



THE COURT OF APPEAL

Record Number: 171/18

**Birmingham P.
McCarthy J.
Kennedy J.**

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

JOHN O'KEEFE

APPELLANT

JUDGMENT (ex tempore) of the Court delivered on the 25th day of February, 2019 by Mr. Justice McCarthy

1. This is an appeal against the sentence of three years' imprisonment, the last year of which was suspended, imposed on Mr. O'Keefe at Galway Circuit Criminal Court on the 16th May 2018 for an offence of theft contrary to the Criminal Justice (Theft and Fraud Offences) Act which occurred on the 19th December 2013 where clothing to the value of €469 was stolen from a Tommy Hilfiger store.
2. A group of four persons with Dublin accents of whom the appellant was one entered the store. They acted as a team, two of them distracting the staff, another selected clothing and the appellant using a de-tagging device tool broke the electronic tagging on the clothing. He placed the clothing in a bag passing it in due course to another of the four. The foursome then left without paying.
3. CCTV footage of the incident exists and Detective Garda Bernard McLaughlin ultimately identified the appellant from it. When a security officer, Mr. Burke, from the first store followed them into a second store they saw him and when they did they fled. Mr. Burke, maintained visual contact with the appellant and followed him into a public house. Detective Garda McLaughlin went in and identified him. He was asked to accompany him outside where he was also identified by the store manager, Mr. Fahey. He was arrested and charged. He was compliant when approached in the public house.
4. He has thirty-four previous convictions from between 1978 - 2016. Twelve of the previous convictions were in relation to theft, two for handling stolen property, three for burglary, six for larceny and one for trespassing. The remainder related to public order and Road Traffic Act offences. It is to be noted that the previous convictions in respect of theft and handling took place between 2008 and 2016.
5. He was fifty-seven at the time of sentence. He left school at a young age and seems to have had a difficult background. He worked for a period as a tiler. He has certain medical difficulties relating to his spine, his feet and type 2 diabetes. He produced €500 at the sentencing hearing in compensation. He has a number of children and his partner is supporting him.
6. He is in contact with the Pathway Centre, an organisation which works with people who have spent time in prison, involving a number of educational courses and he has an offer of employment by Belvedere Print Solutions for a limited number of hours.
7. The Director of Public Prosecutions was content to deal with the matter in the District Court but the accused opted for trial on indictment. It is suggested that he should not have lost mitigation because of his plea of not guilty or at least to the full extent to which that might otherwise be so. It is further suggested that he contested the matter on a so called technical basis and effectively such witnesses as were called were treated in summary in what might be described as a gentle manner pleading guilty after evidence of identification from outside the public house was admitted. We do not think that we can parse and analyse the trial conducted on a plea of not guilty.
8. We understand the applicant's core proposition is that the headline sentence of five years' imprisonment chosen by the Circuit Court judge was excessive and that in truth there are few if any cases of what might be described as shoplifting where the sentence was in excess of twelve months. It was suggested that a sentence of about that level should be regarded as the norm even on indictment since in such cases where higher sentences were imposed all pertain to offences, say, of theft from an employer or from someone with whom a relationship of trust existed and involving substantially larger amounts.
9. This was not however a typical case of shoplifting. It was organised, planned and for profit.
10. We think it of little significance that the Director of Public Prosecutions was prepared to agree to the summary disposal of this case. There may be many reasons why that is done.
11. It is also erroneously submitted that previous offences are not to be taken as aggravating factors. There are many decisions of this court to the effect that they are and these previous convictions are particularly significant here having regard to the fact that many of them relate to dishonesty.
12. We think that even if the headline sentence might be regarded as severe, possibly higher than this court sentencing at first instance might impose, ample credit was given by the Circuit Court judge for all relevant factors and provision was made for

rehabilitation by the suspension of the final year of the three-year sentence actually imposed. We see no error in principle.

13. We therefore dismiss this appeal.