



THE COURT OF APPEAL

Appeal No: 64/14

Sheehan J.
Mahon J.
Edwards J.
BETWEEN

The People at the Suit of the Director of Public Prosecutions

Respondent

- and -

Stephen Somers

Appellant

Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on the 27th day of July 2015

1. The appellant pleaded guilty to one count of possession of explosives contrary to s. 3 of the Explosives Substances Act 1883, as amended by s. 15(4) of the Offences against the State (Amendment) Act 1998 on 1st July 2013, in the Circuit Criminal Court in Dublin. The date of the offence was 16th May 2012. The appellant was sentenced to five years imprisonment on 3rd March 2014, with credit allowed for the period already spent in custody.

2. On 16th May 2012, at about 9.30 p.m. in the evening, gardaí were patrolling the Allenton area of Tallaght in Co. Dublin when they became suspicious of a Ford Mondeo car, and having kept it under observation for a period of time, stopped the vehicle. As the vehicle was being pulled over by the gardaí, a garda noticed the passenger door been opened and a cylindrical object being dropped underneath the car. The passenger was the appellant. He was also noticed removing gloves and discarding them onto the ground as he emerged from the vehicle. The cylindrical object which had been dropped underneath the car was a steel pipe with two PVC cappings and was fitted with a green firework fuse and contained a grey coloured powder. A ballistics expert was satisfied that the object was a so-called pipe bomb fitted with improvised explosives and was a viable device.

3. It was accepted by the gardaí that the appellant was collecting the item for another individual, and had come under pressure to assist in transporting the pipe bomb because of a drugs debt and a threat to his girlfriend unless he co-operated. When interviewed by gardaí he expressed remorse and shame for having been caught up in the offence.

4. The appellant was twenty one years of age at the time of the offence. He is a single man with one child. He had a drug addiction problem at the time of the commission of the offence.

5. It is contended on behalf of the appellant that the sentencing judge fell into error in respect of a number of issues. These include the criticism that the learned sentencing judge placed the offence at too high a level in terms of its gravity, and that she failed to attach sufficient weight to the guilty plea entered by the appellant, that undue emphasis was placed on the aggravating factors in the case, and that insufficient consideration or provision was made for rehabilitation having regard to, *inter alia*, a positive probation report. This last submission, namely the issue of rehabilitation, is the main focus of the appellant's case.

6. The appellant has a very bad record. His previous convictions numbered sixty six in total and some post dated the commission of this offence. All were in the District Court or were dealt with by way of appeal to the Circuit Court. The appellant has four convictions for entering a building with intent, one conviction for burglary and nine convictions for theft. Other convictions are for trespassing, handling stolen property, criminal damage and a variety of road traffic offences.

7. The learned sentencing judge in the course of her sentencing judgment carefully considered the appropriate sentence in the case, and clearly also considered the possibility of dealing with the matter otherwise than by way of an immediate custodial sentence. Clearly, she was concerned with the opinion as expressed in the probation report that the appellant was at a very high risk of re-offending. Ultimately, the learned sentencing judge opted for a custodial sentence, stating as follows:-

"But in my view the time has come to deal with this matter and I propose to do that and to deal with the matter today. In my view, again, this offence does warrant a custodial sentence. In my view, the appropriate sentence is one of seven years in custody, but taking into account all of the mitigating factors I am going to impose a five year custodial sentence and that will take into account the period of four months that Mr. Somers has already spent in custody in relation to this matter."

8. The appellant was a prolific criminal at the time of this offence, and while on an individual basis his previous convictions were not of the most serious type, their large number suggests that the appellant's future in terms of staying out of trouble was weak even before the commission of this offence. This offence was particularly serious and constituted a very different level of offending compared to what he had involved himself in previously. The description of the pipe bomb indicates a most dangerous explosive device, and a device well capable of killing and maiming people.

9. The sentence imposed by the learned sentencing judge was reasonable and appropriate. It adequately takes account of both the offence and the offender, and cannot therefore be faulted. While the letter written by the appellant presented to this court is impressive and certainly raises a glimmer of hope that the appellant's offending days may be over, it does not undermine the sentence imposed.

10. The appeal must therefore be dismissed.