THE HIGH COURT

Record No. [2004] 299 SP

BETWEEN

MARTIN JOHN KERRIGAN

PLAINTIFF

AND THE ATTORNEY GENERAL AND JOE EGAN

DEFENDANTS

Judgment of Ms. Justice Dunne delivered on the 4th day of April, 2006

- 1. Martin John Kerrigan (the applicant) seeks an order herein directing his release pursuant to the provisions of s. 50(2)(bbb) of the Extradition Act, 1965.
- 2. Section 50 of the Extradition Act, 1965, as amended, provides:-
 - 1. A person arrested under this Part shall be released if the High Court or the Minister so directs in accordance with this section.
 - 2. A direction under this section may be given by the High Court where the Court is of opinion that -

(bbb) by reason of lapse of time since the commission of the offence specified in the warrant... and other exceptional circumstances, it would, having regard to all the circumstances, be unjust, oppressive or invidious to deliver him up under s. 47, or...

- 3. The proceedings herein were commenced by a special summons issued on 27th July, 2004. He was arrested on foot of the extradition warrants on the 3rd January 2004. The applicant herein took up bail on 5th January, 2004. Extradition Orders in respect of the warrants were made on the 22nd July 2004.
- 4. It is contended on behalf of the applicant herein that there has been delay in seeking extradition in this case and it is also alleged that it would be unjust, oppressive or invidious to deliver up the applicant on foot of the extradition warrants herein.
- 5. As stated above, the applicant herein was arrested on foot of three warrants on 3rd January, 2004, in respect of three alleged offences. The first two warrants relate to alleged offences of robbery on 9th August, 1993. Warrant (a) is in respect of an alleged robbery at a bank in Northwood, Middlesex, England; warrant (b) relates to an alleged robbery of a customer who was present in the bank at the same time. Warrant (c) relates to the possession of a firearm or an imitation firearm with intent to commit an indictable offence namely robbery on the same occasion.

The Affidavits

- 6. A number of affidavits were sworn by and on behalf of the applicant herein and on behalf of the respondent. I propose to refer briefly to the affidavits.
 - (a) Affidavit of Darach McCarthy this was a short affidavit sworn by Darach McCarthy, a solicitor in the office of Michael J. Staines & Co. He set out the fact that the applicant had been arrested on foot of the extradition warrants on 3rd January, 2004, that he was admitted to bail, the terms of that bail and that the applicant now resides at his family home with his wife and two children. He stated that there has been a delay in dealing with the extradition matter and that there were grounds which would render it unjust, oppressive or invidious to deliver up the applicant and he sought the relief claimed herein.
 - (b) Affidavit of Martin John Kerrigan the first affidavit sworn by the applicant on 7th October, 2004, referred to his arrest on foot of the warrants and that the application on behalf of the Attorney General pursuant to s. 47 of the Extradition Act, 1965 came before the High Court on 22nd July, 2004, on which date extradition orders were made in relation to each of the warrants.
- 7. The applicant proceeded to set out certain matters by way of background. He stated that he was interviewed on a number of occasions by British Police in this jurisdiction. The first such interview took place in Finglas Garda Station six or seven years prior to the swearing of the affidavit. He was contacted initially by the Gardaí who told him that British Police wished to question him about the case of a missing person, one Catherine Corridan. There were two English policemen at that meeting which lasted approximately two hours. There was a second meeting which took place at Malahide Garda Station in the summer of 2002. At that meeting he was requested to give a DNA sample which he voluntarily gave and that meeting lasted approximately an hour or more. A final meeting took place at his home at 15 Foxdene Drive, Lucan, Co. Dublin and in attendance at that meeting was one Detective Inspector Brent Hyatt and Detective Sergeant Pickersgill of the London Metropolitan Police together with Garda Ronan Dunne. This meeting took place in September/October 2003.
- 8. During the meeting which took place in September/October 2003 reference was made to the applicant's brother Samuel Kerrigan. At that time he was serving a twelve year sentence for the offences referred to in the warrant, the subject matter of these proceedings. During the meeting the English police officers indicated that they were going to charge Samuel Kerrigan with the murder of Catherine Corridan. The applicant was asked to go to England to speak to his brother Sammy to see if he knew anything about the matter. The applicant declined. The applicant says that at that stage of the meeting a photograph was produced and the two policemen advised him that they believed the photograph showed the applicant in the course of robbing the bank with his brother, Sammy. His brother was, as stated, then serving a twelve year sentence in connection with that robbery. He denied that the photograph depicted him and states that the English policemen told him that they were not interested in him but if he did not help them to convict his brother of the murder, they would turn the photograph over to the robbery squad. If he did help them they said that they would bury the photograph back where they found it. The applicant stated that at that point he asked the English police to leave his house and they then indicated that they were going to seek a warrant to extradite him back to England for robbery and gave him one of their cards with a phone number and asked him "to have a good long think about what they had said".
- 9. The applicant then set out his personal and family circumstances. He was born on 9th June, 1962. He states that he returned to Ireland from England in August, 1993 and he resides at the address referred to above. He said that he has resided there since his

return to Ireland. He lives there with his wife and two children. His children attend school in that area and his wife works part-time. He stated that if he were to be extradited his wife would find it difficult to afford to pay the rent on the house. He pointed out that he has been registered with the social welfare authorities and that he has lived openly with full knowledge of the authorities since his return from England in or about August 1993. Prior to his return, he had been in England for approximately eighteen months. He set out matters in relation to his wife's health and the fact that she had suffered a nervous breakdown following the death of her brother some years earlier. She is under the care of a psychiatrist and takes medication for her condition.

10. The applicant also dealt with the question of delay since the offences allegedly occurred and said that the lapse of time has severely prejudiced his defence of the charges. He pointed out that had he had notice of the charges at an earlier stage he would have been able to check where he had been at the relevant date, time and place and he could well have had alibi evidence in relation to the allegations. He said that by reason of the lapse of time in bringing the charges he has been deprived of that opportunity. He pointed out that he had never sought to evade the authorities either in the UK or in Ireland and that any reasonable enquiries after 1993 would have discovered his whereabouts.

Affidavit of Caroline Kerrigan

11. The applicant's wife swore an affidavit herein on 7th October, 2004. In that affidavit she referred to a phone call she received on 31st March, 2004, from Samuel Kerrigan on her home phone number. She stated that Samuel Kerrigan told her that he had done a deal with the UK authorities and that he had made certain admissions to the UK police in return for which extradition proceedings against her husband would be dropped. She states that in the course of the same conversation Sergeant Pickersgill came to the telephone and confirmed to her that the extradition proceedings against her husband would be dropped. Constable Pickersgill was the same policeman who had previously interviewed her husband in Ireland. She reiterated the matters deposed to by her husband to the effect that they have lived openly at the same address in Dublin since 1985 and that her husband spent approximately eighteen months in England, although she gives the date when he returned as August 1994. She indicated that she earned a sum of approximately €150 per week working part-time in a local supermarket and that her husband was the main support of the family. She then outlined the circumstances in which her brother who was a member of the Irish army took his own life some nine years earlier. She outlined her reaction to that tragedy and that she subsequently suffered from a nervous breakdown. She was hospitalised as a result and treated for depression. This is an ongoing problem. She added that she would have difficult bringing up her two children on her own without her husband's support, emotional and financial.

Second Affidavit of Martin John Kerrigan

12. The applicant herein swore a further affidavit on 28th April, 2005. In that affidavit he set out further matters in relation to the condition of his wife. She was admitted to the casuality department of Tallaght Hospital on 2nd January, 2005, and was referred to the day hospital at Clondalkin with a diagnosis of recurrent depression and anxiety. He exhibited a report of Mr. Patrick Devitt (Consultant Psychiatrist) of 24th February, 2005. He stated that the extradition application is a source of severe stress to his wife and that she is currently on heavy medication. There was a further incident on 21st March, 2005, where his wife attempted self harm and was brought to the casualty department of Tallaght Hospital and kept overnight. At that time she was attending a clinic approximately once per week. She continues to take medication. The applicant also pointed out difficulties his son was having as a result of the situation in the home. In the report of Dr. Devitt which is exhibited in that affidavit Dr. Devitt noted the psychiatric history of the applicant's wife. He noted that her husband's difficulties were a source of severe stress for her and he also referred to the death of her mother as a more recent stressor. He pointed out that she had a recurrent problem with depression and anxiety and that the precipitant for the current episode relates to the stress she is experiencing due to her husband's legal difficulties and the possibility of his having to leave the home.

Affidavit of Simon Rogers

- 13. An affidavit was sworn by Simon Rodgers, a Detective Constable with the London Metropolitan Police. He set out details in relation to the robbery at the Midland bank, the robbery of the customer and the use of a shotgun or imitation firearm during the course of the robbery. He stated that the applicant is alleged to have committed the offences with his brother Samuel Michael Kerrigan. He stated that Samuel Kerrigan was identified from photographs taken at the time of the alleged offences by the bank's security system. This identification took place on 8th July, 1996. The photograph showed two men and a police officer recognised Samuel Kerrigan from a circulated photograph. The policeman in question had had previous dealings with Samuel Kerrigan. He was then convicted of the offences at the Central Criminal Court, Old Bailey, London, on 30th October, 1997.
- 14. He stated that a subsequent investigation commenced in 2002 concerning the disappearance of Catherine Corridan in 1994. Samuel Kerrigan was convicted on 2nd February, 2005, of her murder. During the course of the investigation he said that evidence came to light implicating the applicant in the offences on 9th August, 1993. He stated that the other man in the photograph referred to was identified as being the applicant. This occurred in July 2002 when officers from the serious crime directorate interviewed the sister of Catherine Corridan, one Bridget Shields and her husband, Jim Shields, at their home in the USA. The applicant apparently had a relationship with Catherine Corridan in or about 1991 which ended some time in the summer of 1992. During that time Bridget Shields and her future husband met the applicant and socialised together. It was stated that the said Bridget Shields, having identified the applicant, provided coloured photographs of him from her family album.
- 15. Constable Rogers stated that in September 2002 a comparative analysis was carried out by Kalagate Imagery Bureau of the photographs provided by Bridget Shields with that taken in the bank at the time of the robbery in 1993 and concluded that the other man in the robbery was the applicant. He stated that the applicant had never been questioned regarding his alleged involvement in the robbery. He added that it is now known that the applicant went to Ireland on 12th August, 1993 and that he was known to the police at the time and had a minor conviction for forgery. Although Samuel Kerrigan was interviewed when arrested in connection with the robbery, he refused to identify his accomplice and no link was ever made to the applicant notwithstanding the conviction of Samuel Kerrigan in October 1997.
- 16. Constable Rogers stated that the murder investigation continued throughout 2002 and 2003 and that in September 2003 the Metropolitan Police submitted papers to the Crown Prosecution Service so that an application could be prepared for the extradition of the applicant. Warrants were obtained for the applicant on 14th November, 2003. He added that prior to July of 2002 there was no evidence known to the police linking the applicant to the robbery in respect of which extradition is now sought. Constable Rogers then stated that there was no record of a visit involving members of the Metropolitan Police Force having taken place at Finglas Garda Station. He stated that a Detective Constable Roy Wilkinson and D.C. Chris Monroe visited the applicant as part of the original inquiry into Catherine Corridan's disappearance.
- 17. He then referred to the interview in October 2002 at Malahide Police Station which he attended with Sergeant Pickersgill. Also present was Garda Dunne. In the course of that interview the applicant provided background information about his relationship with Catherine Corridan and a DNA elimination sample. He referred to the further visit of 22nd July, 2003, involving Detective Inspector Hyatt and Detective Constable Leech. Garda Dunne was also present. He stated that no suggestion was ever made that the

applicant's extradition would not be pursued in return for him assisting the murder investigation. It was explained that there were procedures in place to deal with people who provided information. He set out that an offender who assists the police by giving information leading to the apprehension and prosecution of his associates may expect a discount from his sentence. He described how that could be done.

18. Finally he stated that between late 2002 and April 2004 when Samuel Kerrigan was charged with the murder of Catherine Corridan the investigation into her disappearance was conducted by a small team of officers. Her body was not found until 6th May, 2004. It was in or about September 2003 that steps were taken to seek the extradition of the applicant. Prior to September 2002 when the applicant was identified as having been involved in the robbery he stated there was no basis for seeking to extradite the applicant and that accordingly the extradition of the applicant was pursued with reasonable expedition. Finally he stated that the trial of Samuel Kerrigan began on 10th January, 2005, during which he stated that he (Samuel Kerrigan) implicated the applicant in the robbery of 9th August, 2003, and it's planning. Samuel Kerrigan was convicted of murder on 2nd February, 2005.

Affidavit of Garda Ronan Dunne

- 19. Garda Ronan Dunne swore an affidavit in which he stated that in or October/November 2002 he was asked to assist members of the British Police who were investigating the suspected murder of Catherine Corridan. In October of 2002 he met Detective Sergeant Pickersgill and Detective Constable Rogers from the London Metropolitan Police. His role was to liaise and assist the police officers. He contacted the applicant to ascertain if he was prepared to meet with him and he agreed to do so. A meeting was arranged at Malahide Garda Station as the applicant was working in the area at the time. In the meeting that took place on 22nd October, 2002, the applicant agreed to provide a sample for DNA analysis. Garda Dunne stated that during the course of the meeting the applicant suggested that his brother had been set up by the English Police for the robbery of which he had been convicted.
- 20. Garda Dunne then outlined the details of a further meeting in July, 2003. The purpose of that meeting was to assist in the further inquiries of the London Metropolitan Police regarding Catherine Corridan and the applicant indicated that he was willing to do so. On 22nd July, 2003, Detective Inspector Hyatt and Detective Constable Leech together with Garda Dunne were present at that meeting.
- 21. Garda Dunne stated that during the course of the second meeting a still photograph from CCTV footage was shown to the applicant by D.I. Hyatt. One of the males in the photograph was identified as Samuel Kerrigan, the applicant's brother. Detective Inspector Hyatt informed the applicant that the image was recovered from footage of an armed robbery which occurred a number of years previously in the United Kingdom. Detective Inspector Hyatt informed the applicant that "this evidence" had been uncovered during the course of the investigation into the murder of Catherine Corridan and that it was believed the applicant had been involved in the robbery. It was made clear by the police that the purpose of the meeting was not to gather evidence. Nonetheless the applicant was informed that the investigation into the robbery was ongoing and that he, the applicant, was suspected of being involved. Garda Dunne also stated that at no time during the course of the meetings was any suggestion made to the applicant that he should return to England to assist the police with their murder investigation but they did appeal to the applicant to assist them in any way he could in the light of his previous relationship with Catherine Corridan. Garda Dunne was not aware of any meeting having taken place at Finglas Garda Station six or seven years earlier.

Affidavit of Michael Heffernan

22. An affidavit was sworn by Garda Michael Heffernan on 20th July, 2005. This affidavit related to the execution of the extradition warrant. It is not necessary to refer in detail to the contents of that affidavit.

Third affidavit of Martin Kerrigan

23. This affidavit was sworn by the applicant on 4th November, 2005. It set out briefly further details of the applicant's wife's medical condition. He reiterated the fact that he had lived openly in this jurisdiction with the full knowledge of the authorities since his return from England in or around August, 1993. He also exhibited a document from the local employment exchange in Clondalkin for the purpose of demonstrating that he was known to the social welfare authorities of this State over a number of years.

Affidavit of Ethel Ryan

- 24. The final affidavit was a short affidavit of Ethel Ryan, sworn on 4th January, 2006. She stated that she is the sister of the applicant. She stated that during the course of the trial of her brother, Samuel Kerrigan, in respect of the offences of robbery alleged to have been committed on 9th August, 1993, a photograph was used as evidence against Samuel Kerrigan. Evidence was given from a forensic expert that the photograph was indeed that of Samuel Kerrigan. She stated that the second time she became aware of the photograph was towards the end of 2002 or the beginning of 2003, when two detectives came to see her regarding the disappearance of Catherine Corridan. The constables concerned were Detective Constable David Leech and Detective Constable Mark Leech. She was shown a number of photographs by the police officers, one of which was a photograph of two men in a bank and those two detectives informed her that the two men shown in the photograph were her two brothers. She stated that she did not understand why she was being shown the photograph as it had nothing to do with the disappearance of Catherine Corridan and they informed her that they did not care about the bank robber in the photograph but unless her brother, the applicant, and she would help to secure the arrest of her brother Samuel Kerrigan in connection with the murder, they would have the applicant brought back to London and arrested for the robbery. She states that she declined to become involved in the matter. She said she spoke to the said police officers on at least three different occasions when they visited her and she was frightened for her brother Martin and eventually asked the police officers not to visit any more. Subsequently she got a phone call from Detective Constable David Leech and she was told she could visit her brother, Samuel Kerrigan, at Ealing Police Station in London. She visited her brother that evening, who had at that stage admitted his part in the disappearance of Catherine Corridan and she spoke to her brother Samuel in private. She stated that that conversation had been taped.
- 25. She stated that when she attended at Ealing Police Station to talk with her brother Samuel, Detective Constable David Leech told her not to worry about the applicant herein or the photograph that was previously shown to her as they were now going to leave the family alone. Subsequently, her brother Samuel was charged with murder and pleaded not guilty to murder but pleaded guilty to disposing of her body. A few months later she stated that she received another phone call from Detective Constable David Leech, asking her to tell her brother Samuel to plead guilty to murder. She stated that the police officer was very angry and that he told her that he would make sure her brother, Martin Kerrigan, would be brought back to London to go on trial.
- 26. Notices of intention to cross-examine the deponents were served by both sides in respect of the various deponents who had sworn affidavits herein.

Cross-examination of Martin Kerrigan

27. In the course of his cross-examination the applicant stated that he returned to Ireland in August, 1993 for a sister's wedding. He had not been back to England since. He stated that he had been friendly with Catherine Corridan and that he was aware of her disappearance. He and his father were interviewed at Finglas Garda Station in connection with the disappearance of Catherine

Corridan. He first learned of her disappearance some time in 1995/1996. At the three meetings between himself and the British police, there was no mention of any robbery at either the first or the second meeting. At the third meeting the photograph was produced. He stated that Garda Dunne was present at two of the meetings that took place between himself and British police. He said that Garda Dunne had advised him of his legal rights and that he was present during the meetings. He confirmed that he knew Bridget Corridan, who married a man called Shields. In response to the identification by Bridget Shields in the photograph shown to her in 2002, his comment was "That's what they say". It was put to him that by September, 2003 the papers in the matter had been sent to the Crown Prosecution Service for the purpose of processing extradition and that this had occurred after the final meeting. The applicant in response reiterated that he was told by the British police officers that if he did not help them, they would seek extradition. If he did help, the photograph would be "buried". He denied saying to the police in the course of interviews that his brother Sammy was set up. He said that that was what they said he had said. He reiterated that there had never been any mention of any robbery until he had refused to help obtain a conviction of his brother. He confirmed that during the course of various meetings he told the police everything that they asked him and he provided information to them about his relationship with Catherine Corridan. He added that he had never been a suspect in her murder. The purpose of asking him for his DNA was for the purpose of elimination. Subsequently, after the final meeting, he said he was told that he would hear from the British police because he had refused to go and help them. He stated that he could not remember where he was at the time of the alleged robbery. He remembers coming back for the wedding and that there were lots of people at the wedding. At that time he was reunited with his wife. It was put to him that, as he was capable of giving instructions, he would not have any difficulty in dealing with any defence he wished to make but he did not agree.

Evidence of Caroline Kerrigan

28. Caroline Kerrigan outlined the phone call she received from Samuel Kerrigan on 31st March, 2004. She said that in the course of that phone call she was told by him that the extradition proceedings would be dropped as a result of Samuel Kerrigan's co-operation with the police. It was put to her that the proceedings in respect of the extradition commenced in September, 2003 and that the extradition warrants were received in December, 2003 in Ireland. She pointed out that at the time of phone call Samuel Kerrigan was under arrest. She then outlined her problem with depression and accepted that it was a recurring problem.

29. In re-examination she pointed out that in the course of that phone call from Samuel Kerrigan he had stated that he was phoning from a police station. She then gave some details in relation to her son who was in the process of doing his Leaving Certificate at that time.

Evidence of Constable Simon Rogers

30. Constable Rogers confirmed in the course of direct evidence that he had been involved in the investigation of the murder of Catherine Corridan since 2002. She had been reported missing in 1994 and a reinvestigation commenced in 2002. Around the time she went missing the applicant herein was in a relationship with her. He stated that it was Bridget Shields who was shown photographs from the bank robbery in July, 2002 and both she and her husband identified the applicant from the photographs. A forensic expert did mapping on the photograph obtained from the Shields family and the photograph from the robbery. Prior to this there was no connection made between the applicant and the robbery. Samuel Kerrigan had been convicted of the robbery on 30th October, 1997. He accepted that at the time the applicant was interviewed in October, 2002 by Detective Sergeant Pickersgill in the presence of Garda Dunne that it was known at that stage of the applicant's alleged involvement in the robbery but this was not mentioned. He stated that he was not present at the last meeting. Constable Rogers was then cross-examined. He was asked about the first investigation into the robbery and why the applicant had not become a suspect. Constable Rogers indicated that he was not involved in that investigation. It was not until July, 2002 that the applicant was identified. He conceded that following the robbery efforts would be made by the police to identify both parties and, indeed, one was identified. He accepted that basic police procedure would have involved inquiries being made as to Samuel Kerrigan's associates. He was asked how it was that notwithstanding the normal inquiries that would be made in relation to a suspect's known acquaintances and family members, that he could understand how the applicant did not become a suspect at that time. He made the comment, "It happens all the time". The applicant was never identified and, if he had been, the matter would have been dealt with. Constable Rogers stated that for the purpose of the meeting he attended at Malahide Garda Station that the information in the original inquiry into the disappearance of Catherine Corridan was reviewed and he was then visited.

31. He was unable to assist about the meeting that took place at Finglas Garda Station and he was not present at the meeting at the applicant's home. He stated that it would not have been appropriate to make a comment to the effect that if the applicant had cooperated in persuading his brother to plead guilty to the murder, he would not be extradited. He did not accept that such a suggestion would have been made. He was then asked about the phone call made by Samuel Corrigan on 31st March, 29004. He stated that as the extradition proceedings had been instigated at the time of that phone call that once commenced, such proceedings could not be stopped. He was asked if he had checked the phone records to verify that such a phone call had occurred. He stated that he did not check the records. He explained that Samuel Kerrigan was produced from the prison where he was serving his sentence to Ealing Police Station. He agreed that he could have spoken to his colleague, Sergeant Pickersgill, who was also alleged to have spoken to Mrs. Kerrigan during the course of that phone call. He agreed that if the suggestions alleged had been made, it would be wrong. However, he placed the emphasis on the word 'if'. He confirmed that before swearing his affidavit on 24th June, 2005, he had sight of the affidavits of the applicant and his wife. He was unable to state for how long he had had those affidavits. On re-examination he indicated that Samuel Kerrigan had been identified on 8th July, 1996 in connection with the robbery by a police officer.

Evidence of Ethel Ryan

32. Ethel Ryan indicated in the course of her cross-examination that she had a number of conversations with the police in connection with the investigation into the murder of Catherine Corridan. She said that at the very first meeting the police indicated to her their belief that her brother Sammy had murdered her. On a subsequent visit she was shown the photograph of the robbery. Subsequently there was a meeting which she thought was some time after the extradition warrants. She stated that she was asked by the police who had visited her would she go to Ireland and speak to her parents and speak to her brother, the applicant, in order to persuade her brother Samuel to plead quilty.

Evidence of Garda Ronan Dunne

33. Garda Dunne gave evidence that he was a liaison officer. He was present at the meeting with the applicant in Malahide Garda Station and at his home. He believed that at one stage Detective Constable Leech spoke to Mrs. Kerrigan in a separate room at the meeting in the home. He did not keep any notes of the meeting as it was not necessary for him to do so, given that he would not be a witness in the U.K. proceedings. The purpose of the meeting in the applicant's house was to try and establish the nature of the relationship of the applicant with Catherine Corridan. It was indicated to the applicant that the police had suspicions in relation to Samuel Kerrigan. They wanted him to speak to his brother Sammy. They implored him to contact his brother. It was his understanding that what was proposed was that the applicant would speak to his brother by phone. Garda Dunne could not recall at that stage whether there was a proposal to charge Samuel Kerrigan. His belief was that the British police informed Martin Kerrigan that he, Samual was their only suspect in relation to the matter. The basis upon which they spoke to the applicant was that he had been

close to Catherine Corridan and therefore he would assist in any way he could.

- 34. He was asked about the circumstances in which the photo was produced to the applicant and he stated that during the course of the meeting in the house, Inspector Hyatt said that the applicant did not trust the English police and had thought that Sammy had been set up in relation to the bank robbery conviction. He showed the applicant the photo and said "This is Sammy" and he then said, "We believe that's you". The police never spoke to Martin during the course of this meeting about the robbery or his alleged involvement in it. The purpose of the discussion about the photograph was that there had been an attempt to discuss the disappearance of Catherine Corridan and the police felt there was some resistance because the applicant was of the view that his brother Sammy had been set up and it was in that context that the photo was produced to dispel this idea. Garda Dunne explained that the resistance was observed at the meeting in Malahide and therefore it was at the third meeting in the home that the photograph was produced to dispel the idea that Samuel Kerrigan had been set up. It was only during the course of the third meeting that Garda Dunne became aware of the suggestion that the applicant was involved in that robbery. He had never been told that there was a robbery investigation.
- 35. He confirmed that he had no difficulty in finding the applicant, he was informed where he lived. Garda Dunne indicated that he was not informed of there being a robbery investigation. The first thing that he could recall was when the photo was produced. He then indicated that he was of the view that he had seen the photograph prior to the meeting. Garda Dunne had picked up the detectives at the airport and brought them straight to the applicant's house. As far as he was aware, the main investigation was murder. The robbery was a by-product of that investigation. He added that the photograph had been shown to the applicant at the end of the meeting. The detectives told the applicant that they were not there to gather evidence. They did not inform him that he was also a suspect in the robbery. He added that when the photograph was shown to the applicant the police officers stated that this is the evidence that Samuel Kerrigan was convicted on and they added, "We're not here to gather evidence about it". They were merely informing him in this way that they were investigating the robbery and that he, the applicant, was a suspect. He said that they were not conveying to him that if he played ball they would go easy on the robbery. Finally, Garda Dunne indicated that at the first meeting he advised the applicant that he did not have to speak to the police officers and he did this again before the meeting at the house. That concluded the cross-examination of the various deponents.
- 36. I should make some comments about the evidence in regard to this particular case. I found the evidence of Ethel Ryan in relation to the matters upon which she gave evidence somewhat unsatisfactory. She was vague as to dates when she had spoken to various police officers and as to where she had been at various stages. Overall, I felt her evidence was not of great assistance to me in determining the issues in this case.
- 37. So far as the evidence of the applicant is concerned, there is one particular point on which it is clear that his evidence is to be preferred as opposed to the evidence of Constable Rogers. I do not say this as any criticism of Constable Rogers, as he was not a party to the particular circumstances and therefore was not aware of the details but I should say that, insofar as the applicant has referred to three meetings having taken place with the British police, I am satisfied that his recollection in this regard is absolutely correct. Constable Rogers had indicated that he could not find a record of a third meeting having taken place in Finglas Garda Station but I have no doubt that such a meeting did in fact take place.
- 38. I think it is fair to say that the applicant did co-operate with the police in relation to their investigation into the murder of Catherine Corridan. He spoke to them when he did not have to. He provided a DNA sample when he did not have to. He outlined circumstances in relation to his own relationship with her. However, one of the important issues in this case is whether the extradition proceedings were used by the British police to bring improper pressure to bear on the applicant for the purpose of applying pressure to his brother, Samuel Kerrigan. I will return to this issue later.
- 39. One of the curious aspects of the evidence in this case relates to the matters outlined by Caroline Kerrigan in her affidavit. She gave evidence in relation to the phone call with Samuel Kerrigan. During the course of that phone call she also stated that she had spoken to Detective Sergeant Pickersgill. Her evidence on this point has not been challenged in any way. As already indicated, Constable Rogers confirmed that he had not checked phone records at Ealing Police Station to confirm whether such a phone call had or had not been made. He confirmed that he could have spoken to his colleague, Sergeant Pickersgill, as to the alleged conversation. He confirmed that Samuel Kerrigan had been produced from prison to Ealing Police Station and agreed that if such suggestions had been made to Mrs. Kerrigan it would have been wrong. As noted already, he placed a particular emphasis on the word 'if'. Notwithstanding that, it would have been possible for Constable Rogers to obtain phone records, records as to the custody of Samuel Kerrigan whilst in Ealing Police Station and, if need be, an affidavit from Sergeant Pickersgill, none of which would have been difficult. All of this could have been done to refute the evidence of Caroline Kerrigan. I will refer to this matter later in this judgement.
- 40. Written submissions were furnished to the Court and oral submissions were made by both sides.
- 41. In the written submissions on behalf of the Applicant, Mr. Giblin, S. C., referred to the issue of delay. He pointed out that over ten years had elapsed from the date of the alleged offences. Even if the UK authorities were unaware of the identity of the second alleged suspect, he argued that there was an onus on them to proceed with all due haste once they did so identify him. He referred to a number of decisions in support of this argument, namely, *Martin v Conroy* 2002 1 ILRM 461 and *M. B. v Conroy* 2001, 2 ILRM 311. Reference was also made to the decision in the case of *Kwok Ming Wan v. Conroy* [1998] 3 IR 527.
- 42. Mr. Giblin then referred to the behaviour of UK authorities. He argued that the production of the photograph allegedly showing the applicant involved in the offences of 1993 was an inducement by the London Metropolitan Police Officers to persuade the applicant to help in another investigation. It is submitted that the imposition of threats and inducements upon the applicant has seriously tainted the extradition proceedings. In this context he relied upon the decision in *Ellis v. O'Dea* [1990] ILRM 87, the decision of the Supreme Court in *Lynch v. Attorney General* [2003] 3 IR 416 and to the decision in *Larkin v. O'Dea* [1995] IR 485.
- 43. He also raised the issue of prejudice by reason of the lapse of time and insofar as other exceptional circumstances are concerned he referred to the fact that the applicant has been residing here since 1993 openly. He referred to the circumstances of his family and in particular the ill health of his wife and in the circumstances argued that it would be unjust, oppressive and invidious to deliver up the applicant pursuant to the warrants.
- 44. In his oral submissions he referred also to the evidence given herein. He pointed to the fact that the evidence of the applicant and of his wife have not been effectively refuted insofar as it deals with (a) the conversation Mrs. Kerrigan outlined in the course of her affidavit with Samuel Kerrigan and Sergeant Pickersgill and secondly the allegation made by the applicant that the photo would be buried if he cooperated with the police in relation to the investigation of the murder. He pointed out that Constable Rodgers had not discussed the contents of the affidavits filed on behalf of the applicants with his colleagues Detective Inspector Hyatt or Sergeant Pickersgill. He referred to paragraph 11 of Constable's Rodger's affidavit which stated that during late 2002 up to April 2004 when

Samuel Kerrigan was charged with the murder of Catherine Corridan the investigation into her disappearance was conducted by a number of officers. Once that investigation was being to approach its conclusions, in September 2003 only then were steps taken to seek the extradition of the applicant. On that basis Mr. Giblin argued that the robbery investigation was delayed while the investigation into the murder was well under way. On that basis he argues that the period of delay in this case is excessive. He pointed out that there has been a delay of over one year from the time of allegedly identifying the applicant as a suspect. After he had been identified as a suspect, meetings took place with the applicant over a number of hours without him being informed that he was a suspect. Even so it was pointed out to the applicant that the purpose of the meetings was not for the purpose of investigating the robbery but rather to deal with the murder investigation.

- 45. On this basis Mr. Giblin argued that the UK authorities were not acting expeditiously. He made adverse comments in relation to the lack of affidavit evidence from Constable Leech, Inspector Hyatt and Sergeant Pickersgill. Again he referred to the fact that there was no evidence before the court to suggest whether or not the applicant was a suspect in the original police investigation. He pointed out that Constable Rogers is making that assumption because the applicant herein was not charged at the same time as his brother. Accordingly he concluded that not only was there excessive delay but that the English authorities were attempting to use the extradition proceedings as a method of attempting to further the murder investigation and bring pressure to bear on the applicant's brother in regard to that matter.
- 46. In the written submission on behalf of the respondent, Mr. McCarthy SC referred to the decision of *Kwok Ming Wan v. Conroy* [1998] 3 IR 527 in respect of the interpretation of s. 50(2)(bbb) of the Extradition Act, 1965 as amended. He argued that an applicant must show that not only has there been a lapse of time but that there are other exceptional circumstances that would render it unjust, oppressive or invidious to allow the extradition to proceed. He referred also to the decision in the case of *M.B. v. Conroy* [2001] 2 ILRM 311.
- 47. In regard to the lapse of time he referred to a number of authorities which had considered the issue of lapse of time. He pointed out that each case must be considered on its own facts as stated in the case of *Lynch v. Attorney General* [2003] 3 IR 416. In that case one of the features of the delay in that period was due to the fact that separate proceedings against the applicant in this State had been struck out and before advancing the extradition proceedings a view of the D.P.P. had been sought in respect of recharging the applicant. On that basis the court was satisfied that the delay was explained and was reasonable in the circumstances of the case. The case of *Quinlavin v. Conroy* [2003] IR 154 was a case in which there had been a delay of nine years and eight years since the dates of the commission of the alleged offences. In that case it was held by Kelly J. that the "time scales alone did not of themselves mean the applicant could rely upon the relevant statutory provision".
- 48. He also referred to the decision in a case of *Myles v. Sreenan* [1999] 4 IR 294 which again involved a delay of some seven or eight years. The alleged offences in that case related to conspiracy to defraud and in that case Geoghegan J. accepted the evidence of a member of the English Serious Fraud Office that the case was extremely complex, that a hugely intensive investigation had to be carried out and requests for assistance had to be made to several foreign jurisdictions. Statements and documents in the case were also examined by Geoghegan J. In that case he held that the lapse of time had not been unreasonable and noted that there was "no evidence of any negligent delay on the part of the prosecuting authorities."
- 49. Mr McCarthy pointed out that allied to the lapse of time there must be other exceptional circumstances to enable the exemption to apply. He also argued that the changes in family circumstances are not of themselves exceptional circumstances. They could however according to the court in *Kwok Ming Wan v. Conroy* be taken into consideration in determining whether it would be unjust, oppressive or invidious to deliver up the plaintiff. In that particular case, matters which had been referred to included the applicant getting married, starting a family, purchasing a home and establishing a business. However the court in that particular case noted that the applicant had made no effort to conceal his whereabouts in the State and worked openly. He has also been in contact with the Gardaí and Immigration Authorities and had applied for an obtained a passport from the British Embassy.
- 50. Mr. McCarthy also referred to the words unjust, oppressive or invidious as referred to in the relevant provision. Those words have been considered in a number of cases, namely Fusco v. O'Dea (2) [1998] 3 IR 470, Long v. O'Toole [2001] 3 IR 549.
- 51. In his oral submissions Mr. McCarthy commented that when Samuel Kerrigan was identified in 1996, he did not disclose his accomplice's identity and therefore there was no evidence against the applicant herein. He stated that it was only in the course of the other investigation, namely the murder investigation that the photo came up again. So far as the police were concerned the murder was the matter which had priority and this was a reasonable approach to take. The police were aware of his relationship with Catherine Corridan and in those circumstances it was reasonable to believe that he might have been of assistance in relation to investigation of her disappearance.
- 52. Mr. McCarthy argued that the relevant lapse of time was from the time when the applicant became the prime suspect in relation to the robbery matter in September 2002. The lapse between that time and the application for the warrants in November 2003 was not unreasonable.
- 53. So far as the matter set out in the various affidavits are concerned he submitted that no reliance should be placed on the affidavit of Ethel Ryan given her cavalier approach to dates when contrasted with her evidence on cross-examination. He made a similar observation in relation to the evidence and affidavit of Caroline Kerrigan. He made the point that at the time of the conversation with Caroline Kerrigan described in her affidavit the applicant had already been arrested on foot of the extradition warrants. As the extradition process was in hand there was nothing to be bargained with. He then referred to the various meetings and pointed out that during the meetings the applicant had been advised that he didn't have to attend those meetings or answer questions. It was only on the occasion of the third meeting on 22nd July, 2003, that the photograph was produced. The photograph was produced for the purpose of allaying the fears of the applicant that his brother had been set up.
- 54. Mr. McCarthy also submitted that the fact that the applicant's wife has a recurrent illness which has been there for many years is not of itself a ground which would require the court to make the order sought by the applicant. He pointed out that for people in the same situation the execution of the extradition warrants would be upsetting and difficult. Finally he pointed out that there was nothing other than a bald statement in the affidavit of the applicant to show that he would be prejudiced as a result of the delay or that he had any practical difficulty in showing where he would have been at the time of the alleged offence.

Decision

55. I accept the submission made by Mr. McCarthy that in considering the meaning of s. 50 subs. 2(bbb) the court must look at the lapse of time together with the question of exceptional circumstances and if it is established that there has been a lapse of time and other exceptional circumstances, then the court should proceed to consider if it would in all the circumstances be unjust, oppressive or invidious to deliver up the applicant under s. 47.

56. Undoubtedly there has been a considerable lapse of time in this case between the date of the commission of the offence and the issue of the warrants. The statute specifically refers to the lapse of time "since the commission of the offence specified ..." The authorities cited to me seem to suggest a somewhat narrower time frame. As a matter of practicality it may be difficult to lay down a hard and fast rule to cover the circumstances of every particular case as to what period should be of particular importance in considering the issue of lapse of time. The section undoubtedly refers to the time since the commission of the offence specified. In this case that time was 9th August, 1993. In any extradition case it would be difficult to take into account a period of time, however lengthy, in circumstances where the requesting state's police had assiduously worked to bring about a prosecution. In the case of Myles v Sreenan referred to above, Geoghegan J. referred to the absence of "evidence of any negligent delay on the part of the prosecuting authorities". In this case, the applicant's brother was not identified as a suspect until 1996. He was then convicted of that offence on 30th October, 1997. It does not seem to me to be unfair to say that before the arrest of Samuel Kerrigan, the London Metropolitan Police did not have any information which could have led them any sooner to the applicant. Nonetheless, I do think it is somewhat odd that Constable Rogers was unable to say definitively that the applicant had never been a suspect in the original robbery investigation. Constable Rogers made an assumption to that effect on the basis that the applicant had not been charged with the robbery at that stage.

57. Even if one was only to consider the lapse of time between the period of July 2002 to November 2003 no explanation has been given for that delay other than the matters described in paragraph 11 of Constable Roger's affidavit to the effect that the officers involved in the murder investigation concentrated on their inquiry into that matter and that it was only when it was approaching its conclusion that steps were taken to seek the extradition of the applicant. Indeed Constable Rogers dates the period of lapse of time from September of 2002 at which stage the police had the report from Kalagate Imagery Bureau. Other than that there is no other evidence put forward whatsoever to explain that period of delay. It is interesting in this regard to contrast the circumstances of this case with the facts in the case of *Myles v. Shreenan* referred to above. In that case Geoghegan J. stated at p. 300 as follows:

"I accept in full the evidence of Mr. Farries. This was an extremely complex case. The hugely extensive investigation had to be carried out. There were vast numbers of interviews and production notices in relation to documents. Requests for assistance had to be made to several foreign jurisdictions. In relation to the trial of the co-accused, which is expected to be heard in November, there are some two thousand pages of statements and nearly twenty five thousand pages of documents. There are also gigantic quantities of unused material. In these circumstances, I do not consider that the lapse of time has been unreasonable. There is no evidence of any negligent delay on the part of the prosecuting authorities and at any rate there is no evidence of any other particular or special circumstances."

- 58. The delay in that case related to offences committed between 1st May, 1989, and 31st March, 1990 and the proceedings commenced by special summons on 23rd July, 1997.
- 59. It seems to me that there has been no attempt at all in the circumstances of this particular case to satisfactorily explain the delay that has occurred even in the period between July or indeed September 2002 and November 2003. Another unsatisfactory aspect of the evidence in this case relates to the fact that Constable Rogers was unaware of the visit involving members of the Metropolitan Police Force with the applicant in Finglas Garda Station. It became clear to me hearing the evidence of the applicant that such a meeting undoubtedly took place and it seems somewhat strange that in those circumstances the fact that the British Police were aware of the applicant's relationship to Samuel Kerrigan in the context of the investigation of the murder of Catherine Corridan but were not able to make a connection between him and the photograph from the robbery. As already mentioned there has been no evidence before this court in relation to the steps taken in the earlier investigation of the robbery leading to the conviction of the applicant's brother. Constable Rogers was not involved in that investigation and was unable to assist the court as to what steps were taken in the original investigation to identify the accomplice once Samuel Kerrigan had been identified. It is not good enough to ignore the earlier robbery investigation entirely and proceed on the basis that the applicant was only identified as a suspect in July 2002. There should also have been, in my view, some explanation as to what steps were taken in the earlier robbery investigation. Even if I am wrong in coming to this conclusion, there is a very limited explanation for the delay between July 2002 and the November 2003 when the warrants were obtained. The older the offence the more pressing must be the need to act without undue delay. Overall, therefore it is clear that there has been a lapse of time in this particular case for which no reasonable explanation has been given.
- 60. The next aspect of the case relates to the evidence given by the applicant and his wife in respect of the use of extradition as a method of persuasion both in respect of bringing pressure to bear on Samuel Kerrigan to cooperate with the UK authorities and on the applicant herein to persuade his brother to cooperate with the UK authorities. There is a dispute between the applicant herein and Garda Ronan Dunne as to the precise circumstances that occurred at the third and final meeting between the London Metropolitan Police and the applicant. One matter that is not at issue is the fact that the photograph of the robbery was produced at that meeting. It is more than a little unsatisfactory that there is no affidavit from the members of the London Metropolitan Police who were in attendance at that meeting and in respect of whom the applicant states that they said the photograph would be buried if the applicant helped them to convict his brother. Garda Dunne who was present at that meeting does not expressly contradict the sworn evidence of the applicant on this point. What he stated in his affidavit was that "at no time during the course of the meetings detailed above was any suggestion made to the applicant that he should return to England to assist the English police with their murder investigation but they did appeal to the applicant to assist them in any way he could in light of his previous relationship with Catherine Corridan which had taken place in England in 1993 and to which the applicant made reference". In the course of his crossexamination he stated that the purpose of producing the photograph was to allay his fear that his brother had been "set up" in relation to the robbery. He disagreed with the contention that the police were conveying to the applicant that if he "played ball" that they would go easy on the robbery. According to Garda Dunne they merely informed him that they were investigating the robbery and that he was a suspect.
- 61. It should be borne in mind in regard to the evidence of Garda Dunne that he was not carrying out any investigative role in relation to this matter. He was merely acting as a liaison officer. Accordingly he did not take any note of what occurred at that particular interview. I should add that I found the evidence of Constable Rogers in dealing with this issue to be somewhat unsatisfactory. His evidence in regard to this particular issue was to say no more than what should have occurred if in fact the police were purporting to offer some deal to the applicant. I have to say that so far as this particular issue is concerned, in the absence of any evidence from the London Metropolitan Police Officers present at the meeting, I accept the evidence of the applicant on this point.
- 62. So far as the evidence of Caroline Kerrigan is concerned, nothing has been put before me to contradict the evidence given by her as to the contents of the phone conversation with Samuel Kerrigan and Sergeant Pickersgill. If it were the case that that conversation had not taken place, it seems to me that that is something that could readily be proved. Custody records in relation to Samuel Kerrigan could have been produced, phone records from Ealing Police Station could no doubt have been produced but far more relevant would have been an affidavit from Sergeant Pickersgill who was alleged to have confirmed to Caroline Kerrigan that the extradition proceedings against her husband would be dropped. That was not done. It has to be said that she was not challenged in

the course of her cross-examination to any great extent on the contents of that phone call. It was merely put to her that the phone call took place after her husband had been arrested on foot of the extradition warrants. I accept that the phone call took place as described.

- 63. On the basis of the view I have taken in regard to the evidence of the applicant as to the use made of the photograph at the last meeting at his home and the comments made in the course of the phone conversation to Caroline Kerrigan I am satisfied that the use of the extradition proceedings in this case was inappropriate. It appears to me that the extradition proceedings were held in terrorem over the heads of both the applicant and the applicant's brother Samuel Kerrigan. So far as the applicant himself was concerned the purpose would appear to have been to get him to put pressure on his brother to cooperate with the English Authorities in the investigation and subsequent prosecution for the murder of Catherine Corridan. In the case of Samuel Kerrigan it appears that pressure was brought to bear on him in relation to the murder investigation and the proceedings arising from the murder investigation on the basis that if he did not cooperate, his brother would be extradited from Ireland to face charges of robbery. That this was no idle threat is apparent from the fact that Samuel Kerrigan was sentenced to a period of twelve years in relation to his role in the robbery. Thus I am satisfied that the applicant has established that there was an improper purpose in initiating the extradition proceedings.
- 64. Finally, I note the circumstances of this case and bear in mind the fact that the applicant herein has been residing since August of 1993 at the same address, that his whereabouts have never been concealed from the Irish authorities, that his whereabouts have been known to the British authorities for some six to seven years prior to the issue of these proceedings as evidenced by the fact that he was interviewed in Finglas Garda Station by the London Metropolitan Police, and I take into account the circumstances of his wife's illness which, whilst undoubtedly in part a recurrent depressive illness, is an illness which has clearly been exacerbated by the circumstances relating to the extradition proceedings. Accordingly, I am satisfied that it would be unjust, oppressive and invidious to deliver up the applicant and I will grant the relief sought herein.