

## THE HIGH COURT

Record Number: 2005 No. 28 Ext

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND  
DANIEL HAMILTON

RESPONDENT

**Judgment of Mr Justice Michael Peart delivered on the 23rd day of August 2005**

1. The respondent has been arrested on the 5th July 2005, and was thereafter brought before the High Court on the 6th July 2005 as required by the provisions of s.13 of the European Arrest Warrant Act, 2003, as amended, ("the Act") whereupon a date was fixed for the hearing of this application by the applicant under s. 16 of the Act for an order for the surrender of the respondent to the authorities in Scotland where it is intended to charge him with the offence of murder.

2. There are a number of matters specified in section 16 upon which this Court must be satisfied before the order sought may be made. Firstly, the Court must be satisfied that the person named in the warrant is the person before the Court and in respect of which the order is sought. There is no issue raised in the present case as to identity, and the Court is in any event satisfied from the evidence contained in the affidavit of Sgt. Anthony Linehan, the arresting officer, sworn herein on the 19th July 2005 that the respondent is the person named in the warrant. There is sufficient information contained in that affidavit to leave no doubt whatsoever as to his identity.

3. Secondly, the Court must be satisfied that correspondence is made out within the meaning of that term under the Act. In this case, the offence of murder is one of the offences in respect of which the Framework Decision dated 13th June 2001, to which the Act gives effect, provides that correspondence does not have to be made out. There is in effect a presumption of correspondence in respect of the offence referred to therein in that regard. It is sufficient that the appropriate box be ticked in paragraph (e) I of the warrant itself. This has been done.

4. Thirdly the Court must be satisfied that the warrant is in the proper form as provided by the Framework Decision, which contains a prescribed form of warrant. A point is raised in relation to this matter in as much as it is contended by the respondent that the description of the circumstances in which the offence was committed, including the time, and place and degree of participation/involvement by the respondent, as contained in the warrant on foot of which the respondent was arrested, is deficient in detail, and I will deal with that submission in due course.

5. Fourthly, the Court must be satisfied that the European arrest warrant was properly endorsed for execution pursuant to section 13 of the Act of 2003. Again a point is raised in this regard, in as much as it is submitted on behalf of the respondent that while the section provides that "the High Court" shall endorse the warrant for execution, the endorsement on the warrant in this case is signed by a "Registrar", above which appear the words: "this warrant is endorsed for execution pursuant to Order of the High Court". It is worth noting at this point that this form of endorsement is one specifically provided for by S.I. No. 23 of 2005 at section 1(3) thereof.

6. Conor Devally SC has submitted that the wording of the endorsement prescribed in the statutory instrument is contrary to what is required for compliance with the words of the section of the Act, and I will return to that in due course.

7. There are a number of other matters referred to in s.16 of the Act of 2003 which the Court must be satisfied about, and I am so satisfied in so far as any of them apply in this case. Indeed, no issue is taken by the respondent in relation thereto.

8. In all respects therefore the Court is satisfied that an order can be made under s. 16(1) of the Act, subject to the Court being satisfied that the objections put forward by the respondent are not valid.

**Deficiencies in the warrant:**

9. Mr Devally submits that the warrant in this case on foot of which the respondent was arrested is not in the form required by the Act of 2003. As already stated there is a prescribed form of warrant for use in these cases, and one of the paragraphs contained in that form is headed:

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

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

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

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

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

11. Mr Devally submits that while the date is stated, namely 13 August 2004, on which the respondent is said to have been in the flat with the deceased, the paragraph then states in a different sentence "Between approximately 12.30am the deceased.....were alone in the upstairs bathroom..." He points out that firstly there is obviously some omission of words from that sentence following the words

"Between approximately 12.30am", and also that it is not clear to which date "12.30am" relates. He also says that it is not stated upon what date the victim died when the life support machine was turned off.

12. In addition Mr Devally submits that there is nothing within this paragraph which gives any detail to indicate the degree of participation in the crime by the respondent and that this is required to be included by the precise wording of the heading to that paragraph, and that all that is apparent from the details provided is that the respondent was in the flat with the deceased man on the 13th August 2004, and that on some date between 12.30am and some other unspecified time, the respondent and another man were in the bathroom of the flat with the victim where an altercation is said to have taken place, and that the respondent left the flat "sometime later", and that later again the deceased man, then badly injured, was found in the bathroom, and that at some later date before the 1st October 2004 the man died from head injuries. Mr Devally submits that none of this detail is sufficient to fulfil the requirement to set out the degree of participation of the respondent in the offence.

13. Eileen Stack BL for the applicant submits that there is sufficient detail, and that the purpose of the paragraph is to enable the person arrested to know what it is alleged that he has done. She submits that it is a reasonably detailed narrative of the events complained of, and that it is not intended to be as detailed as perhaps an actual indictment would need to be. What is clear, in her submission, is that the respondent is wanted in Scotland to face a charge of murder, and that the way in which the respondent is implicated in the crime are adequately set forth in the warrant for the respondent to know in what way he is being implicated.

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

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

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

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

#### **Endorsement of warrant by the Registrar pursuant to the Court's order in that regard:**

18. The point has been made by Mr Devally that s.13 of the Act provides that "the High Court" may endorse a warrant for execution, and that in the present case that endorsement has been signed by a High Court Registrar rather than by a judge of the High Court, albeit on the basis that the endorsement has been ordered by the High Court. In Mr Devally's submission Statutory Instrument 23 of 2005 by which the Superior Court Rules Committee, with the consent of the Minister for Justice, has provided for a form of endorsement to be signed by a Registrar has gone outside what is required by s. 13 of the Act, and that this is impermissible. In these circumstances he submits that the warrant has not been properly endorsed for execution.

19. This submission involves determining whether something which is required by statute to be done by "the High Court" - in this case the endorsement of the warrant - can by a rule of court made by the Superior Court Rules Committee be done by a Registrar. In my view it can.

20. The Courts of Justice Act, 1924, s. 22 provides:

*"22. —The jurisdiction vested in and transferred to the High Court and the Supreme Court and the Chief Justice respectively shall be exercised so far as regards pleading, practice and procedure generally, including liability as to costs, in the manner provided by such rules of court as may be made pursuant to this Part of this Act, and where no provision is contained in any such rules of court and as long as there shall be no rule with reference thereto, it shall be exercised as nearly as possible in the same manner in which it might have been exercised by the respective courts from which such jurisdiction shall have been transferred, by this Act."(my emphasis)*

21. So, the jurisdiction of the High Court shall be exercised in the manner provided by rules of court. In so far as the 2003 Act gives to the High Court jurisdiction in the matter of a European arrest warrant, this section clearly enables the exercise of that jurisdiction by means of rules of court.

22. The same Act of 1924 in s.36 thereof then provides detail as to what matters may be the subject of such rules, in the following way:

*"36. —The Minister for Home Affairs may at any time and from time to time after the passing and before or after the commencement of this Act, but with the concurrence of the Minister for Finance in respect of any matter affecting public revenue or expenditure make rules to be styled "Rules of Court" for carrying Part I. of this Act into effect (including the hearing of appeals from the Circuit Court and cases stated by the District Court) and may annul or alter the said rules and make new rules. In particular rules may be made for all or any of the following matters:—*

*(i) pleading, practice and procedure generally (including the entering-up of judgement and the granting of summary judgement in appropriate cases) in all civil cases, including revenue cases and proceedings as to the validity of any law having regard to the provisions of the Constitution and proceedings in the nature of a petition of right;*

*(ii) pleading, practice and procedure generally in all criminal cases before the Central Criminal Court or any court of the High Court Circuit or the Court of Criminal Appeal;*

*(iii) the sending out of Commissioners of the High Court Circuit at such times, to such centres and for such amalgamated districts as shall seem fit;*

*(iv) the sittings of the Central Criminal Court for Dublin and such neighbouring counties as shall be determined by such rules and the cases that shall be disposed of by it, which shall include all cases not disposed of by Commissioners of the High Court Circuit, or in which the venue has been changed to the Central Criminal Court at the instance of the Attorney-General or the accused;*

*(v) the use of the national language of Saorstát Éireann in the said courts;*

*(vi) the mode of address to be adopted to the judges and the robes and official dress to be worn by the Bench and the Bar;*

*(vii) the commencement and duration of the sittings and the vacations;*

*(viii) the fixing and collection of fees;*

*(ix) the adaptation or modification of any statute that may be requisite for any of the purposes of this Act and all subsidiary matters.*

23. Such rules of court shall be made or annulled or altered only with the concurrence of a majority of a committee consisting of the judges of the Supreme Court and the High Court, the President of the Incorporated Law Society of Ireland, and two practising barristers, of the senior and junior Bar respectively, to be selected by the Council of the Bar of Ireland."(my emphssis)

24. S.36 (i) and (ii) above certainly to me appear to be broad enough to encompass the signing of a document by the Registrar where the High Court is given jurisdiction to do so.

25. Some years later, the Oireachtas made provision for the establishment of what is now known as the Superior Courts Rules Committee to replace the Minister for Justice as the body to make rules of court, as appears from the Courts of Justice Act, 1936, ss. 67 and 68, which provide:

*"67.—(1) There shall be and is hereby constituted a committee to be styled and in this Part of this Act referred to as the Superior Courts Rules Committee to fulfil the functions assigned to it by this Part of this Act.*

*68.—(1) From and after the passing of this Act the power of making, annulling, or altering rules of court and making new rules conferred by section 36 of the Principal Act shall cease to be exercisable by the Minister for Justice, and in lieu thereof it is hereby enacted that, subject and without prejudice to the provisions of this Act in regard to the fees chargeable in court offices, the said power shall be exercisable by the Superior Courts Rules Committee with the concurrence of the Minister for Justice."*

26. These matters were then the subject of legislation in the Courts (Supplemental Provisions) Act, 1961 where at s. 14 thereof it is provided:

*"14.—(1) In this section "rules of court" means rules made under section 36 of the Act of 1924, as applied by section 48 of this Act.*

*(2) The jurisdiction which is by virtue of this Act vested in or exercisable by the Supreme Court, the High Court, the Chief justice, the President of the High Court, the Central Criminal court and the Court of Criminal Appeal respectively shall be exercised so far as regards pleading, practice and procedure generally, including liability to costs, in the manner provided by rules of court, and, where no provision is contained in such rules and so long as there is no rule with reference thereto, it shall be exercised as nearly as possible in the same manner as it might have been exercised by the respective existing courts or judges by which or by whom such jurisdiction was, immediately before the operative date, respectively exercisable.*

*(3) Rules of court may, in relation to proceedings and matters (not being criminal proceedings or matters, or matters relating to the liberty of the person) in the High Court and Supreme Court, authorise the Master of the High Court and other principal officers, within the meaning of the Court Officers Acts 1926 to 1951, to exercise functions, powers and jurisdiction in uncontested cases and to take accounts, conduct inquiries and make orders of an interlocutory nature.*

27. S.14(2) above enables rules of court to be made in relation to matters within the jurisdiction of the High Court which provide for such matters as who shall sign a document for "the High Court". In so doing in the present case, the Registrar is not acting judicially or purporting to do so. The judge of the High Court has acted judicially when making the determination as to whether the warrant shall be endorsed. Thereafter the administrative act of endorsing the warrant following that judicial determination is something which can be provided for by a rule of court, being a matter within the ambit of s. 14(2) of the 1961 Act.

28. Having come to these conclusions in relation to the matters raised by Mr Devally on behalf of the respondent, I am satisfied that the order requested by the applicant pursuant to s. 16(1) of the Act should be made and I so order.