



THE COURT OF APPEAL

Court of Appeal Record No. 31/2020

**The President
McCarthy J
Kennedy J**

BETWEEN/

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

RESPONDENT

-AND-

LUKE BARRETT

APPELLANT

JUDGMENT (*ex tempore*) of the Court delivered on the 4th day of April 2022 by Mr Justice McCarthy

1. This is an appeal against the severity of sentence imposed in the Limerick Circuit Criminal Court on the 4th of February 2020 on Bill Nos: LKDP0156/2018 & LKDP0036/2019. Luke Barrett, the appellant herein, entered guilty pleas on the 30th of July 2019 to the various counts on both indictments which we outline below and received an effective sentence of six and a half years.

Bill No: LK36/2019 (the "County" case) comprised of two counts namely: -

Count 1 - Robbery contrary to Section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Count 2 - Production of an article capable of inflicting serious injury contrary to Section 11 of the Firearms and Offensive Weapons Act 1990.

Bill No: LK156/2018 (the "City" case) comprised of four counts namely: -

Count 1 - Robbery contrary to Section 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Count 2 - Attempted Robbery contrary to common law.

Count 5 - Theft contrary to Section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Count 6 - Theft contrary to Section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

2. We will now briefly outline the facts of the matter. The appellant was aged 18 years old at the time of the offences herein. The offences, the subject of this appeal, occurred on multiple dates. The County case deals with the offences which were the first in time, occurring on the 6th of July 2018 at the Corner Deli, 39 Oakpark, Newcastle West, Co. Limerick. Early on the morning of that day the appellant robbed the proprietor of that premises, Ian McIntyre, of €350 in cash. The appellant produced a knife which was approximately 12 inches in length with a steel blade. Mr McIntyre said that the robber shouted "*give me the cash, give me the cash*". He was described by Mr McIntyre as flicking this large knife right up to his face as he was demanding the money in an incident lasting under two minutes. It was a terrifying ordeal for Mr McIntyre and a Christine Hayes, a female colleague, was also present at the time of the offence. The appellant was subsequently identified on CCTV and upon arrest he made admissions from the outset and was cooperative with Gardaí as well as stating that he committed the offence owing to a drug debt. The injured parties did not wish to make victim impact statements on the matter.
3. As to the City case, the first offence in time on this indictment was pleaded at Count 5 (theft) and occurred shortly after 4pm on Saturday the 4th August of 2018 where James Daly, the proprietor of Daly's Jewellers at Wickham Street, Co. Limerick, was working at his premises. Here, the appellant entered this jeweller's shop and inquired about a nine carat gold stone set saddle ring valued at €495. When Mr Daly retrieved this ring from the display cabinet the appellant tried it on and proceeded to flee the premises without paying for the ring.
4. The second offence in time on the indictment pertained to Count 6 (theft) and occurred at a computer shop known as Tech Star, Henry Street, Co. Limerick on the 14th August, 2018. At 3.30pm on that day the appellant entered the premises and inquired from Martyna Jarzyna, who was working in the premises, about an iPhone 7 that was on sale priced at €569. This iPhone was produced by the shop assistant and in a similar fashion to the prior offence, the appellant examined the phone and absconded without having paid for the phone.
5. Counts 1 and 2 on the indictment occurred on the same date, the 15th of August 2018, but the offences occurred at two different locations respectively. Count 2 (attempted robbery), the first offence on that day, occurred at Top Oil, Lock Quay Filling Station, Limerick. One Nikul Patel, the victim of this offence and an Indian national who came to Ireland in 2014, had been working through the night at the 24-hour shop and filling station which was being operated at this premises. Mr Patel had been working throughout the night in circumstances where the front door was closed and business was done through a hatch. Mr Patel was close

to finishing his shift when at 7:00am he opened the main door for customers and delivery men. Shortly after 7:10am he was standing at the till when suddenly a male stood in front of him, shouting "give me money, give me all money, I'll kill you". The assailant was brandishing a knife in his right hand with a blade of six or seven inches long and about an inch wide. He appellant leaned over the counter where he grabbed Mr Patel by his shirt and kept saying "give me money". Mr Patel, who remained reasonably composed in the circumstances, kept saying "okay, okay, give me a moment, I need to see something". The appellant then let go of Mr Patel who acting quickly pressed a panic button. After this, the assailant started moving back from the counter and said "you rang the guards, I'll see you around the city, I'll kill you". The intruder then ran out of the shop and looked back in at Mr Patel to whom he gestured by running his hand across his throat in a threatening fashion.

6. Count 1 (robbery), the second offence on the same day, occurred at about 7.20am at Subway, Chapel Street, Limerick. Here, the appellant robbed Maria Kuzina of €80 in cash. This Subway premises is 10 to 15 minutes' walk from Lock Quay. The victim had opened the doors of Subway at 7am. At about 7.20am a man, later identified as the appellant, came into the restaurant. He had a hood over his face and approached the counter holding a knife. Ms Kuzina said it was a big knife like one used for cutting meat. She described it as the largest type of knife that would be found in a block of knives. This man showed the victim the knife and said: "Give me the money". Ms Kuzina stood back and said she was just after opening the restaurant and showed the intruder that there was no money there. The intruder became more aggressive. He threatened her with the knife and told her to open the till. She opened the till. She took notes from the till and handed the money over to the appellant. As she did this, she saw a man on the street nearby and she shouted for help. The robber dropped some of the money and ran out of the shop.

7. In sentencing the judge first took account of any aggravating factors to the offences in question. He found as follows: -

"...these are very serious events. Violence was threatened. A weapon was produced. A 12 inch bladed knife in one circumstances. The victims were extremely frightened and in one case one of the victims was in fact threatened if he rang the Gardaí. They must be regarded as premeditated. The premises were targeted at an early at the early opening time, a quiet time as such. Money was taken. Insofar as the thefts were concerned, again the same modus operandi and the level of culpability in all matters is high. The Court also notes that the probation report regards that the accused is at high risk of reoffending."

8. In considering the mitigating factors, the judge took into account the appellant's cooperation with Gardaí and his early guilty plea in respect of all matters. The judge also had regard to the appellant's lack of previous convictions and the probation report which outlined the downward spiral of the appellant's life as a result of drug use and the debts that have stemmed therein. The judge was further cognisant of the fact that Gardaí accepted this position and that since the appellant has been in custody that he had been doing exceptionally well and engaged well as part of an Alternative to Violence Programme.

The judge finally accepted that the appellant showed genuine remorse for his actions and accepts full culpability and that he is of a young age and has ambitions for the future.

9. In determining the post-mitigation sentences, in respect of the County case on Bill No: 36/2019, on the robbery matter the judge imposed a sentence of four years imprisonment. In respect of the production of an article capable of inflicting serious injury, the judge imposed a sentence of two years concurrent to the robbery matter on that indictment. In respect of the City case on Bill No: 156/2018, the judge firstly deemed that all sentences thereon whilst concurrent inter se were to be consecutive to those imposed on the County matter. On the robbery charge in the City case, he imposed a sentence of four years' imprisonment and the same sentence was imposed in respect of the attempted robbery charge. The judge suspended eighteen months of the sentences imposed for robbery with provision for engagement with the Probation Services during this period. In respect of Count 5 and Count 6, the theft matters, the judge imposed a sentence of two years to be served.
10. Counsel for the appellant has rightly confined her submission to what is the core point, namely that the aggregate sentence of eight years (notwithstanding the suspension of the last eighteen months thereof) is excessive, primarily because of an excessive sentence in respect of Count 1 of the County case. We think that the sentence imposed in respect of the robbery charge on the County indictment was excessive because of the youth of the appellant and the fact that it was his first offence. No criticism can be made, however, of the sentences imposed on any of the counts on the City case. However, because we think there was an error in principle in arriving at a sentence of four years on the County robbery case, an excessive aggregate sentence resulted. We accordingly quash the sentence on Count 1 of Bill No: 36/2019 and proceed to resentence. We think that the appropriate sentence on that offence is one of three years imprisonment. The sentences imposed on the City case remain the same and remain consecutive. We will however suspend the last two years rather than eighteen months on Count 1 and Count 2 of that City case on terms that he will not merely keep the peace and be of good behaviour but also place himself under the supervision of the Probation and Welfare Service and obey all lawful instructions thereof.