

**THE HIGH COURT**

**2009 323 Ext**

**2010 24 Ext**

**Between:**

**Minister for Justice, Equality and Law Reform**

**Applicant**

**And**

**Thomas O'Rourke**

**Respondent**

**Judgment of Mr. Justice Michael Peart delivered on the 17th day of June, 2010:**

The surrender of the respondent is sought on foot of two European arrest warrants which have issued in the United Kingdom.

The first warrant is one dated 12th November 2009 which was endorsed here for execution by order of the High Court on the 9th December 2009, and the respondent was duly arrested on foot of same on the 12th December 2009.

The second warrant is one dated 7th January 2010, which was endorsed for execution here on the 27th January 2010, and the respondent was arrested on foot of same on the 10th February 2010.

Surrender on each warrant is sought so that the respondent can be prosecuted for the offences referred therein.

**The first warrant:**

In respect of the first warrant there are six offences referred to, two of which are marked as Article 2.2 offences, namely attempted murder and causing grievous bodily harm. Minimum gravity is satisfied in respect of all six offences, and correspondence must be established in respect of the remaining four offences, and in view of the issues raised in relation to correspondence in respect of two of these four offences, I shall return to the question of correspondence shortly.

In respect of the second warrant there are four offences set forth, and correspondence must be established in respect of all four. An issue arises in respect of correspondence in respect of one of these offences, namely that of attempting to pervert the course of justice, and I will come to that.

In respect of each warrant I am satisfied that there is no reason to refuse to order surrender under ss. 21A, 22, 23 or 24 of the Act, and also, subject to correspondence, that there is no reason why surrender is prohibited by any provision of Part III of the Act or the Framework Decision.

**Correspondence:**

**First warrant:**

As I have said, the first two offences are within Article 2.2 of the Framework Decision, and offences 3, 4, 5 and 6 in respect of which correspondence must be established. Each is a firearms-type offence, and I will address them individually:

*"3. [the respondent] on the 30th March 2005 without the authority of the Secretary of State, had in his possession a firearm, namely a handgun which had a barrel which was less than 60 centimetres in length overall, contrary to section 5 (1) (aba) of the Firearms Act 1968."*

Under that section of the UK legislation, according to what is contained in the warrant, makes it an offence to have in one's possession without a licence "any firearm which either has a barrel less than 30 centimetres or is less than 60 centimetres in length overall".

An issue is raised in relation to correspondence for this offence.

Patrick McGrath BL for the applicant submits that if the respondent did in this jurisdiction what it is alleged he did in the warrant, he would commit an offence here contrary to s. 2 of the Firearms Act, 1925 ("the 1925 Act") which provides as follows:

*"2. - (1) Subject to the exceptions from this section hereinafter mentioned, it shall not be lawful for any person after the commencement of this Act to have in his possession, use or carry any firearm or ammunition save in so far as such possession, use or carriage is authorised by a firearm certificate granted under this Act and for the time being in force.*

*(2) Save in any of the cases hereinafter excepted from this section, every person who after the commencement of this Act has in his possession, uses, or carries any firearm without holding a firearm certificate therefore or otherwise than as authorised by such certificate, or purchases, uses, has in his possession, or carries any ammunition without holding a*

*firearm certificate, or in quantities in excess of those authorised by such certificate, or fails to comply with any condition subject to which a firearm certificate was granted to him, shall be guilty of an offence [under this section]."*

The question for this Court is whether if the respondent was in this jurisdiction in possession without a firearm certificate of a firearm with a barrel length of less than 60 centimetres would commit the offence here under s. 2(2) of the 1925 Act. Remy Farrell BL for the respondent commenced his submissions by referring to this offence as simply a licensing offence because of the nature of the offence, i.e. there is nothing inherently criminal about being in possession of a firearm. Rather, it is simply that it is an offence to do so without having a firearm certificate. He submits that in this jurisdiction there is no requirement to have a firearm certificate which has anything to do with the length of the barrel of the firearm, and he raises the question as to whether or not the Minister for Justice, Equality and Law reform has perhaps introduced some Regulations in that regard.

I am satisfied that there are no regulations in existence under the 1925 Act which are relevant to the question of barrel length for the purpose of a firearms certificate. I am satisfied that for the purpose of correspondence with the s. 2 offence here, the length of the barrel is not relevant, and therefore I am satisfied that if the respondent was in possession without a firearm certificate of the particular weapon which is referred to in the warrant, he would commit the offence identified under s. 2(2) of the 1925 Act.

The next offence in the warrant is described as follows:

*"4. [the respondent] on the 30th day of March 2005 had in his possession a firearm, namely a handgun with intent thereof to endanger life, contrary to section 16 of the Firearms Act 1968."*

No issue is raised in relation to correspondence for this offence, and the applicant has submitted that this offence corresponds with an offence in this jurisdiction namely that of possession of a firearm with intent to endanger life contrary to s. 15 of the Firearms Act, 1925. I agree that this offence so corresponds given the narrative of facts contained in the warrant.

The next offence in the warrant is described as follows:

*"5. [the respondent] on the 30th day of March 2005 had with him a firearm namely a handgun with intent to commit an indictable offence, namely to cause grievous bodily harm with intent to cause grievous bodily harm while he had the said forearm (sic) with him, contrary to section 18(1) of the Firearms Act 1968."*

Again, no issue is raised in relation to correspondence for this offence, and the applicant has submitted that this offence corresponds with an offence in this jurisdiction namely that of possession of a firearm with intent to commit an indictable offence, contrary to s. 27B of the Firearms Act, 1964 (as inserted by s. 9 of the Criminal Law (Jurisdiction) Act, 1976). I agree that this offence so corresponds given the narrative of facts contained in the warrant.

The final offence in this warrant is described as follows:

*"6. [the respondent] on the 30th day of March 2005 without lawful authority or reasonable excuse, had with him in a public place, namely Streatham Hill, London SW2, a firearm namely a handgun together with ammunition suitable for use in the firearm, namely a .44 calibre lead bullet, contrary to section 19 of the Firearms Act 1968."*

An issue is raised in relation to correspondence for this offence. Mr. McGrath has put forward an offence contrary to s. 2(2) of the 1925 Act as a candidate for correspondence for this offence also. However Mr. Farrell has submitted that in this jurisdiction there is no offence which criminalises the carrying of a firearm in a public place.

Mr. McGrath submits that even though there is no reference in s. 2 of the 1925 Act to "a public place" it does not follow that there is no correspondence. I agree. For the purpose of correspondence under s. 5 of the European Arrest Warrant Act, 2003, as amended, I am satisfied that even though the UK offence and the Irish offence are not identical, the respondent would commit the s. 2 offence if he did, even in a public place, in this State what he is alleged to have done according to the warrant.

#### **The second warrant:**

The second warrant relates to four offences - agreeing with another person to do certain specified acts with intent to pervert the course of public justice; robbery; conspiracy to rob; and finally escaping from lawful custody.

No issue is raised in relation to correspondence in relation to the robbery, conspiracy to rob and escaping lawful custody offences. I will come to the objections relating to the first offence of agreeing to pervert the course of justice.

The robbery offence, according to the brief facts set forth in the warrant corresponds to an offence here contrary to s. 12 of the Criminal Justice (Theft and Fraud offences) Act, 2001. The conspiracy to rob offence corresponds here to an offence of conspiracy to rob contrary to common law. Similarly, I am satisfied that the offence of escaping to lawful custody contrary to common law corresponds here to the identical offence contrary to common law. As I have said, no issue to the contrary has been raised by the respondent.

#### **Pervverting the course of justice:**

The second warrant sets out the details of this offence as follows:

*"Thomas O'Rourke together with Janet Mulligan between the 9th day of September 2001 and the 4th day of January 2002 within the jurisdiction of the Central Criminal Court for England and Wales, with intent to pervert the course of public justice agreed to do a series of acts which had that tendency namely:*

*(i) Janet Mulligan would provide false information to O'Rourke's solicitors;*

*(ii) Janet Mulligan would lie on oath in court at O'Rourke's trial that she has been present at the Hobgoblin Public House on the evening of the 16th to 17th June 2001;*

*(iii) Thomas O'Rourke and Janet Mulligan would not reveal in evidence in court that at O'Rourke's trial they were well known to one another, contrary to common law."*

There is a lengthy narrative of what lies behind this charge in the warrant. From that narrative it appears that on the night in question the respondent was involved in a brawl in the Hobgoblin Pub in Brixton, South London, and both the landlady of the pub and

a customer were injured. The respondent was later arrested but upon arrest denied having been present on the premises. However, he was later picked out at an identity parade. Whilst on remand he met this Janet Mulligan who was a probation officer, and it is alleged that a relationship developed between the two and that they remained in close contact. At his trial the respondent denied the assault and claimed that he had been the victim of rough handling by a doorman at the Hobgoblin and also the victim of verbal abuse by the landlady. He gave evidence also of having later met Janet Mulligan at the magistrates' court while on remand, believing at the time that she was a solicitor. Janet Mulligan apparently gave evidence for the defence, and stated firstly that she had met the respondent in her capacity as a probation officer as part of her duties, that she knew about the charges which he faced, and that she recognised him and realised that by pure coincidence she had been present in the Hobgoblin Pub on the night in question. It is alleged that at a later remand hearing she agreed that she would contact the respondent's solicitors and she made a statement. At the respondent's trial she gave evidence which corroborated the evidence of the respondent. The respondent was acquitted by the jury, and immediately thereafter he and Janet Mulligan lived together. There are further details of what action was taken by the trial judge subsequently as he was unhappy with the manner in which Janet Mulligan had used her professional position and compromised herself by its misuse. It is not necessary to set out what is contained in the remainder of the narrative save to say that the judge was of the view that had it not been for the evidence of Janet Mulligan the respondent would have been found guilty.

That is the background to the allegations contained in the warrant in relation to this charge.

Remy Farrell BL on the respondent's behalf refers to the fact that while there is just one offence alleged that the respondent agreed with another person upon certain things in order to or tending to pervert the course of justice, there are in fact three elements as set forth in the warrant. He submits that before this Court can be satisfied as to correspondence it is necessary that each of the three elements should be such as to amount to a perverting of the course of justice. In particular Mr. Farrell refers to the final allegation in the charge, namely that the respondent and Janet Mulligan agreed that they "*would not reveal in evidence in court that at O'Rourke's trial they were well acquainted*". In so far as the charge itself is that they did certain things, Mr. Farrell points to the fact that this latter allegation is that they agreed not to do something. It is submitted that this agreement not to do something lacks the element of a positive act which, it is submitted, is necessary to constitute a perverting of the course of justice.

Mr. Farrell has suggested also that a problem is evident also in relation to specialty given that possibly three offences are apparent on these facts even though only one charge has been laid, but that submission amounts to little, and I am quite satisfied that there is no reason to refuse to order surrender on specialty grounds. There is one offence charged, and if for some reason the issuing authority wishes to charge him with other matters, I have no reason to doubt that the requirements as to specialty will be observed and complied with by the issuing judicial authority.

As to Mr. Farrell's principal submission that the third element of the alleged offence fails to disclose any positive act and cannot therefore correspond to the offence of perverting the course of justice, I am not satisfied that this submission is meritorious. It is quite clear from the narrative of alleged facts giving rise to this charge that if the same was done in this jurisdiction the respondent would be guilty of an offence here of perverting the course of justice contrary to common law. There is a factual matrix alleged which clearly alleges a conspiracy or an agreement between the respondent and the named person to do things which were intended to pervert the course of justice. The fact that part of the agreement was that they would not reveal that they knew each other is part of that agreement and in the circumstances of this offence had as much capacity to pervert the course of justice as any other element and was part of the agreed course of conduct which was intended to pervert. I am completely satisfied that the offence corresponds.

In respect of each warrant I am satisfied that there is no reason to refuse surrender by reason of ss. 21A, 22, 23 or 24 of the Act, and also that his surrender is not prohibited by any provision of Part III of the Act or the Framework Decision.

For all these reasons I am satisfied that the surrender of the respondent must be made, and I will so order.