



THE COURT OF APPEAL

[185/18 & 198 CJA/18]

The President

McCarthy J.

Kennedy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

DAMIEN NOONAN

APPELLANT

AND

[186/18 & 199 CJA/18]

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

FRANCIS MURPHY

APPELLANT

[187/18 & 200CJA/18]

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

STEFAN SAUNDERS

APPELLANT

JUDGMENT of the Court delivered on the 12th day of April 2019 by Birmingham P.

1. On 12th June 2018, in the Circuit Court in Trim, County Meath, Mr. Noonan, Mr. Murphy, and Mr. Saunders were each sentenced to a term of ten years imprisonment, with the last two and a half years of their respective sentences suspended, in relation to events that occurred on 7th October 2016 at Dunboyne, County Meath. In the case of Mr. Noonan, he entered pleas of guilty to the offence of conspiracy to commit robbery, contrary to common law and to s. 7 of the Criminal Justice Act 2006, and the offence of possession of stolen property contrary to s. 18 of the Criminal Justice (Theft and Fraud) Offences Act 2001. He received a sentence of ten years imprisonment with the final two and a half years suspended on the conspiracy to commit robbery offence and a concurrent sentence of four years imprisonment with the final year of the sentence suspended in relation to the possession of stolen property offence. Mr. Stefan Saunders and Mr. Francis Murphy entered pleas of guilty to counts of conspiracy to commit robbery and to possession of a firearm in suspicious circumstances. They were sentenced to ten years imprisonment with the final two and a half years suspended in respect of the conspiracy to commit robbery offences, and to concurrent sentences of six years imprisonment with the final year suspended in respect of the firearms offence.

2. In each case, the Director of Public Prosecutions has sought to review the sentences imposed on grounds of undue leniency, and in each case, the person sentenced (the accused) has appealed against the severity of the sentence imposed. The situation, therefore, is that the Court is required to deal with three sets of what are, in effect, cross-appeals.

3. The background to the matter is to be found in the fact that Gardaí acquired intelligence relating to plans to rob a cash-in-transit delivery van in County Meath. This led Gardaí to mount a major surveillance operation. The movements of a number of individuals were monitored and a former bank branch at the Yeats Centre, Dunboyne, County Meath, was the subject of particular attention. Some focus was placed on the AIB ATM located at the disused AIB branch in Dunboyne. The said machine was restocked on Fridays.

4. Between 26th August 2016 and 7th October 2016, the accused, Damien Noonan and Stefan Saunders, were observed carrying out reconnaissance in or about the location of the planned robbery. On four occasions, they were noted as carrying out surveillance on cash deliveries, twice from a nearby coffee shop and twice from a van that was being used for observation purposes. On three occasions, there was interference with the premises. A lock on the window of the premises had been broken, a roller shutter that protected the inner part of the window was compromised and an alarm sensor within the room in the disused bank had also been disabled. These instances of interference with the premises each occurred in the early hours of 21st September 2016, 28th September 2016, and 4th October 2016 respectively.

5. On Friday 7th October 2016 at approximately 2.50am, Gardaí monitored the movements of a BMW X5 Jeep. It was driven to Dunboyne and driven to the car park at the rear of the disused bank. Two men were left at the disused bank and the BMW was driven along the main street in Dunboyne and parked a little way up the street. The accused, Mr. Noonan, was the driver of the vehicle at this stage. Gardaí monitored closely the activities and movements of each of the three men. The provisions of the Surveillance Act 2009 had been invoked so Gardaí were in a position to follow the conversations taking place between the individuals. Based on those conversations, it was clear to Gardaí that there was a firearm in the possession of the two individuals who were inside the building and that the firearm could be used if necessary. At this point, there was a team of approximately fifty detectives involved in the Garda operation. This is in addition to twenty-third members of the Emergency Response Unit who were participating in same. Gardaí entered the premises. As they did so, one of the two men in the premises was seen to throw something onto the floor, that individual was the accused, Mr. Stefan Saunders. The item he threw to the floor was a Makarov semiautomatic pistol. There was one round in the breach and there were seven rounds in the magazine. The other individual on the premises was the accused, Mr. Francis Murphy. He had a crowbar in his hand as Gardaí entered the premises and threw the crowbar to the ground.

6. The two men in the building were wearing a number of layers of clothing. It is clear that they were very forensically-aware. The first layer of clothing was extremely tight-fitting, spandex-type clothing. Each had two sets of gloves on, they had walkie-talkies and material to keep the walkie-talkie earpieces in place. The walkie-talkies were set to the same channel as was one which Mr. Damien Noonan had in the BMW X5 Jeep. They also had mobile phones and "snoods", items of clothing usually used for skiing or similar activities, but in their cases, available to be pulled up over their faces to disguise their appearance. Recovered from the scene was a backpack, and in the backpack was a bottle of bleach which was to be used to mask any forensic residue that might be left at the scene of the crime. On the ground in the former bank premises was a sheet that the men had lay down on during the course of the night, again, with a view to reducing the risk of leaving forensic trace evidence. Also in the backpack were a number of cable ties, a role of duct tape and a Stanley blade.

7. Further enquiries established that the BMW had been stolen from the Hartstown area in Dublin on 3rd October 2015. A number of Licence Plates were also recovered. When arrested, Mr. Saunders had in his possession a key for an Audi motor vehicle, which Gardaí found a couple of days after the incident, that had been parked up near the bank.

8. The sentence hearing was told that there was a sum of €85,000 in the ATM machine, that €150,000 was being delivered and that the cash in transit van was carrying €2 million. On behalf of the accused, it is said that the reference to €2m is to overstate the scale of the operation and to overstate the potential financial benefits to the perpetrators in the event that their operation had been a success.

9. In terms of the background and personal circumstances of the accused, Mr. Stefan Saunders was born in August 1977. He had no relevant previous convictions, with only two very minor road traffic matters recorded back in 2010. He was in a stable, domestic relationship and the father of three children. He had been involved in construction, but his business had failed, as did an interior design business operated by his wife. In relation to the accused, Mr. Francis Murphy, on 28th May 2009, he was sentenced in the Circuit Court in Trim to two years in respect of a firearms matter, and to a sentence of ten years with three suspended in respect of an offence contrary to s. 15A of the Misuse of Drugs Act. This sentence was varied by the Court of Criminal Appeal on 18th May 2010, which increased the period of suspension from three years to six years. In relation to Mr. Damien Noonan, he had a total of nine previous convictions recorded of which five related to Road Traffic Act matters. On 19th July 2011, he received a five-year suspended sentence in Dublin Circuit Court, having appeared before the Court on charges relating to possession of ammunition in suspicious circumstances and possession of firearms.

10. On behalf of Mr. Murphy, the case was advanced that he had come late to the planning of the event and that this was a matter which the Judge should have taken into account. It is said that the Judge was wrong to say, as he did, that he felt that all were equally involved and equally to blame. Counsel for Mr. Murphy also suggested that having come late to the event, he could have received a sentence less than the others, and in particular, less than Mr. Saunders. It is pointed out that he is the father of two children, actively involved in their upbringing, and that he had experienced financial problems. It is pointed out that his son had suffered serious injuries in a kitchen fire and that this had placed a considerable burden on the family.

11. The Director says that the sentences imposed by the Trial Judge failed to reflect the many aggravating features of the case. The Director lays emphasis on the extensive and elaborate planning, the potential yield of the robbery, the possession of a firearm, and the willingness to use that firearm which was loaded and ready to be used. It is said that the sentence imposed in the firearms matter failed to accord with the guidelines offered by the Court of Criminal Appeal in the case of *DPP v. Ryan* [2014] IECCA 11. The Director says that this was a case where the sentencing Judge attached too much significance to the plea of guilty. Further, it is highlighted that the evidence against the three men was overwhelming and that they were, in effect, caught in the act.

12. On behalf of the accused, it is said that while the evidence for the prosecution was cogent, that had the case been contested, it would not have been a straightforward one and very likely would have involved voir dire arising from the surveillance operation. In respect of Mr. Murphy, counsel pointed out that when arrested, his immediate reaction was to say "I made a mistake". In resisting the DPP's application to review on grounds of undue leniency, on behalf of the accused, it is said that not only were the sentences not unduly lenient, that they were, if anything, over-severe. It is, however, fair to say that while there are cross-appeals before the Court, that the primary focus for the three accused has been to resist the application to review on grounds of undue leniency.

13. The Court can say at the outset without any hesitation that it regards the appeals against severity as entirely without merit. This was organised, professional criminality at a high level, and by no stretch of the imagination can the sentences imposed be regarded as severe, still less, overly-severe. Accordingly, the Court can say immediately and without hesitation that it will be dismissing the appeals against severity.

14. The trial Judge imposed, in effect, the same sentences on each of the three accused. In the Court's view, that was not an unreasonable approach. The accused, Mr. Stefan Saunders, was obviously centrally involved, he was present for the various recognisance operations, it was he who had possession of the firearm and he had the key to the backup Audi vehicle. However, in his favour is the fact that he had no relevant previous convictions. In those circumstances, that the Judge would decide to treat the three accused alike was understandable.

15. In the Court's view, the sentences imposed were at the outer limits in terms of leniency. Had more severe sentences been imposed, in the range of nine to ten years, the Court would very likely have upheld such sentences. However, as the jurisprudence in this area, going back to the very first case, that of *DPP v. Byrne* [1995] 1 ILRM 279, has consistently made clear, that is not the point. The question is whether the lenient sentences imposed are so lenient, so unduly lenient, as to justify intervention by this Court. Notwithstanding that had the Court been called on to sentence at first instance, and notwithstanding the fact that we are in no doubt that we would have been prepared to uphold more severe sentences, we have, with very considerable hesitation, decided

that the sentences are not so lenient as to require intervention. Rather, we are of the view that the lenient sentences imposed fell within, though at the very limit, of the discretionary range available to the Trial Judge.

16. In the circumstances, we will dismiss both the applications to review on grounds of undue leniency and the appeals against severity of sentence.