence Act. This position of things in relation to confessional statements has been given the necessary approval by no less a court than this court. See *Egbogbonome v. State* (1993) 7 NWLR (Pt.306) 388 at 433 per Olatawura JSC; *Obasi v State* (1992) 8 NWLR (Pt.260) 383 at 398. B

The other way around to what I have stated above is that it is now even trite law that a confession alone without corroboration is good enough to support a conviction as long as the court is satisfied that the confession is true. Indeed in this instance nothing has happened to impinge on the integrity of the confessional statement of the appellant. Therefore even standing alone a conviction can be sustained, on the confessional statement. See *James Achbua v. The State* (1975) 10 NSCC 714. C

As if the effect of the confessional statement was not enough, then comes the damning corroborative pieces of evidence such as the stickers and the retrieved locally made gun. All these coming in the heels of a weak denial of further membership of the confraternity especially since the Appellant apart from making that naked assertion that he had renounced membership gave no details as to when and before whom and the where such a denunciation was made. These are issues only the Appellant and not the prosecution would proffer. Therefore the facts available situated within the precinct of Section 17 of the Secret Cult Law of Kwara State, nothing precludes this court in supporting the concurrent findings of the two Courts below. For effect Section 17 of the said Law provides as follows:- D

“17: Secret Cult” or Secret Society” includes a cult or any society, association, group or body of persons (whether registered or not):- E

a) that uses Secret Signs, Oaths, Rites or Symbols and which is formed to promote a cause, the purpose or part of the purpose of which is to foster the interest of its members and to aid one another under any circumstance without due regard to merit, fair play or justice to the detriment of the legitimate interest of those who are not F

members;

b) whose activities are not known to the Public at large, the means of whose members are kept secret and whose meeting and other activities are held in secret;

c) pursuing activities which are illegal, inimical, destructive or unlawful; and

d) not duly registered with the respective Educational Institution as a Club or Society.”

Clearly the prosecution as the trial Court found and the Court of Appeal agreed had established or proved the offences of unlawful possession of firearms and belonging to a Secret Society beyond reasonable doubt. Stated differently is that the Appellant’s case has no fighting chance since there is a certainty of the committal of the offences and by no other than himself. In this I am at one with Obaseki JSC in *Mufutau Bakare v. State* (1987) 3 SCNJ 9.

In respect of the count of unlawful possession of firearms contrary to Section 3 (1) of the Robbery and Firearms (Special Provisions) Act Cap R11 Laws of Federation of Nigeria 2004 which provides as follows:-

“Any person having a firearm in his possession or under his control shall be guilty of an offence under this Act and shall upon conviction under this Act be sentenced to a fine of twenty thousand naira or to imprisonment for a period of not less than 10 years or both.”

On this matter of unlawful possession of the locally made gun are the confessional statements of the Appellant and the corroborating evidence like the gun itself recovered, tendered and admitted as exhibit. The evidence of PW1, PW2 and the testimony of the Appellant confirmed that he had a gun which he pointed at the sister of the boy he went to intimidate while he and the complainant Abdul Kayode who he said was of Aiyé Confraternity wrestled him to the ground disarming him.

From the confessional statement which is direct and positive can be sustained the charge not to talk of the corroborating pieces of evidence including the evidence of the appellant. It is safe to say that the offence had been proved as required by law beyond reasonable doubt. I place reliance on *Edet Obiasa v State* (1965) NMLR 119; *Yusuf v State* (1975) 6 SC 167 at 173.

The issue herein is without doubt resolved in favour of the Respondent as the attempt by the Appellant to wriggle out of the tight corner is too flimsy for any impact.

ISSUE 2:

The question herein raised is if the Court of Appeal was right to have upheld the trial court's decision that it had no discretion to exercise when imposing the maximum punishment under section 11 of the Secret Cult and Secret Societies in Higher Institutions (Prohibition) Law No.6 of Kwara State, 2004. B

On the point above stated learned counsel for the Appellant said in denying the Appellant the right to have the discretion exercised in his favour the Court of Appeal relied on the general perception of the public as to the havoc that cultism had wrecked on the society at large even though no single shred of evidence to that effect was placed before the court. That in doing that the Court of Appeal relied on speculation. He referred to Ezemba v. Ibeneme (2004) 14 NWLR (Pt. 894) 617; Dalfam Nig. Ltd v Okaku Int. Ltd (2001) 15 NWLR (Pt.735) 203 at 237; In Re Alase (2002) 10 NWLR (Pt.776) 553 at 563 - 564. C D

In response, learned counsel for the Respondent said the terms of ten years imprisonment and N50,000.00 fine are both mandatory and the judge had no discretion to exercise. That the law provided ten years imprisonment and fifty thousand naira. That "And" as used in the said section is conjunctive. He referred to Kayode v. The State (2008) 2 All FWLR (Pt.402) 1014 at 1032. E F

He said the observations of the Lower Court on the menace of cultism was not based on sentiment but based on a sincere evaluation of the state of affairs of our higher institutions in relation to the facts exhibited by the case before it. That it was not out of place for the Lower Court to observe by way of obiter dictum and notable pronouncement in this case. Section 11 of the Secret Cult and Secret Societies in Higher Institutions (Prohibition) Law No. 6 of Kwara State, 2004 provides thus:- G

"Any student or person who contravenes the provisions of Section 6 (1), 7 and 9 of this law shall be guilty of an offence and shall be liable on conviction to ten years imprisonment and a fine of Fifty Thousand Naira (N50,000.00)."

I would like in this regard to adopt what the Court of Appeal H

did in *Kayode v. The State* (2008) 2 All FWLR (Pt.402) 1014 at 1032 in interpreting this same section of the same law and that is thus:-

“I now examine the provision of Section 11 (1) of the Secret Cult and Secret Societies in educational institution (Prohibition) Law 2004 with a view to finding out whether the law gives the trial judge  
B specific mandate to impose both term of imprisonment and fine...  
The above section is clear and self explanatory, the law gives the judge specific mandate to impose both the terms of imprisonment and fine. I am of the considered view that the law provides ten years  
C imprisonment and fifty thousand naira fine. And as used in the section is conjunctive and I hold the trial court had no discretion in the sentence passed after convicting the appellants” per Abdullahi JCA.

Indeed the case of *Kayode v. State* (supra) effectively settles the question raised here and I do not hesitate in agreeing with the two Courts below that the section of that law Section 11 (1) of the  
D Cultism Prohibition Law for short does not admit a discretion in the court to reduce the punishments as provided, that is the 10 years imprisonment with the N50,000.00 fine.

The criticism of the trial court’s deprecation of the acts of cultism changes nothing as the court was at liberty to deplore a gross  
E misconduct with its attendant evil visited on the society in the name of cultism or secret society activities. If the judge does not state his finding such conduct or anti-social activities deplorable, who then is better qualified?

From the above clearly, the Appellant has not been able to shift the Court’s mind to his point of view as everything is weighted against his appeal. The issue is resolved in favour of the Respondent and I need to add that the appeal is unmeritorious and I dismiss it. I affirm the judgment of the Court of Appeal which in turn had affirmed the decision, conviction and sentences of the Appellant at the trial  
G High Court.

MOHAMMED JSC

I have had a preview of the judgment just delivered by my learned brother Peter-Odili JSC. I entirely agree with the judgment  
H particularly the manner the issues arising for determination in this appeal were closely scrutinised and resolved before arriving at the

final conclusion that the Appellant's appeal against his conviction and sentences for the offence he was charged, lacked merit and ought to be dismissed. The Appellant's main complaint against the sentence of 10 years imprisonment and N50,000.00 fine for his conviction for the offence under Section 11(1) of the Secret Cult and Secret Societies in Educational Institution (Prohibition) Law, 2004 of Kwara State in this appeal has to fail because compliance with the minimum sentence under the law is mandatory in order to ensure the prevalence of conducive atmosphere of learning in our educational institutions. B

Accordingly, I also dismiss this appeal and further affirm the conviction and sentence passed on the Appellant by the trial Court and affirmed by the Court below. C

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#### FABIYI JSC

I had the advantage of reading in advance the judgment just delivered by my learned brother - Peter-Odili, JSC. I agree with the reasons therein assembled to arrived at the conclusion that the appeal lacks merit and should be dismissed. E

The appellant was charged and tried on three counts, to wit - attempted robbery, unlawful possession of firearms and being a member of secret cult. Five witnesses testified to prop the case of the prosecution. The confessional statement of the appellant was admitted as Exhibit 5. Therein, he admitted that he was initiated into the Buccaneer cult group sometime in 2003 at a bush in Offa. He said he was contracted by one Sunday Adeniran to intimidate PW.2 and on getting to his house he pointed a locally made pistol (Exhibit 1) at PW.2 who wrestled the pistol from him. The appellant said he ran away but was later apprehended. The police conducted a search in his house and two Buccaneer stickers (Exhibit 2) were recovered. F G

The appellant was convicted as charge for belonging to a secret cult group. As a student at the material time, he was let off on the charges touching on attempted robbery and unlawful possession of firearms. He was really fortunate, I should say. H

The appellants' confessions in his cautioned statement nailed him. The admission made by the appellant was corroborated by the Buccaneer stickers - Exhibit 2 which were recovered from his house.

After all, corroborative evidence is evidence which is supplementary to that already given and tending to strengthen or confirm it. It is additional evidence of a different character to the same point. *Edwards v. Edwards Tenn* - App 501 SW 283 289 (Black's Law Dictionary Six Edition, page 344).

B The learned counsel for the appellant, with all the cold facts in the transcript record of appeal, still submitted that the case was not proved beyond reasonable doubt. This is the usual ploy always embarked upon by defence Lawyers in recent times. All the ingredients of the charge were clearly established. Proof beyond reasonable doubt does not equate with proof beyond every shadow of doubt. See: *Bakare v. The State* (1987) 3 SCNJ 9.

I wish to repeat that the appellant was lucky to be let off on the counts touching on attempted armed robbery and being in unlawful possession of firearms.

D The two courts below made concurrent findings of fact which were not shown to be perverse. This court cannot interfere with same. See: *Oduntan v. Akibu* (2000) 7 SC (Pt.2) 106.

E For the above reasons and the detailed ones carefully adumbrated in the lead judgment, I, too, feel that the appeal lacks merit and should be dismissed. I order accordingly, and endorse all the consequential orders therein contained.

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#### RHODES-VIVOUR JSC

I read the draft of the leading judgment prepared by my learned brother Peter-Odili, JSC, I am in complete agreement with it. The appellant was tried and convicted for the offences of:

G (a) unlawful possession of firearms contrary to section 3(1) of Robbery and Firearms Act, and

(b) being a member of Secret Cult contrary to section 7 of the Kwara State Secret Cult Law of 2004.

The trial judge sentenced the appellant to 3 years with option of N10,000 fine and 10 years and N50,000 fine respectively. The judgment was confirmed by the Court of Appeal.

H The appellant was convicted largely on his confessional statement. The long held position of the law is that where the extra-judicial

confession of an accused person has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt it is sole to convict on it. See *Aremu v. State* 1984 6 SC 85 *Akinfe v. State* 1988 3 NWLR pt.85 p.729, *Ejinima v. State* 1991 6 NWLR pt.200 p.62

A confessional statement is proved to have been made voluntarily when at the stage of tendering the confessional statement there is no objection from the accused person or his counsel as to the voluntaries of the statement. During investigations PW4 Inspector Dabo Ezekiel obtained an extra judicial confessional statement from the appellant. During trial on 27/3/08 the State sought to tender the extra judicial confessional statement. This is what transpired.

“State Counsel: we seek to tender the statement of the accused as exhibit.

Mr. Atirene Defence Counsel: I object to the admissibility of the statement of the accused on the grounds that it is not voluntarily made. I am withdrawing the objection. I pray that substantial justice be done in this case.

Court: Cautionary statement of the accused is admitted and marked exhibit 5.”

It is clear to my mind from the proceedings that the appellant’s confessional statement is true since there was no objection from the appellant at the stage when it was tendered as an exhibit. Both courts below were correct to be satisfied with that fact. It is long settled that it is desirable to have outside the confession some evidence which makes its probable that the confession was true. See *Kopa v. State* 1971 ALL NLR p.160 *Njoku v. State* 1992 8 NWLR pt.263 p.714

The confession of being in possession of a gun and a member of a secret cult was free and voluntary and in itself fully consistent and probable, and exhibit 5, the confessional statement was corroborated by several facts testified to by the prosecution witnesses e.g. evidence of PW2 and 5. They show that the confession is true.

For this and the detailed reasoning of my learned brother, Peter-Odili, JSC the appeal is dismissed.

AKA’AHS JSC

I had a preview of the judgment of my learned brother, Peter-Odili JSC and I agree that the appeal lacks merit.

The prevalence of secret cults in our tertiary institutions does not make for a good learning environment. It is a menace that should be stamped out and anyone found to be engaged in such activities should be severely dealt with and should not be accommodated within the institution. For this and the greater reasons articulated in  
B the leading judgment, I too will dismiss the appeal.

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