



THE COURT OF APPEAL

Record Number 74/22

**Birmingham P.
Edwards J.
Kennedy J.**

BETWEEN/

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

RESPONDENT

V

NICOLA ROBINSON

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 12th of December, 2022 by Mr Justice Edwards.

Introduction

1. The appellant appeared for sentencing before Cork Circuit Criminal Court on the 27th of September 2021 following a plea of guilty to four of the counts on the indictment, those being count 10, criminal damage contrary to section 2 of the Criminal Damage Act 1991, count 15, possession of a thing with intent to damage property contrary to section 4 of the Criminal Damage Act 1991, count 16, aggravated burglary contrary to section 13 of the Criminal Justice (Theft and Fraud Offences) Act 2001 and count 18, production of an article capable of inflicting serious injury contrary to section 11 of the Firearms and Offensive Weapons Act 1990. The appellant appeared alongside her co-accused during the sentencing hearing and a nolle prosequi was entered by the prosecution in respect of the other counts on the indictment.
2. The appellant was sentenced to five years imprisonment on each count, to run concurrently, with the final year suspended for a term of 12 months on conditions, including supervision by the probation service.
3. The appellant now seeks to appeal against the severity of her sentence.

Factual background

4. Evidence was given by Sergeant Crowley during sentencing detailing the circumstances of the offences the subject of this appeal.

5. On the 17th of January 2021 at 4am the appellant and her co-accused travelled in her Opel Insignia to the home of the victim where the victim, his son and a third party were residing.
6. The victim, who had recently returned from a lengthy stay in hospital and was struggling to sleep at that time, was alerted to a loud noise when the appellant and her co-accused threw a brick at the back door of the premises. When the victim answered the door the two co-accused, who appeared in a fit of rage, burst into the house without permission. The appellant was armed with a petrol cannister and a knife while the two terrorised and threatened to kill the occupants of the house.
7. The appellant and the co-accused threw fluid from the petrol cannister at the victim and his son before chasing the third party to his bedroom and trying to get at him by banging on the door with knives. Evidence given during the sentencing hearing indicated that the appellant had a grievance with respect to a third party, who was a visitor temporarily also residing in the house, which grievance was said to be behind the attack. At the appeal hearing it was clarified that the basis for the grievance was the suspected sexual molestation of a vulnerable person, related to the appellant, by the third party.
8. During this incident the two co-accused caused damage to the property by smashing a window. The appellant then lit a piece of tissue that she had doused with acetone fluid before throwing it on the timber floor. Due to the quick actions of the victim the fire was extinguished, preventing extensive damage being caused. Subsequent technical examination of the fluid found that it contained flammable solvents.
9. The appellant and her co-accused then left the premises in the appellant's car and the victim called 999. However, 20 minutes later the two accused returned to the victim's house in a second attempt to apprehend the third party and to retrieve any evidence that they may have left behind from their previous trespass on the property. In doing so, they smashed a back window, mirrors in the hallway and damaged all but one of the interior doors by kicking them down. The total value of the damage caused amounted to €2,000.
10. During this second attempt at apprehending the third party, the appellant's co-accused armed himself with a knife from the kitchen in the property and they then threatened the victim at knifepoint to "get the other occupant out of the house and away from [a named town]."
11. The appellant and the co-accused then left the property for a second time in the appellant's car. On arrival, the victim and another witness identified the two co-accused to gardaí as being personally known to them. Following an extensive search, the co-accused was arrested in a public place, while the appellant was arrested at a residential address where she had made an unsuccessful attempt to escape through the backdoor of that premises.

12. The appellant and the co-accused were taken to a Garda Station where she was examined by a doctor who found that due to her intoxication she could not be interviewed for a number of hours.
13. During interviews the appellant made full admissions to the offences and expressed her remorse to gardaí. She also indicated that she had tried to dilute some of the materials she had brought with her during the offences. Subsequent examination of the materials showed that some items contained water while others contained flammable solvents.
14. The appellant entered a guilty plea when the case was returned for trial.

Victim impact statement

15. The victim described how the offences had impacted on him as follows,

"I am still very anxious about noises in and around my home. Any car banging or noise at the back of the property has me very jumpy and nervous. My sleep pattern is only returning to normal following this incident. It was a very traumatic incident for me and it is something that both my son and I will never forget. I have been in poor health and these events have had a big impact on my health in general.

I'm not in a position to fix the damage caused during the attack on my home. 3 doors are still damaged and the back window is still broken. There is also damage to the lino in the hallway. The total damage is €2000 and I don't have the means to have it fixed."

Personal circumstances of the appellant

16. The appellant was 46 years of age at the time of sentencing. She is a single parent of five children, the three youngest of which lived with her at the time the offences were committed. The three youngest children for whom she was the principal carer ranged in age from 7 to 14 years, and all suffered from various developmental issues including autism, speech impairment and development delays. Evidence was given by counsel that the appellant was also under the care of her G.P. for anxiety and depression with an obsessive-compulsive component which has necessitated an input from mental health services.
17. At the time of the offences the appellant was in stable rented accommodation and the co-accused lived there on a temporary basis helping out around the house and with the children.
18. The appellant had no previous convictions prior to the offences the subject of this appeal and following the charges she abided by her bail conditions.

Sentencing judge's remarks

19. After outlining the circumstances of the offences and the effect they had had on the victim, the trial judge viewed the most tragic part of the incidence as that *"they damaged his house; the doors, they set fire to lino, and that unfortunate man is still there in his*

compromised health with not the money to fix it and he has to live on and suffer on. And that is what was visited by their violence on him."

20. The trial judge stated that the level of violence used during the offences was "incomprehensible" before identifying the aggravating factors of the case as;

"... the fact that they invaded this man's house in the middle of the night; the state of his health; the fact that they subjected him to prolonged threats and unprovoked assault; they were at part during this, at times, armed with knives; the fact that they went there as a group. In other words, there was more than one person, there was the two of them. And they went there with a premeditated determination or intention and they went there in the middle of the night. And they set fire."

He continued that due to the aggravating factors present in the case "Under no reckoning or consideration of these facts could a non-custodial sentence be considered."

21. On the evidence before the court the trial judge viewed the appellant as the orchestrator of the offences and viewed an "appropriate sentence, without mitigation as seven years." He continued by stating,

"She has issues in her life. She has pleaded guilty. There was a level of co-operation. So, I'll suspend the final -- well, in view of those, I think the appropriate sentence will be five years, and I'll suspend the final year of that on condition that on her release she will be under the care of the probation service for one year and will obey all their directions. That's on each count, concurrent."

Grounds of appeal

22. The appellant appeals the severity of her sentence on the following grounds:

- 1) The sentencing judge erred in principle and in fact in imposing a sentence that was excessive in all the circumstances.
- 2) The sentencing judge erred in principle and in fact in not having adequate regard to the mitigating factors of the case.
- 3) The sentencing judge erred in principle and in fact in placing too much emphasis on the principle of punishment in sentencing.

Submissions

23. The Court is in receipt of written submissions from both parties for which it is grateful and these have been amplified by counsel on both sides at the oral hearing.

The Court's Analysis and Decision

24. Some criticism was levelled at a perceived lack of clarity on the part of the sentencing judge in setting a headline sentence in this case. However, in our view there is no lack of clarity. What the sentencing judge said was:

Robinson was, on the evidence that I find, the orchestrator, the driving force. I think for her part in this, I think the appropriate sentence, without mitigation, is seven years. She has issues in her life. She has pleaded guilty. There was a level of cooperation. So, I'll suspend the final -- well, in view of those, I think the appropriate sentence would be five years, and I'll suspend the final year of that on condition that on her release she will be under the care of the probation service for one year and will obey all their directions."

23. The headline sentence was clearly one of seven years. That was discounted by two years to reflect "*the issues in her life*", the plea of guilty and her cooperation. The sentencing judge then went on to suspend a year of the resultant post mitigation sentence of five years. While he did not explicitly specify the basis for doing so it may be inferred that the suspended year was the extension of further mercy in furtherance of the objectives of rehabilitation/reform in circumstances where she was a middle-aged first-time offender and the offending conduct was ostensibly aberrational and out of character.
24. We have no hesitation in saying that the headline sentence nominated was appropriate. There was a constellation of aggravating circumstances in this case. It involved the violation of a dwelling. It involved confrontation with the homeowner. It involved a homeowner who was vulnerable and who was left traumatised. It involved more than one raider. It involved the production and use of knives, although fortunately no physical injury was caused to anybody with the weapons. It involved arson. It involved significant physical damage to doors and windows in the premises and fire damage to the premises. It involved a return visit during which the homeowner was further traumatised, and further damage was done. Taking into account the appellant's culpability and the harm done the headline sentence of seven years that was nominated was entirely appropriate and justified.
25. All that having been said, however, there were extensive mitigating circumstances in the case. We've been asked to take into account the fact that the appellant was highly intoxicated at the time. We have said many times that self-induced intoxication provides no mitigation. However, in this case it does provide some context for the circumstances in which the appellant, who was clearly highly stressed and, rightly or wrongly, harboured the aforementioned grievance, came to lose her self-control in the way that she did. We consider the medical evidence that she has mental health issues, with an obsessive-compulsive component, to be relevant. The intoxication aspect of the of the case could not provide mitigation on its own but we are satisfied that it is part of the factual matrix that nevertheless must be somewhat taken into account.
26. It is clear that the appellant has had a good deal of adversity in her life, and that despite this adversity she had up until this point lived a good and crime-free life and had not come to adverse attention. However, the sentencing judge did take into account the fact that "*she has issues in her life*", and we do not regard the level of discount from the headline sentence to reflect the mitigating factors in the case as having been too little or

otherwise erroneous in circumstances where the sentencing judge was prepared to go somewhat further and part suspend the resultant post mitigation sentence.

27. One aspect of the case that we are concerned about however is the differentiation by the sentencing judge between this appellant and her co-accused in terms of their respective culpabilities. While sentencing judge did characterise the appellant as the orchestrator and the driving force, we do not think that there was much orchestration in point of fact. The incident appears to have been largely due to a spontaneous and sudden loss of self-control by a person with obsessive-compulsive tendencies who was stressed and highly intoxicated. The co-accused, who had none of those difficulties, seemingly went along with it and actively participated. In the circumstances we consider that there was not a justified basis for differentiating between the two of them in terms of their respective culpabilities. To have so differentiated was in our view an error of principle.
28. It is necessary in circumstances where we have found an error to quash the sentence imposed by the court below and to resentence the appellant.

Re-sentencing

29. We will again nominate a headline sentence of seven years for the offending in this case.
30. While we agree with the sentencing judge that on any view of this case it required the imposition of a custodial sentence, we also consider that there was scope, certainly in the appellant's case, for the showing of considerable mercy having regard to her available mitigation and the fact that she was a first time offender whose offending behaviour was ostensibly aberrational and very much out of character.
31. We will again discount from the headline sentence by two years leaving a post mitigation sentence of five years imprisonment. However, we consider that in her circumstances this appellant should not be required to serve an actual custodial sentence longer than that which was imposed on her co-accused. In the circumstances we will suspend the final two years of the post mitigation sentence of five years imprisonment, leaving a net sentence to be served of three years imprisonment which is the same as the net sentence to be served which was imposed on the co-accused.