



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Edwards J.**

183CJA/15

In the matter of Section 2 of the Criminal Justice Act 1993

The People at the Suit of the Director of Public Prosecutions

Applicant

And

Donna Hutch

Respondent

JUDGMENT of the Court (ex tempore) delivered on the 31st day of May 2016,

by Mr. Justice Birmingham

1. In this case the Director of Public Prosecutions seeks to review on grounds of undue leniency the sentence imposed on the appellant in the Dublin Circuit Court on the 18th June, 2015. The sentence sought to be reviewed is one of twelve months imprisonment backdated to the 15th May, 2015, the date that a plea of guilty was entered. On that day, the 15th May, 2015, the appellant pleaded guilty to an offence of possession of a syringe contrary to s. 7(1) and (2) of the Non Fatal Offences Against the Person Act 1997. When sentencing a second count, a count of assault was taken into consideration.

2. There are circumstances relating to this offence which occurred on the 10th September, 2014, which are unusual, indeed highly unusual. On the day of the offence at approximately 11.25 am, Garda John O'Donovan saw Donna Hutch in Amiens Street, Dublin. She was shouting she was looking back in the direction from which she had come and she fell to the ground in the southbound lane of traffic. She got up and ran off in the direction of Beresford Place. Garda O'Donovan again saw Donna Hutch at the railings of the Custom House. He got out of the car that he had been driving, he was in an unmarked garda car, and he approached Ms. Hutch and told her to stop. He formally identified himself, he was in plain clothes, and as he approached her he could see that she had syringe needle clenched in her right hand. He could see that blood was visible on Ms. Hutch's right hand. As he went to speak to Ms. Hutch she struck out at him with her right hand. Garda O'Donovan managed to protect himself by gripping and restraining both of her wrists. At this stage she was still trying to stab him with the syringe and he was shouting at her to drop the syringe and that he was a Garda.

3. A member of the public, as it happened, someone who works for the Simon Community intervened in order to come to the assistance of Garda O'Donovan. This member of the public went to a car and got gloves. Garda O'Donovan asked this member of the public to contact Store Street garda station and this he did. Eventually Ms. Hutch opened her hand, dropped the syringe and at that stage it became clear to the Garda that there was no barrel attached to it. At this stage Ms. Hutch reached into her trousers, took something out and swallowed it and it emerged that this was the barrel. Soon after, assistance arrived and Ms. Hutch was taken to Store Street garda station.

4. In terms of the investigation by the gardaí that followed, An Garda Síochána were aware that she was detained at the Dóchas Health Centre and they went there to speak to her. She spoke to them voluntarily, there was no necessity to seek a warrant. She accepted that she had done what she did, she said she was "out of it", she was extremely apologetic and she thanked the gardaí for having sought to come to her assistance.

5. The ordinary, indeed the almost invariable result if a syringe is produced to a member of the Garda Síochána in a threatening or aggressive fashion is that the person doing this can expect to serve time in custody. In terms of Ms. Hutch's background and circumstances, she was 41 years of age at the time and she is the mother of two teenage boys. She has an extraordinary number of previous convictions, 313 in all. Of these, 138 are for theft, 44 for handling and 81 for larceny. There are 9 cases of s. 2 assault and 1 of s. 3 assault and, significantly, 1 case involving the production of a syringe in threatening circumstances. It appears that the great bulk of the offences are in the nature of shop lifting offences, apparently designed to feed a drugs habit.

6. Given the gravity of the offence and allowing for the record of previous convictions, the appalling number in total, including one directly relevant for producing a syringe, at first blush the sentence sought to be reviewed was not just unduly lenient, but unduly lenient to a very significant degree indeed. Ordinarily, one would certainly expect that somebody producing a syringe to a garda in a threatening fashion, particularly someone with a very bad prior record which involved a directly relevant previous conviction could expect a substantial sentence indeed.

7. However, things are not always as they seem at first. Ms. Hutch had known Garda O'Donovan for upwards of 20 years and it seems she had a very good relationship with him. On the day in question, she failed to recognise him. Her account to the gardaí was that she initially thought that the person approaching was Fr. Peter McVerry and realised that that was not so, and had then thought that there were people who were out there chasing her. She was, it seems, hallucinating, no doubt as a result of the fact that she had ingested herself with crystal methamphetamine on the day in question. This was not a case where Ms. Hutch went out with any intention of producing a syringe, whether to rob or for any other criminal purpose. She did not go out with any intention to harm anyone. It seems that the implement was produced to someone who was long known to her and in respect of whom she had no hostile feelings whatever, and that this happened at a time when she was hallucinating.

8. It thus must also be said notwithstanding the one prior conviction involving a syringe to which reference has already been made, that there was no general inclination on her part to produce a syringe for the purpose of committing crime. On the contrary, the

evidence was that she had an established practice of informing any garda who had occasion to stop her as to whether she was in possession of a syringe or not, lest the garda be endangered.

9. When imposing sentence the judge adverted to the fact that, at the time of sentence, she was in the Dóchas Centre, and that she appeared to be doing well there and making progress, and also that her methadone dosage had been reduced. Indeed these factors had caused counsel on her behalf to urge the judge to refrain from increasing the period that she was facing in custody. The judge indicated that he could not accede to that request in full, but went on to say that he regarded the appropriate sentence as one of twelve months imprisonment.

10. The DPP criticises the judge for failing to place the offence on the spectrum of seriousness. The point is also made on behalf of the Director that the judge failed to have sufficient regard to the previous extensive record of Ms. Hutch, and it is said that in the circumstances the issue of general deterrence was not addressed.

11. The sentence was a lenient one. Indeed someone hearing that an individual with an excess of 300 previous recorded convictions received a sentence of only twelve months imprisonment for producing a syringe to a garda in a threatening or intimidating manner, indeed in effect to stab a member of the Garda Síochána, would likely react with disbelief.

12. However, closer examination of the judge's approach to sentencing shows that he recognises this as a very unusual case indeed and, recognising that, he sought to craft a sentence appropriate for such an unusual case. He did so with care and while the sentence remains a lenient one, this Court does not identify any error in principle and accordingly the court will refuse the application. In those circumstances, in accordance with the established jurisprudence of the court, the court does not address the question of what matters have developed since sentence was imposed in the Circuit Court. In summary, the court refuses the Director's application.