



**THE COURT OF APPEAL**

**[214/2017]**

The President

McGovern J.

McCarthy J.

**BETWEEN**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**AND**

**ADAM BRADY**

**APPELLANT**

**AND**

**[140/2017]**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**AND**

**RYAN TATE**

**APPELLANT**

**JUDGMENT (Ex tempore) of the Court delivered on the 16th day of October 2018 by Birmingham P.**

1. These are appeals against severity of sentences.
2. The sentences under appeal are sentences that were imposed on 26th May 2017 at the Circuit Criminal Court in Clonmel. On that occasion, sentences of 12 years' imprisonment were imposed on the appellants in respect of the offences of false imprisonment and robbery, along with concurrent sentences of ten years' imprisonment in respect of arson and seizure of a motor vehicle. The final three years of the sentences were suspended. In the case of the appellant, Adam Brady, the sentences were made consecutive to a sentence that was reactivated on the same day. The sentence reactivated had been one of four years' imprisonment with the final two years suspended which had been imposed in the Circuit Court on 20th March 2015 in respect of an offence of attempted robbery.
3. The background to the matter before the Circuit Court is to be found in events that occurred on 6th July 2016. On that occasion, the injured party, a man in his early 50s, drove his vehicle to Clonmel, County Tipperary where there was a festival taking place. He consumed some alcohol, not a great deal, it must be said, and, not wishing to drive while perhaps over the limit, decided to sleep in his vehicle that was parked in a carpark in the town centre. Having locked himself into the car, he reclined the front passenger seat and fell asleep. Thereafter, he was awoken by a bang. Turning to his left, he observed a male standing at the passenger window brandishing a large hunting knife. The male hit the window with the knife, cracking it. On his right-hand side, the injured party observed another male attempting to kick in the window of the car with his foot. The window broke. The male on his left demanded that he get out of the car. At first, the victim declined to do so, but following repeated kicks and blows on both windows, he did get out.
4. The evidence was that the smaller of the two males demanded that the victim hand over the car keys. A complicating factor is that while the narrative provided by the injured party referred to the two people involved in the incident as smaller and larger, the two co-accused, now two co-appellants, Mr. Brady and Mr. Tate, were in fact of broadly similar build. However, the Garda view was that they were dressed quite differently on the night and that as a result, it was likely that Ryan Tate would have appeared to be the smaller of the two.
5. The narrative provided to the Court indicated that the smaller of the two males then demanded that the injured party hand over the car keys. When the injured party refused, the smaller male came at him and swung his fists. A struggle ensued. In the course of the grappling that followed, the injured party was cut on the face and the smaller male said "you'll have a scar on your face". At that stage, the larger male delivered a punch to the face and head of the injured party causing him to fall to the ground. When the victim was on the ground, he was kicked into the body by both attackers. One then said "throw him into the boot". The two attackers then picked him up and bundled him into the boot. The car took off, travelling at high speed, and was driven to a wooded area approximately half an hour's drive from Clonmel near Bansha. In the course of the journey, the car was crashed outside Cahir. When the car was halted, the injured party was asked to hand over his watch, and then when he refused, he was attacked by both individuals with punches thrown to the head and face.
6. In the course of an interview with the appellant, Mr. Brady, he admitted kicking the injured party in the face while he lay on the ground. The appellant, Mr. Brady, was asked "was the male able to defend himself?" and he replied "no, the poor man didn't stand a

chance". The injured party was left by his attackers in a rural location. At that stage, there were obvious signs of injuries. He waited outside a nearby house and the householder there, when he became aware of the presence of someone outside, phoned the Gardaí. In the course of the incident, it emerged that the injured party had sustained soft tissue injuries to his face and also a dislocation of his right shoulder. The dislocated shoulder required surgery which involved a bone graft and then there was a need for extensive physiotherapy thereafter.

7. After the incident, the attackers drove the car to Templenahurney in Bansha. There, the car ceased to work, it appears as a result of having been involved in the earlier crash to which reference was made. At that location, the car was burnt out. A passing truck driver noticed the car on fire and rang 999. Gardaí were despatched, and as Gardaí made their way to the scene, they saw two males on the road. One of the two males on the road was known to the Gardaí as Ryan Tate. Those Gardaí did not know Adam Brady. Gardaí turned their patrol car, but on going back to the location where they had observed the males, they were gone. It emerged that they had fled through the fields at that point.

8. On 8th July 2016, Ryan Tate was arrested in relation to a burglary at Aldi in Clonmel. In the course of his detention, he was interviewed in relation to this incident and made certain admissions. On the same date, Adam Brady presented himself at Clonmel Garda station where he was arrested. Gardaí had earlier called to his home in possession of a search warrant. In the course of detention, he, too, made admissions.

9. In the course of the appeal by Mr. Brady, it is said that the Judge dealt with this appellant more severely than he did with the co-accused. It said that this occurred in a situation where the Judge had misunderstood the evidence as to the role played by each of the individual attackers, in particular, by operating on the appellant, Mr. Brady, was the man with the knife when the evidence, in fact, went the other way. It said that reactivating the suspended sentence and then making the sentence for this incident consecutive was an error since it meant that there was, in effect, a 14-year sentence with the final three years suspended. It said that such a sentence would offend against the totality principles.

## **Grounds of Appeal**

10. In terms of the background and personal circumstances of the appellants, Adam Brady was born on 19th November 1993. He had 25 previous convictions of which one was for attempted robbery, one for possession of knives, 17 for public order, four for criminal damage, one for theft and one for s. 2 assault. The attempted robbery had been dealt with in the Circuit Court in Clonmel on 20th March 2015 when he received a sentence of four years' imprisonment with the final two years suspended. It is this offence which has given rise to the reactivation issue.

11. Ryan Tate had 23 previous convictions. Three of these were under the Misuse of Drugs Act, one being a s. 15 offence. He had three s. 2 assaults, one s. 3 assault recorded and three convictions for burglary. The s. 3 assault was committed on 12th June 2016 and he was on bail in respect of that assault at the time of this offence. The fact that the offending with which the Court was concerned was committed while he was on bail was, by statute, to be regarded as an aggravating factor. His date of birth is 19th November 1997.

12. At the sentence hearing, an issue arose as to whether it was appropriate to differentiate between the two accused. During the cross-examination of the investigating Garda by Counsel on behalf of Ryan Tate, the Judge interjected to say that he had come to the conclusion that it was most probably Mr. Brady who had the knife, but if ever there was a case of joint enterprise, this was it. The Judge added that at that moment, he did not see a reason to differentiate between the two men.

13. In the Court's view, the question of who was in possession of the knife is not of major significance. This was a classic case of joint enterprise with both men full and active participants in the incident.

14. In terms of their personal circumstances, the Court heard that Mr. Tate had a drug problem and had drugs taken on the night of the incident, that his family background was an exceptionally difficult one. The Court was told that addiction to drugs and alcohol was also an issue in the case of the appellant, Adam Brady.

15. In the course of this appeal, there has been much focus on two comparator cases, the case of Dowdall and the case of Lacki and Niepogoda, the latter case having been before this Court in recent days. The case of Dowdall was one that involved the torture, including waterboarding, of an individual that the principal assailant suspected of having been involved in an attempt to defraud him.

16. The Special Criminal Court had taken as its starting point a sentence of 14 years as being appropriate. In this Court, where judgment was delivered by Mahon J., it was said that that was not an appropriate starting point, but it is the case that the sentence actually imposed following the appeal was lower, one of ten years with two suspended.

17. The case of Lacki and Niepogoda was before this Court in recent days. In that case, the principal injured party – there were two injured parties – was lured to the house where Mr. Lacki and Mr. Niepogoda were resident on the basis of having been invited to spend Christmas. While there, he was very seriously assaulted. He was placed in the boot of a car, driven to another location and the car was set alight while the injured party was in it. When the injured party succeeded in making his escape from the car, the men who had attacked him sought to put him back into it and only failed in that regard because of the extent to which the car was now on fire making access to it impossible. Another part of the incident saw them suspending the injured party from a bridge while threatening to kill him. There was also another injured party.

18. There had been an incident involving the other injured party which had occurred perhaps a year earlier and, while not perhaps on the same scale as the incident involving the major injured party, was along the same lines. Again, in the case of Mr. Niepogoda, there was a second incident involving the second injured party which occurred at a time after the very serious incident to which reference has been made had occurred.

19. Looking at these comparators, the Court is of the view that serious as the case before the Court today was, and there can be no dispute about the fact that it was a serious case indeed, the Court takes the position that the offences with which its dealing were not quite in the same league. On the other hand, it has to be said that the mitigation available was greater in the earlier cases. In the Dowdall case, the appellant was a man in his mid-40s who had built a successful business for himself and one who came before the Court without previous convictions. In the case of Lacki and Niepogoda, neither man, who are the respondents to the application to review by the DPP, had relevant previous convictions. In one instance, there were limited road traffic matters, but nothing directly relevant. Here, both had significant previous convictions and in the case of Mr. Brady, some of those convictions were directly

relevant. In the case of Mr. Tate, there was the fact that the offences were committed on bail, an aggravating factor.

20. Balancing all of those, the Court has, nonetheless, come to the view that the sentences imposed in the Circuit Court were somewhat out of line, and indeed, out of line to the extent that the Court has been persuaded that it should intervene. Nonetheless, the scope for any intervention is clearly a limited one.

21. The Court is of the view that the headline or pre-mitigation figure could have indeed been one of 12 years and certainly could not, under any circumstances, be one less than ten years. Having regard to the mitigating factors that were present, and the Court identifies those mitigating most relevant as being the plea, which it recognises was a valuable plea following on admissions. The plea was particularly valuable because the injured party in this case was somebody who was an intensely private individual and it appears regarded with dread the prospect of having to come to Court and thereby put himself in the public eye.

22. Having regard to the factors that are present, the Court will operate on the basis of a starting sentence of ten years. In relation to that starting sentence of ten years, the Court is prepared, as was the Circuit Court, to suspend three years of the ten. That represents a figure of 30%.

23. In the case of the appellant, Mr. Brady, the offence was committed while he was subject to a suspended sentence and the Court sees that as an aggravating factor in itself and also sees as an aggravating factor that there are directly relevant previous convictions, most notably, the attempted robbery which is itself the subject of the revocation application, but also an offence involving the possession of knives. The Court is in no doubt that the trial Judge was entirely right to activate the sentence and in no doubt that the Judge was entirely right in concluding that whatever sentence he was imposing had to be made consecutive.

24. In summary, then, so far as the sentences for the false imprisonment and robbery are concerned, where the sentences that have been imposed were sentences of 12 years with three suspended, the sentences now will be ones of ten years with three suspended.

25. In the case of the arson and the seizure of a motor vehicle, the concurrent sentences will be ones of eight years, again with the final three years suspended.

26. In the case of Mr. Brady, the earlier sentence that was the subject of the reactivation issue will be reactivated and the sentence imposed on him in respect of this matter will be consecutive to that.

27. It would appear appropriate that both men should enter into bonds in relation to the new sentences.