

## THE HIGH COURT

[2018 No. 249 EXT]

BETWEEN

THE ATTORNEY GENERAL

APPLICANT

AND

SAMUEL JOSEPH TUCKER

RESPONDENT

**JUDGMENT of Mr. Justice McDermott delivered on the 21st day of January, 2019**

1. The government of the United States seeks the extradition of Samuel Joseph Tucker, an American citizen born on 6th March, 1995 and said to have an address in Florida. Mr. Tucker's extradition is sought in relation to charges arising out of a road traffic crash which occurred in the early hours of the morning of 24th June, 2017 and resulted in the death of Ms. Alyssa Kay Vice, aged twenty two.

2. Ms. Victoria J. Avalon, Assistant State Attorney for Polk Highlands and Hardee Counties Florida in an affidavit grounding the extradition application alleges that on Saturday 24th June, 2017 at approximately 3:30am, Florida authorities were notified of a crash on Florida's State Road 17 South of San Wan Avenue, at Avon Park, Highlands County, Florida. Upon arrival a deputy sheriff was informed by Mr. Tucker that he had lost control of a Maserati car which he was driving at the time and that the late Ms. Vice was in the right front passenger seat of the car. She was severely injured in the collision and was sadly declared dead at the scene a short time later. The Maserati car was the only vehicle involved in the collision. It had overturned and sustained severe damage: its roof and engine hood were crushed and the front of the rear trunk (boot) lid, rear right passenger door and right rear wheel were missing. Numerous beer bottles were scattered around the car. A nearby chain-link fence and power pole had been broken and damaged by the car. It was determined that the car left the road some 400 feet south of the power pole colliding with it and the fence and overturning four times before coming to rest. Investigations revealed that the car was travelling at approximately 127 miles per hour at the time of impact and up to 140 miles per hour during the last five seconds prior thereto. Mr. Tucker's medical records were also obtained which indicated that his blood alcohol level from a blood sample collected at 04:55 hours was 0.162 g/dl.

3. A Ms. Harmon informed the police that she had been in the company of the late Ms Vice whom she met at approximately 23.30 in a restaurant. During the course of the evening they were joined by Mr Tucker. Mr Tucker is alleged to have consumed a pitcher of beer while in the restaurant. All three left the restaurant together at 02.15am and drove to a house to obtain the keys of the Maserati car which was in the car-park of a different restaurant. The three got into the car. Mr. Tucker then drove the car at a high rate of speed to another restaurant where he was employed. He then obtained a case of beer and placed it in the car's boot. They left the restaurant at 03.00 and drove to a local race-track. There Mr Tucker allegedly opened a bottle of beer before returning to the car and driving off with the two women. Ms. Harmon alleges that he was now driving on the public road at speeds between 150 and 170 miles per hour and she requested to be let out of the car at approximately 03:22 hours on 24th June minutes prior to the collision.

4. Arising out of these events the investigating officer charged Mr. Tucker on foot of a sworn information with three violations of Florida law as follows:

Count 1 – driving under the influence with blood alcohol level of 0.15 grams/dl blood or more with property damage to the property of the Duke Energy Company, and violation of s. 316.193(3)(c)(1) Florida Statutes.

Count 2 – driving under the influence with blood alcohol level of 0.15 grams/dl of blood or more and property damage to the property of Venacio Silves Cerapio, and violation of s. 316.193(3)(c)(1) Florida Statutes and

Count 3 – driving under the influence manslaughter, resulting in the death of Alyssa Kay Vice in violation of s. 316.193 (3)(c)(3)(a) Florida Statutes.

5. On 26th September, 2017 Highlands County Deputy Clerk of Circuit Court Jane Bayless acting on the authority of 10th Circuit Judge Peter F. Estrada issued a capias or warrant for Mr. Tucker's arrest. Copies of the information and capias duly certified by the clerk of the court are set out at exhibits A and B in Ms. Avalon's affidavit.

6. The extradition request was duly made on the 3rd May 2018 by Mr. Jason E. Carter of the Justice Department of the United States based on the affidavit of Ms. Avalon and the exhibits therein contained. A Diplomatic note enclosing this request dated 14th May 2018 and requesting Mr. Tucker's extradition was presented in proper form in accordance with the various Treaties set out therein and stating that Mr. Tucker was a citizen of the United States believed to be located in Ireland and was wanted to stand trial in respect of the three charges referred to above. On 12th July 2018 The Minister for Justice and Equality issued a certificate under s.26(1)(a) of the Extradition Act 1965 as amended certifying that the request duly made for Mr. Tucker's extradition under the relevant treaties and provisions was received by him in accordance with Part II of the Extradition Act, 1965. Thereafter a Warrant of Arrest was issued by the High Court (Donnelly J.) on the 30th July 2018 for Mr. Tucker's arrest. No issue is taken with the lawfulness or due execution or presentation of any of the documents submitted to the court in these proceedings and I am satisfied that the extradition request has been made in accordance with the treaties and relevant statutory provisions governing extradition between Ireland and the United States of America.

7. Ms Avalon's affidavit contains evidence as to the identification of Samuel Joseph Tucker. He was believed to have fled the United States for Ireland following the events outlined above. No issue is taken in respect of the identification of Mr Tucker who was later arrested in Cork in circumstances outlined in the affidavit of Garda Anthony Keane of 15th January 2019. Mr. Tucker in the course of his arrest accepted that he was the person whose photograph was exhibited in Ms Avalon's affidavit: he gave a date of birth and address corresponding to that furnished for the person the subject of the request. The court is satisfied on the evidence adduced that Mr. Tucker who was arrested on this application is one and the same person who was the subject of the investigation and the procurement of the capias in Florida and is the subject of this extradition request.

8. Points of objection were delivered on behalf of Mr. Tucker together with an affidavit sworn by him on 12th December, 2018, on 4th January, 2019. In response to these documents further information was sought and obtained from the United States Department of

Justice contained in a letter of 10th January, 2019. The matter was listed for 16th January for hearing. There was insufficient time to obtain a further affidavit verifying the materials set out in this letter and objection was taken to its admissibility in evidence. Some of the material contained in the letter is more appropriate for submission in any event but in relation to issues concerning the reporting and investigation of threats and/or assaults to which Mr. Tucker was allegedly subjected following the crash and prior to his fleeing the United States, the only admissible evidence in respect of that issue arises from the affidavit sworn by Mr. Tucker. An opportunity to furnish a further affidavit from the United States authorities was declined by counsel on behalf of the Attorney General.

9. A central issue raised in the points of the defence concerns the absence of correspondence between the three charges in respect of which extradition is sought and offences in Irish law.

10. Section 10 of the Extradition Act 1965, as amended, provides that extradition should be granted only in respect of an offence which is punishable under the laws of the requesting country and the State by imprisonment for a maximum period of at least one year or not less than one year (if a Convention country) or a more severe penalty. Section 10(2) provides that if a request is made for extradition in respect of an offence which is extraditable but the request also includes another offence which is punishable under the laws of the requesting State and of the State but does not comply with the minimum period of imprisonment of one-year, extradition may, nevertheless, also be granted in respect of that offence. The test in relation to whether an offence corresponds with an offence in this state is largely factually or conduct based. In *Hanlon v. Fleming* [1981] I.R. 489 Henchy J. (at p. 495) stated:-

"...it is a question of looking at the factual components of the offence specified in the warrant, regardless of the name given to it, and seeing if those factual components, in their entirety or in their near-entirety, would constitute an offence which, if committed in this State, could be said to be a corresponding offence of the required gravity."

11. Section 10(3) provides that "an offence punishable under the laws of State" means: -

"(a) an act that, if committed in the State on the day on which the request for extradition is made, would constitute an offence..."

In *Attorney General v. Dyer* [2004] 1 I.R. 40 the Supreme Court (albeit in respect of a consideration of correspondence in a European Arrest Warrant application for surrender) emphasised that in considering and deciding the issue of correspondence a court should determine whether the acts alleged to constitute the offence in the requesting State as specified in the warrant correspond to an offence under Irish law rather than embarking upon an analysis of the constituent elements of the offence in the requesting State as compared with those said to be the Irish equivalent. As stated by Denham J, (as she then was) in *Minister for Justice, Equality and Law Reform v. Altaravicius (No. 2)* [2007] 2 I.R. 265 at p. 280:-

"This issue was fully examined by the Supreme Court in the *Attorney General v. Dyer* ...In the course of his decision Fennelly J. identified a number of principles set out in previous cases. These are:

1. In considering whether correspondence has been established the court looks to the facts alleged against the subject of their request, as opposed to the name of the offence for which he or she is sought in the requesting State, and considers whether these facts or this conduct would amount in this State to a crime of the necessary minimum gravity;
2. In considering correspondence therefore the court is concerned not with the name of the offence in the requesting country but the criminal conduct alleged in the request or warrant and;
3. In the absence of anything suggesting that the words used in a warrant had a different meaning in the law of the requesting State, the question of correspondence was to be examined by attributing to such words the meaning they would have in Irish Law."

12. The relevant elements of Count 3 are contained in the information exhibited :-

"Count 3: Informant aforesaid, under oath, further information makes that Samuel Joseph Tucker on or about June 24 2017 in the County of Highlands and State of Florida unlawfully did drive or was in actual physical control of a motor vehicle while under the influence of alcoholic beverage... to the extent that his normal faculties were impaired, or did have a blood alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood, or breath alcohol level of 0.08 or more grams of alcohol per 210 liters of breath and further alleges Samuel Joseph Tucker did have a blood alcohol level of 0.15 or more grams of alcohol per 100 milliliters of blood or breath alcohol of 0.15 or more grams of alcohol per 210 liters of breath, and during the course of driving a motor vehicle while under the influence of alcoholic beverages.. did cause or contribute to the cause of the death of Alyssa Kay Vice, a human being contrary to Florida Statute 316.193..."

In the warrant issued for Mr. Tucker's arrest this offence is described as driving under the influence manslaughter, or "DUI manslaughter".

13. The relevant provision under Florida law is Florida Statute s. 316.193 "driving under the influence" which provides, *inter alia*:-

"(1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:

- (a) The person is under the influence of alcoholic beverages... when affected to the extent that the person's normal faculties are impaired;
- (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath...

(3) Any person:

- (a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree...
2. Serious bodily injury to another commits a felony of the third degree..
3. The death of any human being...commits DUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

A person who is convicted of driving under the influence manslaughter is subject to a mandatory minimum term of imprisonment of four years imprisonment and may be sentenced to a maximum term of fifteen years imprisonment.

14. It was submitted on behalf of Mr. Tucker that there is no correspondence between the offence of driving under the influence manslaughter and any offence under Irish law. I am satisfied that correspondence falls to be examined in relation to the offences of manslaughter, dangerous driving causing death and careless driving causing death. The focus of the court lies not on the technical definition of the Florida offence but on the factual basis upon which the offence is based and extradition is sought and whether the offence based upon such facts corresponds with an offence under Irish law.

15. The offence of manslaughter is, of course, a long established criminal offence at common law in this jurisdiction. It may be committed in a number of ways. Thus a person may be guilty of manslaughter by causing death by an act which is not criminal of itself but constitutes an act or conduct involving a very high degree of, or gross negligence. It may also be committed by causing death by an act or conduct which is criminal and dangerous.

16. In *People (Attorney General) v. Crosbie and Meehan* [1966] I.R. 490 the Court of Criminal Appeal (Kenny J.) in considering the scope of the offence of manslaughter stated:-

" A person who produces a knife with the intention of intimidating or frightening another and not for self-defence commits an assault and the act done is therefore unlawful. When a killing resulted from an unlawful act, the old law was that the unlawful quality of the act was sufficient to constitute the offence of manslaughter. The correct view, however, is that the act causing death must be unlawful and dangerous to constitute the offence of manslaughter. The dangerous quality of the act must however be judged by objective standards and it is irrelevant that the accused person did not think that the act was dangerous. In the opinion of this Court the statement of the law in *R. v. Larkin* [1943] 1 All ER 217 a decision of the Court of Criminal Appeal in England, at p. 219, is correct insofar as it deals with the offence of manslaughter:—'If a person is engaged in doing a lawful act, and in the course of doing that lawful act behaves so negligently as to cause the death of some other person, then it is for the jury to say, upon a consideration of the whole of the facts of the case, whether the negligence proved against the accused person amounts to manslaughter, and it is the duty of the presiding judge to tell them that it will not amount to manslaughter unless the negligence is of a very high degree; the expression most commonly used is unless it shows the accused to have been reckless as to the consequences of the act. That is where the act is lawful. Where the act which a person is engaged in performing is unlawful, then, if at the same time it is a dangerous act, that is, an act which is likely to injure another person, and quite inadvertently he causes the death of that other person by that act, then he is guilty of manslaughter.'

...the question in manslaughter is not whether the accused intended to do serious injury, for if he did, he is guilty of murder. The relevant intention in manslaughter is the deliberate doing of an act which is unlawful and which, judged by objective standards, is dangerous. Thus, in a charge of manslaughter caused by the dangerous driving of a motor car, it is not a defence that the accused driver did not think that the driving was dangerous."

17. It is clear from *The People(DPP) v Dunleavy* [1948] I.R 95 that a simple act of ordinary negligence in driving causing death would not justify a conviction for manslaughter. The prosecution must establish negligence of a very high degree. The court stated at p.102 :-

"If the negligence proved is of a very high degree and of such a character that any reasonable driver, endowed with ordinary road sense and in full possession of his faculties would realise, if he thought at all, that by driving in a manner that occasioned the fatality he was, without lawful excuse, incurring in a very high degree, the risk of causing substantial personal injury to others, the crime of manslaughter appears clearly to be established."

I am satisfied that the elements of the Florida offence in Count 3 and the facts underpinning the charge provide the basis for a prosecution for a charge of criminal negligence or gross negligence manslaughter in this jurisdiction and fall within an allegation that death was caused by the driver "failing to behave as a reasonable driver should". The offence set out in Count 3 is a type of 'motor manslaughter'. The facts alleged against Mr. Tucker in respect of DUI manslaughter that he as a driver deliberately consumed alcohol to the extent that his normal faculties were impaired or to a degree in excess of the statutory limit, procured a motor car capable of driving at high speed, drove it at such a high speed that it careered off the public road and collided with a pole thereby causing the death of his passenger, correspond to facts and conduct that would support a charge of manslaughter in this jurisdiction on this basis.

18. Furthermore, I am satisfied that driving while intoxicated in contravention of the s.316.193(1) of the Florida statute quoted clearly constitutes an unlawful act. The court in *Dunleavy* noted that a conviction for manslaughter in a case of road traffic fatality based on anything less than evidence of a high degree of negligence would be deficient: a charge of dangerous or careless driving causing death is now considered to be adequate to address most such cases. However, death caused by a deliberate act or conduct of which there is *prima facie* evidence and which is itself unlawful in the sense of criminal, may also give rise to a charge of manslaughter. In Ireland driving whilst under the influence of alcohol or in breach of the statutory limits constitutes a criminal offence. It is clear that the prosecution for manslaughter in the State of Florida is based upon the fact that Mr. Tucker allegedly consumed alcohol deliberately which impaired his normal faculties or with an excess of alcohol in his body and then took control of and drove a motor vehicle in the manner described which caused Ms. Vice's death: he travelled to obtain the car keys of the Maserati and the car itself, obtained further alcohol and drove the Maserati at very high speed while his normal faculties were impaired or while there was an excess of alcohol in his system - a criminal offence. This form of manslaughter requires a deliberate act or conduct on the accused's

part which in this case may be said to be provided by the intentional or deliberate consumption of alcohol to the level alleged and taking control of and driving the motor vehicle having done so. The second element for the purpose of this type of manslaughter is whether on an objective assessment the driving of a vehicle while intoxicated to that level was objectively dangerous conduct and whether a reasonable person would realise that fact and would have subjected the deceased to the risk of harm. I am satisfied that these elements provide the basis for the prosecution of this form of manslaughter also in this jurisdiction. At the core of each form of charge is the concept of blameworthy driving causing death.

19. I am therefore satisfied that the offence of "driving under the influence manslaughter" as laid against Mr. Tucker corresponds with the offence of manslaughter under Irish law.

20. Two further offences may be considered in the context of correspondence, namely dangerous driving causing death, contrary to s. 53 of the Road Traffic Act 1961, as amended and careless driving causing death contrary to s. 52 of the Road Traffic Act 1961, as inserted by s. 4 of the Road Traffic (No. 2) Act 2011. As stated by Ó Briain P. in *The People v. Quinlan* (1962) ILT & SJ 123, dangerous driving is:-

"...driving in a manner which a reasonably prudent man, having regard to all the circumstances, would recognise as involving a direct, immediate and serious risk to the public."

The offence of careless driving requires a lesser degree of negligence in order to ground a conviction.

21. The ingredients of these offences were discussed by O'Malley J. in *The People (DPP) v. O'Shea* [2017] 3 I.R. 684 as follows:-

"67. There is a continuum of offences that may arise out of a case of bad driving, from gross negligence manslaughter at the most serious end to inconsiderate driving at the lowest. The constituent elements of each offence are set out in the legislation and the authorities. The dividing line between the offences may be difficult to describe precisely - that is because all of them depend so heavily on the facts of individual cases - but certain propositions are clear.

68. The concept of intention has always had a very limited role in cases of bad driving. This, presumably, is because of the ubiquity of the car in modern society, the danger to members of the public caused by bad driving and the fact that accidents are rarely intentional on anyone's part. A crash that causes physical injury will generally not constitute an assault.

69. There must, certainly, be an intention to drive and to that extent an event such as driving in a state of automatism, or an epileptic seizure (subject perhaps to questions of foreseeability), would be a potential defence. So might the intervention of some wholly unforeseeable event such as the sudden emergence of another vehicle on the wrong side of the road, although one might consider that the standard of the reasonably competent or prudent driver would not impose liability in such circumstances. But there is no requirement of intention in relation to the consequences of the driving - if intent to cause death or serious injury could be proved, the offence of murder would be established.

70. Recklessness arises where the accused knowingly takes an unjustifiable risk. This is not only difficult to reconcile with an offence that essentially consists of *failure* to pay sufficient attention or to take due care - it would, if established, tend rather to support a charge of manslaughter or dangerous driving causing death or serious bodily harm.

71. Dangerous driving, whether causing death or not, entails a lower degree of negligence than gross negligence manslaughter. It is, as Judge O Briain said in 1962, driving that a reasonably prudent driver would, in the circumstances, recognise as causing a direct, immediate and serious risk of harm to the public...There is therefore no requirement to prove that the accused adverted to that risk - the test is objective.

72. Careless driving comes below dangerous driving on the continuum. The section makes it an offence to drive 'without due care and attention'. That wording in itself makes it impossible to 'read in' a necessity to prove intention or recklessness - the core ingredient of the offence is a lack of the care and attention that a reasonably prudent driver would give when driving in a public place, having regard to the circumstances as they actually exist. It is probably not desirable to attempt to define the matter further, since everything will depend on the factual circumstances. The degree of negligence is lower than that involved in dangerous driving, since the driving does not, for the purposes of this offence, have to create the 'direct, immediate and serious' risk that characterises dangerous driving.

73. This does not mean that a 'blameless' driver is liable to be convicted and punished. In the first place, a person who drives without due care and attention in a public place is not properly described as 'blameless' if harm is caused as a consequence of such driving. On the other hand, a driver may be involved in an accident, and may even have caused that accident, and yet be held blameless if he or she met the standard of the reasonably competent or prudent driver in the circumstances. It is also essential to stress that the fact that a death or serious bodily harm results does not mean that a conviction for careless driving is the same as a conviction for dangerous driving causing the same consequence. The risk created by the careless driver is less than that created by the dangerous driver, and the careless driver is therefore less blameworthy in respect of the result. The question of the appropriate sentence remains a matter for the court, and while it is clear that the consequence of the offence must be taken into consideration, it does not determine the punishment to the exclusion of other relevant factors."

22. Dangerous driving is defined by s. 53 as amended as driving :-

"a vehicle in a public place at a speed or in a manner which, having regard to all the circumstances of the case (including the nature, condition and use of the place and the amount of traffic which then actually is or might reasonably be expected then to be therein) is dangerous to the public."

The offence for which extradition is sought is defined by reference to the intoxication of the driver of a motor vehicle who having taken control of the vehicle causes the death of a deceased victim while driving when his/her faculties are impaired or there is excess alcohol in his/her body. The facts relied upon by the State of Florida to establish causation relate to the driving of a vehicle in a public place, at the speed outlined in the affidavit of Ms. Avalon and in the manner and in the circumstances described therein. I am satisfied that the proofs required in respect of Count 3 also correspond with the blameworthy conduct criminalised by the offence of dangerous driving which may embrace much wider circumstances than those set out in Ms. Avalon's affidavit: dangerous driving causing death encompasses these alleged facts but has a wider application to other circumstances beyond the somewhat narrower definition provided in the Florida Statute.

23. Careless driving causing death requires proof that the driver drove the vehicle in a public place without due care and attention or without recent consideration for other persons. It requires proof of a lesser degree of negligent or culpable driving than in a charge of dangerous driving. As O'Malley J. noted in *O'Shea* "it may be described as an appreciable falling below the standard of care and attention expected of a reasonably competent driver, creating a risk of harm to others that the reasonably competent driver would recognise and avoid." (para. 60). I am satisfied that a charge of careless driving causing death in this jurisdiction would also encompass the facts and elements of DUI manslaughter alleged in Count 3 under the Florida Statute. The Irish offence embraces a much wider range of circumstances than that postulated in Count 3, the facts and elements of which may, in effect, be regarded as a subset of careless driving causing death under Irish law.

24. The court does not accept the proposition that the absence of "*mens rea*" renders it inappropriate to accede to this extradition request because no intention or recklessness or mental element is required in order to secure a conviction under Florida law. In both jurisdictions the emphasis is on the blameworthy nature of the driving causing death. The blameworthiness addressed under the Florida statute and in the case of dangerous or careless driving in this jurisdiction does not require advertence by the driver to the consequences of his/her driving. The driving is examined by the application of an objective test in both cases. Under the Florida Statute the nature of the driving is relevant to the causation of the death. The prosecution will have to demonstrate that the driver deliberately drove the vehicle while intoxicated thereby causing the death of the deceased. Clearly the purpose of offence created by the statute is to address the risk to passengers, pedestrians and other road users by persons driving under the influence and the blameworthiness involved is assessed by reference to such driving which thereby causes the death of the deceased. This will take into account necessarily all of the circumstances surrounding the driving in order to establish the causation of death and its relationship to the accused's intoxication. Inevitably the evidence as set out by Ms. Avalon, will be relied upon to establish that Mr. Tucker as a driver under the influence of alcohol which impaired his normal faculties or in excess of the permitted amount contrary to the statute, drove the vehicle and as a result, caused the death of Ms. Vice. There is a narrower basis for criminal liability under the Florida Statute but I am satisfied that the elements and facts to be relied upon as set out in the application for extradition correspond with the Irish offences. I am not satisfied in any respect that Mr. Tucker's rights to a trial in accordance with law under Article 38 of the Constitution would be in any way compromised by his extradition.

25. It is submitted in respect of Count 3 that no request has been made by the United States for Mr. Tucker's extradition on that charge. It is said that it would offend against the Rule against Specialty under s. 20 of the Extradition Act 1965, as amended, were Mr. Tucker to be extradited in respect of Counts 1 and 2 where it is stated that Mr. Tucker will also be prosecuted for Count 3. In that regard reliance is placed on p. 3 of the Diplomatic Note where it is stated, "in accordance with Article II (4) of the Annex, the United States requests the extradition of Tucker for Counts 1 and 2 of the information."

26. Article II(1) of the Annex provides:-

"1. An offence shall be an extraditable offence only if it is punishable under the law of both contracting parties by imprisonment for a period of more than one year..."

27. Article II(4) of the Annex provides:

"If extradition is granted for an extraditable offence, it may also be granted for any other offence for which extradition was requested that meets all the requirements for extradition other than the periods of imprisonment specified in paragraph 1 of this Article."

28. The Diplomatic Note presented by the United States sets out the various treaties under which the application is made and states that Mr. Tucker was wanted to stand trial in the United States on charges set out in Counts 1, 2 and 3. The Note distinguishes between Counts 1 and 2 and Count 3 insofar as Counts 1 and 2 are the subject of a request for extradition in accordance with Article II (4) of the Annex. This arises because Counts 1 and 2 do not fulfil the minimum penalty requirements which require the offence for which extradition is sought to carry a punishment by imprisonment for a period of more than one year or a more severe penalty. Count 3 carries a maximum of penalty of fifteen years imprisonment. It is only in the event that extradition is granted in respect of Count 3 that the application may be granted in relation to Counts 1 and 2 pursuant to Article II (4) and s. 10(2) of the Extradition Act 1965, as amended. Accordingly, I am satisfied that the application for extradition is in relation to Count 3. Extradition is not sought in respect of Counts 1 and 2 as standalone counts. Extradition in respect of those Counts is dependent on the court directing extradition on Count 3. I am satisfied that there is no substance in this point of objection.

29. The substance of the offences set out at Counts 1 and 2 is that Mr. Tucker allegedly drove in respect of Count 1 under the influence of alcohol with a blood alcohol level in excess of the statutory limit provided in s. 316.193 (3)(c)(1) "resulting in property damage to a pole property of Duke Energy by reason of such operation of the said vehicle". Count 2 is a similar charge in respect of property damage. I am satisfied that the factual circumstances and conduct, the subject matter of these charges, corresponds to the prohibition on a driving mechanically propelled vehicle while under the influence of an intoxicant or exceeding alcohol limits as set out in s. 4 of the Road Traffic Act 2010, as amended. The Irish offence does not require the infliction of damage on property. However, the offence of damaging property is created under s. 2 of the Criminal Damage Act 1991. A person who without lawful excuse damages any property belonging to another intending to damage any such property or reckless as to whether any such property would be damaged is guilty of an offence. For the purpose of the section a person is reckless if he foresees that the particular kind of damage that in fact was done might be done and has yet gone on to take the risk of it. Under Article II (2) of the Annex:-

"For the purpose of this Article, it shall not matter:

(a) whether the laws of the contracting parties place the offence within the same category of offence or denominate the offence by the same terminology;..."

I am satisfied that the facts advanced in support of Counts 1 and 2 in the affidavit of Ms. Avalon in respect of the driving of a motor vehicle in excess of the statutory limit of alcohol and the resultant damage to property correspond entirely or almost entirely with the offences under s. 4 of the Road Traffic Act 2010, as amended and s. 2 of the Criminal Damage Act 1991.

30. I am therefore satisfied that the offence in Count 3 in respect of which Mr. Tucker's extradition is sought by the United States is an extraditable offence and that the necessary proofs have been established before the court and consequently, I am satisfied that the extradition has been (a) duly requested, (b) that part II of the Extradition Act 1965 applies in relation to the United States of America, (c) that Mr. Tucker's extradition is not prohibited by the Extradition Act 1965, as amended, or any other statutory or constitutional provision and (d) that the documents required to support the request for extradition under s. 25 of the Extradition Act 1965, as amended, have been produced, I am therefore satisfied that I should order his extradition as requested. Consequently, I am

also satisfied that his extradition in respect of Counts 1 and 2 should be directed in accordance with Article II (4) of the Annex and s.10(2) and on the basis that all other necessary proofs have been established.

31. An affidavit sworn by Mr. Tucker claims that if extradited to the United States his right to life and or health will not be vindicated by the United States authorities. He claims that he was threatened by a number of individuals. He claims that certain individuals sought information about him from his employees and offered "a bounty to my head chef in exchange for information". He alleges that these threats continued for two to three weeks and that people attended at his property. He was in fear of his life and safety. He said he reported this matter to a local law enforcement officials and in particular to a Detective Officer Cloud and was informed that nothing could be done about it until the threats were actually acted upon. Thereafter he alleges a large group gathered about outside his house who were hooded and wore dark clothes and carried fire arms. This incident was reported the next day to Detective Officer Cloud but he was again told that nothing could be done as they had not entered his home. A number of days later a similar situation arose and in this occasion one of the group allegedly discharged a shot gun at him. He states that the shot grazed his shoulder. He claims that he had a first aid kit in the house and that his girlfriend came over and removed the pellets and applied disinfectant. No medical attention was apparently sought at that time. He believed these incidents to be related to the road traffic incident on which the charges are based. He states that he then left the United States a week later in fear of his life. He said he did not report this incident to law enforcement as he had lost all faith given the lack of engagement by Detective Officer Cloud when he made the two previous reports. He believes that his life will continue to be at risk if returned to the United States contrary to his right to life under Article 40.3 of the Constitution and Article 3 of the European Convention on Human Rights.

32. I do not accept that this evidence is a sufficient basis upon which to refuse extradition. Mr. Tucker will be returned to the United States and into the custody of law enforcement officials there. The threats and alleged assault emanated from civilians who are amenable to the criminal law of the State of Florida not from the police force or other State or Federal agencies. I am not satisfied that there is sufficiently cogent evidence that these bodies will not protect Mr Tucker on his return. I am not satisfied that any formal complaint has been made against any particular individual concerning any alleged threats or violence of the type described . I am not satisfied on the basis of the evidence presented that Mr. Tucker or others in his position would be without the protection of the police or prison authorities in the United States or its criminal law when returned on foot of this order. I note also that there is no medical evidence to support the claim made by Mr. Tucker. It seems to me that the allegations advanced by Mr. Tucker in this regard lack the cogency and detail required to justify a refusal of extradition on that basis. In considering this matter I have adopted and applied the principles set out in *Minister for Justice Equality and Law Reform v. Rettinger* [2010] IESC 45 and more recently in *Attorney General v. Davis* [2018] IESC 27.