

THE HIGH COURT

Record No.: 2011 153 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003, AS AMENDED

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

-AND-

PHILIP MICHAEL BARON

RESPONDENT

JUDGMENT of Mr. Justice Edwards delivered on the 4th day of May, 2012**Introduction**

The respondent is the subject of a European arrest warrant issued by the United Kingdom of Great Britain and Northern Ireland (hereinafter "the U.K.") on the 6th April, 2011. The warrant was endorsed for execution in this jurisdiction by the High Court (Peart J.) on the 6th May, 2011. The respondent was arrested on the 10th May, 2011, and brought before the High Court in accordance with s. 13 of the European Arrest Warrant Act 2003, as amended, (hereinafter "the Act of 2003") when a date was fixed for the purposes of s. 16 of the Act of 2003. Thereafter the matter was adjourned from time to time, mostly upon the application of the respondent, until it came on for hearing before this Court on the 29th February, 2012. Following a day long hearing the Court reserved its judgment, which it now delivers.²

The respondent does not consent to his surrender to the U.K. Accordingly, this Court is asked by the applicant to make an Order pursuant to s. 16 of the Act of 2003 directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him. In the circumstances the Court must enquire whether it is appropriate to do so.

The respondent, as is his entitlement, does not concede that any of the requirements of s. 16 aforesaid are satisfied. The Court is therefore put on inquiry as to whether the requirements of s. 16 of the Act of 2003, both controversial and uncontroversial, have been satisfied, and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been satisfied. In so far as specific points of objection are concerned, the Court is required to consider a number of specific objections to the respondent's surrender, namely, those pleaded at paragraphs 1 to 7 inclusive of amended points of objection tiled on the respondent's behalf on the 29th of February 2012. These will be identified and considered later in this judgment.

Uncontroversial s. 16 issues

The Court has received an affidavit of Sgt. Sean Fallon sworn on the 22nd June, 2011 in which he deposes to arresting the respondent at 4 Bawnogues, New Road, Straffan, Co. Kildare on the 10th May, 2011. In describing the circumstances of the arrest he states, *inter alia*, how the respondent acknowledged that he was Philip Baron, and further, having been shown a photograph attached to the warrant, acknowledged that the photograph was of him.

The Court has been provided with and has scrutinised a copy of the European arrest warrant in this case. Moreover the Court has also inspected the original European arrest warrant which is on the Court's file and which bears this Court's endorsement. The Court is satisfied following its consideration of this evidence and documentation that:

- (a) the person before it is the person in respect of whom the European arrest warrant was issued;
- (b) the European arrest warrant has been endorsed for execution in accordance with s. 13 of the Act of 2003;
- (c) the European arrest warrant has been duly executed;
- (d) because the respondent is wanted for prosecution in the issuing state no issue arises as to trial *in absentia*. and so there is no question of as. 45 undertaking being required;
- (e) the Court need not be concerned with correspondence in circumstances where paragraph 2 of Article 2 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (hereinafter "the Framework Decision") has been properly invoked by the ticking of boxes relating to illicit trafficking in narcotic drugs and psychotropic substances and laundering of the proceeds of crime, and the warrant states the potential penalties for each of the four offences to which it relates, and they all carry a potential penalty of in excess of three years imprisonment;
- (e) the High Court is not required. under ss. 21A, 22, 23. or 24 of the Act of 2003 (inserted by ss. 79, 80, 81 and 82 of the Criminal Justice (Terrorist Offences) Act 2005), to refuse to surrender the respondent.

In addition the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) Order 2004 (S.I. No.4 of 2004) (hereinafter "the 2004 Designation Order"), and duly notes that by a combination of s.3(1) of the Act of 2003, and Article 2 of, and the Schedule to, the 2004 Designation Order, the "United Kingdom of Great Britain & Northern Ireland" is designated for the purposes of the Act of 2003 as being a state that has under its national law given effect to the Framework Decision.

The offences to which the warrant relates:

The warrant relates to four offences and these are particularised in Part E of the European arrest warrant. Having regard to the nature of the specific objections that have been raised it is appropriate to reproduce exactly the manner in which they are particularised:

"(e) Offences

This warrant relates to in total: (4) offences.

1) On days between the 18 March 2008 and the 30 November 2008 did conspire with persons and persons unknown to fraudulently evade the prohibition on the importation of a controlled drug of Class 'A', namely cocaine. Imposed by section 3 (1) of the Misuse of Drugs Act 1971 and in contravention of Section 170 of the Customs and Excise Management Act 1979.

2) On days between the 19 September 2005 and the 9 December 2009 did conspire with persons and persons unknown to fraudulently evade the prohibition on the importation of a controlled drug, namely cannabis, imposed by section 3 (1) of the Misuse of Drugs Act 1971 and In contravention of Section 170 of the Customs and Excise Management Act 1979.

3) On days between the 19 September 2005 and the 9 December 2009 did conspire with persons and persons unknown to supply a quantity of cannabis, a controlled drug in contravention on section 1 (1) of the Criminal Law Act 1977.

4) On days between the 19 September 2005 and the 7 September 2010 enters into or becomes concerned in a arrangement which he knew or suspected facilitated the use of criminal property namely cash. by or on behalf of others, namely Walter CALLINAN. Malcolm CARLE, Rachael BARON and Patrick HAYHURST.

Contrary to Section 328 Proceeds of Crime Act 2002.

The person in respect of whom this warrant is accused in the United Kingdom of the commission of an extradition offence.

This warrant is issued with a view to his arrest and extradition to the United Kingdom for the purpose of being prosecuted for the offences.

It is hereby certified pursuant to Section 142(6) of the Extradition Act 2003 that:-

(a) the conduct set out below constituting the extradition offences specified in the warrant falls within the European framework list;

(b) the offences are not extra-territorial offences;

Statement

I am satisfied that a Crown Prosecutor in the Crown Prosecution Service, whose function is to decide whether or not to prosecute an individual for the alleged commission of criminal offences, has decided to charge the person named herein and to try him for the offences specified above and for which this warrant is issued.

Description of the circumstances in which the offence(s) was (were) committed, including the time and place they were committed by the requested person.

(1) On days between the 19 September 2005 and the 9 December 2009 did conspire with persons and persons unknown to fraudulently evade the prohibition on the importation of a controlled drug, namely cannabis, imposed by section 3 (1) of the Misuse of Drugs Act 1971 and in contravention of Section 170 of the Customs and Excise Management Act 1979.

Walter CALLINAN'S, is the Head of an organised criminal enterprise who has since 1995 been based in Spain. After his arrest in December 2009 whilst trying to leave the U.K. on a false passport SOCA searched the properties owned by Walter CALLINAN in Spain. They recovered a 200 page ledger. The ledger covers the period from September 2005 until 2008. The document has been forensically examined and in the opinion of an expert Walter CALLINAN is the author of the ledger. The document lists the purchase price of cannabis resin; the transportation costs involved getting the drugs to its destination in the U.K., the exchange rates and the profits from each importation.

The ledger is split into various "customer accounts" The customers are identified by nick names. SOCA has been able to attribute the nick name "4x" to Philip BARON .He is a close business associate of Walter CALLINAN. An extract from the ledger on the 26 September 2007 reads as follows:-

Page 25 Labelled 4x

25x 3,100 euro= 77,500 euro + 1.45 534,448

A drug expert who has examined the ledger interprets the entry to mean 25kgs of cannabis costing 3100 euro's per kilo has been supplied to "4x" on or around the 26 September 2007. The total amount owed by "4x" is 77500 euro's. Walter CALLINAN has converted that amount into sterling at the exchange rate of 1.45 euro to then pound.

This is one of many entries in the ledger detailing consignments of cannabis that have been imported on behalf of Philip BARON.

Occasionally the ledger identified a "LOST" consignment. One such loss is recorded on the 15 February 2006. On the 22 February 2006 1.2 tons of cannabis was seized by Warwickshire Police. The cannabis was concealed in packaging with labels showing the shipment was organised by a "Patrick Becker". This is another alias used by Philip BARON.

The seizure confirms the ledger relates to importations of cannabis from Spain into the U.K ... Examination of Philip Barons flight history reveals he flew from Dublin on the 6 February 2006 to Barcelona, he then took an internal flight to Alicante. He remained in Spain *until* the 23 February 2006 when he returned to Dublin.

By the 6 April 2006 Philip Baron had returned to Spain. On that date Spanish Police had seized 2.700kgs of cannabis in Alicante. The seizure is also shown as a "Loss" in Walter Callinan's ledger. Philip BARON was arrested in Spain and remains on bail for this matter. When his property was searched the Spanish Police recovered documentation revealing Philip Baron's use of the alias BECKER.

The seizures in 2006 reveal Philip Baron is a close associate of Walter Callinan and involved in the importation of Cannabis into the U.K...

(2) On days between the 19 September 2005 and the 9 December 2009 did conspire with persons and persons unknown to supply a quantity of cannabis, a controlled drug in contravention on section 1 (1) of the Criminal Law Act 1977.

It is the prosecution case the ledger is clear evidence Philip BARON not only assisted Walter Callinan with his importations but was also one of his main cannabis customers.

The ledger covering the period 2005 - 2008 has separate sections for each customer. The section marked "4x" which is a nick name for Philip Baron, reveals Callinan would regularly imports cannabis for "4x". The seizures in Spain and England in 2006 establish the document recovered in Spain is a drug ledger and the importations are from Spain to the U.K... During this period Philip Baron was residing in Dublin but had a residence in Spain and would travel regularly to Alicante.

(3) On days between the 18 March 2008 and the 30 November 2008 did conspire with persons and persons unknown to fraudulently evade the prohibition on the importation of a controlled drug of Class 'A', namely cocaine, imposed by section 3 (1) of the Misuse of Drugs Act 1971 and in contravention of Section 170 of the Customs and Excise Management Act 1979.

On the 27th of November 2008 Gloucester Police seized 40 kgs of Cocaine at a 'virtual office' complex in Cheltenham. The consignment was secreted in boxes delivered from Spain by a legitimate courier firm. The boxes was substituted and the following day it was collected by a 'courier' and was followed to Liverpool where a number of individuals were arrested by Merseyside & Gloucestershire Police Officers. A Liverpoolian: Michael O'NEIL, was jailed for 8 years for receiving the drugs. The courier and organisers in the U.K.. and Spain were later charged by SOCA in March 2010.

Enquiries by the Serious and Organised Crime Agency disclosed a highly sophisticated professional organisation that had set up a network of 16 'virtual offices' throughout England and Scotland. Using various cover loads, consignments were sent from Spain using legitimate courier firms by an Organised Criminal Group (OCG). At the head of the business was Paul HEWETT who lived in Spain and in England. A Karla REEVES was recruited as a Secretary and she was reporting to Hewett and another manager who was only known as "Butlins". The courier and organisers in the U.K.. and Spain were later charged by SOCA in March 2010. All were subsequently convicted receiving sentences from 23 to 9 - years imprisonment.

SOCA has now identified "Butlin" to be Philip Baron.

Philip BARON was closely linked and heavily involved in the importation of the 40kgs that was due to be delivered on the 27 November 2008.

At 14:45 on that day BARON sent REEVES a text message saying:-

"Just send my man in to pick orange up they where del at 1.59 let you know when out and homes"

He receives a reply from REEVES at 15:48 :-

"I still have not been informed by the office"

REEVE'S is then in contact with the office who are receiving the delivery enquiring when the consignment is to arrive. The boxes did arrive but staff became suspicious and discovered the consignment contained a white powder. The police were called and the consignment was identified as cocaine. That day a driver arrived to collect the boxes in accordance with BARON'S message. He was told the boxes could not be collected because of an outstanding debt. REEVES having spoken with BARON she then arranges for the outstanding debt to be paid. She is told the boxes cannot be collected until the 28 November 2008.

On the morning of the 28 November 2008 BARON sends REEVES a text message as follows:-

"Informing just to say if you could inform the office that our customer has made a collection schedule re yesterdays del between eleven and two can they now confirm that all is clear and paid lo save any confusion thanks".

At 12 noon Wayne REED who is clearly BARON'S man collects that boxes and travels Northbound on the MS. At 12:11; 12:42, 12:44 and then again at 12:46pm he speaks with Michael O'NEIL on his mobile. At 13:12, 13:15 BARON speaks with REEVES and at 14:53 she speaks with BARON. At 15:08 and 15:26 REED telephones O'NEIL and then at 16: 14 BARON sends REEVES a text message saying:-

"Lads home thanks".

Michael O'NEIL is arrested in Liverpool in possession of the cocaine.

The telephone traffic clearly demonstrates BARON is a senior member of the OCG and able to influence the events surrounding the collection of the cocaine.

Examination of the documentation, in diaries, notes and spreadsheets, showed that in the period between June and December 2008 Malcolm CARLE had undertaken the collection, movement and distribution of £545,000 in cash. This was under the instructions of Walter CALLINAN. This cash was collected and delivered by CARLE to a Rachael BARON, daughter of Philip Baron. The meetings with CARLE are confirmed in her own seized diaries and confirmed in telephone contact, texts and traffic with CARLE and Philip BARON. Shortly after the cash was delivered she would either visit or send a parcel to Ireland. Between June 2008 and December 2008 Philip Baron was living in Ireland. Rachael BARON was also found to be responsible for the payment of rent at one of the 16 virtual offices used by her father for importing numerous

consignments.

On the 03/11/2008 Walter CALLINAN, using the alias James Jones arrived in Costa Rica having flown from Frankfurt. At the same time 2 other associates arrived from Venezuela having travelled from South Africa. All stayed in the same hotel which was paid for in cash. On the 07/11/2008 James Jones left Costa Rica, flying Iberia to Madrid. The two associates returned to Venezuela.

It is the belief of SOCA the purpose of the meeting in Costa Rica was to make arrangements for the importation of the cocaine later that month.

Examination of Philip Baron's American Express Card reveals that between the 2 November 2008 and the 7 November 2008 he charged £2,735.89 on his card. The debit was for a hotel bill in Costa Rica. It is the prosecution's case that Philip Baron was present during the meeting in Costa Rica when arrangements would have been made for the importation.

The payment of the £545,000 by CALLINAN was his investment in the consignment paid to BARON who was clearly involved in the importation.

The prosecution have discovered e-mails between Walter CALLINAN and Malcolm CARLE in which they discuss the loss. A search of Malcolm CARLE's house revealed the Crown Prosecution Service Advance Disclosure bundle marked "Everton". These are documents given to the Michael O'NEIL's solicitors prior to the first appearance at court. The prosecution suggest this is because Walter CALLINAN was anxious to find out what has happened to his consignment and tasked Malcolm CARLE to find out if he has been double crossed.

Emails showed that CARLE had received visits from the 'Everton' customers concerning their loss of the Cocaine consignment. Walter CALLINAN replied that they should speak to him about this debt. This is clear evidence connecting CARLE and CALLINAN to O'NEIL who in turn is connected to BARON.

In addition to collecting the £545,000, in a GPS Satellite Navigation device seized from Rachael BARON she has the Liverpool address of an individual with whom CALLINAN met in Costa Rica in early November. This is further evidence the money collected was payment for the consignment.

4) On days between the 19 September 2005 and the 7 September 2010 enters into or becomes concerned in a arrangement which he knew or suspected facilitated the use of criminal property namely cash, by or on behalf of others, namely Walter CALLINAN, Malcolm CARLE, Rachael BARON and Patrick HAYHURST. Contrary to Section 328 Proceeds of Crime Act 2002.

On 29th June 2010 a Malcolm Leslie CARLE, Walter CALLINAN'S U.K. representative and money launderer was arrested. His home address and business premises were searched and recovered were over 30,000 documents along with numerous computers and mobile telephones. They showed him to be instrumental in money laundering and supplying drugs.

Examination of the seized material revealed diaries, notes, spreadsheets and email contact between CALLINAN, CARLE and BARON. These detailed the collection and movement of over £10,300,000 in cash by CARLE on the instructions of CALLINAN in the period 2005 to 2010 in over 180 detailed events.

In the ledger, the diaries and spreadsheets recovered from Malcolm Carle reference is made to "4x". "4x's contact" or "Tweek". This is a reference to Rachel Baron, the daughter of Philip Baron.

During this period June 2008 to December 2008 Rachel Baron collected £545,000 in cash, the Prosecution would say this is evidence Philip Baron was involved in the importation but is also a specific money laundering offence.

In addition to the above Philip Baron has been involved in further specific money laundering events involving his daughter Rachel and her partner Patrick Hayhurst.

On the 6 November 2009 Rachel Baron had received a text message from her father saying

"Hi tweek do you think you could arrange that job this afternoon if your not happy let me know x". She replied "Leave it with me but the usual man is on holiday".

There was phone traffic between Rachel Baron and Patrick Hayhurst and then between Rachel Baron and Philip Baron. On the 7 November 2009 at 08:33 hrs Philip Baron sent a text to Rachel Baron saying

"Hi tweek will you let me know what your man will be in this morning".

She replied confirming the vehicle and at 11:45 hrs she sends her father a text saying

"all there wasn't to bad just tidied it up".

At 13:58 hrs Philip Baron sent his daughter a text saying

"Could pad nip back for a bit more this aft x"

On the 13 November 2009 Patrick Hayhurst was arrested in possession of £37,000 in cash .concealed in a vehicle.

SOCA has examined the mobile telephones attributable to Rachel Baron, Patrick Hayhurst and an Irish mobile attributable to Philip Baron. The examination reveals contact between all three on the 12th and 13th November 2009. At 15:15pm a text is sent from the Irish mobile attributable to Philip Baron to the mobile attributable to Patrick Hayhurst saying

"Pilot Imports Ltd T: 01618329988 & 01618392888 43 North St, Manchester. Lancashire, M8 8RE.

Patrick Hayhurst was arrested at Pilot Imports Ltd at 16:07 pm.

It is the prosecution case that Hayhurst knew or believed the £37,000 he was delivering was criminal property. He was, however, only delivering the money to assist Rachel Baron. She was giving him the instructions and it was clear from the diaries, spreadsheets and telephone downloads she was important to her father and was an integral part of her father's business in the U.K...

Between the 19 March 2009 and 1 April 2009 SOCA were able to covertly record conversations from 29 Gleneagles, Bolton, the home address of Rachel Baron and Patrick Hayhurst. In one particular conversation on the 29 March 2010 it was suggested by Rachel Baron that her partner had no knowledge of Philip Baron's activities; this does imply however that Rachel Baron did.

The SOCA investigation has established continuing and on going links between Philip BARON and Walter CALLINAN:

- Since his arrest in December 2009 Walter CALLINAN has remained in telephone contact, with calls once a week to Philip BARON.
- The calls with BARON are all concerning drugs consignments and the seizures, arrests and activity of Law Enforcement to do with their OCG and others known to them.
- BARON and CALLINAN talk about those involved with the seizure in Cheltenham on the 27th November 2008. They mention Paul HEWETT, who whilst awaiting trial for the Cheltenham seizure was with CALLINAN in HMP Winchester.
- BARON and CALLINAN converse about the debts owed with the 'Everton' customers and monies owed by third parties in South Africa.
- The contact details used by CALLINAN when he obtained the bank & credit card accounts at the Am Bank in Ireland are those of Philip BARON.
- Philip BARON and Walter CALLINAN visited South Africa twice during 2009. The person they meet was the supplier of Cocaine to the OCG.

Philip Michael BARON is a drugs importer who specialises in. the providing the transportation methods to bring Cocaine and Cannabis into the United Kingdom. He is also a drug supplier in his own right sourcing Cocaine and Cannabis. He also organises the laundering, aided by others, of the vast criminal profits his criminal business generates.

Walter Callinan, Malcolm Carle, Rachel Baron. Patrick Hayhurst and another 4 defendants have all been charged with similar offences and are due to appear before the Winchester Crown Court for trial on the 3 October 2011."

(All emphasis exactly as in original)

The Points of Objection

The respondent's objections to his surrender may be summarised as follows:

Form of the European Arrest Warrant

The first point of objection alleges, in substance, that the warrant is defective because it allegedly fails to specify the involvement or alleged degree of involvement of the respondent in the commission of the alleged offences, contrary to s. 11 (1A)(f) of the Act of 2003, as amended by s. 72 of the Criminal Justice (Terrorist Offences) Act 2005. It may be of assistance to set out exactly what is pleaded in that regard:

"The surrender of the respondent is sought in respect of four offences arising as outlined at paragraph E of the European arrest warrant issued in the United Kingdom on the 6th day of April, 2011, It is alleged that the respondent was involved in offences, particulars of these activities are contained in the subsequent paragraphs which describe the following activities:-

Paragraph (I) -- conspiring between the 18th day of March, 2008 and the 30th day of September, 2008 with person or persons unknown to import cocaine.

Paragraph (II) -- conspiring between the 19th day of September, 2005 and the 9th day of December. 2009 with person or persons unknown to import cannabis;

Paragraph (III) -- conspiring between the 19th day of September, 2005 and the 9th day of December. 2009 with person or persons unknown to supply a quantity of cannabis;

Paragraph (IV) -- between the 19th day of September, 2005 and the 7th day of September, 2010 entering into an arrangement with others facilitating the use of criminal property, namely cash.

.... [I]t is clear ...that the issuing state intends to prosecute the respondent in his capacity as an alleged conspirator with regard to the above offences. It is not clear, however, whether any of the activities outlined were done personally by the respondent or whether it is alleged that they were done by others acting on his instructions or through intermediaries. The European arrest warrant fails to specify with a sufficient degree of particularity the criminal acts or omissions alleged against the respondent in respect of which his surrender is sought. Whilst the warrant sets out a great amount of detail this largely concerned other suspected persons. It is clear that the warrant purports to allege an offence *in rem* rather than one *in personam*. As such the warrant fails to comply with the provisions of section 11 of the European arrest warrant act, 2003 and is defective. In the premises surrender ought to be refused."

It is further objected that the warrant is defective for allegedly failing to specify when and where the offences the subject matter of

the warrant were allegedly committed, again contrary to s.11(1)(e) of the Act of 2003. (As the Act of 2003 does not contain a s. 11(1)(e) it is presumed that the respondent was intending to refer to s. 11(1A)(f) of the Act of 2003, as amended).

The warrant is further said to be defective because such allegations as there are relate to activities in the name of "4X", "Patrick Becker", "Becker" or "Butlin". It is pleaded that since the European arrest warrant relates to none of these names, and does not provide detail as to how it is alleged that the person named in the European arrest warrant is alleged to be any or all of the names provided in relation to the commission of the alleged offences the subject matter of the warrant, it is bad (presumably, once again, for want of the specificity required by s. 11 (1A)(f) of the Act of 2003).

It is further alleged that because of what is characterised in the points of objection as "the unduly broad and vague nature of the allegation [*sic*] against him" the respondent, if surrendered, will not be able to avail of the rule of specialty. It is pleaded that in reciting large amounts of extraneous detail at paragraph E of the warrant the issuing state has *de facto* rendered the rule of specialty ineffective as regards the respondent. It is contended that the warrant is bad on account of this and that surrender ought to be refused in the circumstances. Curiously, the respondent then adds:

"For the sake of clarity the respondent does not seek to argue that the rule of specialty would not be observed in the event of surrender, but rather that he will not be able to invoke same due to the vagueness of the information already referred to."

A further and broadly similar objection to the last one is asserted on the basis that the respondent "will similarly be unable to avail of the prohibition on further prosecution in other member states, in particular Spain, in the event that he is surrendered for prosecution to the United Kingdom".

It is further objected that the same considerations as arise from the respondent's alleged inability to invoke the rule of specialty "will apply *mutatis mutandis* to the *ne bis in idem* rule." The respondent contends that the *ne bis in idem* rule may become relevant in the event that he is surrendered for prosecution to the United Kingdom. He points out that he is already subject to prosecution in Spain in relation to the offence that is alleged to have occurred on the 6th April, 2006, which forms the subject matter of the first allegation in the European arrest warrant, and he is on bail in respect of that. If the Court understands his point correctly, the *ne bis in idem* rule could become relevant to his trial in the U.K. if he is convicted in Spain after he has been surrendered by this Court to the U.K., but before his trial comes on in the U.K. Of course, if he were to be convicted in Spain before being surrendered he could invoke s. 41 of the Act of 2003 and seek to argue that he ought not to be surrendered. However he has not been convicted of any offence in Spain to date and it is not open to him to rely on s. 41 at the present time.

Extraterritoriality

It is further objected that that the surrender of the respondent in respect of the offences that are the subject of the European arrest warrant would be contrary to s. 44 of the Act of 2003, on the grounds that the alleged offences, if committed, were committed extra-territorially.

Form of the European Arrest Warrant

The relevant statutory provisions and the provisions of the underlying Framework Decision

The Act of 2003 was enacted by the Oireachtas for the purpose of transposing the Framework Decision into Irish law. In so far as the form of the European arrest warrant is concerned, the relevant provisions of the Act of 2003 (as amended) are contained in s. II in the following terms:

"11. [1] A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision.

(1A) Subject to subsection (2A), a European arrest warrant shall specify-

(a) the name and the nationality of the person in respect of whom it is issued,

(b) the name of the judicial authority that issued the European arrest warrant, and the address of its principal office,

(c) the telephone number, fax number and email address (if any) of that judicial authority.

(d) the offence to which the European arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned.

(e) that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his or her arrest, or other order of a judicial authority in the issuing state having the same effect, has been issued in respect of one of the offences to which the European arrest warrant relates.

(f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, and

(g) (i) the penalties to which that person would, if convicted of the offence specified in the European arrest warrant, be liable,

(ii) where that person has been convicted of the offence specified in the European arrest warrant but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence, or

(iii) where that person has been convicted of the offence specified in the European arrest warrant and a sentence

has been imposed in respect thereof; the penalties of which that sentence consists.

(2) Where it is not practicable for the European arrest warrant to be in the form referred to in subsection (1), it shall include such information, additional to the information specified in subsection (1A), as would be required to be provided were it in that form.

(2A) If any of the information to which subsection (1A) (inserted by section 72(a) of the Criminal Justice (Terrorist Offences) Act 2005) refers is not specified in the European arrest warrant, it may be specified in a separate document

(3) [Deleted by s. 72(c) of the Criminal Justice (Terrorist Offences) Act 2005]

(4) For the avoidance of doubt, a European arrest warrant may be issued in respect of one or more than one offence."

Article 8 of the Framework Decision is in the following terms:

"Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities."

The objection based on alleged failure to specify the involvement or alleged degree of involvement of the respondent in the commission of the offence

The obligation to specify within the warrant the involvement or alleged degree of involvement of the respondent in the commission of the offence arises under s. 11(1A)(t) of the Act of 2003, which in turn implements Article 8(1)(e) of the Framework Decision.

In the course of his submissions to the Court, counsel for the respondent posed the question as to what is what is required to comply with s. 11(1A)(f) and Article 8 of the Framework Decision? He submitted that much of the jurisprudence of the Supreme Court and of the High Court tends to address that question in the negative *i.e.*, to say what is not required. Accordingly, he submitted, it is not necessary that the information supplied should establish a *prima facie* case, or a strength of argument case, or even a strong case. Moreover, it is not required to be material that would invite this court to enter into a deliberation directly, or even collaterally, as to guilt or innocence. He submitted that the jurisprudence establishes that mere or actual inconsistencies in the narrative would not of themselves be sufficient to establish non-compliance. There would have to be an inconsistency at a level that would not enable this court to understand what is the case being made.

In counsel's submission what is in fact required is clearly set out in s. 11(1A)(t). The warrant must set out a description of the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence. It must be information that tends to link him to involvement in the offence. Ideally the information should establish a direct link, as in an assault case- A struck B. However, as has been made clear by the Supreme Court in *Minister for Justice, Equality and Law Reform v. Stafford* [2009] IESC 83 (unreported, Supreme Court, 17th December, 2009) and by this Court in *Minister for Justice and Equality v. Shannon* [2012] IEHC 91 (unreported, High Court, Edwards J., 15th February, 2012), there is nothing wrong with circumstantial evidence. An inevitable inference can be drawn but only where there is a basis for such inference. You cannot have a simple assertion that "he did it". Counsel submitted that the test is quite low, and that this Court is entitled to ask whether "looking at this information, putting a fair wind at its back and taking it at its height, could the inference reasonably be drawn?"

In the Court's view counsel has summarised the law fairly. It may, however, be of some assistance to briefly review the main authorities. The *Stafford* and *Shannon* cases respectively have already been alluded to, but the chronological starting point in terms of the reported or readily available jurisprudence is the case of *Minister for Justice, Equality and Law Reform v. Hamilton* [2008] 1 I.R. 60. At pp. 63 to 65, Peart J. dealt with a submission that the warrant contained insufficient detail as follows:

"Deficiencies in the warrant

[9] Counsel for the respondent submits that the warrant in this case, on foot of which the respondent was arrested, is not in the form required by the Act of 2003. As already stated, there is a prescribed form of warrant for use in these

cases and one of the paragraphs contained in that form is headed:-

'Description of the circumstances in which the offence was committed, including the time and place they were committed and the degree of participation by the requested person.'

[10] Counsel for the respondent submits that the way in which this section of the warrant has been completed falls short of containing sufficient information in order to comply with what is required to be inserted by the heading. To deal with this submission, I ought to set out in full what details have been provided in the warrant under that heading:-

'On the 13th August, 2004, the accused, Daniel Hamilton, co-accused. Joseph Hamilton, the deceased, Paul Anthony Donald Whyte and witnesses. Margaret Hamilton and Angela Hamilton, were within Flat 2, 12 Riverford Road, Pollokshaws, Glasgow. Between approximately 12.30 a.m. (*sic*), the deceased, Daniel Hamilton and Joseph Hamilton were alone in the upstairs bathroom. where an altercation took place. Sometime later, the accused, Daniel Hamilton, left the premises.

Upon investigation, witness, Margaret Hamilton, found the now deceased badly injured within the bathroom. An ambulance was called and the deceased was conveyed to the local hospital. The deceased was not responding to medical treatment and was found to be suffering from a catastrophic brain injury and a depressed skull fracture. He remained unconscious and was taken to the intensive care unit and put on a life support machine. The life support machine was switched off as he did not respond to any medical treatment.

On the 1st October, 2004, at Sheriff Court of Glasgow and Strathkelvin, Glasgow, Scotland, A petition arrest warrant was granted for Daniel Hamilton in respect of the offence of murder.,,

"[12] In addition, counsel for the respondent submits that there is nothing within this paragraph which gives any detail to indicate the degree of participation in the crime by the respondent and that this is required to be included by the precise wording of the heading to that paragraph"

"[14] My view of the matter is that the purpose of the warrant is not simply that the respondent might be aware of why his extradition is requested, but that this court, when asked to endorse the warrant for execution, might be satisfied that there is an offence alleged in which the proposed respondent is implicated in some way. When the application for endorsement of the warrant is made initially under s. 13 of the Act the court must be satisfied that the warrant is in the proper form before it can endorse it for execution. At that stage, the court itself must be in a position, from the manner in which the warrant is completed, to see in what way the offence alleged involves the person named therein.

[15] There is no question of this court, in carrying out that exercise, being concerned as to the strength of the case against the person named. That is not involved in the exercise of being satisfied that the warrant is in the proper form. Clearly, there must be some detail, however, from which the court can be satisfied that the person named has some involvement in the alleged offence. There must be some connection made between the alleged offence and the person named in the warrant. But the fact that the paragraph is headed in such a way as to require the time and place, as well as the degree of involvement of the person, does not mean that anything akin to a *prima facie* case must be set forth. That type or matter will be a matter for the prosecution authority in the requesting country to deal with by whatever procedure applies in that jurisdiction, such as would occur here by the service of the book of evidence.

[16] In the present case, I am satisfied that even allowing for the absence of some words following "12.30 a.m.", the time and place have been sufficiently set forth. As to the degree of involvement of the respondent, the information provided in the narrative puts the respondent not only in the flat but also in the bathroom itself where with victim was found injured after an altercation had taken place in that bathroom in circumstances where the respondent was said to be present. We are also told that the respondent left the premises "sometime later".

[17] It is hard to imagine what further information is necessary in order to indicate a degree of involvement, apart from somebody being actually in the bathroom when injury was inflicted and who could then say whether this respondent inflicted the blows, or whether he was simply an onlooker to what was happening, or whether he was an accessory and so forth. These are matters which will no doubt be ventilated at any trial which will take place. But there is detail sufficient to show a degree of involvement and this court is not required to pass any judgment upon the level or amount of that involvement. I am satisfied that the form of the warrant complies with the prescribed form as provided for in the Framework Decision."

The next case in time was *Minister for Justice, Equality and Law Reform v. Desjatnikovs* [2009] 1 I.R. 618, where Denham J., giving judgment on behalf of the Supreme Court (*nem diss*), stated at p. 632:

"The fact that there is a precise description of the facts of the case is important, even though the issue of double criminality is not required to be considered. It is important that there be a good description of the facts. An arrested person is entitled to be informed of the reasons for his arrest and of any charge against him in plain language which he can understand. Also, in view of the specialty rule, the facts upon which a warrant is based should be clearly stated."

In the *Stafford* case previously referred to, the Supreme Court, again per Denham J. (*nem diss*), said the following:

"15. It is required that there be a description of the acts upon which the warrant is based. This is similar to the situation under the Extradition Act 1965, as amended. and indeed classically in extradition law. A description of the acts, or the acts alleged, are the facts upon which the executing judicial authority may apply the law. By describing the acts the facts are before the court and so a decision may be made as to whether there is, for example, double criminality. I am satisfied that the facts on the warrant in this case are sufficient to describe the circumstances in which alleged offences were committed.

Participation

16. The next issue is the submission that the information is insufficient to show that the appellant "participated".

17. The Framework Decision, in Article 8, in describing the content and form of the European arrest warrant states in (1) (e) "... and degree of participation in the offence by the requested person". The European arrest warrant form in the annex to the Framework Decision states: "... and degree of participation in the offence(s) by the requested person". The Act of 2003, as amended by s.72 of the Criminal Justice (Terrorist Offences) Act 2005, requires in s.11 (1A)(f) "... and the degree of involvement or alleged degree of involvement of the person in the commission of the offence...". It is these words which fall to be considered in this case.

18. While the Framework Decision uses the word "participation" and the Act of 2003 uses the word "involvement". I am satisfied that no issue arises on the use of different terms. Both mean to take part in, to participate in, to be involved in. There is no significance in the use of the different words.

19. The question which arises for determination is whether the acts alleged on the warrant show a link with the requested person. It is not necessary to show a *prima facie* case. It is not necessary to show a "strong" case. The issue of guilt or innocence is for the jury in the requesting state.

20. This case is one of circumstantial evidence. There is no reason why an accusation of a crime based upon circumstantial evidence could not be the basis for a European arrest warrant. It is necessary to look at the facts alleged in each warrant."

Counsel for the respondent has also drawn this court's attention to *Minister for Justice Equality and Law Reform v. Jarzebak* [2010] IEHC 472 (unreported, High Court, Peart J., 30th November, 2010), wherein the learned High Court judge stated:

"The judgments of our Courts in these matters indicate a somewhat different approach to the contents of a warrant to that adopted in the neighbouring jurisdiction. Perhaps that can be explained by reference to the manner in which a European arrest warrant is defined under the Act giving effect to the Framework Decision in the United Kingdom. While it is interesting to see how the Framework Decision is applied in different jurisdictions and how their enabling legislation operates and is interpreted, this Court must look to its own and the Supreme Court's case-law when considering how the Act giving effect in this State to the Framework Decision is to be applied and interpreted.

It has been made clear here that the purpose of the factual details of the offence and the involvement of the respondent in it as described in the warrant serves is beyond mere formal adherence to a prescribed form. It is important that a warrant contains sufficient detail to indicate the respondent's role or involvement in the offence, so that when arrested on foot of it, he/she can be immediately be aware in broad outline what it is that he has been arrested in relation to. But the information need not be exhaustive in every known detail.

Equally, such broad factual detail is necessary so that the High Court, when considering whether or not to endorse the warrant prior to a respondent's arrest, can be satisfied that the person named in the warrant is a person who is alleged to have been involved in or to have committed the offence in the warrant. But there is no question of a strong or *prima facie* case having to be apparent, as the strength of the case against the respondent is of no relevance to what this Court must decide on an application for surrender.

This Court needs to be apprised of sufficient information either from the warrant itself or, as supplemented by additional information, to enable it in appropriate cases to be satisfied that the offence in the warrant corresponds to an offence in this State.

The content of the warrant may be important also if, at the hearing of the application for surrender issues such as specialty or extra-territoriality need to be considered. There may be other issues which will need to be decided by reference to the contents of the warrant.

But there is no question of the Court having to apply the same strict rules to adherence to form as it might in a criminal case in this State, such as in a warrant or an indictment. provided that a reasonable summary of the offences is contained in the warrant, which at least sufficient to show that the respondent is implicated in the offence, and sufficient for any of the other purposes to which I have referred."

Most recently, this Court in the *Shannon* case alluded to earlier, applying the earlier decisions just reviewed, rejected a submission that a European arrest warrant contained insufficient particulars as to the respondent's alleged participation or involvement in the following circumstances. I said:

"It is submitted by counsel for the respondent that this is a case of participation in a joint enterprise based on circumstantial evidence. There are sufficient facts and details set out in the warrant to link the respondent to the crimes and to indicate the degree of his alleged participation or involvement. However, it is not necessary that the warrant should, in such a case, specify to the nth degree exactly what acts the respondent did and did not do in furtherance of the joint enterprise. It is sufficient if it contains basic information as to the nature of the offence alleged against the respondent and indicates in general terms how he participated or was involved.

The Court's decision on the specificity point.

The Court is satisfied that the European arrest warrant contains sufficient particulars both of the offences to which it relates, and concerning the alleged degree of the respondent's involvement or participation. The case is based on circumstantial evidence. The allegations are clear. The respondent is said to be the brother of a man who was caught red handed stealing from Castle Howard, and who pleaded guilty to stealing from that premises and also from five other stately homes. The respondent is recorded on CCTV as having entered Castle Howard on the day in question in the company of his brother. He was later stopped in Dublin driving a green Fiat car that had been seen at Castle Howard at the time of the theft from that premises. That car had just disembarked from the Holyhead/Dublin car ferry. He was found in possession of items from all six of the stately homes in question. The car also contained a satellite navigation system programmed with the locations of all six stately homes. This is strong circumstantial evidence and clearly invites the inference that the respondent and brother had, in joint enterprise, toured the stately homes in question and committed the offences to which the warrant relates.

Accordingly, the nature of respondent's involvement or participation is in fact clear from the warrant. He is alleged to have burgled six different states and it is quite clear, although not stated in terms, that he is considered to have committed the offences acting in joint enterprise with his brother. There is no doubt in the Court's mind but that that is what is being alleged. In joint enterprise the acts of any one participant are attributable to all of the participants in the enterprise. It is not therefore necessary that the warrant should specify every act personally performed by the respondent."

The respondent has taken the Court through the particulars provided line by line and has sought to criticise the allegations made as being as being unduly broad and vague, as covering too wide a timeframe, and as containing excessive extraneous detail. More particularly, he contends that the information provided fails to adequately link the respondent to the offences charged.

It is not necessary for the purposes of this judgment to rehearse each and every criticism made concerning the detail or in some cases the lack thereof in the information provided, although the Court has considered all of them. It is sufficient to highlight some of the main criticisms.

The Court will take, for example, the following complaints that were made in relation to the information provided concerning the first alleged offence in time, which is that on days between the 19th September, 2005 and the 9th December, 2009, the respondent did conspire with persons and persons unknown to fraudulently evade the prohibition on the importation of a controlled drug, namely cannabis, imposed by s. 3 (1) of the Misuse of Drugs Act 1971 and in contravention of s. 170 of the Customs and Excise Management Act 1979. The main focus of complaint was in relation to the 200 page ledger said to have been found in a search of Walter Callinan's properties in Spain. The information contained in the warrant states:

"The ledger covers the period from September 2005 until 2008. The document has been forensically examined and in the opinion of an expert Walter CALINAN [sic] is the author of the ledger. The document lists the purchase price of cannabis resin; the transportation costs involved getting the drugs to its destination in the U.K... the exchange rates and the profits from each importation.

The ledger is split into various "customer accounts" The customers are identified by nick names. SOCA has been able to attribute the nick name "4x" to Philip BARON .He is a close business associate of Walter CALLINAN. An extract from the ledger on the 26 September 2007 reads as follows:-

Page 25 Labelled 4x

25x 3,100 euro= 77,500 euro + 1.45 534,448

A drug expert who has examined the ledger interprets the entry to mean 25kgs of cannabis costing 3100 euro's per kilo has been supplied to "4x" on or around the 26 September 2007. The total amount owed by "4x" is 77500 euro's. Walter CALLINAN has converted that amount into sterling at the exchange rate of 1.45 euro to then pound.

This is one of many entries in the ledger detailing consignments of cannabis that have been imported on behalf of Philip BARON."

The criticism is made that the information does not state on what basis, or how, SOCA contends the nickname "4x" is attributable to the respondent. It is claimed that this is a mere assertion and does not in fact establish any "link" to the respondent. Further, counsel for the respondent accepts that the ledger is alleged to contain a record of drugs transactions connected to the U.K. but he says that when it comes to the example highlighted there is no U.K. connection.

Further criticism is then made of the remaining passages in this section which state:

"Occasionally the ledger identified a "LOST" consignment. One such loss is recorded on the 15 February 2006. On the 22 February 2006 1.2 tons of cannabis was seized by Warwickshire Police. The cannabis was concealed in packaging with labels showing the shipment was organised by a "Patrick Becker". This is another alias used by Philip BARON.

The seizure confirms the ledger relates to importations of cannabis from Spain into the U.K ... Examination of Philip Barons flight history reveals he flew from Dublin on the 6 February 2006 to Barcelona, he then took an internal flight to Alicante. He remained in Spain *until* the 23 February 2006 when he returned to Dublin.

By the 6 April 2006 Philip Baron had returned to Spain. On that date Spanish Police had seized 2,700kgs of cannabis in Alicante. The seizure is also shown as a "Loss" in Walter Callinan's ledger. Philip BARON was arrested in Spain and remains on bail for this matter. When his property was searched the Spanish Police recovered documentation revealing Philip Baron's use of the alias BECKER.

The seizures in 2006 reveal Philip Baron is a close associate of Walter Callinan and involved in the importation of Cannabis into the U.K..."

It is urged on the Court that the high water mark of this is that there is a lost consignment which counsel urges is unconnected to his client. There follows a seizure by the Warwickshire police that is connected to him but which is not connected to the ledger. Subsequently, there is the April 2006 seizure in Spain which is also connected to his client but does not bear any connection to the U.K. Counsel submits that in the circumstances the information fails to link his client to the specific offence alleged.

In response, counsel for the applicant says that counsel for the respondent is conflating the requirement to provide an adequate description of the circumstances of the offence, and in particular a description of how the respondent may be linked to the offence, with the sort of evidence that the prosecution would need to adduce to prove the link before the court of trial. Counsel submits that it is not necessary, and it is neither a requirement of the statutory provision, nor of the underlying article of the Framework Decision, that the warrant should set out in every detail what evidence the prosecution may have to establish the link.

This Court respectfully agrees with counsel for the applicant. It is sufficient if the information both specifically asserts a link and gives a general outline of the basis for that assertion, or alternatively sets forth sufficient alleged circumstantial facts that would, if proven, allow a court to infer the necessary link. It is not necessary, however, to provide every detail of the proposed evidence by means of which the circumstances in question might be established in Court. Accordingly, it is perfectly in order for the warrant to assert, for example, that "[t]he ledger is split into various 'customer accounts' The customers are identified by nick names"; to provide an

example of an entry such as:

Page 25 Labelled 4x

25x 3,100 euro= 77,500 euro + 1.45 534,448 ;

and to make the link by asserting, as it does, that "SOCA has been able to attribute the nickname "4x" to Philip BARON" and that "[h]e is a close business associate of Walter CALLINAN." It is not necessary in the Court's view for the warrant to specify the evidence by means of which SOCA will attempt to stand up their attribution of the nickname "4x" to the respondent.

In relation to the criticisms based upon the entries relating to lost consignments, the Court does not consider these well founded in so far as the form of the European arrest warrant is concerned. They may well have some utility at the respondent's trial, should this court see fit to surrender him, in the context of a testing of the prosecution's evidence but this Court is not concerned with testing evidence, or with the issue of innocence or guilt. It is solely concerned with knowing what is alleged against the respondent in sufficient detail to enable it to properly consider the issue of correspondence, which as it happens it is not required to do in this case because of the invocation of paragraph 2 of Article 2 of the Framework Decision, and also to enable it to deal with any issues arising under the rule of specialty, or in respect of an extraterritoriality argument and such matters. The Court considers that the information provided makes it quite clear as to what is being alleged.

It is also important to state that such information as that relating to the lost consignments cannot be viewed in isolation. The court is entitled to have regard to the entirety of the information provided and it is not legitimate to parse and scrutinise individual paragraphs in isolation. The paragraphs criticised set out important circumstances, which when taken into account with other circumstances set out in the warrant, provide further support for the respondent's suggested participation in the conspiracy alleged. In any event quite apart from that the Court considers that the paragraphs criticised are open to a construction other than that put on them by counsel for the respondent, viz. that the information provides three examples of losses entered in the ledger, not just one as has been contended, and that the Warwickshire consignment can be linked both to the ledger and to the respondent. While there is no express statement that the Warwickshire seizure can be correlated with a particular ledger entry, that detail is capable of being interred in the Court's view from the use of the word "occasionally" at the commencement of the first paragraph of the relevant extract. In the Court's view what follows immediately afterwards can be regarded as the provision of three examples of such occasions.

Having considered the entirety of the information provided, the Court has no hesitation in concluding that the requirements of s. 11 (1A)(f) are met in respect of the first offence in time in so far as setting out the circumstances relating to the respondent's involvement or participation in the alleged offence is concerned.

Moving then to the second offence in time, namely that on days between the 19th September, 2005 and the 9th December, 2009 the respondent did conspire with persons and persons unknown to supply a quantity of cannabis, a controlled drug in contravention of s. 1 (1) of the Criminal Law Act 1977, the particulars provided assert that:

"It is the prosecution case the ledger is clear evidence Philip BARON not only assisted Walter Callinan with his importations but was also one of his main cannabis Customers.

The ledger covering the period 2005 - 2008 has separate sections for each customer. The section marked "4x" which is a nick name for Philip Baron, reveals Callinan would regularly imports cannabis for "4x". The seizures in Spain and England in 2006 establish the document recovered in Spain is a drug ledger and the importations are from Spain to the U.K... During this period Philip Baron was residing in Dublin but had a residence in Spain and would travel regularly to Alicante."

It was again submitted by counsel for the respondent that this fails to provide the necessary linkage. Counsel asked the question rhetorically "where is there any information in that [the particulars] to show that he assisted Walter Callinan in his importation? And how does it come to pass that that allegation can be volunteered and no information is put into the document which would support it?"

With due respect to counsel, it is quite clear what is being alleged here in terms of the respondent's participation or involvement in the conspiracy offence alleged. He is said to have assisted Walter Callinan with his importations and it is said that the fact that he provided such assistance is clear from the ledger. It is true that the precise nature of the entries in the ledger that will be relied on to support that are not set out, but in the Court's view they do not have to be. The Court would reiterate its view that it is not necessary to provide every detail of the proposed evidence to be relied upon once the circumstance on which the link is based is itself identified.

Counsel further submitted that the evidence that the respondent was himself a customer of Walter Callinan would not, of itself support involvement in a conspiracy to supply, absent evidence that the respondent was acting in the role of middleman or something of that sort and that the drugs allegedly purchased by him were destined for or ended up in the U.K. However, the Court need express no view on that in circumstances where there is a clear assertion of linkage in as much as it is said that the respondent "assisted Walter Callinan with his importations" and the Court is told that the ledger makes that clear.

In relation to the third offence, viz. that on days between the 18th March, 2008 and the 30th November, 2008 the respondent did conspire with persons and persons unknown to fraudulently evade the prohibition on the importation of a controlled drug of Class 'A', namely cocaine, imposed by s. 3(1) of the Misuse of Drugs Act 1971 and in contravention of s. 170 of the Customs and Excise Management Act 1979, extensive particulars are provided which the Court has already reproduced above.

The first criticism of the information relates to the description of the network of 16 so called "virtual offices" set up throughout England and Scotland that are said to have been for the purpose of facilitating the importation of drugs, and in this instance cocaine. The respondent is alleged to have been involved in the management of this network of virtual offices under the nickname, codename or alias "Butlin." It is asserted that SOCA "has now identified 'Butlin' to be Philip Baron".

The first point made by counsel is that, even on the information provided, the so called virtual offices were manifestly not fictional or 'front' entities, but rather they were real and legitimate offices. It is suggested that this is clear because the seizure on the 27th November, 2008 only occurred because staff in the office to which the consignment of drugs was delivered became suspicious and called the police. Counsel maintains that this totally undermines any possibility of it being reasonably inferred from the facts provided that the respondent was linked to that consignment, and that the linkage cannot be made.

In the Court's view this is again to misunderstand this Court's function in respect of considering whether the warrant contains a sufficient description of the degree of involvement or participation of the respondent in the offence alleged. The Court is not concerned with whether what is alleged in regard to the degree of involvement or participation of the respondent in the offence will stand up when the evidence in support of it is tested. It is solely concerned with whether there is clarity as to what is in fact being alleged in that regard. In this Court's view the allegation here is quite clear. The respondent, using the name Butlin, is alleged to have acted in a management role in respect of a network of virtual offices that were used to facilitate receipt of consignments of drugs, and in this instance specifically cocaine, coming from Spain and to be delivered using legitimate courier firms.

Counsel for the respondent concedes that the telephone traffic described is the type of thing that one would expect to see in a European arrest warrant to establish linkage, but contends that in this instance it cannot be relied upon because the whole allegation is predicated on there being a network of virtual offices managed by the respondent to facilitate receipt of consignments of drugs. It was submitted that in circumstances where the information is that it was the staff at one of these so-called virtual offices that called the police on the 27th November, 2008, this undermines any suggestion that there was something illegitimate or phoney or unreal about these offices, and accordingly there is no basis for inferring that the telephone traffic in question was other than in connection with legitimate business.

The Court would reiterate again that it is not concerned with whether what is alleged in regard to the degree of involvement or participation of the respondent in the offence will stand up when the evidence in support of it is tested. However, in so far as the Court is concerned the allegation itself is quite clear and the information provided in relation to this charge makes clear what linkage is alleged and the basis for it.

There is further criticism of the information concerning the alleged meeting in Costa Rica, and in particular of the assertion that "[i]t is the belief of SOCA the purpose of the meeting in Costa Rica was to make arrangements for the importation of the cocaine later that month." Counsel for the respondent submits that it is to be inferred from that that SOCA has no evidence to support that assertion.

The Court would simply remark that whether or not there is sufficient, or indeed any evidence, to support that assertion is a matter for the court of trial. It is nonetheless clearly alleged that the meeting in Costa Rica was to make arrangements for the importation of the cocaine later that month, and information tending to link the respondent to that meeting is provided in as much as it is stated that :

"Examination of Philip Baron's American Express Card reveals that between the 2 November 2008 and the 7 November 2008 he charged £2,735.89 on his card. The debit was for a hotel bill in Costa Rica. It is the prosecution's case that Philip Baron was present during the meeting in Costa Rica when arrangements would have been made for the importation."

In relation to the fourth and final offence, viz. that on days between the 19th September, 2005 and the 7th September, 2010 the respondent enters into or becomes concerned in a arrangement which he knew or suspected facilitated the use of criminal property namely cash, by or on behalf of others, namely Walter Callinan, Malcolm Carle, Rachael Baron and Patrick Hayhurst, contrary to s. 328 of the Proceeds of Crime Act 2002; extensive particulars are again provided which the Court has already reproduced above.

It was submitted that the information, as far as it goes, suggests that £545,000 was received by Rachael Baron and that it was used for the purchase of the cocaine. Counsel asks "how could that be money laundering?" The answer is of course that the phrase "money laundering" is not used in the charge although it is used within the information contained in the warrant. Whether or not the label "money laundering" represents a correct characterisation of what is charged, having regard to what we in Ireland understand money laundering to be, is irrelevant. The "laundering of the proceeds of crime" box is ticked and the charge itself is expressed to be an offence contrary to s. 328 of the Proceeds of Crime Act 2002. The wording of s. 328 is set out within the European arrest warrant and a consideration of it immediately sheds light upon the apparent inconsistency. It states:

"A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."

The conduct complained of would clearly come within that definition if proven. Moreover, the Supreme Court has made it clear in *Minister for Justice. Equality and Law Reform v. Ferenca* [2008] 4 I.R. 480 that (per Murray C.J. at p. 487):

"....it is for the issuing state to identify any offence in relation to which surrender is sought. as defined by its own law, as being one of the offences listed in article 2.2."

Counsel submits that there is insufficient information in what is set out concerning the SMS text traffic on the 6th and 7th November, 2009 and the events of the 12th and 13th November, 2009 to enable the Court to infer the necessary linkage to the respondent. The Court respectfully disagrees with counsel and considers that taking the totality of the information provided into account, as it is entitled to do, the basis exists for the drawing of the necessary inference.

The objection based on alleged failure to specify adequately the time and place of the commission of the alleged offences.

In the Court's view there is very little to be said about this. This objection, though not withdrawn, was not really addressed at all as a stand alone ground of objection in the course of counsel's submissions and such complaint as was made was made in the context of the complaint that the time-span covered by the particulars furnished would inevitably create difficulties for the respondent in invoking specialty, and/or *ne bis in idem* in the future. This will be addressed momentarily. It is sufficient for the Court to state that it has considered the warrant in detail and that it is satisfied that sufficient particulars as to time and place are provided in relation to the first three offences both for the Court's purposes and the respondent's purposes, bearing in mind that what is alleged in each instance is the respondents' participation in a trans-national conspiracy that is alleged to have been ongoing over a defined time as set out in the warrant. In relation to the fourth offence, which is charged under s. 328 of the issuing state's Proceeds of Crime Act 2002, the particulars as to time and place are more than adequate in the court's view, both for its purposes and the respondent's purposes.

The complaint based on the references to "4X",

"Patrick Becker", "Becker" or "Butlin"

The warrant is further said to be defective because such allegations as there are relate to activities in the name of "4X", "Patrick Becker", "Becker" or "Butlin". It is pleaded that since the European arrest warrant relates to none of these names, and does not provide detail as to how it is alleged that the person named in the European arrest warrant is alleged to be any or all of the names provided in relation to the commission of the alleged offences the subject matter of the warrant, it is bad (presumably, once again, for want of the specificity required by s.11 (1A)(f) of the Act of 2003). The Court is satisfied that there is nothing in this point, and considers that it has already dealt with it in circumstances where it has stated clearly that there is no obligation on the issuing state to provide the detailed evidence supporting an assertion such as that the respondent used one, or other, or all of the aliases in question.

The suggestion that the respondent will be unable to rely on the rule of specialty and/or the ne bis in idem rule in the future

The Court is not impressed with the arguments put forward on this account. In the Court's view it is readily apparent from the European arrest warrant that the warrant relates merely to three counts of "conspiracy to" do individual unlawful acts specified in each of the charges preferred. Respectively, and contrary to the various statutory provisions specified in the warrant; and one count of "entering into or becoming concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person, contrary to s. 328 of the Proceeds of Crime Act 2002". In so far as the warrant contains information describing activity that could potentially form the basis of other charges (whether such apprehended charges might be preferred in the U.K., or in Spain), such information (which in the case of the conspiracy charges is properly to be characterised as information concerning acts done in furtherance of the alleged conspiracies properly included for the purpose of establishing linkage to the respondent; and which in the case of the fourth offence was also properly provided for the purpose of establishing linkage to the respondent) does itself not form the basis of any charge other than the four discrete charges set out in the warrant. The Court considers that the respondent has not credibly demonstrated that he will be disadvantaged in invoking the rule of specialty in the future on account of the contents of this warrant. He is not asserting or invoking the rule against specialty at the moment. Indeed, he has been at pains to point out that he is not seeking to argue that the rule of specialty would not be observed in the event of surrender. Moreover, there is a presumption under s. 23(3) of the Act of 2003 that the requesting state will observe the rule of specialty and no evidence tending to rebut that presumption has been adduced. In so far as *ne bis in idem* is concerned, the apprehended difficulty is entirely theoretical at the moment in circumstances where the respondent has not been convicted of any offence in any jurisdiction and is merely charged both in the U.K. and in Spain. However, even if there were to be an attempt to secure his return to Spain from the U.K. in order for him to face trial in Spain, or alternatively if he were convicted in Spain of a charge relating to the seizure of the 2,700 kgs of cannabis there in April 2006, he would have no difficulty in asserting any *ne bis in idem* concern that he might wish to raise before a relevant Court. There is no confusion or lack of clarity in this Court's view concerning what the present European arrest warrant relates to.

The extra-territoriality point

The Court considers that this does not arise for consideration in circumstances where it is expressly certified on the face of the warrant that the offences are not extra territorial offences and no expert evidence has been adduced concerning the law of the issuing State tending to suggest the contrary. In the circumstances the Court is entitled to rely on what is stated on the face of the warrant.

Conclusion

In all the circumstances of the case the Court is satisfied to make an order pursuant to s. 16(1) of the Act of 2003 surrendering the respondent on all four offences covered by the European arrest warrant, and does so.