



## THE COURT OF APPEAL

Birmingham J.  
Sheehan J.  
Mahon J.

Record No.: 125/2016

Between/

The Director of Public Prosecutions

Respondent

- and -

Petrica Lucaci

Appellant

### Judgment (*ex tempore*) of the Court delivered by Mr. Justice Mahon on the 17th day of November 2016

1. The appellant pleaded guilty at the Circuit Criminal Court in Dublin in respect of eleven offences at or near Dublin Airport over a period of a number of hours on the 7th October 2014. The offences consisted of one count of illegal seizure of a vehicle contrary to s. 10 of the Criminal Law (Jurisdiction) Act 1976, one count of assault contrary to s. 3 of the Non Fatal Offences against the Person Act 1997, one count of assault of a peace officer acting in the execution of his duty contrary to s. 19(1)(c) and (2) of the Criminal Justice Public Order Act 1994, as amended by s. 185 of the Criminal Justice Act 2006, two counts of assault of a person acting in aid of a peace officer contrary to s. 19(1)(d) and (2) of the said act of 1994 as amended by s. 185 of the Criminal Justice Act 2006, two counts of endangerment contrary to s. 13 of the Non Fatal Offences against the Person Act 1997, one count of attempting to seize a vehicle by force contrary to common law and one road traffic act count of dangerous driving.

2. Sentences were imposed on 11th May 2016. Concurrent prison sentences of five years, with the final twelve months suspended on conditions, were imposed in respect of count no. 1 (the illegal seizure of a vehicle) and count no. 10 (attempting to seize a vehicle by force). In respect of count no. 11 (dangerous driving), the appellant was disqualified from holding a driving licence for a period of six years from 11th May 2016. The other counts were taken into consideration, and a *nolle prosequi* was entered in respect of one count. The appellant has appealed against sentence.

3. The appellant is a Romanian national who was living in Ireland for three months at the time of these offences. He was then aged twenty five years. During these three months the appellant worked as a gardener. His wife, who is Italian, was obliged to remain behind in Italy because of serious illness. She moved to Ireland shortly after the commission of these offences and continues to reside here. There are no previous convictions.

4. On 7th October 2014, the appellant's Volkswagen Polo car broke down on M50 motorway. He abandoned the car and walked along the central median of the motorway for a period of time, before arriving on foot having removed his boots at Dublin Airport. At the airport he shouted at a vehicle to stop, and threw a pair of steel capped boots, tied together, at the car. This car was being driven by Mr. Joe Walsh, who was accompanied by his two children, aged five and twelve. He ran after the car, grabbed the door handle and shouted "get out of the car" and attempted to open the door. Having failed to gain entry into the car, the appellant walked back to the Terminal 2 building at the airport where he confronted Mr. Kevin O'Brien who had parked his car in the set down area awaiting the arrival of a passenger. He approached Mr. O'Brien who was looking into his boot and demanded the keys to his car. In an entirely unprovoked attack, he punched Mr. O'Brien to the side of the head and then punched him a second time. When Mr. O'Brien attempted to defend himself by grabbing at the boots being carried by the appellant he was kicked into his chest. He took the keys of Mr. O'Brien's car and drove it away at speed colliding with a steel bollard in the process. In doing so he struck a taxi driver who had come to Mr. O'Brien's assistance, and lifted him onto the bonnet, fortunately not seriously injuring him. The car was then driven at high speed, breaking red traffic lights, and at times on the wrong side of the road. He was pursued by a number of garda cars for a period of approximately twenty minutes and over a distance of approximately seven kilometres before finally being apprehended and arrested at a roundabout in Ballymun. The gardaí had to pepper spray him to effect his arrest. He was initially taken to Beaumont Hospital for treatment for minor injuries.

5. One of the investigating gardaí, Gda. Lennon, acknowledged that the appellant's behaviour was bizarre and that he was not acting under the influence of any intoxicant which one might have thought likely. He accepted that the behaviour was out of character, and that there had been no issues with his behaviour in the three month period in which he had been living in Ireland prior to these incidents.

6. The grounds of appeal argued on behalf of the appellant include the following:-

- (i) Imposing a sentence which was in all the circumstances excessive.
- (ii) Failure to place sufficient weight on the appellant's personal circumstances, including the fact that his wife was then in hospital having been diagnosed with a serious illness.
- (iii) Failure to have sufficient regard to the opinion of the Probation Service to the effect that the appellant was at a low risk of reoffending, and the fact that the appellant had no previous convictions.
- (iv) Failing to provide sufficiently for rehabilitation.

7. The learned sentencing judge described the incident as *extremely serious and unusual*, and for which *there is no apparent explanation*. He placed the gravity of the offending *towards the higher end of the level of seriousness*, noting that the maximum sentence available to the court was one of fifteen years. He stated that he believed the appropriate tariff for these offences was in the region of seven and a half years imprisonment before discounting for mitigating factors. He identified the mitigating factors as the lack of previous convictions, his expression of remorse and his offer to pay €2,000 compensation, and his plea of guilty. He accepted that the illness of the appellant's wife was also a mitigating factor, but only to a *very minor extent*. The learned sentencing judge

considered in some detail the reports provided to him, including the probation report, in the context of rehabilitation. His decision to suspend the final twelve months of the five year sentence subject to a number of conditions, including that the appellant attend an anger management course, and that he would comply with the lawful directions of the Probation Service in relation to psychiatric or psychological services that they might suggest.

8. The focus of the appeal is the submission that the learned sentencing judge in his sentencing of the appellant did not fully reflect the out of character nature of the offending behaviour and the stress factors which provided the only possible explanation for that bizarre behaviour. It is also suggested that the strong mitigating factors (being the guilty plea, remorse and lack of previous convictions) were not afforded sufficient weight by the learned sentencing judge, nor was there sufficient provision for rehabilitation, with the result that the sentence imposed was in all the circumstances excessive. Ms. Murphy, B.L., (for the respondent) makes the sensible observation that the emphasis by the appellant of his probation service assessment of a low risk of re-offending begs the question: why the need to provide for rehabilitation in the sentencing structure? A need for rehabilitation is, arguably, almost entirely absent.

9. This is a difficult and troubling case. The learned sentencing judge also found it to be so as is apparent from the issues raised by him in the course of his sentencing judgment. It is clear that he went to considerable trouble to arrive at a sentence which, on the one hand, adequately reflected the mayhem created by the appellant on the day in question including the fear and trauma inflicted on innocent individuals in the vicinity of Dublin Airport, including two young children, and the appellant's reckless efforts to avoid being apprehended, and on the other hand, the fact that these events were very much out of character for the appellant and the fact that he may have been struggling to cope with considerable stress on the occasion. Having said that, it is nevertheless important to emphasise that personal difficulties causing stress can never be an excuse for assaulting, threatening and terrorising members of the public who are merely going about their ordinary business. Sentences imposed by the courts must reflect this fact and undoubtedly this was a primary motivation in the sentencing imposed by the learned sentencing judge.

10. It is useful to refer to the often quoted passage from the judgment of Barron J. in *DPP v. McCormack* [2000] 4 I.R. 356:-

*"Each case must depend upon its special circumstances. The appropriate sentence depends not only upon its own facts, but also upon the personal circumstances of the accused. The sentence to be imposed is not the appropriate sentence for the crime, but the appropriate sentence for the crime because it has been committed by that accused. The range of possible penalties is dependent upon those two factors."*

11. The Court is satisfied that the headline sentence of five years imprisonment imposed by the learned sentencing judge was the appropriate sentence in this case. While the offending was, by all accounts, out of character and unlikely to recur, it did not just involve a short lived, albeit bizarre, reaction to severe stress or personal difficulty; rather it was concerted and reckless criminality of a most serious type involving and endangering innocent people, and which included twenty minutes of very serious dangerous driving on busy roads. In their entirety these incidents were played out over a number of hours.

12. Where the Court does however identify an error in principle is in the decision to suspend only twelve months of the five year term. In the Court's view, the out of character nature of the offending coupled with the plea of guilty and genuine remorse, the offer of what was for the appellant substantial compensation, and the low risk of re-offending, deserves a greater portion of the sentence being suspended, than judge twelve months. Accordingly it is necessary for this court to re-sentence the appellant as of today.

13. The Court has carefully considered the impressive testimonials, character references and certificates of achievement while in prison, as well as the obvious significant support that the appellant enjoys from his wife, family and friends.

14. The Court will therefore impose a sentence of five years imprisonment on the appellant, the commencement date being the same as provided for in the Circuit Criminal Court, but with the final two years and six months suspended on condition that he enter into a bond in the sum of €100 to keep the peace and to be of good behaviour for a period of two years post release. The suspended period will also be subject to the other conditions imposed in the Circuit Criminal Court.

15. The order of disqualification from driving for six years will remain in place.