

THE HIGH COURT

2005 No. 7 Ext.

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
MARTIN STAFFORD

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 14th day of February 2006

1. The respondent was arrested and brought before this Court on the 12th April 2005 on foot of a European Arrest Warrant issued forth of Bow Street Magistrates Court in London, England dated the 18th March 2005. This warrant had been duly transmitted to the Central Authority in this State, namely the Minister for Justice, Equality and Law Reform as provided by s. 6 of the 2003 Act, and was endorsed for execution by Order of this Court made on the 25th March 2005 following an application for endorsement made by the Central Authority.

2. The arresting officer is Sgt. Anthony Linehan of An Garda Síochána, and he has filed an affidavit in relation to the arrest of the respondent for the purpose of this application now for an order under s. 16 (1) of the 2003 Act for the delivery of the respondent to the appropriate person in the issuing State, the United Kingdom, authorised to receive him.

3. In the said warrant there are six offences set forth in respect of which the respondent's surrender to the United Kingdom is sought. These are unlawful wounding, kidnapping, false imprisonment, rape, sexual touching, and murder.

4. Following the bringing of the respondent before the Court following his arrest on the 12th April 2005, the respondent was remanded from time to time and this application was heard by me on the 22nd July 2005. Points of Objection had been filed and delivered on the 26th April 2005. These points were as follows:

1. That there is no evidence to substantiate offences 2 to 6 inclusive, namely kidnapping, false imprisonment, rape, sexual touching and murder.
2. That the Warrant is not in the form required by section 11(1) of the 2003 Act and in particular is not in the form set out in the Annex to the Framework decision in that it does not specify any or any adequate description of the circumstances in which the offences were committed, including the time, place and degree of participation in the offences by the requested person.
3. That there is insufficient information provided in relation to the aforesaid offences 2 to 6 inclusive and the warrant does not comply with the provisions of the 2003 Act, and in particular section 11(e) and section 11(2) thereof.
4. That the Court should pursuant to section 20(1) of the 2003 Act require the issuing judicial authority to provide it with appropriate additional documentation or information.
5. That the applicant is required to prove the relevant correspondence in relation to the offences appearing in the warrant.
6. That Mr Stafford is currently charged with offences in this jurisdiction and has been remanded in custody by the District Court.
7. That the surrender of the respondent would constitute a contravention of the Constitution and in particular Article 38.1 thereof.

5. Michael O'Higgins SC for the respondent applied at the hearing of this application before me for liberty to amend his Points of Objection by adding two additional points. Firstly he submitted that given that the respondent was arrested on the 12th April 2005 and brought before the Court, the 60 day time limit (or in some circumstances 90 days) specified by the Framework Decision has expired. At the time, that point was the subject of an appeal before the Supreme Court. It was suggested by Counsel for the respondent that it would be appropriate to await the decision of the Supreme Court on the point, before delivery of this judgment, as it could affect the capacity of this Court to make the order sought herein, even if this Court is otherwise satisfied that an order should be made under s. 16 of the Act. I readily agreed to that course.

6. By now judgment has been delivered by the Supreme Court in the case of Dundon to the effect, inter alia, that the fact that the period of sixty or ninety days may have been exceeded is not a bar to an order for surrender being made under s. 16 of the Act.

7. Secondly, Mr O'Higgins submitted that the endorsement for execution of the Warrant received from the United Kingdom has been signed by a Registrar of the High Court and not a judge of the High Court. However, by Statutory Instrument 23 of 2005 the form of endorsement is provided for at s.2 (3) thereof, and this form provides for signature by "Registrar". That point is no longer pursued by the respondent.

8. Patrick McCarthy SC on behalf of the applicant makes application for an order under section 16(1) of the Act. Before making such an Order this Court must be satisfied that the person before the Court is the person in respect of whom the warrant was issued. Mr O'Higgins has conceded that this is so.

9. The Court must also be satisfied that the warrant was endorsed in accordance with s. 13 of the Act for execution. I am so satisfied.

10. As this is not a case of a conviction of the respondent in absentia in the United Kingdom, the undertaking referred to in s. 16(1) (c) of the Act is not required. Neither is the Court required in this case to refuse to surrender the respondent as provided in s. 16(1) (d) of the Act, and neither is his surrender prohibited by Part 3 of the Framework Decision (including the recitals thereto).

11. The matters which require the Court's determination are really confined to correspondence of offences, and whether the European Arrest Warrant on foot of which the respondent was arrested is in conformity with that provided for by Framework Decision.

Correspondence

12. By Article 2 of the Framework Decision, it is provided that a large number of offences set forth in that article shall “and without verification of the double criminality of the act, give rise to surrender”. In other words correspondence is presumed, provided that in this State such offences are punishable by at least three years’ imprisonment. The offences of murder, kidnapping and rape are specifically named in this article as offences in which double criminality does not need to be verified. Also included in the list is one referred to as “illegal restraint” which I take to mean or include “false imprisonment”, but in any event I am satisfied that the facts as set forth in the warrant are sufficient to show that if committed in this State they would give rise to a charge of false imprisonment contrary to common law. In respect of the offence of unlawful wounding, the facts as set forth in the warrant would in my opinion give rise to a charge of assault causing serious harm under s. 4 of the Non-Fatal Offences Against the Person Act, 1997. In respect of the offence charged of “sexual touching without consent” I am of the view that the facts set forth in the warrant would if committed in this State give rise to an offence of sexual assault contrary to s. 2 of the Criminal Law (Rape)(Amendment) Act, 1990.

13. I am satisfied that the minimum gravity requirement under the 2003 Act is met in respect of all the offences for which the respondent is sought to be surrendered.

The contents of the warrant

14. Mr O’Higgins has submitted that the contents of the European Arrest Warrant which has been endorsed and executed in this State is not in conformity as to its contents with the form as provided for such a warrant by the Framework Decision. He has at the outset highlighted the need as recognised in the jurisprudence of our Courts to do things right in matters which affect the fundamental rights of a person, particularly where the liberty of the person is at stake. In the present case he has pointed to the radical effect of the extradition process on the liberty of the person in a situation where, as in this case, a person can be arrested and incarcerated here not on the basis of anything alleged to have been done in this State but on the basis that somebody in another State alleges that the person has done something unlawful there. For that reason he submits that the onus of establishing that everything required under the 2003 Act and the Framework Decision has been done as required and specified in that legislation. Having said that, Mr O’Higgins has acknowledged that the bar is set at a low level in terms of what is required to be shown in the warrant under the Framework Decision. Nevertheless he submits that there must be some minimum level of evidence available from the contents of the warrant to show that an offence has been committed. He accepts that it is not necessary that a *prima facie* case need be made out in respect of the offences charged, and he is not making what he referred to as “a strength of case” argument, but he is saying that there must be sufficient contained in the warrant and any accompanying documents so that this court can be satisfied as to the existence of facts which could give rise to the offences being charged, and that in the present case this is not done. He submits that the warrant does not conform to the requirements of the Framework Decision.

15. The starting point for this submission is s. 11 (1) of the 2003 Act, as substituted by s. 72(a) of the Criminal Justice (Terrorist Offences) Act, 2005 (“the 2005 Act”) which provides:

“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.”

16. Section 11(1A), as inserted by the 2005 Act sets out in paragraphs (a) to (g) a number of matters, which are in any event specified in the prescribed form of warrant in the Framework Decision, which a European Arrest Warrant shall specify, such as the name and nationality of the person in respect of whom it is issued, the name and address and contact details of the issuing judicial authority, the offence to which the warrant relates, and the penalties applicable to the offence. The other matter included at paragraph (f) of this section is one upon which Mr O’Higgins relies and it relates to “*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...*” (my emphasis)

17. This requirement in paragraph (f) of s.11(1A) of the Act, as amended is mirrored in the prescribed form of warrant contained in the Framework Decision at section (e) thereof where the person completing the form of warrant is required to provide details under the following heading:

“Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person”. (my emphasis)

18. Mr O’Higgins then refers to the form of warrant on foot of which the respondent was arrested and to the fact that in section (e) of the warrant this ‘heading’, following which details must be set forth, has omitted therefrom the words “and degree of participation in the offence(s), even though there follows in section (e) of the warrant nevertheless three full pages of narrative intended to no doubt provide all the detail required. But Mr O’Higgins submits that in fact it may be no accident that has resulted an abbreviation of the ‘heading’, because, in his submission, the details provided, albeit extensive, do not in fact disclose any “degree of participation in the offence(s)” by the respondent.

19. Mr O’Higgins has made it clear, following a question from me, that his objection is not one based simply on the technical defect, if it be such, that the ‘heading’ has been abbreviated from the form of warrant prepared and transmitted. His objection is that the necessary details have not been provided in the narrative. He is simply pointing to the abbreviation of the ‘heading’ in the form used, and submits that this perhaps is indicative of the fact that the person preparing the warrant was conscious that the narrative being provided did not give all the details which the ‘heading’ required to be inserted.

20. It is submitted that this part of the warrant must provide a nexus between the person named in the warrant and the offence(s) specified, and at least in some respects it does not do so in the present case. In order to examine this submission, I must set out some of the detail provided in the narrative section of the warrant. Firstly it is to be recalled that the offences charged are kidnapping, false imprisonment, murder, rape, unlawful wounding, and sexual touching.

21. The unlawful wounding is in respect of a man, David Lee Goodall on the 25th July 2004. Mr O’Higgins’s submissions do not, and in all reality could not relate to this charge since the details given clearly make out a degree of participation in an assault on Mr Goodall which resulted in an injury, and it recites date, time and place.

22. The remaining offences are in respect of a lady named as Michelle Gunshon and between the 3rd December 2004 and the 7th December 2004. Her body has never been found. The narrative indicates that on the 3rd and 4th December 2004 she was in the company of two other male work colleagues in Birmingham. They were involved in some work at the Birmingham Exhibition Centre and all stayed at a premises called The Dubliner Public House. She stayed in Room 2, Flat 3. On the 4th December 2004 they all finished work at 6.30pm and got back to the hotel at 7.15pm, travelling in her car, a blue Ford Escort. She parked her car in a street between these premises and a Coach Station. They all had some drinks, following which she went to her room. She was last seen at 9.30pm on

the 4th December 2004 when one of the men, named Finney, went to her room to borrow money from her. At 10.05pm her partner (not one of the two work colleagues) rang her and she informed him that she was tired and was going to bed. On the 6th December she was reported missing, and her work colleagues stated that they saw her belongings and her mobile phone (with 27 missed calls displayed thereon) in her room at 3pm on the 6th December 2004, but that by 5pm that day these items had been removed.

23. The narrative goes on to say that CCTV footage was recovered from the surrounding area and that it shows her car being driven at 7.05am on the 5th December 2004 from where she had parked it. This footage is said to show "one person" approaching the car and getting into it, and that it is not possible to say if this person is male or female.

24. The narrative then states that at between 8.29 am and 9.08am on the same date this car is spotted on speed cameras coming into the city centre, and that this footage has been examined by the licensee of the Dubliner Public House and that he has identified the driver of this car as the respondent, Martin Stafford.

25. She did not turn up for work on the 5th December 2004, thereby leaving her work colleagues stranded for transport back to London, and she has not been seen since.

26. The narrative goes on as follows:

"On 7 December 2004 Michelle Gunshon's car was found on a street near to The Dubliner. On examination blood was recovered from a jacket in the boot, blood was also recovered from the front drivers door frame and from the steering wheel. This is Michelle's blood. Semen was also recovered and this matches a profile held on the DNA database for Martin Stafford."

Martin Stafford had been staying at The Dubliner in Room 5, Flat 3 and had stayed at the Pub from time to time under a loose agreement with the landlord Paddy Finn, whereby he would walk the family dog and collect glasses in return for free accommodation. He did not stay at The Dubliner from Sunday 5 December 2004 to Wednesday 8 December 2004. On 8 December 2004 he was seen by a witness, Sheila Mohan at the main coach station where they both travelled to Dublin via Holyhead. Mr Stafford told Sheila Mohan not to tell anyone that she had seen him."

On 23 February 2005 a further search was carried out for evidence, and property belonging to Michelle Gunshon was recovered on a small piece of waste land next to The Dubliner Public House. This included her wallet and bank cards, a bag of mens clothing, a tube of mascara, a T mobile telecommunications paperwork (sic) and two kitchen knives with a serrated edge."

Although Michelle Gunshon's body has not been found, the circumstantial evidence is such to render the commission of her murder certain and leave no grounds for reasonable doubt."

27. Of some relevance also is a statement in the warrant at (e) thereof by the issuing judicial authority as follows:

"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 a criminal offence, has decided to charge the person named herein and to try him for the offences specified above and for which this warrant is issued."

28. However, in relation to the objection raised by Mr O'Higgins it is the contents of the above narrative of the facts thought to give rise to the charges which need to be considered for the purpose of seeing if they satisfy the requirement to provide within the warrant 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..." (my emphasis)

29. Mr O'Higgins submits that there is only brief reference to the respondent in this longish narrative. He has been identified as the driver of Ms. Gunshon's car at 8.29am and 9.08am on the 5th December 2004, as it proceeded into the city centre, although it was not possible to identify who was driving that same car one hour and fourteen minutes earlier away from Mill Lane where she had parked it. But the only other reference to the respondent is that semen which on examination had a DNA match to DNA held on a database for the respondent. Mr O'Higgins says that this is not evidence of rape, since it says nothing about lack of consent to any sexual activity, and there is nothing in his submission to indicate that anything which happened in the car, if anything happened, was not consensual. He submits that this narrative cannot satisfy the requirement in the specimen warrant annexed to the Framework Decision to give a description of the facts which includes "the degree of participation in the offences by the respondent. He submits also that there is nothing which speaks to the charge of murder.

30. I have mentioned it already, but I should say again that Mr O'Higgins is not making a "strength of case" argument, but is simply relying on the lack of conformity by the UK authority with the requirements of the Framework Decision, and that this Court should not too easily assume that everything is in order where so little connection is made to the respondent in an otherwise substantial narrative of the background to the charges.

Conclusions

31. The warrant transmitted to this State by the UK authority must be looked at in the context of the Framework Decision itself, effect to which was given by the passing of the 2003 Act. In the Preamble of the Framework Decision it speaks at paragraph (5) thereof of replacing extradition between member states, with "a system of surrender" so as "to remove the complexity and potential for delay inherent in the present extradition procedures."

32. Paragraph (6) provides:

"The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the 'cornerstone' of judicial cooperation."

33. It goes on at paragraph (10) of the Preamble to say as follows:

"The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1)

of the said Treaty with consequences set out in Article 7(2) thereof.”(my emphasis)

34. Article 1.2 reflects this aspiration of mutual recognition of judicial instruments emanating from an issuing state when it provides:

“Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.”

35. I set forth these paragraphs from the Preamble in order to highlight the change brought about in the nature of the process of surrender between Member States with the introduction of the European arrest warrant.

36. I am of the view that the submission made by Mr O'Higgins fails to take adequate account of the principle of mutual recognition referred to in the Framework Decision. What is required to be included in paragraph (e) of the warrant, according to the specimen form of warrant annexed to the Framework Decision is a description of the circumstances in which the offences were committed, and this description should include details such as time, place and degree of participation by the requested person. The requesting judicial authority has stated in the warrant that the Crown prosecution Service has decided to charge the respondent and to try him for these offences. The principle of mutual recognition must be interpreted in a way which precludes this Court, except in the most obvious and glaring inadequacy and failure to make any link between the person named in the warrant and the alleged offence, from seeking to go behind the description contained in paragraph (e) and in so doing questioning the bona fides of the warrant signed as it is by the issuing judge. Surrender, or extradition as it was formerly named, is something intimately linked to the comity of nations and comity of courts – a theme touched upon by Denham J. in her very lucid and helpful judgment in *Attorney General v. Parke*, unreported, Supreme Court, 6th December 2004 as to the nature of the process undertaken by the Court when hearing an application for the surrender of a person to another jurisdiction. She stated therein:

“The role of the trial judge in an application for an order of extradition is unique. The hearing is not a criminal trial, in the adversarial sense where the State must prove the guilt of the accused beyond all reasonable doubt. Nor is it a civil case between two parties. It is a unique procedure where the court holds an inquiry as to whether the criteria set out in the Extradition Act 1965, as amended, has been met. Further, this law has been established against the backdrop that the State has entered into an agreement with the requesting State that there be extradition arrangements between the two States. Thus these cases are founded on the comity of nations and the comity of courts.”

37. Even though this was stated in the context of the now virtually defunct arrangements set forth in Part III of the 1965 Act (repealed by the 2003 Act), it remains pertinent and relevant to the new arrangements set forth in the 2003 Act.

38. Nevertheless this Court must consider an application under s. 16 of the Act in a manner which accords to the requested person due protection against any infringements of his fundamental and constitutional rights, so that the hearing is in due course of law.

39. The requirement that the warrant contains a description of the degree of the respondent's involvement in the offences means just that – a description thereof. There is no requirement that a particular level of involvement be described in the sense of having to pass a certain threshold of involvement so as to show anything like a prima facie case. That would be to require a strength of argument demonstration. In my view the principle of mutual co-operation is consistent with the requesting authority being expected to show a degree of participation or involvement by the respondent in the offences set forth in the warrant. Beyond that it is a matter for the requesting authority, who in this case has stated that it has been decided to charge and try the respondent with the charges, to prove its case at trial beyond a reasonable doubt so as to dislodge the presumption of innocence which he presently enjoys as of right. To go further in my view and expect that the requesting authority should at this stage be required to set forth all of its proposed evidence in more detail is not something required by either the letter or the spirit of the Framework Decision.

40. The detail contained in the narrative to the effect that the respondent has been identified as being the driver in the missing person's car on the morning of the 5th December 2004, combined with the fact that the semen which has a DNA match to the DNA of the respondent, as well as finding blood in the car, and the alleged conversation with Ms. Mohan on the way to Dublin is more than enough by way of degree of involvement in the alleged offences numbered 2 to 6 in the warrant in order to satisfy the requirement contained in the form of warrant provided for in the Framework Decision.

41. It follows that Point 4 of the Points of Objection fails, namely that the Court should, pursuant to the provisions of s. 20 of the 2003 Act require the issuing judicial authority to provide it with appropriate additional documentation or information.

42. Neither am I satisfied that the surrender of the respondent would constitute a contravention of the Constitution and in particular Article 38.1. thereof, as pleaded at Point 7 of the Points of Objection.

43. I am satisfied that there is nothing in Part 3 of the Act which prohibits the surrender of the respondent and neither is there any reason arising under ss.21A, 22, 23, or 24 of the said Act which should require that such an order be not made.

44. I therefore make the necessary order under s. 16(1) of the Act for the surrender of the respondent to a person of the United Kingdom authority duly authorised to receive him.