Neutral Citation: [2014] IEHC 576

THE HIGH COURT

Record No.: 2014/ 95 EXT

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

Between/

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant

and

YEMI MOSHOOD OLATUNDE

Respondent

JUDGMENT of Mr. Justice Edwards delivered on the 28th day of October, 2014.

Introduction:
This is one of those relatively rare cases, in this Court's experience, in which a person arrested on foot of a European arrest warrant, and brought before the Court pursuant to s. 13(5) of the European Arrest Warrant Act, 2003 (hereinafter "the Act of 2003"), has sought to challenge and dispute at the arrest hearing that he is the person to whom the warrant in question relates.

In hearing and determining that issue this Court was also required to rule in relation to subsidiary issues relating to (i) the admissibility of certain documentary evidence in the nature of e-mails, and certain fingerprint impressions attached to a document known as an Interpol Diffusion, that the applicant was seeking to rely upon in support of her contention that the person before the Court was indeed the person named in the warrant, and which the respondent was contending constituted inadmissible hearsay, and (ii) the extent, if any, to which the applicant could call in aid and rely upon s. 45A(11) of the Act of 2003.

Following a hearing lasting several hours, and heard over two days, the Court ultimately ruled the disputed evidence to be admissible, and determined that the applicant could rely upon s. 45 A(11) of the Act of 2003 in the circumstances of the case.

Ultimately, the Court was satisfied that the person before the Court was the person to whom the European arrest warrant related. This ruling and determination was expressed to be for the purposes of the s.13 procedure only, and without prejudice to the respondent's right to revisit the issue, if he wished, at any full surrender hearing that might occur in due course in accordance with s.16 of the Act of 2013.

The Court indicated that it would give the reasons for its decisions and rulings in a reserved judgment to be delivered later. The Court now gives its reasons.

Section 13(5) procedure
It has been stated many times that proceedings under the Act of 2003 are *sui generis*. They are neither wholly adversarial nor wholly inquisitorial, but have more in common with an inquiry than with a strictly adversarial contest.

As stated by this Court in *Minister for Justice & Equality v J.A.T.* [2014] IEHC 320 (Unreported, High Court, Edwards J, 9th May, 2014) proceedings under the Act of 2003 commence at the point where an incoming European arrest warrant is endorsed by the Court on the *ex-parte* application of the Central Authority, at which point the case is assigned it's record number. The endorsed warrant then requires to be executed by a member of An Garda Síochána in accordance with s. 13 (3) & (4) of the Act of 2003. Assuming the warrant is in fact executed, both the Act of 2003, and the Rules of the Superior Courts (European Arrest Warrant Act 2003 and Extradition Acts 1965-2001) 2005, (S.I. 23 of 2005), respectively, contemplate an initial interlocutory hearing before the High Court, under s. 13(5) of the Act of 2003; to be followed at a later stage by surrender hearings, either under s.15 of the Act of 2003, where a respondent is consenting to his rendition, or under s.16 of the Act of 2003, where a respondent is objecting to his rendition. The s.13(5) interlocutory hearing is required to be held "as soon as may be" after the arrest.

S. 13(5) provides:

"(5) A person arrested under a European arrest warrant shall, as soon as may be after his or her arrest, be brought before the High Court, and the High Court shall, if satisfied that that person is the person in respect of whom the European arrest warrant was issued—

(a) remand the person in custody or on bail (and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence),

(b) fix a date for the purpose of section 16 (being a date that falls not later than 21 days after the date of the person's arrest), and

(c) inform the person that he or she has the right to—

(i) consent to his or her surrender to the issuing state under section 15,

(ii) obtain, or be provided with, professional legal advice and representation, and

(iii) where appropriate, obtain, or be provided with, the services of an interpreter."

The words "*the High Court shall, if satisfied that that person is the person in respect of whom the European arrest warrant was issued -",* make clear that proof of identity to the satisfaction of the Court is a precondition to anything further happening in the proceedings. If, at that point, the Court is not satisfied that the person who has been brought before the Court is one and the same person as the person named in the warrant then the only thing the Court can do is discharge the arrestee. Moreover, proof to the satisfaction of the Court is a relatively high standard of proof. It is certainly higher than proof on the balance of probabilities, although proof to the criminal standard of beyond reasonable doubt is not required. It follows from this that at an arrest hearing the applicant bears the evidential burden of adducing evidence sufficient to "satisfy" the Court that the arrestee is in fact the person named in the warrant. Equally every arrestee brought before the Court has an entitlement to dispute the claim that he is the person named in the warrant, and to challenge the evidence adduced by the applicant, either on admissibility grounds, or on insufficiency grounds, or on both grounds.

Before passing to consider the evidence sought to be adduced at the s.13(5) hearing in this case, and the admissibility and associated issues that arose therein, it is appropriate to point out that a determination as to identity at the s.13(5) arrest hearing in any case does not render that issue *res judicata* and incapable of being raised again in the remainder of the proceedings. On the contrary, where the putative or alleged respondent is objecting to his rendition, the Court, as a precondition to making an order under s. 16(1) of the Act of 2003, is again required to consider identity and, per s. 16(1)(a) of the Act of 2003, must at that stage also be "*satisfied that the person before it is the person in respect of whom the European arrest warrant was issued*".

Evidence of identity sought to be adduced by the applicant
The first witness called by the applicant was Detective Sergeant Seán Fallon of An Garda Síochána's Extradition Unit, who effected an arrest of the man before the Court on foot of a European arrest warrant. He told the Court, *inter alia*, that on Tuesday the 21st October, 2014, he was in possession of a European arrest warrant, issued by the competent judicial authority in Italy, seeking the surrender of one Yemi Moshood Olatunde, and which had been endorsed for execution in this jurisdiction by this Court on the 16th May, 2014.

I should pause at this stage to note that the original warrant was produced to this Court by the witness at the end of his evidence-in-chief. It is dated the 18th October, 2012, and it seeks the rendition of the said Yemi Moshood Olatunde for the purpose of executing a sentence of imprisonment, initially of 22 years imprisonment but later reduced to 20 years, imposed upon him by a court in Naples in respect of a single drugs related offence particularised in Part (e) of the warrant. The offence is ticked as involving both "participation in a criminal organisation" and "illicit trafficking in narcotic drugs and psychotropic substances".

Detective Sergeant Fallon continued by testifying that upon receipt of the warrant he initiated a preliminary investigation to ascertain the whereabouts in this jurisdiction of the person named in this warrant and that based upon enquiries made, he had acquired cause to believe that the individual concerned would be attending Tallaght Garda Station in connection with an unrelated matter on that day, namely to pay monies due in order to deal with penal warrants that had been issued to a person in the name of Roy Andrew Yemi Aro. Detective Sergeant Fallon stated that, based on his enquiries, he had come to believe that a person claiming to be Roy Andrew Yemi Aro was in fact the Yemi Moshood Olatunde named in the European arrest warrant in his possession.

Detective Sergeant Fallon went to Tallaght Garda Station where he met the person who turned up to deal with the said penal warrants, and he sought to execute the European arrest warrant. He introduced himself to that person by telling him his name, rank and station and by producing to him his official Garda identification card. He then asked the individual concerned if he was Roy Andrew Yemi Aro, to which the individual replied "Yes". Detective Sergeant Fallon then informed him that he believed him to be Yemi Moshood Olatunde, the person named in the European arrest warrant that he had in his possession. The man in question said that he wasn't that person and claimed that his correct name was Roy Andrew Yemi Aro. Indeed, he was adamant that he was not Yemi Moshood Olatunde, and Detective Sergeant Fallon testified that he made some reference to the fact that that name was a tribal name, and that it was not his tribal name.

Detective Sergeant Fallon told the Court that the name Roy Andrew Yemi Aro is the name under which the individual now before the Court holds an Irish Driving Licence, and an Irish Public Service Vehicle Licence, both of which documents he had produced to Detective Sergeant Fallon who had retained them. Detective Sergeant Fallon produced both to this Court. The witness also informed the Court that Roy Andrew Yemi Aro is the name under which the individual concerned had registered with the Garda National Immigration Bureau (G.N.I.B.). The G.N.I.B., in the course of its functions, had taken at the time of such registration, and had retained, that individual's fingerprints.

Detective Sergeant Fallon told the Court that he had further asked the individual in question if his date of birth was 04.04.1967 (i.e., that specified in Part A of the European arrest warrant) and had received the reply "No, that's not me." Detective Sergeant Fallon stated that he then re-iterated to the individual before him that he believed him to be the Yemi Moshood Olatunde named in the European arrest warrant in his possession, and proceeded to arrest him on foot of that warrant.

It is unnecessary for the purposes of this judgment to recite the remainder of Detective Sergeant Fallon's evidence, in so far as it concerns the formalities in and around the arrest, as those matters are not in controversy. It is sufficient to state that the arrested person disavowed any knowledge of the matters to which the warrant related, and further to state that following arrest he was presented to the member in charge at Tallaght Garda Station where he was processed as an arrested person in accordance with the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 (S.I. 119 of 1987).

While there he was again spoken to by Detective Sergeant Fallon who requested his consent to the taking of his fingerprints and palm prints. The arrested person, having had the benefit of legal advice, gave his consent, and signed the relevant consent form which was produced to the Court by Detective Sergeant Fallon. It was not necessary in the circumstances for Detective Sergeant Fallon to seek to invoke, as he might have done if consent had not been forthcoming, the power under s. 45A(1) of the Act of 2003 as amended by s.20 of the Criminal Justice (Miscellaneous Provisions) Act 2009 to take, or cause to be taken, with the authority of a member of An Garda Síochána not below the rank of Inspector, the arrested person's fingerprints and palm prints in order to assist in verifying or ascertaining his identity. Impressions of the arrested person's fingerprints and palm prints were taken from him shortly thereafter.

Detective Sergeant Fallon then testified that subsequent to this he had been in a position to invite his colleague, Detective Garda Frank Doyle, who is attached to the Fingerprint Section at the Garda Technical Bureau, to compare the fingerprint impressions that had been taken from the arrested person at Tallaght Garda Station with a set of fingerprint impressions, associated with the person to whom the European arrest warrant related, that had been transmitted to him earlier by Interpol, and that Detective Garda Doyle had done so.

At this point counsel for the respondent interjected and stated that he was objecting to the admissibility of any fingerprint

impressions transmitted to Detective Sergeant Fallon by Interpol, unless it was intended to call the witness or witnesses who had taken the impressions, and subsequently transmitted them, on the grounds that the material in question constituted inadmissible hearsay.

The Court invited legal argument from both sides in respect of the objection raised. The initial response of counsel on behalf of the applicant was to seek to rely on s.45A (11) of the Act of 2003 as amended by s. 20 of the Criminal Justice (Miscellaneous Provisions) Act 2009 which provides:

> "Where a fingerprint, palm print or photograph of a person to whom a European arrest warrant relates is transmitted by or on behalf of an issuing judicial authority, such fingerprint, palm print or photograph shall be received in evidence without further proof."

Counsel for the respondent then voiced a further objection to the effect that the Court had no evidence before it that in transmitting the fingerprint impressions at issue to Detective Sergeant Fallon Interpol was acting "on behalf of" the Italian issuing judicial authority, which is a requirement of s.45A (11).

In response to this, counsel for the applicant invited the Court to hear further evidence from Sergeant Fallon concerning the nature of the communication that he had received from Interpol, said to be a document known as a "Diffusion", and if necessary to inspect the document in question for the limited purpose of determining whether it was apparent on the face of it, as she contended it was, that it was a document transmitted on behalf of the issuing judicial authority. The Court acceded to this application and Detective Sergeant Fallon was recalled to the witness box.

Detective Sergeant Fallon explained to the Court that "the fingerprints pertaining to the person wanted in this warrant were circulated by means of what is known as an Interpol Diffusion. That is a notification to member states whereby they indicate the identifying particulars of the person sought, and they would attach a copy of the fingerprints." He added that the Interpol Diffusion that he had received stated that the fingerprints attached to it were the fingerprints of the person named in the warrant now before the Court.

Detective Sergeant Fallon concluded his evidence-in-chief by stating that he had learned from his colleague Detective Garda Frank Doyle that when the fingerprint impressions taken from the arrested man in Tallaght Garda Station had been compared with the fingerprint impressions that the witness had received from Interpol, and which he had in turn passed on to Detective Garda Doyle, they were found to be a complete match. In light of this information the witness was satisfied that the person he had arrested was one and the same person as the Yemi Moshood Olatunde named in the European arrest warrant. This evidence was, of course, led without prejudice to the objections being maintained by the respondent, and on which the Court had not yet ruled.

Following this Detective Sergeant Fallon was cross-examined by counsel on behalf of the respondent. The witness agreed that in so far the arrested person had had previous dealings with the driving licence authorities in Ireland, the public service vehicle licensing authorities in Ireland, and the Gardaí and the Courts in Ireland, all of those previous dealings had been conducted on the basis that he was Roy Andrew Yemi Aro. He further agreed that his belief that the person he had arrested was Yemi Moshood Olatunde was based on the information he had received from Interpol, and the match between the fingerprint impressions taken at Tallaght Garda Station with the fingerprint impressions supplied in the Interpol Diffusion.

The Court then indicated that, while it would require to be addressed in more detail by both sides on the hearsay issue, and also concerning the applicability of s.45A(11), it would proceed to hear the remainder of the evidence "*de bene esse*" before hearing legal submissions, and again without prejudice to the objections still being maintained by the respondent. At this point in the proceedings, due to the lateness of the hour, the Court adjourned the hearing until the following day.

When the hearing resumed on day two, counsel for the applicant sought, and was granted, leave to recall Detective Sergeant Fallon. Before the witness gave any further testimony, the Court was provided with a copy of the Interpol Diffusion document and duly inspected it. While counsel for the respondent indicated that his client was objecting to the admissibility of the document's contents in connection with the substantive issue of identity on the grounds that they were hearsay, there was no objection to the court inspecting it and having regard to its contents for the limited purpose of determining the admissibility issue.

The so called Diffusion document represents a written communication that purports on its face to have emanated from "NCB Rome Italy", addressed primarily to "NCB Dublin Ireland", "NCB London United Kingdom," "NCB Nicosia Cyprus" and "SB Gibraltar, United Kingdom", but which was also copied in turn to a very large number of other NCB's and SB's.

The Court should digress at this point to state that the acronym "NCB" refers to an Interpol member state's "National Central Bureau" (see Council of the European Union Note 7702/05, dated 1 April 2005, on "European Arrest warrant – Transmission via Interpol, formatted diffusion"); and the acronym "SB" stands for the "SIRENE Bureau" of a Schengen state, "SIRENE" itself being an acronym for "Supplementary Information Request at the National Entries". National offices known as SIRENE Bureaux have been set up in all Schengen countries to assist with obtaining supplementary information for the purposes of the second generation Schengen Information System (hereinafter " SIS II") by acting as the contact points between a Member State creating an alert and one achieving a match. (See Council Decision 2007/533 JHA of 12 June 2007 on the establishment, operation and use of SIS II, O.J. L381 28.12.2006; Commission Decision 2008/333/EC of 4 March 2008 adopting the SIRENE Manual and other implementing measures for SIS II, O. J. L123 08.05.2008; and Part 3 of the Criminal Justice (Miscellaneous Provisions) Act, 2009).

The Diffusion document received by Detective Sergeant Fallon and inspected by the Court requests those to whom it is addressed to "[l]ocate and arrest (the person concerned) with a view to extradition", and further states that "[t]his request is based on a European Arrest Warrant issued by a competent judicial authority" and that "[t]he arrest and surrender of the above mentioned person is requested for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order pursuant to Article 10(3) of the European Arrest Warrant Framework Decision of 13 June 2002." The document later correctly references the matters to which the European arrest warrant before the Court relates, and is accompanied by "Identity Particulars" in respect of the wanted person, to which are annexed in turn a set of fingerprint impressions, and also copies of two photographs, of poor quality it has to be said, one showing the frontal facial view, and the other showing a side profile view, of what is evidently a black man. The document further identifies the officer in charge of the case at NCB Rome as being "M Aliotta Didier."

Having inspected the Diffusion document the Court indicated that it could not agree that it was immediately apparent from the face of it that it had been transmitted to Detective Sergeant Fallon "on behalf of" the issuing judicial authority. It was clear that it emanated from the police authorities in the issuing state, and that it purported to relate to the warrant before the Court, but if reliance was being placed on s.45A(11) for the purpose of having it received in evidence without further proof, notwithstanding the

hearsay nature of it, it required to be established not just that the document had emanated from an official agency representing the issuing state but, specifically and additionally, that it had been "transmitted by or on behalf of the issuing judicial authority". In so indicating, the Court accepted that it had not yet heard all the evidence.

Detective Sergeant Fallon then returned to the witness box and identified the Diffusion document in question as being the document, received from Interpol, of which he had spoken the previous day. He was asked to explain what is "a Diffusion" and he stated that "a Diffusion is a notification amongst the member states of Interpol in relation to wanted persons". He referred to the fact that the Interpol system works primarily by the promulgation of colour coded Interpol notices that are international requests for co-operation or alerts allowing police in member countries to share critical crime-related information. Red Notices are used by many, but not all, participating states to seek the location and arrest of wanted persons with a view to extradition or other action. However, Ireland does not respond to Red Notices for various reasons, including that Ireland's participation in SIS II is limited as it is based on the Schengen Acquis rather than the Schengen Convention, and Ireland does not act upon Schengen alerts. For member states not using or recognising Red Notices an alternative document is now in use as the means of communicating requests seeking the location and arrest of wanted persons with a view to extradition. This is known as a Diffusion. The witness added that a Diffusion is issued on what he characterised as "a shotgun basis" to many, or perhaps all, Interpol member states. This Court infers that what he meant in referring to "a shotgun basis" is that a Diffusion is promulgated indiscriminately, rather than on a targeted basis, in the hope that the subject person will come to the attention of the police authorities of a recipient member state in the normal way, either serendipitously or as a result of checks in national law enforcement databases carried out in response to a Diffusion having been received, and then be arrested. Conversely, Red Notices tend to be more specifically targeted.

At this point the Court should digress to state that, in the course of the Court's own legal research conducted over the lunch break on Day two of the hearing, its attention was drawn to a somewhat fuller explanation to be found in an official Council of the European Union Note, No 7702/05, dated 1 April 2005, entitled "European Arrest Warrant – Transmission via Interpol, formatted diffusion" (accessable via the European Union Official Web Portal : www.europa.eu). The Court ensured that the parties were duly apprised of, and furnished with, this document. The said Note states that:

> "Article 10(3) of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States provides that the ICPO-Interpol may be used to transmit the European Arrest Warrant if it is not possible to call on the services of the SIS.
>
> In October 2002, the General Secretariat of the ICPO-Interpol surveyed Ministries of Justice of the European Union Member States concerning their intentions for implementing the EAW, in particular with regards to plans for using the Interpol network and notices system. The General Secretariat was indeed keen to anticipate potential amendments of its instruments in order to match the needs of its own members (all Member States of the European Union are also represented in Interpol).
>
> On the basis of the replies received and in particular given that a number of countries clearly indicated their intention to use the Interpol red notice to transmit the European arrest warrant and to consider the red notice as equivalent to a European arrest warrant provided that the information set out in Article 8(1) of the Framework decision was incorporated in the red notice, the General Secretariat in December 2003 sent to the Ministries of Justice of the European Union Member States (including acceding countries), a revised version of the Interpol red notice form for comments. The responses to this initiative were very positive and the form was amended to incorporate some of the comments made.
>
> Meanwhile, Member States of the European Union unable to call on the services of the SIS had started to transmit the EAW via Interpol channels through their own NCB. Such transmission was made by simple message sent to one or many NCBs through Interpol I-24/7 telecommunication system in one of the Organization's official languages (English, French, Spanish, Arabic).
>
> However, it soon appeared that these messages, most often combining both surrender procedure requests to other Member States of the European Union and provisional arrest requests to the rest of Interpol countries, generated confusion. Presentation of the message would vary from one Member State to the other and the information requested in Article 8(1) of the Framework decision that is necessary for a provisional arrest request would not be clearly identified. The General Secretariat of the ICPO-Interpol had earlier initiated a project of "formatted diffusion", i.e. a standard message with formatted fields rather than plain text, with a view not only to increase the quality of the information but also to streamline the processing of this information. The decision was therefore taken to incorporate the specific fields of the European arrest warrant into this formatted diffusion as was done for the red notice. The formatted diffusion has been made available to Interpol members via Interpol I-24/7 telecommunication system on 31 March 2005...."

Returning to the further testimony of Detective Sergeant Fallon, he expressed his belief that the Diffusion before the Court was sent on behalf of "the Italian judicial authority." In purported explanation of how he came to this view he then pointed out that "in many States the central authority is also the Interpol Bureau" and the effect of his testimony was that, as he understood this to be the position in Italy, *ergo* the Diffusion could be regarded as having been transmitted on behalf of the issuing judicial authority.

The Court commented in an exchange with counsel that even if the transmission had come from the Italian central authority it would still had to have been transmitted with the authority, express or implied, of the issuing judicial authority for s.45A(11) to apply. The Italian central authority and the issuing judicial authority could not be treated as the one entity. This is because where a member state opts to have a central authority it is invariably part of the executive branch of government of that member state, and the *raison d'être* of the European arrest warrant system was to reduce the role of the executive to that of a facilitator and to place all decision making power in respect of both the issuing and execution of European arrest warrants in the hands of judicial authorities who would operate on the basis of mutual recognition of judicial decisions in criminal matters.

The Court noted that the issuing judicial authority in respect of the European arrest warrant before the Court was stated in Part (i) of the warrant to be the "Office of the State Prosecutor attached to the Court of Naples", whose nominated representative is Fabio Massimo Del Mauro, Deputy State Prosecutor.

The next witness called on behalf of the applicant was a Mr Barry Crossan, a Higher Executive Officer in the Department of Justice with authority to act on behalf of the Minister for Justice in her capacity as the Central Authority in Ireland for the purposes of the European arrest warrant. Mr Crossan confirmed that, having been apprised of the controversy unfolding before this Court concerning the admissibility of the fingerprint impressions forming part of the Interpol Diffusion received by Detective Sergeant Fallon, and related issues, he had earlier that afternoon spoken by telephone to a police lieutenant based at Interpol NCB Rome, a Lieutenant Domenico Meliddo, who had confirmed to him that the information contained in the Diffusion document was sent on behalf of both the Italian

central authority and the public prosecutor (who is also the issuing judicial authority). Understandably, counsel for the respondent intervened to put on the record that he was also maintaining a hearsay objection in respect of anything said on the telephone by the police lieutenant concerned. Mr Crossan further stated that in addition he had received a number of e-mails, including one from an official with the Italian central authority, and one from the said Lieutenant Domenico Meliddo. Counsel for the respondent also indicated that he was objecting to the introduction of any such e-mails, again on the grounds that they constituted inadmissible hearsay. The Court allowed the witness to produce, and refer to, the said e-mails on the basis that the court would receive that evidence *de bene esse* and again without prejudice to the objections being maintained by the respondent, on which the Court had yet to rule.

The first e-mail in time produced by Mr Crossan was an email received by the Irish Central Authority at approximately 10.10 on the 22nd October 2014 from a Marco Laratta of the Italian Central Authority stating (*inter alia*, and to the extent relevant):

> "In respect of your ref. 1917113/13 of 21/10/2014, I would like to specify that only Interpol has the identification material available in that it is a Police Office and that the issuing judicial authority has not this material available. We await your reply in this case.
>
> Best regards"

The second document in time produced by Mr Crossan, although also described in evidence as an "e-mail", is, in the Court's view, more correctly to be characterised as a printout by some form of teleprinter (not dissimilar to the printouts produced by the Telex machines that were common in legal and commercial offices worldwide in the days before that technology was superseded by fax, and later again by electronic mail transmitted via computer modem) of an electronic communication received by him during the afternoon of the 22nd October, 2014 from the said Lieutenant Domenico Meliddo. The exact time of transmission is not apparent from the printout, and the names of certain parties not before the Court have been redacted. The document states (*inter alia*, and to the extent relevant):

> "Dear Sir,
>
> Further [to] the telephone conversation of this afternoon, we confirm that the identification materials of all subjects, that you received by Interpol Dublin through this office, have been sent on behalf of our central authority for the European arrest warrant and the Public Prosecutor's office at the Court of Naples, in application of EAW regulations.
>
> Therefore, you are kindly request to confirm the arrest in application of EAW issued by our judicial authorities in Naples of A/M Olatunde Yemi Moshood.
>
> Kind regards,
>
> Interpol Rome
>
> MD/"

Mr Crossan was briefly cross-examined by counsel on behalf of the respondent. The Court considers that nothing of particular assistance to it, in terms of the issues that it has had to decide, emerged from this cross-examination, and it is unnecessary in the circumstances to review it.

The final witness called by the applicant was Detective Garda Frank Doyle who is a fingerprint expert attached to the Fingerprint Section at the Garda Technical Bureau. His expertise was not challenged by counsel on behalf of the respondent. He confirmed to the Court that he had received both the fingerprint impressions taken from the arrested man at Tallaght Garda Station, and the fingerprint impressions attached to the Interpol Diffusion referred to, and identified, by Detective Sergeant Fallon in his evidence. He stated that he had compared the impressions from both sources. In his opinion they were a complete match.

Legal Argument
Counsel for the applicant contended that the Interpol Diffusion document was confirmed in the correspondence produced by Mr Crossan as having been forwarded on behalf of the issuing judicial authority. In the circumstances, she believed that it was receivable without further proof under s. 45A(11) of the Act of 2003.

In the alternative, counsel for applicant contends that the evidence in question could in any event be admitted at a s. 13(5) arrest hearing, which was interlocutory in nature, notwithstanding the hearsay nature of that evidence, where the witnesses required to give first hand and direct evidence of the matters in controversy were outside of the jurisdiction, in this instance in Italy, and it would be wholly impractical to try to arrange, and would very likely be impossible to secure, their attendance before the court for an arrest hearing, given the statutory time constraints.

The Court notes that there are two statutory time constraints contained within the Act of 2003. First, s. 13(5) itself requires than an arrested person should be brought before the High Court "as soon as may be". Secondly, s.27 of the Act of 2003 specifies that the maximum period for which an arrested person can be held in a Garda Station following arrest is 48 hours. Moreover, and quite apart from the statutory constraints, Article 40.4 of the Constitution guarantees to the respondent that he will not be deprived of his personal liberty save in accordance with law, and the Courts must be strict in requiring the prompt demonstration of a basis in law for any detention. If it cannot be demonstrated forthwith, then at most it must be demonstrated within a very short time.

In support of her argument that, even if s.45A(11) does not apply, the Interpol Diffusion might nonetheless be admitted notwithstanding that it offends the rule against hearsay, counsel for the applicant has urged upon the Court that support for her contention is to be found in the decision of the Supreme Court in *The People (Director of Public Prosecutions) v McGinley* [1998] 2.I.R. 408.

Further, counsel for the applicant also calls in aid the approach adopted in the *McGinley* case to suggest that the other manifestly hearsay material that the applicant seeks to rely upon, namely the e-mail correspondence adduced by Mr Crossan, and his account of his telephone conversation with Lieutenant Domenico Mellido of Interpol NCB Rome, ought to be admitted and taken account of by the Court in this interlocutory procedure, notwithstanding that it is hearsay, in circumstances where, once again, the procurement of direct *viva voce* evidence could not realistically be organised in the short time available.

In response, counsel for the respondent has argued that before the Court could find that the applicant is entitled to rely upon

s.45A(11) the Court would have to have admissible evidence before it that the Interpol Diffusion to which dactyloscopic evidence was attached was forwarded to the Irish Central Authority by Interpol NCB Rome (via Interpol NCB Dublin) "on behalf of" the issuing judicial authority. Counsel for the respondent contends that there is no such admissible evidence, whether direct or circumstantial. In so far as reliance is placed on the contents of the Interpol Diffusion itself, it is said that regard cannot be had to its contents in circumstances where they represent inadmissible hearsay. In so far as the oral representations made to Mr Crossan by Lieutenant Domenico Meliddo of Interpol NCB Rome are concerned, it is contended that they are also inadmissible as hearsay. Finally, in so far as the contents of the documents described as "e-mails" by Mr Crosson are concerned, i.e., that received from Marco Laratta of the Italian Central Authority, and the subsequent one received from the said Lieutenant Domenico Meliddo, the point is again made that regard cannot be had to them as they contain hearsay.

In counsel for the respondent's submission, the Court would be wrong to admit this hearsay evidence in reliance upon the *McGinley* case. The *McGinley* case concerned bail and is readily distinguishable upon its facts from the facts of the present case. Moreover, he urged that sight should not be lost of the fact that in *McGinley* the Supreme Court had held that, in admitting the hearsay evidence in controversy at the hearing before him, the learned High Court judge had erred in law.

The Court's Analysis and Decision
In so far as s.45A(11) of the Act of 2003 is concerned, there is really no controversy as between the parties concerning how it is to be interpreted. Its meaning is clear and unambiguous. Where it applies, it allows a fingerprint, palmprint or photograph of a person to whom a European arrest warrant relates to be received in evidence without further proof. Moreover, the scope of its application is equally clear. For it to apply one of two circumstances must obtain. The fingerprint, palmprint or photograph at issue must either have been transmitted by an issuing judicial authority itself; alternatively have been transmitted on behalf of an issuing judicial authority. Nobody is suggesting that the first circumstance obtains in the present case. The controversy, such as it is, concerns whether or not the dactyloscopic evidence attached to the Interpol Diffusion transmitted by Interpol NCB Rome to Interpol NCB Dublin, and ultimately provided to Detective Garda Frank Doyle for the purposes of his fingerprint comparison exercise, was so transmitted "on behalf of" the issuing judicial authority in this case, namely the State Prosecutor attached to the Court of Naples. Ultimately, that is an issue of fact.

What does the Act of 2003 envisage?

Section 11 of the Act of 2003 substantially mirrors Article 8 of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States 13.06.2002 (hereinafter "the Framework Decision"). Section 11(1) requires that a European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision (as amended by Council Framework Decision 2009/299/JHA 26.02.2009). Moreover, s.11 (1A) of the Act of 2003 as amended specifies certain minimum information that ought to be contained in a European arrest warrant. In so far as the identity of the requested person is concerned, s.11 (1A) (a) specifies that a European arrest warrant shall specify "the name and nationality of the person in respect of whom it is issued".

Neither the Act nor the Framework Decision requires that dactyloscopic, photographic or any other evidence in support of identity should accompany a European arrest warrant, or be otherwise provided. However, notwithstanding that it is not a mandatory requirement, the Annex to the Framework Decision (as amended) seems to envisage that such evidence might indeed be provided, and either be transmitted with a European arrest warrant, or be made available later through a designated contact. Accordingly, Part A of the form set out in the Annex to the Framework Decision (as amended) allows an issuing judicial authority to indicate the position in regard to the availability of evidence in support of identity, particularly photographic and dactyloscopic evidence, and a DNA profile, and is framed in the following way:

> "Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included):
>
> _____ ."

Clearly if Interpol NCB Rome had been specified by the issuing judicial authority in Part A of the warrant as the contact point for the obtaining of fingerprints, there could have been no dispute before this Court concerning whether the dactyloscopic evidence attached to the Diffusion document was transmitted "on behalf of" the issuing judicial authority. In the present case, however, the issuing judicial authority has regrettably left the relevant item in Part A of the European arrest warrant blank, and has neither stated that fingerprints were available and would be transmitted with the warrant, nor provided contact details for a person from whom fingerprints might be obtained later.

It is necessary at this point to examine what the Act of 2003 envisages should happen in terms of the transmission of a European arrest warrant and any accompanying documentation, as well as documentation forwarded subsequently.

Section 12(1) of the Act of 2003 states that "[a] European arrest warrant shall be transmitted by, or on behalf of, the issuing judicial authority to the Central Authority in the State". Subss. 12(3), and 12(3B) as amended, respectively, go on to provide:

> "(3) A European arrest warrant, or an undertaking required to be given under this Act or any other document to be transmitted for the purposes of this Act, may be transmitted to the Central Authority in the State by—
>
> (a) delivering it to the Central Authority in the State, or
>
> (b) any means capable of producing a written record under conditions allowing the Central Authority in the State to establish its authenticity.
>
> (3A) ….
>
> (3B) The written record of a document that is transmitted in accordance with subsection (3)(b) shall be deemed to be the document that was transmitted."

Section 12(10) provides for the making of Ministerial regulations prescribing procedures for the transmission of documents in accordance with that section. However, no such regulations have ever been promulgated.

The Act of 2003 differs from the Framework Decision as amended in as much as the latter contains detailed procedures for transmitting a European arrest warrant, whereas the former does not. While the Framework Decision is not directly effective, it is legitimate to have regard to it as an aid to interpreting the Act of 2003 (as amended) which was intended to transpose it, and to ensure that in so far as is legitimately possible, the Act of 2003 is interpreted in conformity with it.

The relevant provisions of the Framework Decision are Articles 9 and 10, respectively.

> Article 9 is headed "Transmission of a European arrest warrant", and states:
>
> "1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.
>
> 2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).
>
> 3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).
>
> For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority."

It requires to be reiterated that Ireland is not a party to the Schengen Convention (otherwise the Schengen Agreement Application Convention or SAAC). However, Ireland takes part in Schengen co-operation under the terms of the Treaty of Amsterdam, which introduced the provisions of the *Schengen Acquis* into the European Union. *Schengen Acquis* allows Ireland to take part in some or all of the Schengen Convention arrangements. Ireland has requested to take part in some of those arrangements, as specified in Council Decision 2002/192/EC of the 28th February 2002, and since the enactment of Part 3 of Criminal Justice (Miscellaneous Provisions) Act 2009 Ireland uses SIS II in a limited way for law enforcement purposes.

Article 10 is headed "Detailed procedures for transmitting a European arrest warrant", and states:

> "1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network [Footnote 1: Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).] , in order to obtain that information from the executing Member State.
>
> 2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.
>
> 3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.
>
> 4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.
>
> 5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.
>
> 6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly."

Thus, the Framework Decision envisages that the default vehicle for transmission of a European arrest warrant, and any document needed for its execution, is to be the Schengen Information System or SIS (now SIS II). However, if it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

The Court has received no express evidence concerning how the European arrest warrant in this case was in fact transmitted to the Irish Central Authority, and specifically concerning whether the issuing judicial authority used SIS II, or Interpol, or some other vehicle of transmission, for that purpose.

Moreover, this Court also does not know whether it was possible, or not possible, for the issuing judicial authority to utilise SIS II for transmission purposes in this particular instance. While Italy is certainly a full participant in both the Schengen Convention and SIS II, the Court cannot foreclose on the possibility that Ireland's limited participation in Schengen arrangements may have presented a problem. What can be stated with certainty is that if there was indeed a difficulty, or a perceived difficulty, in that regard, there was a readily available alternative vehicle for transmission in that Article 10.3 of the Framework Decision specifically contemplates the services of Interpol being used in that event. Accordingly, even though the Act of 2003 does not specifically mention Interpol, Interpol must nevertheless be regarded as a legitimate vehicle for the transmission of information where an issuing judicial authority sees fit to utilise it.

If the Court had evidence before it that it had not been possible for the issuing judicial authority to utilise SIS II for transmission of the warrant and any document needed for its execution, it could have readily inferred that the dactyloscopic material accompanying the Interpol Diffusion at issue in the present case was transmitted "on behalf of" the issuing judicial authority. However, in circumstances where there is an evidential deficit with respect to the transmission options open to the issuing judicial authority in this case, the basis for the drawing of such an inference does not exist, and more specific evidence is required.

Undoubtedly, the hearsay evidence of Mr Barry Crosson concerning the representations made to him by the Italian authorities, and specifically both the oral and written representations of Lieutenant Domenico Meliddo of Interpol NCB Rome, could, if capable of being admitted, provide evidence sufficient to satisfy this Court that the Interpol Diffusion was indeed transmitted "on behalf of" the issuing

judicial authority, thereby allowing the dactyloscopic material accompanying that document to be received in evidence without further proof in reliance on s.45A(11) of the Act of 2003. The issue for the Court nets down to this: can the representations made to Mr Crosson be admitted and taken account of by the Court notwithstanding that they are hearsay?

It is certainly the case that the ordinary rules of evidence apply at surrender hearings pursuant to s. 16 of the Act of 2003. The position in that regard was stated by this Court in *Minister for Justice and Equality v R.P.G.* [2013] IEHC 54 (Unreported, High Court, Edwards J., 18th July 2013) in the following terms:

> "… it is well established that while proceedings such as the present are sui generis, and are neither wholly adversarial nor wholly inquisitorial, they are predominantly inquisitorial. That said, the rules of evidence do apply, though self evidently particular rules that have as their raison d'etre the maintenance of balance and fairness in an adversarial contest may have less relevance in a process that is predominantly inquisitorial. Moreover, the Supreme Court has stated in *Minister for Justice, Equality and Law Reform v Sliczynski* [2008] IESC 73 (unreported, Supreme Court, 19th December, 2008) that (where there is a difference between the rules of evidence applicable to criminal cases and the rules of evidence applicable to civil cases) it is the civil rules of evidence that apply in proceedings such the present.
>
> > In *Sliczynski*, Murray C.J., as he then was, stated:
> >
> > '…Counsel for the appellant properly acknowledged that extradition proceedings are neither strictly criminal nor civil in nature but the ordinary rules of evidence apply. It was submitted, citing *Minister for Justice, Equality & Law Reform –v- Abimbola* [2006 IEHC 325] which in turn relied on *R (Levin) -v- Governor of Brixton Prison* 1997 AC 741 that while not strictly criminal proceedings, in extradition matters criminal procedure and rules of evidence should apply. Suffice it to say that the latter case, the United Kingdom case, referred to a particular form of extradition proceedings in the context of arrangements for extradition between the United Kingdom and the United States which involved a wholly different procedure for extradition than that which arises under the system of surrender provided for in the Act of 2003 as amended. Section 10 of the Act of 2003 provides "Where a Judicial Authority in an issuing State duly issues a European Arrest Warrant in respect of a person …that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision be arrested and surrendered to the issuing State." For the purpose of making an Order pursuant to s. 10 the trial Judge has to be satisfied that the requirements of the Act, and where specified, the Framework Decision, have been complied with. Once so satisfied he or she is bound to make the Order for surrender.
> >
> > As I pointed out in *Attorney General –v- Park* (Unreported) Supreme Court 6th December 2004 which concerned extradition under the Act of 1965, as amended, "The burden of proof of facts which may rest on the applicant in these proceedings is not that of a criminal trial. I hasten to add that the learned High Court Judge did not approach this matter on such a basis and it is just that I consider it appropriate at this point to distinguish between extradition proceedings and other forms of proceedings, criminal and civil. An extradition proceeding pursuant to the relevant Acts has its own special features which in a certain sense makes it *sui generis*." Later in the judgment it was stated "The role of the requested State, indeed its duty, is to give effect to a lawful request from a requesting State once it is determined that the request fulfils the criteria laid down by the relevant legislation …. The responsibility for bringing a person named in a warrant before the High Court clearly rests with authorities in the State. Once that is done the task in determining whether all legal requirements for the making of an Order pursuant to s. 47 are fulfilled rests with the High Court Judge. That is an inherently inquisitorial function." It seems to me that the same considerations apply to applications for surrender pursuant to the Act of 2003 and indeed s. 20 of the Act, as cited above, highlights the inquisitorial dimension of the proceedings. The rules of evidence which apply are not those of a criminal trial.' "

However, an arrest hearing pursuant to s.13(5) of the Act of 2003 is a different species of hearing to a surrender hearing. It is interlocutory in nature. Moreover, although the s. 13(5) arrest hearing represents an interlocutory stage in what is, strictly speaking, a civil procedure, it has some features in common with a criminal proceedings, and in particular it may result in deprivation or restriction of the arrested person's liberty.

One very important feature of it is that it does not determine the issue of identity for all time. On the contrary, and as has already been pointed out, the issue can, and indeed must, be revisited at any subsequent surrender hearing.

Another important feature is that it must be dealt with as a matter of urgency. The act of arrest will already have impinged upon the arrested person's right to liberty by the time he is brought before the High Court; and, unless the arrested person is discharged following the s.13(5) hearing (a relatively rare occurrence), the outcome of the arrest hearing is likely to involve either total denial of the arrested person's liberty pending his or her surrender hearing (in a case where bail is denied), or at least some restriction of the requested person's liberty pending his or her surrender hearing (in a case where conditional bail is granted).

It is because of the prejudicial implications for the right to liberty of the arrested person that there is urgency associated with the holding of an s.13(5) arrest hearing. The statute requires that the person should be brought before the High Court "as soon as may be after his or her arrest", and further specifies that the maximum period for which such a person may be detained in a Garda Síochána station is 48 hours. In practice, arrested persons are usually brought before the High Court on the same day, or if that is not possible within 24 hours of the arrest. Inevitably the need to observe and respect these time constraints will, from time to time, and in a case such as the present, prejudice the ability of the applicant to assemble and adduce the best possible evidence in order to satisfy the Court with respect to the matters of which it must be satisfied. Frequently arrests are effected, and consequential s. 13(5) arrest hearings, are conducted at unsocial hours, at weekends and during vacations. However, even during the normal working week it may be an impossible "ask" to expect an applicant to arrange the attendance of a witness or witnesses from abroad at very short notice.

Recognising this reality, the question is begged as to whether it is open to the Court in those circumstances to receive the best evidence actually available, rather than the best evidence that might in theory be adduced, and in particular to receive and admit hearsay evidence in lieu of direct *viva voce* evidence, subject to an issue as to what weight might be attached to it? This Court believes that the admission of hearsay evidence on such a basis at an arrest hearing is permissible in principle, bearing in mind the interlocutory nature of such a hearing, where the Court considers it appropriate to do so in the interests of justice,. Whether or not the admission of hearsay evidence will in fact be appropriate in any given case will depend on the nature of the evidence sought to be adduced, its potential relevance to the issues the Court has to determine, whether it relates to key facts directly in controversy or merely to some subsidiary issue (e.g., a link in the chain of evidence, or the authorship or provenance of a document sought to be relied upon), and the reasons offered as to why the viva voce evidence of those in a position to give direct evidence of the matters

at issue cannot be adduced. However, where the evidence sought to be adduced concerns a subsidiary issue, and the party who would wish to adduce such evidence is effectively prevented by tight statutory time constraints from doing so, the Court can exercise its discretion to receive secondary hearsay evidence on behalf of the party concerned.

In coming to this view, this Court has been greatly influenced by the approach of the Supreme Court in *The People (Director of Public Prosecutions) v McGinley* [1998] 2.I.R. 408. The respondent in the present case is correct in pointing out that the Supreme Court held that, in the particular circumstances of that case, the High Court had been incorrect in admitting hearsay evidence at a bail hearing. However, it is clear from a close reading of the judgment of Keane J. (as he then was), with whom the other four members of the Supreme Court agreed, that although the Court was of the view that bail hearings were not wholly analogous with interlocutory applications in civil proceedings; that indeed, the analogy with such applications was "incomplete and misleading"; it did allow that hearsay evidence could sometimes, exceptionally, be admitted in bail applications where to do so would not impinge on the essential fairness of the hearing and provided the court hearing the application was satisfied that there were sufficient grounds for not requiring a witness to give viva voce evidence.

It is appropriate to quote the key passages from the judgment of Keane J in *McGinley*. The learned judge stated (at pp. 413-415):

> "The rule against hearsay, like any other evidentiary rule, is capable of producing injustice in individual cases, particularly if applied in a rigid and unyielding manner. For that reason, numerous exceptions have been grafted on to the general exclusionary rule, both by judicial decision and legislation. But it remains an essential feature of our legal system, the importance of which was emphasised by O'Dalaigh C.J. in In *re Haughey* [1971] I.R. 217 at p. 264, and by Henchy J., speaking for this Court in *Kiely v. Minister for Social Welfare* [1977] I.R. 267, where he said at p. 281:-
>
> > "Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice."
>
> There is no reason why those principles should not be applied to an application for bail, such as the present. The analogy with interlocutory applications in civil proceedings is incomplete and misleading. No doubt the bail application can properly be described as interlocutory in its nature, since it does not resolve in any way the central issue in the proceedings, *i.e.*, the guilt or innocence of the accused. But it differs crucially from civil interlocutory applications in that, if bail is refused, the accused person is deprived of his liberty in circumstances where he must be presumed to be innocent. Moreover, if subsequently acquitted at his trial, the fact that he has spent a period in custody, however lengthy, awaiting his trial affords him no remedy. By contrast, the granting of an interlocutory injunction, generally speaking, does no more than preserve the *status quo* pending the final determination of the proceedings and is not normally granted unless the plaintiff is in a position to give an undertaking to pay damages in the event of his being unsuccessful in the plenary proceedings.
>
> There is undoubtedly another distinction between bail applications and interlocutory injunctions in civil proceedings. The constitutional right of the applicant for bail to liberty must, in every case where there is an objection to the granting of bail, be balanced against the public interest in ensuring that the integrity of the trial process is protected. Where there is evidence which indicates as a matter of probability that the applicant, if granted bail, will not stand his trial or will interfere with witnesses, the right to liberty must yield to the public interest in the administration of justice. It is in that context that hearsay evidence may become admissible, where the court hearing the application is satisfied that there are sufficient grounds for not requiring the witness to give viva voce evidence. In such a case, it would be for the court to consider what weight should be given to the evidence, having regard to the fact that the author of the statement had not been produced and to any other relevant circumstances which arose in the particular case.
>
> An example of a bail application in which hearsay evidence was held to have been properly admissible is *McKeon v. Director of Public Prosecutions* (Unreported, Supreme Court, 12th October, 1995), to which reference has already been made. That was an application to revoke bail already granted on the ground that there was evidence that the applicant would abscond. A garda said in evidence that she had received confidential information indicating that the applicant had obtained a false passport and had received financial assistance from an illegal organisation to assist him in leaving the country. The High Court (Costello P.) held that, having regard to the principle of police privilege in relation to confidential information, such hearsay evidence was admissible, although the weight to be given to it was another matter. Having reviewed the other circumstances in the case, he concluded that there was a high probability that the applicant would not stand his trial and he accordingly revoked the bail. On appeal that decision was unanimously upheld by this Court (Hamilton C.J., O'Flaherty and Egan JJ.).
>
> There was thus present in *McKeon v. Director of Public Prosecutions* (Unreported, Supreme Court, 12th October, 1995), a critical factor which is missing from this case. A specific reason for not producing the author of the statement, *i.e.* the fact that the information had been communicated in confidence to the garda, was given to the trial judge. The courts both here and in England have for long recognised that the public interest may require that the anonymity of police informers should be preserved in particular cases; see *Marks v. Beyfus* [1890] 25 Q.B.D. 494 and *Director of Consumer Affairs v. Sugar Distributors Ltd.* [1991] 1 I.R. 225. The trial judge in that case was satisfied that the anonymity of the informer should be preserved and that, having regard to all the other circumstances before him, the application for bail should be refused. Although the hearsay nature of the evidence in the present case was specifically objected to by counsel on behalf of the applicant, no reason was given as to why those concerned should not give viva voce evidence.
>
> The application of the principles to which I have referred need not change significantly the format in which the numerous and necessarily urgent applications for bail are dealt with. In many cases the applicant for bail and the judge hearing the application find it helpful to have the nature of the charge and the circumstances of the case outlined by the prosecuting garda in his evidence to the court. In giving such evidence the prosecuting member usually collates information received by him from a number of sources. It would be unusual for objection to be taken to hearsay evidence of that nature. Where, however, as in the present case a positive conflict exists between the evidence given by the applicant on an issue crucial to the application and the opinion of the member of the garda based on evidence derived from other sources, the appropriate principles of law must be applied and an adjournment granted to the prosecution for that purpose, if necessary.
>
> I am satisfied that, in these circumstances, the learned High Court Judge erred in law in admitting the hearsay evidence."

I am satisfied that in the present case it is appropriate to admit the hearsay evidence given by Mr Crosson concerning what he was told, both orally and in writing, by the Italian authorities, and specifically by Marco Laratta of the Italian Central Authority and by

Lieutenant Domenico Meliddo of Interpol NCB Rome. None of this material bears directly on the central issue of positive conflict that this Court has to determine at this arrest hearing, namely whether the person before the Court is one and the same person as the person to whom the European arrest warrant relates. Rather it only bears on the subsidiary issue of whether the dactyloscopic evidence that accompanied the Interpol Diffusion transmitted by Interpol NCB Rome to Interpol NCB Dublin, and subsequently passed to Detective Sergeant Fallon and ultimately to Detective Sergeant Frank Doyle, was material transmitted "on behalf of" the issuing judicial authority.

In circumstances where the Court is satisfied to admit the said hearsay evidence, and in circumstances where no good reason has been advanced for not attaching probative weight to it (the respondent can point to no cogent evidence tending in any way to contradict the hearsay assertion that the material was transmitted on behalf of both the Italian Central Authority and the State Prosecutor at the Court of Naples, the latter being the issuing judicial authority), this Court is satisfied that the fingerprints accompanying the Interpol Diffusion and referable to the European arrest warrant with which the Court is presently concerned were indeed transmitted on behalf of the issuing judicial authority. That being the case s.45A(11) of the Act of 2003 as amended applies to such fingerprint evidence and it may be received in evidence without further proof.

Conclusion
The Court, having heard all of the evidence reviewed in this judgment, and in particular the evidence of Detective Garda Frank Doyle concerning his expert comparison of the fingerprint impressions taken from the arrested person at Tallaght Garda Station, with those attached to the Interpol Diffusion previously referred to, and his finding of a match, is satisfied that the person before the Court is one and the same person as the person to whom the European arrest warrant relates.