Neutral Citation No. [2005] IEHC 129

THE HIGH COURT

Record Number: 2002 No. 301 SP

BETWEEN
CHRISTOPHER CORCORAN

PLAINTIFF

AND
DEPUTY COMMISSIONER T.P. FITZGERALD

DEFENDANT

Judgment of Mr Justice Michael Peart delivered on the 12th day of May 2005

1. On the 6th September 2001 the plaintiff was arrested on foot of four Warrants issued by a judicial authority in England and Wales and was brought, as then required, before a Judge of the District Court. He was remanded in custody pending an application for his rendition pursuant to s. 47 of the Extradition Act, 1965 (as amended) ("the 1965 Act"), but shortly thereafter was admitted to bail subject to conditions, all of which have been met and observed.

2. The matter appeared again before the District Judge on a number of occasions between that date and the eventual disposition of the matter on the 8th July 2002, but adjournments were granted for reasons which become of some relevance in due course.

3. On the 15th July 2002, the District Judge made an order for the rendition of the plaintiff in respect of one only of the said four Warrants, namely Warrant B, being satisfied that correspondence had been made out in respect of the charge contained in that Warrant, and refused the application in respect of the remaining Warrants A, C and D, being not satisfied as to correspondence.

4. Subsequent to the making of the said order in respect of Warrant B the plaintiff, as he was entitled to do, instituted the present proceedings for the purpose of applying for an order for his release pursuant to the provisions of s. 50 (2)(b)(b)(b) of the 1965 Act on the grounds that because of the lapse of time since the date of the alleged offence, and other circumstances which the plaintiff regards as being exceptional, it would in all the circumstances be unjust, oppressive or invidious to return the plaintiff to the authorities in the United Kingdom.

5. Pending the hearing of this application, the plaintiff has been on bail.

6. Section 50(2)(bbb) of the 1965 Act (as inserted by s. 2(1)(b) of the Extradition (Amendment) Act, 1987 provides:

> *"A direction under this section may be given by the High Court where the Court is of the opinion that -*
>
> > *… (bbb) by reason of lapse of time since the commission of the offence specified in the Warrant…and other exceptional circumstances, it would, having regard to all the circumstances, be unjust, oppressive or invidious to deliver him up under section 47, or*
> >
> > *(c) the offence specified in the Warrant does not correspond with any offence under the law of the State which is an indictable offence or is punishable on summary conviction by imprisonment for a maximum period of at least six months."*

7. Although the application being made by the plaintiff in these proceedings is for an order of release under s. 50 on account of lapse of time and other exceptional circumstances, this Court must, by virtue of (c) above, not only be of the opinion that it would not be unjust, oppressive or invidious to deliver him up under section 47, but also of the opinion that the offence specified in Warrant B corresponds to an offence in this jurisdiction, even though the learned District Judge has already satisfied himself in that regard on the 15th July 2002. I therefore propose to deal with the question of correspondence first.

Correspondence

8. Warrant B sets forth the alleged offence in the following terms:

> *"Between 1st January 1998 and 9th June 2000 within the jurisdiction of the Central Criminal Court for England and Wales, Christopher John Corcoran conspired with Terence James Silcock, Alan Harry Jones, David Levin, Marat Musin, Mark Anthony Adderley and other persons to deliver to another or others counterfeits of a currency note, namely United States one hundred dollar Federal Reserve notes, knowing or believing the same to be counterfeit and intending that the person to whom such notes were delivered or another should pass or tender them as genuine, contrary to Section 1(1) of the Criminal Law Act 1977."*

9. The essential constituents of the offence charged is that the plaintiff conspired with others to deliver counterfeit U.S. dollar notes to another or others, knowing or believing them to be counterfeit, and intending that the person to whom such notes were delivered or another should pass or tender them as genuine.

10. There is no need, since it is by now uncontroversial, to set out in any great detail the authority for the proposition that in conducting its exercise in determining correspondence, this Court must examine the facts as disclosed in the Warrant and satisfy itself that the same facts, if committed in this jurisdiction, would constitute a criminal offence of the required gravity here. In other words simply because there might be an offence of the same name in both the requesting State and this State is not determinative. As stated in this respect by Walsh J. in *Wyatt v. McLoughlin* [1974] I.R. 378:

> *"……it is necessary that either the Warrant or some other document accompanying it should set out sufficient information as to these acts to enable the courts of the State to identify the corresponding offence, if any, in our law. It cannot be sufficient simply to use the name by which the crime is known, or alleged to be known in the requesting country even though the same name may be used in this country as the name of a crime, because the acts complained of, although having identical names, may constitute quite different criminal offences in different countries or, indeed, no offence at all in one of them."*

11. Patrick McCarthy SC on behalf of the defendant has suggested to the Court that the facts disclosed in Warrant B would, if committed in this State, constitute a criminal offence of the required gravity, and he has sought to demonstrate this by reference to certain statutory provisions. First of all, in s.1 of the Forgery Act, 1913, "forgery" is defined as *"…the making of a false document in order that it may be used as genuine……and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided."*

12. Secondly, s.2 (1)(c) of the same Act provides that *"forgery of the following documents, if committed with intent to defraud,*

shall be felony and punishable with penal servitude for life :- … (c) any bank note……"

13. Thirdly, s.6 of the same Act provides in ss. (1) that "every person who utters any forged document …shall be guilty of an offence of like degree …….and on conviction shall be liable to the same punishment as if he himself had forged the document…", and in ss. (2) that "a person utters a forged document …who, knowing same to be forged, and with either of the intents necessary to constitute the offence of forging the said document……delivers the said forged document…", and in ss.(3) that "it is immaterial where the document … was forged."

14. Fourthly, s. 52 of the Central Bank Act, 1942 provides that "the expression 'bank note' has the same meaning as it has in the Forgery Act, 1913, as amended or extended by the Currency Act and by this Part [VII] of this Act."

15. Fifthly, s. 53 (I) of the same Act provides that "currency notes issued by or on behalf of the Government of any country outside the State shall be deemed to be bank notes within the meaning of the Forgery Act, 1913", while ss.2 thereof that in ss. 1 "the expression 'currency note' includes any notes (by whatever name they are called) which are legal tender in the country in which they are issued."

16. Finally, the Court has been referred to s. 55(1) of the Central Bank Act, 1942, as substituted by s. 8 of the Central Bank Acct, 1989, which provides:

> "(1) if any person makes, or causes to be made, or uses for any purpose whatsoever, or utters any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, a bank note or part of a bank note, he shall be guilty of an offence under this section and shall be liable - (a) on summary conviction to a fine not exceeding £1000 or, at the discretion of the court, to imprisonment for a term not exceeding twelve months, or to both, or (b) on conviction on indictment to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both."

17. Mr McCarthy has referred the Court to the judgment of Geoghegan J. in *Myles v. Serbian* [1999] 4 I.R. 294 in which that learned judge held that the common law offence of conspiracy to defraud was carried over by the Constitution as its ingredients had clearly been established and no question of uncertainty arose. In this regard, the learned judge referred to the fact that in a schedule to the Criminal Justice Act, 1924 there is included a form of indictment in respect of the charge of conspiracy to defraud. In the same judgment, albeit obiter, Geoghegan stated at p. 298:

> " The best definition of the common law offence of conspiracy to defraud is probably to be found in the English case of Scott v. Metropolitan Police Commissioner [1975] A.C. 819. That definition reads as follows at p. 840:-
>
> > '…an agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud."

18. When one considers these various statutory provisions and the statement of the common law offence of conspiracy to defraud which has survived in this State, there can be no doubt that the facts disclosed in the wording of Warrant B would, if committed in this State, constitute the offence of conspiracy to defraud here, being an offence of the required minimum gravity to give rise to a corresponding offence for the purpose of the 1965 Act. A person "utters" who "delivers", and the ordinary meaning of "counterfeit" is sufficient to bring it within the meaning of "forged". The ingredient of intent identified in the Warrant is clearly an ingredient in the equivalent offence in this State. Finally, there can be no doubt that a bank note includes U.S. one hundred dollar notes by virtue of s. 53 of the Central Bank Act, 1942.

19. The Court is therefore of the opinion that the offence specified in Warrant B does correspond with a criminal offence of the required gravity under the laws of this State, namely a charge of conspiracy to defraud contrary to Common Law, and that there is no obligation on the Court by virtue of s. 50 (2)(c) of the 1965 Act to direct the release of the plaintiff.

20. It now remains to consider the plaintiff's application by reference to s. 50(2)(bbb) of the 1965 Act.

Delay

21. The applicant submits that there has been a lapse of time. There are a number of periods of time to be considered.

22. The Warrant alleges that the offence took place "between 1st January 1998 and 9th June 2000". The applicant submits that time therefore must be regarded as running from 1st January 1998. In his grounding affidavit the applicant states that he was arrested on the 6th September 2001 - a period of 3 years and nine months from the earliest of the dates appearing in the Warrant. However, through an affidavit sworn by Detective Constable Michael Cartwright on the 4th May 2004, the respondent states that in November 1998 an investigation in the counterfeiting in question was commenced, and it was not until 6th February 1999 that that the National Crime Squad became aware of the possible involvement of the applicant in the matter. His affidavit outlines the course which the investigation took thereafter, including the arrest on the 9th February 1999 of a man called Hugh Todd. The investigation continued thereafter, and he states that on the 8th June 2000 a number of other persons were arrested in the United Kingdom, but that the applicant was not present in the UK at that date and so was not arrested. I should just say at this time that in this affidavit, Mr Cartwright states that "Corcoran was not present in the United Kingdom and consequently evaded arrest". When he was cross-examined by Brendan Kielty SC on behalf of the applicant before this Court, he accepted that the use of the word "evaded" was inappropriate and pejorative, and the fact simply was that the applicant was not in the United Kingdom and was not therefore available to be arrested along with the other suspects. It was in my view appropriate and proper for him to make that concession in the circumstances. In cross-examination, he conceded also that since the applicant was during the period in question a regular visitor to the UK he could have been arrested on any of these visits if they had been minded to do so.

23. Mr Kielty also made the point during his cross-examination that by the 6th February 1999 the police in the UK had sufficient evidence on foot of which to arrest the applicant, given what is stated in paragraph 10 of D/Constable Cartwright's affidavit, and that therefore the contents of paragraph 15 thereof were not correct when it states "in order to secure sufficient evidence against all the individuals involved it was necessary to continue the operation for a lengthy period…" and that it was not possible to justify the continued delay in arresting or seeking the extradition of the applicant after February 1999. However, D/Constable Cartwright stated that this was an operational decision taken at the level of Detective Chief Inspector or higher, but he also stated that if arrested in February 1999 the offence he would have been charged with would have been a minor offence compared with that for which he was eventually arrested.

24. In respect of the period from the 8th June 2000 and 25th September 2000, Mr Cartwright states in his affidavit that search warrants were executed in respect of the applicant's place of work and his home and certain documentary evidence was recovered. He further states that on the 25th September 2000 "a full extradition file was sent to Richard Glenister in the Crown Prosecution Service, Casework Directorate in London." This was for the purpose of seeking the applicant's extradition from this State back to the UK. It was a further six months before the matter was fully dealt with in that office, and on the 19th April 2001 Warrants were applied for at Bromsgrove and Redditch Magistrates Court in respect of the applicant. Mr Kielty questioned him about why there was a delay of over three months between June 2000 and 25th September 2000 before he forwarded the file to Mr Glenister in order to seek the extradition of the applicant. He responded that it was as soon as he could do it. He explains in his first affidavit at paragraph 27 that following the arrests of other suspects in June 2000 he completed the prosecution file in an expeditious manner, and that it was a complex investigation and that the investigative procedures were extensive. He goes on therein: "*The précis alone runs into 40 pages, there are in excess of 34 witnesses, and 66 exhibits many of which are documentary that form a pile of papers 3 inches thick.*"

25. As I have stated the warrants were obtained on the 19th April 2001. D/Constable Cartwright states that "in the summer of 2001" these warrants were handed to the Irish Extradition Department. He was asked whether he could remember the date on which this occurred but he could not, even though he did it personally. However, the Court was informed by Counsel for the respondent, Patrick McCarthy SC that the records available to his client indicated that the warrants in question were received by the Extradition Department here on about the 6th May 2001. The applicant was arrested on 6th September 2001.

Post - arrest events: 6th September 2001 - 15th July 2002

26. According to the applicant's affidavit he was arrested on the 6th September 2001 and brought before the District Court on the same date. He was remanded from time to time thereafter until the date fixed for hearing of the application on the 11th March 2002. He was granted bail. It appears that on the 11th March 2002 when the matter came before the District Court for hearing Counsel for the Attorney General informed the Court that it was the intention to call oral evidence from police officers of the UK in order to supplement the particulars alleged in the warrants before the Court. Counsel for the applicant objected on the basis that no notice of this intention had been furnished beforehand, and that time would be required in order to consider the matter. The case was adjourned until the 15th April 2002. On that date it appears that Counsel for the applicant made an objection to the calling of oral evidence on the basis that there was no statutory basis for so doing. The District Judge stated that he agreed with this submission but offered to state a consultative case stated if the Attorney General so wished, and an adjournment was granted until the 5th June 2002 so that an instruction could be taken. It was decided that no case stated would be sought and the hearing date was then fixed for the 8th July 2002. On the 15th July 2002 the District Judge made the order in respect of one only of the four warrants in question, namely Warrant B, the subject matter of the present application.

27. The applicant in his grounding affidavit refers to what he considers to be a lapse of time both before his arrest and due to the fact that following his arrest a period of about eleven months passed before the making of the said order in the District Court on the 15th July 2002. He states also as follows:

> "I am retired and receive a pension of €180 per week. I therefore say and believe and am advised that, having regard to all the circumstances, it would be unjust, oppressive and invidious to order that I be delivered up under Section 47 of the Extradition Act, 1965." That is the only averment up to that point in which the applicant makes any attempt to show that it would be unjust, oppressive or invidious to deliver him up to the UK authorities. That affidavit was sworn on the 18th February 2003 in order to ground the present application under s. 50(2)(bbb) of the 1965 Act.

28. However, in a supplemental affidavit sworn by him on the 13th December 2004, he refers to two television programmes made by the BBC and with which the UK police co-operated, both of which concerned the investigation into the counterfeiting enterprise which resulted in the arrest of the applicant, as well as several other persons, and which led to a 65 day trial in the UK of these other persons. In addition, the applicant has referred to newspaper coverage of that trial, and the convictions which resulted. One of the television programmes was a BBC Panorama programme which was broadcast in June 2004. The other programme was a BBC Northern Ireland Spotlight programme broadcast in April 2004, the content of which was virtually the same. The applicant's complaint in relation to these programmes is that he now cannot get a fair trial in the UK because of the publicity of the content of the programmes. He is of the view that he can be clearly associated with members of the gang involved in the counterfeiting operation which formed the subject matter of the programmes, some of whom were convicted and are named in Warrant B as being those with whom the applicant is alleged to have conspired.

29. He states in paragraph 3 of his supplemental affidavit sworn on the 13th December 2004 that the programme appears to detail extensively the involvement of various persons in an international conspiracy to deal in counterfeit dollars, and he says that it is apparent from the names of the persons mentioned in Warrant B, together with the affidavit of D/Constable Cartwright sworn in May 2004 that the conspiracy detailed in the said programme is one and the same allegation contained in Warrant B. He believes that the programme positively asserts a conspiracy and the involvement of those named in the conspiracy. He also refers to the fact that the programme makers had access to police recordings of conversations with various persons involved in the alleged conspiracy, and also themselves interviewed various members of the police for the programme. He refers to the fact that the programme made reference to an involvement in the conspiracy of a named alleged senior figure in the official IRA, and that the programme showed a reconstruction of a court hearing where an actor playing the part of the prosecution QC is seen and heard stating in open court that the conspiracy involved members of the KGB and the IRA. In addition the applicant refers to the fact that the same reconstruction makes reference to the involvement of Irish people who are outside the jurisdiction of the United Kingdom. This is submitted to be a reference capable of being interpreted as referring to the applicant, even though there is no reference to his name in the programme. The applicant asserts in his affidavit that there is a clear inference from the programme that any Irish person alleged to have been involved in this conspiracy was also involved in the IRA. He draws attention to the fact that in Warrant B there is no mention of any kind of the IRA. He submits that the IRA is an organisation held in contempt in the United Kingdom, and that given the Crown's assertion in Court that the Official IRA was involved in the alleged conspiracy, and the implication that any Irish person charged with the offence was involved in that organisation, there is a real substantial risk that his trial would be unfair.

30. An affidavit has been sworn on behalf of the respondent by an English barrister, Gareth Paterson. The purpose of that affidavit is to put before this Court an outline of the safeguards contained in England and Wales for an accused person when concerns arise as to possible prejudice at a criminal trial as a result of pre-trial publicity. These are listed as (a) the Court's discretion to stay the indictment on the ground of abuse of process, (b) questions to the jury panel prior to the selection of the jury, (c) the law of contempt, (d) the judge's directions to the jury, (e) the accused's right of appeal. Each of these headings are dealt with in turn by Mr Paterson, and there is nothing unusual about anything stated in that regard.

31. The applicant has sworn two further affidavits following the affidavit of Mr Patterson, but there is no need to set out the contents thereof, but I have of course had regard to what is stated therein.

Conclusions
32. The Court has been referred to the by now well-known authorities which deal with the question of what will amount to an unreasonable lapse of time in any given case. Each case will be factually different, but the principles are well-established. I do not propose to set out extracts from these well-known cases.

33. But applying the principles, I am satisfied that the period of time from January 1998, being the earliest date referred to in the Warrant is not the date from which time should be considered. It was not until February 1999 that the UK authorities had any knowledge of the possible involvement of the applicant in the conspiracy investigation under way. It is noteworthy that D/Constable Cartwright stated that as of that date there was evidence sufficient to effect an arrest of the applicant, but only for a more minor offence than that for which he was later arrested. From February 1999 investigations were ongoing until in June 2000 some persons were arrested, but it is clear that if the applicant had been in the UK at that date he would also have been arrested. However, the fact is that he was outside the UK, and while I fully accept that he cannot be classified as an evader at that time, the fact is that he was not in the UK and therefore was not available, as it were, to be arrested. The authorities in the UK were in my view entitled to make operational decisions as to how the investigation should proceed and decide upon an appropriate time to effect the arrests of suspects. That delay is not culpable in any way therefore.

34. It has been averred that between the 8th June 2000 and the 25th September 2000, search warrants were obtained and executed in respect of the applicant's home and workplace, and a detailed file was prepared by D/Constable Cartwright and was sent to Mr Glenister at the end of September 2000. I do not consider that period of time as an excessive one or an unreasonable one.

35. There was however a delay from that date until the middle of March 2001 which has not in my view been satisfactorily explained. That is a period of five and a half months, and given the desirability of extradition matters being dealt with urgently, I have no explanation as to why the application to the Magistrates Court for the Warrants obtained in April 2001 could not have been achieved in a much shorter time. Nevertheless the period of such delay is very small given the obvious complexity of the investigation as a whole. I am satisfied that from the date of arrival of the Warrants in this State, matters proceeded without delay until the applicant was arrested in September 2001. The matter proceeded somewhat slowly in the District Court but in my view not so slowly as being culpable. There were matters raised which took time to deal with to a conclusion. Finally the order under s. 47 was made on the 15th July 2002.

36. It was not possible to arrest the applicant in June 2000 and steps had to be taken in order to achieve his extradition thereafter. If the delay between September 2000 and March 2000 had been of shorter duration, one could argue that the applicant might have been arrested a few months earlier, and the application to the District Court would have got under way also a few months sooner. The upshot of that might have been that the order under s. 47 would have been made perhaps in March or April 2002 instead of July 2002. That is not a significant period of delay by any reckoning. If the entire period from, say, February 1999 to July 2002 was regarded as unreasonable, unexplained and therefore culpable delay, or indeed a very significant portion thereof, it might be possible to consider that a period of two and a half years was getting close to a lapse of time of some significance, but even such a delay in this case, without much more, would hardly render it unjust, oppressive or invidious to deliver up the applicant.

37. But that is not the situation here. The element of culpable delay on the part of the UK authorities is not sufficient in my view to enable this Court to be of the opinion that by reason of lapse of time since the commission of the offence specified in the warrant (forgetting altogether about the requirement that there be other exceptional circumstances in addition) it would be either unjust, oppressive or invidious to deliver the applicant up to the UK authorities. Matters were handled with reasonable dispatch. There were necessarily investigations to be made, search warrants to be obtained and executed, files to be prepared and decisions taken in relation to an application for warrants for the purpose of extradition. Once those were obtained, matters proceeded in this jurisdiction in a normal way, albeit with a number of adjournments in the District Court while consideration was given to the question of whether oral evidence could or would be called to supplement the information contained in the Warrants. None of this was unreasonable.

38. In view of this finding, it is not necessary under the section to go further and consider whether there has been shown to exist any "other exceptional circumstances" which need to be considered. But it might be helpful to express a view nonetheless. As I stated earlier the applicant in his first grounding affidavit set out very brief grounds for so contending, namely that the hearing in the District Court took about eleven months to conclude, and that he is retired and living on a pension of €180 per week. In relation to the former, this is really a point made already in relation to lapse of time and cannot be considered as exceptional in any other sense. In relation to the latter point, there really is nothing unusual or exceptional about that fact. It is in his later affidavit dated 13th December 2004 that the most significant matter is raised, namely the broadcast by the BBC of two programmes, one a Panorama programme in June 2004 and just before that a BBC Northern Ireland Spotlight programme. The Court was given the opportunity in Court to view the Panorama programme in full, and was supplied with a transcript. It is simply a fact that nowhere during this programme, and it is to be inferred that the same position pertains in relation to the Spotlight programme, is there a single mention of the applicant by name or indeed by any means by which is identity can be gleaned. It is true that there are references to senior IRA figures and it is clear that the authorities believe that the counterfeiting operation into which they were investigating involved that organisation. But while various persons are identified and references are made to the trial of other persons, including those mentioned as co-conspirators of the applicant as appearing in Warrant B, there is no reference good bad or indifferent to the applicant.

39. What is submitted on the applicant's behalf is that because the Official IRA is mentioned, and because there is a reference to a person being sought in Ireland to face trial, and because of the wide coverage of the programmes in question, thereby exposing a large portion of the UK population to extensive details of the alleged counterfeiting operation and some of the persons suspected of involvement, there is a real risk that the applicant can receive a fair trial on account of the association of his name with the other names in the warrant. In my view this is too contrived to be a reality. There is no mention of any illegal organisation in the charge. There are, as stated by Mr Patterson in his affidavit, and on foot of which he was cross-examined, the sort of built-in safeguards in the criminal law procedures in England and Wales with which the Courts here are very familiar and which, except in the rarest of cases, ensure that an accused person can and does receive a fair trial.

40. It is also the case that since the applicant's trial will more than likely take place towards the end of this year, according to the evidence of D/Constable Cartwright, it will by then in any event be almost eighteen months since the programmes were broadcast, and the 'fade factor' is something which cannot be overlooked. However, as I have said, even though I am not strictly speaking required to consider the question of other exceptional circumstances, I feel it is useful to express these views. Therefore even if I had found there to have been a lapse of time for the purpose of the section, the additional factor of the programmes would not in my view, when added to the lapse of time, have in all the circumstances have rendered it unjust, oppressive or invidious to deliver up the applicant.

41. Finally, I should refer for the sake of completeness to the newspaper extracts to which the Court was referred. These do not refer to the applicant in any way, by name or otherwise. Many of the pieces consist of contemporaneous reporting of the trial of the

other accused persons connected to the counterfeiting operation in question. They are not exceptional, and would not in my view have come within the concept of "other exceptional circumstances" if the Court had been obliged to consider same.

42. For these reasons I refuse the relief sought by the applicant.