

THE HIGH COURT

[2016 No. 90 S.S.]

IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT 1857, AS EXTENDED BY SECTION 51 OF THE COURTS
(SUPPLEMENT PROVISIONS) ACT 1961

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS (GARDA ADRIAN COFFEY)

PROSECUTOR

AND

STEVEN BENNETT

DEFENDANT

JUDGMENT of Mr. Justice White delivered on the 30th of November, 2016

1. This is an appeal by way of case stated by Judge Ann Ryan of the District Court pursuant to s. 52(1) of the Courts (Supplemental Provisions) Act 1961, on the application in writing of the Defendant having been dissatisfied with the determination of the learned Judge as being erroneous on a point of law.

2. The Defendant was convicted on three charges on 31st March, 2015, one of which was an allegation that on 8th July, 2014, at Pembroke Road, Dublin 4, a public place did without lawful authority or reasonable excuse, wilfully prevent or interrupt the free passage of a vehicle in said public place, contrary to Section 9 of the Criminal Justice(Public Order) Act 1994.

3. The offence was taken into consideration when the Defendant was sentenced to a suspended five month prison sentence on a charge contrary to s. 19(3)(c) of the Criminal Justice (Public Order) Act 1994, that he resisted Garda Adrian Coffey a police officer acting in the execution of his duty.

4. The facts determined by the learned judge were as follows:-

(a) On 8th July, 2014, a political protest took place outside the Israeli Embassy on Pembroke Road, Dublin 4. The protest was organised by the Defendant and some others and was motivated by his opposition to Israeli military air strikes on Gaza City.

(b) A short sit down protest took place within the context of a larger protest outside the Israeli Embassy premises. The larger protest commenced at about 7am and continued through the time the Israeli ambassador's car was obstructed by the Defendant at around 9am.

(c) The Defendant, and one Saoirse Bennett then laid down on the side of the public road in an effort to obstruct the passage of the Israeli ambassador's car as it drove towards the entrance of the embassy's premises. The ambassador's car was accompanied by an unmarked Garda Síochána car. The Gardai then directed the Defendant to desist from obstructing the road under s. 8 of the Criminal Justice Public Order Act 1994, and outlined the consequences of any breach of that instruction.

(d) The sit down protest which obstructed the ambassador's car was of very short duration. The Defendant passively resisted being removed from the road by stiffening his limbs. He also held on to the leg of Saoirse Bennett. The Gardai then forcibly removed him. The obstruction caused by the sit down protest lasted about twenty seconds because of the quick intervention of Gardaí.

(e) The Defendant was peaceful throughout the protest. He did not make any threat of violence, overt or otherwise to the Israeli ambassador, or any of the other occupants of the car or anyone else.

(f) The Gardaí intervened very quickly to physically remove the Defendant from obstructing the passage of the Israeli ambassador's car.

5. After the evidence concluded and submissions were made, the learned judge held:-

"The right of a citizen to assemble peacefully to express opinions freely is guaranteed subject to public order and morality. However, I found that in the particular circumstances of this case considering safety, security and sensitively concerns – that the obstruction caused by the Defendant was without lawful authority or reasonable excuse."

6. The opinion of the High Court is sought on the following question:-

"(1) in a prosecution pursuant to s. 9 of the Criminal Justice Public Order Act 1994, is a sit down political protest – which obstructs the passage of a car for a period of about twenty seconds, in circumstances where there were no threats of violence overt or otherwise, towards the occupants of the car – an act which is capable of lawful authority or reasonable excuse."

7. While the question posed seems to be a general question of law without application to any particular case, the court should answer the question in the context of the specific appeal by way of case stated and the facts as found by the learned judge,

Relevant extracts from Sections 8 of the Criminal Justice Public Order Act 1994, state,

(1) Where a member of the Garda Síochána finds a person in a public place and suspects, with reasonable cause, that such person—

(a) is or has been acting in a manner contrary to the provisions of section 4, 5, 6, 7 or 9, the member may direct the person so suspected to either or both of the following that is to say,

(i) desist from acting in such a manner, and

(ii) leave immediately the vicinity of the place concerned in a peaceable or orderly manner.....

Section 9 of the Criminal Justice(Public Order) Act 1994 states,

Any person who, without lawful authority or reasonable excuse, wilfully prevents or interrupts the free passage of any person or vehicle in any public place shall be liable on summary conviction to a fine not exceeding [€400].

8. Article 40.6.1 of the Constitution states:-

The State guarantees liberty for the exercise of the following rights, subject to public order and morality:-

ii The right of the citizens to assemble peaceably and without arms.

Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas.

9. Section 2 of the European Convention on Human Rights Act 2003, states:-

"In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions."

Article 10 of the Convention under the heading "Freedom of expression" states,

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

10. Article 11 under the heading of Freedom of Assembly and Association states:-

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

11. The principles regarding how the High Court should approach issues of fact and of law in a case stated are summarised in *Proes v. Revenue Commissioners* [1998] 4 I.R. 174, by Costello P. In item 4 in the head note it states as follows:-

"4. That the High Court, when considering a case stated as to whether a particular option was correct in law, should apply the following principles:-

(i) findings of primary fact by the trial judge should not be disturbed unless there is no evidence to support them,

(ii) inferences from primary facts are mixed questions of fact and law,

(iii) if the trial judge adopted a wrong view of the law, his conclusions should be set aside,

(iv) if the trial judge's conclusions are not based on a mistaken view of the law, they should only be set aside if he drew inferences which no reasonable judge could draw.

Mara (Insp. of Taxes) v. Hummingbird Ltd. [1982] I.L.R.M. 421 and *Ó Cúlacháin v. McMullan Brothers Ltd.* [1995] 2 I.R. 217 applied."

12. The words lawful authority or reasonable excuse in section 9 of the Criminal Justice(Public Order) Act 1994 must be considered separately by a trial judge hearing a prosecution pursuant to the section.

13. Lawful authority means something permitted by law which did not apply to the Defendant. The issue was the "reasonable excuse" defence of the Defendant's activity.

14. The Defendant in his legal submissions has accepted that the learned District Judge may have considered the question as to whether the impugned activity of the Defendant might have qualified as being done with a reasonable excuse. However, it was submitted that as the question was certified, it indicated that the learned District Judge did not accept that the action was capable of being done with reasonable excuse.

15. It was submitted that the Defendant was entitled to:-

(a) an explicit finding by the learned trial judge that as a matter of law, a sit down political protest causing an obstruction of the passage of a car for a period of about twenty seconds, in circumstances where there are no threats of violence, was capable of being done with reasonable excuse;

(b) that once the issue arose, the prosecution was obliged to prove beyond a reasonable doubt that the Defendant did not have a reasonable excuse for his actions; and

(c) a ruling from which it could be seen that only relevant matters were taken into account in deciding whether in the particular circumstances the Defendant did not have a reasonable excuse.

16. The Defendant places emphasis on the fact that he was engaged in a peaceful protest and that the length of his obstruction of the public road was no more than twenty seconds.

17. In both *G. v. Federal Republic of Germany* No. 13079/87, a decision of 6th March, 1989 and in *Lucas v. United Kingdom* Application No. 39013/02, a decision of 18th March, 2003, the restriction on freedom of expression and freedom of peaceful assembly as set out in Article 10(2) and Article 11(2) of the Convention was considered, by the European Court of Human Rights and the Commission.

18. In the *Lucas* case, the European Court of Human Rights, reviewed the conviction of the applicant for committing a breach of the peace, when she sat on the public road leading to Faslane naval base in Scotland, and when asked to move on and refused to do so she was subsequently arrested, convicted and fined. The court concluded that any interference with the applicant's rights under Article 10 and 11 was justified under its terms and provisions.

19. The court at page 9 of its judgment stated,

"Contrary to the submissions of the applicant, the Court considers that the arrest, detention and conviction of the applicant may be regarded as pursuing the interests of public safety and/or for the prevention of disorder and therefore, that the interference with her rights pursued one or more of the aims listed in Article 10 ~ 2. Finally, the Court finds that the action of the police in arresting and detaining and of the national court in convicting the applicant were proportionate to the legitimate aim pursued in view of the dangers posed by the applicant's conduct in sitting in a public road and the interest in maintaining public order as well as the relatively minor penalty that was imposed.

Therefore, the Court concludes that any interference with the applicant's rights under Article 10 was justified under the terms of that provision.

As regards the applicant's complaints that her arrest, detention and conviction constituted an unjustified interference with her rights under Article 11, the Court considers that the demonstration in which the applicant participated falls within the terms of Article 11 since the organisers and participants intended to hold a peaceful assembly (see, for example, *G. v. Federal Republic of Germany*, no. 13079/87, Commission decision of 6 March 1989, Decisions and Reports 60, p.256). While the arrest, detention and conviction of the applicant constituted interference with her right to freedom of assembly (*ibid*), the Court finds that the interference must be regarded as justified under the terms of Article 11.2. The same criteria for justification as listed above in the case of Article 10 also apply to Article 11 and the same conclusions apply in the present case.

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35.3 and 4 of the Convention.

20. Our own constitutional provision protects the right of citizens to assemble peaceably and without arms, however, they are subject to certain controls prescribed by law to preserve public order, which is the proportionate response to the guaranteed freedom.

21. The Prosecutor pursuant to s. 9 of the Criminal Justice (Public Order) Act 1994, had the onus of establishing beyond reasonable doubt that the Defendant without reasonable excuse wilfully prevented or interrupted the free passage of any person or vehicle in any public place. It was up to the trial judge to determine if there was any reasonable excuse. It is not a strict liability or absolute offence.

22. The trial judge considered the issues of safety, security and sensitivity to be paramount and found that the occasion of a protest outside the Israeli Embassy, where the ambassador's car was obstructed, was a particularly sensitive situation. She took notice that the State provides extra security to this particular embassy on an ongoing basis. The learned judge found that the Defendant's protest was well organised and motivated politically and that the intention was to prevent the ambassador gaining access to the embassy, that the protest took place at a time of the day at which the public road was busy with vehicular and pedestrian traffic and found that the Defendant had no consideration of the possible dangers that might have arisen to the ambassador, the staff of the embassy, the Gardaí or the general public and that the Defendant's protest could have caused a heightened security risk, because of the particular ambassador involved. She considered that there was a possibility of provoking others to commit unlawful acts.

23. The trial judge found in this particular case that considering safety, security and sensitivity concerns that the obstruction caused by the Defendant was without lawful authority or reasonable excuse. The length of time of the obstruction is a factor to be taken into account, but not relevant in this prosecution, as the Defendant did not voluntarily desist from the activity when asked to do so, but had to be forcibly removed. A non-violent obstruction comes within the ambit of the Section.

24. The trial judge did not adopt a wrong view of the law and did not draw any inferences which no reasonable judge could draw, so applying the facts as found in this case stated, the answer is in the negative.

25. There may well be occasions, where a peaceful protest causes obstruction in a public place, and a trial judge in a prosecution pursuant to s. 9 decides that the prosecution has not rebutted the defence of reasonable excuse, but this prosecution and conviction is not one of them.